

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT.

Complainant.

v.

BRYAN N. POLOZOLA
(CRD No. 4370964).

Respondent.

Disciplinary Proceeding
No. C10050023

Hearing Officer—AWH

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: June 22, 2005

INTRODUCTION

Disciplinary Proceeding No. C10050023 was filed on April 22, 2005, by the Department of Enforcement of NASD ("Complainant") against Respondent Bryan N. Polozola ("Respondent").

Respondent submitted an Offer of Settlement ("Offer") to Complainant, dated May 24, 2005. Pursuant to Code of Procedure Rule 9270(e), the Complainant and the National Adjudicatory Council ("NAC") Review Subcommittee or the Office of Disciplinary Affairs ("ODA") have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to Code of Procedure Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer, as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of his

permanent disciplinary record and may be considered in any future actions brought by NASD.

BACKGROUND

Respondent first became registered with NASD as a Financial and Operations Principal on June 11, 2001, through an association with E*Trade Professional Trading, LLC (BD No. 39293) ("ETPT") a current NASD member firm. Respondent was last associated with an NASD member firm on or about March 19, 2004—his last day of employment with ETPT. On or about April 30, 2004; August 18, 2004; and March 10, 2005, ETPT filed amendments to Respondent's Form U-5 that indicate that Respondent was the subject of an internal review based, in part, upon the misconduct alleged in the instant Disciplinary Proceeding.

Although Respondent is not currently associated with any NASD member firm, Respondent remains subject to NASD's jurisdiction pursuant to Article V, Section 4 of NASD's By-Laws through at least April 29, 2006. Specifically, the Notice of Complaint and Complaint were served upon Respondent and filed on April 22, 2005, which is within two years from ETPT's filing of Respondent's Form U-5 amendment in which it disclosed new information that Respondent had possibly engaged in actionable conduct.

Respondent does not have any prior disciplinary history with the Securities and Exchange Commission, any self-regulatory organization or any state securities regulator.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows: From in or around June 11, 2002, through in or around March 19, 2004, Respondent served as the Controller and Financial and Operations Principal of ETPT. On at least four occasions during 2003, Respondent authorized wire transfers totaling at least \$49,350 from ETPT's bank account to his personal bank account. Specifically:

- a. On or about January 9, 2003, Respondent converted \$30,000 of ETPT's funds for Respondent's own use and benefit.
- b. On or about June 23, 2003, Respondent converted \$4,000 of ETPT's funds for Respondent's own use and benefit.
- c. On or about July 22, 2003, Respondent converted \$9,200 of ETPT's funds for Respondent's own use and benefit.
- d. On or about August 26, 2003, Respondent converted \$6,150 of ETPT's funds for Respondent's own use and benefit.

Accordingly, as alleged in the First Cause of Complaint, Respondent violated NASD Conduct Rule 2110.

Additionally, as alleged in the Second Cause of Complaint, Respondent failed to respond to NASD's request for information. Specifically, by letter dated July 26, 2004 ("July 26 Request") that was sent to Respondent at his last known residential address as reflected in the records of the NASD's Central Registration Depository system ("CRD Address"), NASD requested certain information from Respondent. By letter dated August 11, 2004, Respondent's attorney notified NASD that Respondent declined to respond. By letter dated August 13, 2004, NASD notified Respondent that his failure to respond to its previous letter would be referred for possible disciplinary action against him. By electronic mail dated March 22, 2005, Respondent's attorney notified NASD that Respondent declined to respond to NASD's July 26 Request.

Accordingly, Respondent violated NASD Procedural Rule 8210 and Conduct Rule 2110.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Respondent's Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by NASD of its regulatory responsibility

under the Securities Exchange Act of 1934.

SANCTIONS

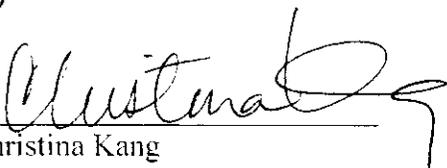
It is ordered that Respondent be:

Barred from associating with any NASD member firm in any capacity.

The sanction imposed herein shall be effective on a date set by NASD.

SO ORDERED.

NASD

By: 
Christina Kang
Regional Counsel
On behalf of the Director of ODA, pursuant to
delegated authority