

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2006004542201**

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

RE: James R. Zitch, Respondent
Registered Representative and General Securities Principal
CRD #819961

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2008 MAY 16 P 1:47
REGISTRATION & DISCLOSURE

Pursuant to NASD 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

Zitch was registered with various member firms of FINRA (f/k/a NASD) from 1975 until May 31, 2007, and is no longer employed in the securities industry. He first became registered with Prudential Securities, Inc. (PSI), which later became Wachovia Securities, LLC, in September 1989. Zitch was the Branch Manager of the PSI/Wachovia Securities Philadelphia branch office from October 2000 until May 31, 2007. He has no disciplinary history.

OVERVIEW

During the period March 2002 through early 2003, two brokers under Zitch's supervision in the Philadelphia office of PSI assisted a hedge fund client that engaged in deceptive market timing practices. Zitch knew or

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should have known of the client's market timing activities, and of the brokers' use of multiple account numbers, multiple partnership names, and three registered representative numbers to assist the client in those activities. As a result of these practices, the hedge fund client was able to avoid detection of its market timing activities by mutual fund companies in many instances and to circumvent "blocks" imposed against its trading by those companies. Zitch failed to take adequate action to supervise or monitor the two brokers' activities relating to this customer. As a result, Zitch failed to adequately supervise the registered representatives, in violation of NASD Conduct Rules 3010 and 2110.

FACTS AND VIOLATIVE CONDUCT

Market Timing Generally

Unlike securities listed on an exchange, the NAV of most mutual funds currently is calculated only once per day, based upon closing prices at 4:00 p.m. Eastern Time. This regimen for determining NAV provides market timers the opportunity to engage in arbitrage based on market information not reflected in that day's net asset value. To do this, market timers typically buy and sell shares in mutual funds on a short-term basis, realizing quick gains and then retreating to the previous market position. Market timing is not illegal per se. It can harm mutual fund shareholders, however, because it can dilute the value of their shares, by, among other things, removing profits that would otherwise be shared by all the shareholders, requiring the fund to keep a larger percentage of highly liquid assets to cover redemptions, or by increasing the transaction costs for the fund. Long-term fund investors may ultimately bear the burden of paying these costs. In addition, trading profits obtained by market timers can result in losses to long-term mutual fund shareholders.

In an effort to minimize the negative effects of market timing, as disclosed in mutual fund prospectuses, many mutual fund companies maintain policies and procedures to detect and prevent market timing. Many mutual fund companies monitor trading activity for market timing and attempt to enforce restrictions and limitations on market timing through written and oral communications, or notices. The notices vary from reminders as to the fund company's market timing policies and procedures, to warnings that an account is permitted one more transaction, to absolute restrictions from effecting additional transactions in the securities of that fund company ("block notices").

The Philadelphia Office Market Timing Accounts

During the time period at issue here, Zitch was the branch manager of the PSI/Wachovia Securities Philadelphia branch office. In March and April 2002, two registered representatives under Zitch's supervision in the Philadelphia office acquired as a customer a local asset management company which operated a hedge fund ("the Hedge Fund Customer"). The Hedge Fund Customer told the registered representatives that it intended to engage in market timing of international mutual funds. The registered representatives informed Zitch that the Hedge Fund Customer intended to engage in this activity. Zitch told the registered representatives, based on his prior experience with market timing clients in other branch offices as early as 1993, that mutual fund companies might undertake efforts to block or restrict the type of trading that the Hedge Fund Customer intended to pursue.

Between March and July 2002, Zitch knew or should have known that the registered representatives opened a total of forty-four separate accounts for the Hedge Fund Customer. The accounts each bore one of the eleven limited partnership names that the Hedge Fund Customer used to open brokerage accounts at various firms. The eleven limited partnership names were used on four accounts each, with the different accounts for each limited partnership bearing a separate number identifier (such as XYZ #1, XYZ #2, XYZ #3, and XYZ #4). The accounts were split evenly between the two registered representatives, with the #1 and #3 accounts assigned to one of the registered representatives and the #2 and #4 accounts to the other, although the two registered representatives had a joint registered representative number that they could have used for this shared client. In addition, for approximately three months, eight of the Hedge Fund Customer's accounts traded under the name and registered representative number of a different broker in the office, who received the commissions for the trades in those accounts.

