

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2007009070901**

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

RE: Donald E. Derieg, Respondent
General Securities Representative
CRD No. 1365963

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

Donald E. Derieg entered the securities industry in 1985 as a General Securities Representative. He was registered with Wachovia Securities, LLC, n/k/a Wells Fargo Advisors, LLC (the Firm) from March 3, 1998 through May 2, 2007. From September 12, 2007 through June 30, 2009, Derieg was registered with another broker-dealer. He currently is not registered with a FINRA member. Derieg does not have any disciplinary history, however, he was the subject of criminal charges concerning the customer at issue in this proceeding, as follows:

On November 17, 2008, Derieg was charged with four felony counts, including grand theft of personal property, exceeding \$400, of customer CG, in violation of California Penal Code § 487(a), and related charges. On January 29, 2009, Derieg pled *nolo contendere* to a misdemeanor violation of § 487(a).

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OVERVIEW

From March 2004 to March 2007, Respondent Derieg served as customer CG's attorney-in-fact pursuant to a Power of Attorney designation. At about the same time, Derieg became a successor trustee and a beneficiary of CG's living trust. At this time, CG was in her early 80s and had been Derieg's customer since 1987.

In 2004, 2005, and 2006, Derieg provided incorrect answers on the Firm's Annual Attestation Form, which asked questions about his securities and insurance business. Specifically, he concealed from his employer firm and its insurance affiliates that he was acting as CG's attorney-in-fact, successor trustee and a beneficiary of her living trust, in violation of firm policy. Derieg thus entered false information in the records of his employer firm.

In December 2006, Derieg borrowed funds from CG to pay personal debts and expenses, without obtaining approval from his Firm. He also engaged in unauthorized and unsuitable aggressive equity trading in CG's account nearly a year after CG had been declared incompetent and during a period when she was incapacitated in a nursing home.

As a result of the foregoing conduct, Derieg violated NASD Conduct Rules 2110, 2310, and 2370.

FACTS AND VIOLATIVE CONDUCT

1. Background

In 1987, Donald Derieg became the broker-of-record for customer CG, born in [REDACTED] CG was a widow, and in late 2000, her only child died. In June 2001, CG executed a restated living trust, naming Derieg as one of two successor trustees.

In 2002, CG purchased a \$100,000 life insurance policy and named Derieg as the beneficiary (CG Life Insurance Policy). In 2003, Derieg purchased a \$750,000 life insurance policy and named CG and Derieg's his two brothers as beneficiaries (Derieg Policy).

In early 2004, CG executed an amendment to her living trust, which named Derieg and a bank as co-successor trustees (2004 Amendment). The 2004 Amendment also named Derieg as a beneficiary with a 55% interest. At that time, Derieg submitted to his Firm a Trustee Certification of Investment Powers form for CG's trust, and identified himself and the bank as co-successor trustees. At about that time, CG also executed a Durable Power of Attorney (POA), which

named Derieg as her attorney-in-fact. The POA became effective if two physicians deemed CG incapable of managing her financial affairs.¹

On February 2, 2006, Derieg took CG to a physician, who declared her incompetent. On February 27, 2006, Derieg took CG to a second physician, who also declared her incompetent. At that time, Derieg submitted the POA to the bank and began exercising control over CG's bank account.

In October 2006, CG suffered a fractured hip and entered a nursing home. Shortly thereafter, CG's relatives learned of Derieg's legal authority over CG's health care and finances, and filed a civil action to have Derieg removed as CG's attorney-in-fact and as successor trustee to her living trust. On March 9, 2007, the court ordered Derieg removed, and granted an exclusive power of attorney to the bank. CG died the following day.

2. NASD Conduct Rule 2110 – Falsification

Between 2003 and 2007, the Firm's compliance manual for representatives generally prohibited representatives from accepting fiduciary appointments, except in connection with family. Beginning in 2004, the Firm prohibited representatives from engaging in the following conduct without prior Firm approval:

- a. Accepting any designation as beneficiary or co-owner;
- b. Accepting a grant of power of attorney; and
- c. Receiving any bequests or distribution from any client or client account or investment, including under a will, annuity, life insurance, or trust.

