

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2005002244303**

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Brian J. Fest
Respondent
CRD No. 2422725

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I submit this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. I hereby accept and consent, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

Brian J. Fest first became registered as a General Securities Representative (Series 7) with FINRA (formerly known as NASD or the National Association of Securities Dealers) in August 1994. Fest was associated with a member firm (the "Member Firm" or "Firm") from January 2004 until his termination in August 2008. He is not currently associated with a member firm. Fest has no prior disciplinary history.

OVERVIEW

Between January 2004 and August 2008 (the "relevant period"), Fest violated NASD Rule 2110 by routinely having his clients sign blank transaction documents, including switch authorization forms and other transaction disclosure documents, which he had his assistant complete later without the client having reviewed them. In hundreds of instances, the transaction documents contained incomplete and inaccurate information, including inaccurate sales charges and incorrect rationale for transactions. Fest was responsible for ensuring that the documents contained accurate information, and, thus, by submitting materially false and/or incomplete information on firm documents, he violated NASD Rule 2110. Fest also recommended unsuitable sales of UITs, in violation of NASD Rules 2310 and Rule 2110.

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During on-the-record testimony requested by FINRA staff (the "staff") pursuant to NASD Rule 8210, Fest did not give accurate testimony about whether he had his customers sign blank transaction forms, in violation of NASD Rules 8210 and 2110. Soon after his testimony, Fest violated Rule 2110 when he approached his sales assistant and attempted to persuade her to corroborate his inaccurate testimony.

FACTS AND VIOLATIVE CONDUCT

1. Fest Had Customers Sign Blank Transaction Forms and Submitted Materially False and/or Incomplete Information on Firm Documents

During the relevant period, over 50% of Fest's commissions were derived from sales of unit investment trusts with most of the remainder derived from sales of real estate investment trusts and variable annuities. Unit Investment Trusts, or UITs as they are commonly known, are investment companies that offer redeemable shares, or units, of a generally fixed portfolio of securities that terminate on a specified date.

In connection with these transactions, Fest had to complete various disclosure and authorization forms. Among these disclosure documents was the switch authorization form, which, when completed, disclosed in writing material information about the transaction, including surrender charges paid on the original investment, sales charges and surrender charges associated with the new investment, and rationale for purchasing the new product. The Firm explicitly required customers to sign the switch authorization form and other transaction documents after they had been completed as evidence that the customer was aware of the disclosures in those documents.

For the overwhelming majority of his transactions, Fest had his clients sign blank transaction documents and had his sales assistant fill in the documents later without his clients' knowledge or participation. His customers, therefore, did not have written disclosure of material terms of the transactions before they entered into them, including surrender charges paid, sales charges incurred on the new investment, and optional riders selected on variable annuities.

On virtually every switch authorization form for UIT transactions, Fest provided his sales assistant with inaccurate sales charge information. For example, for most transactions involving an exchange into a UIT, the form, as completed, disclosed only the 1% "Initial Sales Charge" that the customer paid, but did not disclose that the client paid a "Deferred Sales Charge" that was often 2.45% or higher.

The forms also included inaccurate information regarding the reason for the switches. In many instances involving UIT switches, Fest would identify inaccurately on the form that the reason for the transaction was a "rollover" when the transaction involved an exchange from one UIT to another prior to the end of the term of the initial UIT.

By having his customers sign blank transaction documents, and by causing certain documents to be completed with inaccurate information, Fest violated NASD Rule 2110.

2. Fest Provided Inaccurate and Misleading Information to FINRA Staff During On-the-Record Testimony

Fest testified under oath and pursuant to NASD Rule 8210 on July 21, 2008. In response to repeated questions, he testified that he did not have his customers sign blank transaction forms. Even after the staff confronted him with transaction documents from his own client files that were otherwise blank except for customer signatures, Fest stated that he did not have customers sign blank forms. Fest testified that his sales assistant would fill out forms prior to the customer signing the forms. In fact, as Fest knew, in hundreds of transactions during the relevant period, Fest had his sales assistant fill in such information after the customers had signed the blank documents.

By reason of his false on-the-record testimony, Fest violated NASD Rules 8210 and 2110.

3. Fest Attempted to Influence His Sales Assistant to Provide False Testimony

Days after his on-the-record testimony, Fest approached his sales assistant and described how he testified to FINRA staff regarding how, when, and by whom transaction documents were completed. He told her that, when asked by the firm or FINRA, she should answer, falsely, that customer documents were completed before obtaining customer signatures.

Fest violated Rule 2110 when he attempted to influence his sales assistant to provide misleading and false information to FINRA staff.

4. Fest Recommended Unsuitable UIT Transactions

In at least dozens of instances, Fest recommended that his customers trade UITs on a short-term basis. Investment company products with front-end sales charges, such as UITs, are normally not proper vehicles for short-term trading. Fest's pattern of recommending short-term UIT trading in his customers' accounts was unsuitable, and Fest thereby violated NASD Rules 2310 and 2110.

B. I also consent to the imposition of the following sanctions:

A bar from association with any member of FINRA in any capacity.

I understand that if I am barred or suspended from associating with any FINRA member, I become subject to a statutory disqualification as that term is described in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rules 8310 and 8311).

The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to FINRA Rule 8313(e), a bar or expulsion shall become effective upon approval or acceptance of this AWC.

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against me;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, I specifically and voluntarily waive any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

I further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

I understand that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and

C. If accepted:

1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my disciplinary record;
3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
4. I may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. I may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects my right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

Date

Brian A. Rest

Reviewed by:


Jerry A. Isenberg, Esq.
Counsel for Respondent
LeClairRyan

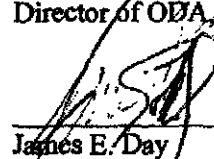
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Washington, D.C. 20036
202.659.6701

Accepted by FINRA:

10/30/07

Date

Signed on behalf of the
Director of ODA, by delegated authority



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