Shortly after the accounts were opened, the Hedge Fund Customer began to engage in market timing activity. On April 14, 2002, less than a month after the first accounts were opened, the registered representatives began receiving restriction notices from mutual fund companies, including blocks on trading of certain funds by specific accounts of the Hedge Fund Customer. A number of fund companies continued to impose blocks or restrictions on the Hedge Fund accounts from this time through March 2003. The Hedge Fund Customer's accounts were closed in or around September 2003. The blocks and restrictions were communicated to, or received by, the registered representatives in various ways, including calls

placed directly to the brokers from mutual fund companies, trade rejections communicated to the brokers by PSI's mutual fund operations department, e-mails to the brokers from Zitch and from PSI's compliance department, and letters sent directly to the Philadelphia branch office or to the brokers.

The use of multiple accounts, multiple limited partnership names, and three registered representative numbers allowed the Hedge Fund Customer to avoid and circumvent some mutual fund restrictions and limitations on market timing activity. For instance, the division of accounts under separate registered representative numbers allowed the Hedge Fund Customer to gain access to certain fund families that had blocked one representative number but not the other, and in other cases to avoid detection as market timers in the first instance by splitting simultaneous trading between the two representatives. Similarly, the use of multiple accounts and account names allowed the Hedge Fund Customer in a number of cases to avoid detection as a market-timer in the first instance through the practice of "spreading" trades. The Hedge Fund Customer would frequently trade the same funds on the same day in multiple accounts, allowing for trade sizes to be kept smaller than those monitored by fund families and allowing the Hedge Fund Customer to avoid exposure to account-by-account surveillance by the mutual fund companies. The tactics also allowed the Hedge Fund to engage in post-block trading for a number of months. This was accomplished primarily by moving trading in fund families to accounts that had not been blocked by those families or to accounts under a representative number that had not been blocked by those families.

Zitch's Failure to Adequately Supervise the Two Brokers

Zitch was aware from the time the Hedge Fund Customer opened its accounts that its investment objective was short term mutual fund trading. He discussed the possibility of mutual fund company blocks or restrictions with the two registered representatives shortly after the accounts were opened. Although Zitch instructed the registered representatives to track any restriction notices they received from mutual fund companies, he did not require that they keep him apprised of their tracking efforts, nor ask to see any file or document they created to track the restrictions.

Zitch knew or should have known of the number of accounts that the Hedge Fund Customer opened with the registered representatives, that those accounts were opened under multiple limited partnership names, and that each limited partnership had opened four accounts. Zitch should

also have known that the accounts were periodically journaling monies between each other, including transfers between separately-titled partnerships. He also knew or should have known that half of the Hedge Fund Customer's accounts were opened under each registered representative's name. Zitch was aware that the registered representatives received restrictions on trading from a number of mutual funds, either through PSI's Compliance Department or directly from fund companies via telephone, e-mail, or mail.

Despite this, Zitch failed to undertake adequate efforts to ensure that the registered representatives subject to his supervision complied with the restrictions on the market timing activity and that the Hedge Fund Customer did not trade in violation of restrictions imposed by the mutual fund companies. After some of the fund companies began imposing restrictions, Zitch consulted with PSI legal and compliance personnel, who told him that the firm did not, but needed to, have a policy regarding market timing. While he then directed branch employees to comply with the prospectuses of mutual funds, he did not take sufficient steps to monitor compliance with that instruction. Zitch also failed to take sufficient action to ensure that the registered representatives did not assist the Hedge Fund Customer in engaging in activities to circumvent and evade restrictions imposed by mutual fund companies. By virtue of these failures, Zitch failed reasonably to supervise the activities of the brokers, and thereby violated NASD Conduct Rules 3010 and 2110.

B. Zitch also consents to the imposition of the following sanctions:

1. A suspension from acting in a principal capacity with any FINRA member firm for a period of thirty calendar days; and
2. A fine in the amount of \$25,000.

The sanctions imposed herein shall be effective on a date set by FINRA staff. The fine shall be due and payable either immediately upon reassociation with a member firm following the thirty day suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Formal Complaint issued specifying the allegations against me;
- B. To be notified of the Formal 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 NASD Rule 9143 or the separation of functions prohibitions of NASD 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 NASD 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 NASD Rule 8310 and IM-8310-3; 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.

D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

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.

4/2/08
Date

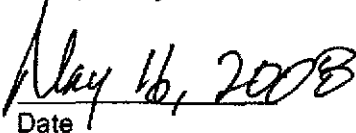
[Signature]
Respondent

Reviewed by:



Debra Pataikis
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Accepted by FINRA:


Date

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



Name: *VP, Chief Counsel*
Title: *VP, Chief Counsel*
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