

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2006006615401**

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REGISTRATION & DISCLOSURE

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

RE: Timothy P. Shively, Respondent
CRD No. 1664561

Pursuant to NASD Rule 9216 of FINRA's Code of Procedure, Respondent submits 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

Shively, who holds a Series 7 license, first entered the securities industry on April 13, 1987 and has been associated with eight firms the most recent of which, Mariner Investment Group, Inc., filed a Form U5 terminating him from the firm on September 27, 2007.

Shively is not currently registered with a member firm; however, he remains subject to FINRA's jurisdiction for the purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's Bylaws, because: (i) the AWC was filed within two years following the termination of his registration with FINRA; and (ii) the AWC charges him with misconduct committed while he was associated with a FINRA member firm. FINRA's jurisdiction over Shively extends to September 26, 2009.

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RELEVANT PRIOR DISCIPLINARY HISTORY

Shively was the subject of a regulatory action (C04040002) by NASD in January 2004, alleging improper sales practices with respect to Class B mutual funds while at FBD Investments, Inc. Shively was fined \$200,000, and was suspended for three months. Shively has paid only approximately \$50,000 of this fine through the present. His registration was revoked by FINRA in March 2008, in connection with the non-payment of this fine.

OVERVIEW

Timothy P. Shively, while employed as a registered representative at Broad Street Securities, Inc. and NEXT Financial Group, Inc. excessively traded and churned the accounts of two customers, in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and of NASD Conduct Rules 2110, 2120 and 2310. Further, while employed as a registered representative at Mariner Investment Group, Shively excessively traded and churned the account of another customer, in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and of NASD Conduct Rules 2110, 2120 and 2310. In addition, Shively willfully failed to disclose four unsatisfied federal tax liens on his Form U4, in violation of FINRA By-Laws Article V Section 2(c), NASD Conduct Rule 2110 and IM 1000-1. Finally, Shively failed to respond to the staff's requests to provide testimony, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110.

FACTS AND VIOLATIVE CONDUCT

- A. 1. During the time period from January 1, 2004, through March 31, 2006, while employed at member firms Broad Street Securities, Inc. and NEXT Financial Group, Inc., Respondent made unsuitable recommendations and engaged in churning in the accounts of two customers.
- a. Purchases made by Shively in a 64 year-old customer's account at NEXT Financial totaled \$1,815,656 during the relevant time period. The average equity in the account during this time period was \$156,472, resulting in an annualized turnover ratio of 7.32, and the average holding period for securities bought and sold in the account was 20 days. Purchases made by Shively in the customer's account at Broad Street Securities totaled \$856,321 during the relevant time period. The average equity in the account during this time period was \$95,489, resulting in an annualized turnover ratio of 15, and the average holding period for securities bought and sold in the account was 11 days. Shively effected all transactions in the customer's accounts without her knowledge.

b. Purchases made by Shively in a 52 year-old customer's account at NEXT Financial totaled \$895,451 during the relevant time period. The average equity in the account during this time period was \$53,512, resulting in an annualized turnover ratio of 10.55, and the average holding period for securities bought and sold in the account was 24 days. Shively effected all transactions in the customer's account without her knowledge.

2. During the time period from June 2006 through September 2007, while employed at member firm Mariner Investment Group, Shively made unsuitable recommendations and engaged in churning in the account of a 73 year-old customer. Purchases made by Shively in the customer's account totaled \$3.177 million during the relevant time period. The average equity in the account during this time period was \$298,806, resulting in an annualized turnover ratio of 8.04, and the average holding period for securities bought and sold in the account was 24 days.

Such acts, practices, and conduct constitute separate and distinct violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and of NASD Conduct Rules 2110, 2120 and 2310 by Respondent Shively,

3. During the period from May 17, 2003, through September 19, 2007, Respondent Shively willfully failed to promptly report four unsatisfied federal tax liens on a Form U4.

Such acts, practices, and conduct constitute separate and distinct violations of FINRA By-Laws Article V Section 2(c), NASD Conduct Rule 2110 and IM 1000-1 by Respondent Shively.

4. The staff of FINRA sent Respondent Shively requests to provide testimony on January 28, 2008 and February 20, 2008. Each request was sent to Respondent's CRD address by first-class and certified mail. Respondent Shively failed to respond to or appear in response to the staff's requests to provide testimony.

Such acts, practices, and conduct constitute separate and distinct violations of NASD Procedural Rule 8210 and Conduct Rule 2110 by Respondent Shively.

B. Respondent consents to the imposition of the following sanctions:

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

Further, 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 defined 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 NASD Rule 8310 and IM-8310-1.)

Further, I understand that this settlement includes a finding that, during the period from May 17, 2003, through September 19, 2007, I willfully failed to disclose a material fact on a Form U4, and that under Section 15(b)(4)(A) of the Securities Exchange Act of 1934 and Article III, Section 4(f) of the FINRA By-Laws, this nondisclosure makes me subject to a statutory disqualification with respect to association with a member.

The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to NASD IM-8310-3(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 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 prejudice 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

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NO. 2006006615401 / Timothy P. Shively

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:

10/13/08


Timothy P. Shively, Respondent

Reviewed by:

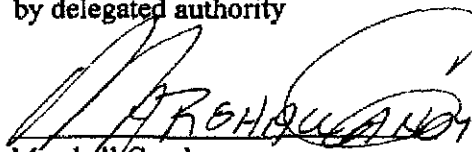
Counsel for Respondent

Accepted by FINRA:

Date:

10/15/2008

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


Marshall Gandy

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