The Firm's Annual Attestation forms required registered representatives to affirm that they had read all applicable compliance manuals and guides and that they conducted their business in compliance with the Firm's policies and procedures.

On February 11, 2004, Derieg completed his 2003 Associate Annual Attestation, in which he failed to disclose that he was named as a co-successor trustee to CG's restated trust, or that he was a beneficiary of CG's Life Insurance Policy.

On May 20, 2005, and May 15, 2006, Derieg completed his 2004 and 2005 Associate Annual Attestations, respectively, in which he failed to disclose that he was named as a co-successor trustee of CG's amended and restated trust; that he was a beneficiary of her trust and CG's Life Insurance Policy; or that he was designated as an attorney-in-fact under the POA should CG become incapacitated.

By reason of the foregoing, Derieg falsified Firm documents, and thereby violated NASD Conduct Rule 2110.

¹ The POA also granted Derieg an Advanced Healthcare Directive.

3. NASD Conduct Rules 2370 and 2110 – Improper Borrowing from a Customer

During 2006, Derieg wrote checks against CG's bank account to pay the premium on the Derieg Policy (\$955.00) and to pay property taxes on the home in which he lives (\$2087.96), which is owned by Derieg's family. Derieg characterized these withdrawals as personal loans from CG to him. The Firm's written procedures prohibited registered persons from borrowing money from customers, other than family members, and only then with management approval. CG was not a member of Derieg's family and Derieg did not notify the Firm of the loans or obtain its prior approval.

By reason of the foregoing, Derieg violated NASD Conduct Rules 2370 and 2110.

4. NASD Conduct Rule 2110 – Unauthorized Transactions; and NASD Conduct Rules 2110 and 2310 – Unsuitable Transactions

Nearly one year after CG was declared incompetent by two physicians at Derieg's request and her health declined significantly, Derieg engaged in a pattern of aggressive equity trading in CG's portfolio. In or about January 2007 when CG was living in a nursing home after she broke her hip, she began to suffer from cognitive impairment. During January and February 2007, Derieg engaged in eight unauthorized equity transactions. These transactions also were unsuitable at that time in light of CG's deteriorating medical condition and her resulting financial situation and need for preservation of principal. During this period, withdrawal of principal from CG's investment portfolio was the primary source of funding for her medical expenses, which were substantial and rising. The equities in which Derieg traded during January and February 2007 comprised low-priced high risk stocks with negative earnings and high volatility. These investments were not suitable for an ill and elderly woman in need of cash to fund her rising medical costs.

By reason of the foregoing, Derieg violated NASD Conduct Rules 2110 and 2310.

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

A bar from association with any FINRA member 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 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 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

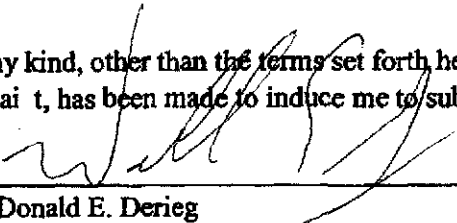
C. If accepted:

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.

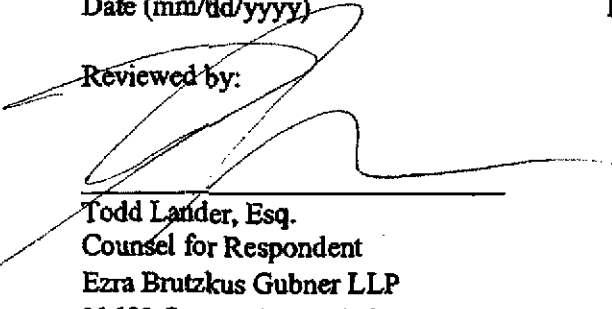
I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its provisions voluntarily; and that

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.

3/10/2010
Date (mm/dd/yyyy)


Donald E. Derieg

Reviewed by:


Todd Lander, Esq.
Counsel for Respondent
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Accepted by FINRA:

4/19/10
Date

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


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