

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20080137721-01**

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REGISTRATION & DISCLOSURE

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

RE: Robert E. Messinger, Respondent
Registered Representative
CRD No. 1234161

Pursuant to Rule 9216 of FINRA Code of Procedure, I, Robert E. Messinger, 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

Robert Messinger ("Messinger") was born in [REDACTED]. He has been in the securities industry and registered with Financial Industry Regulatory Authority ("FINRA") as a Series 7 general securities representative since February 1984. In June 1992 he joined UBS Financial Services Inc. ("UBS" or "the Firm"). Messinger is currently employed at UBS.

OVERVIEW

From mid 2006 to early 2008, Messinger exercised discretion in at least 40 of his customer accounts without written authorization in violation of NASD Rules 2510(b) and 2110 and without the Firm's acceptance of the account as discretionary.

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FACTS AND VIOLATIVE CONDUCT**Messinger Exercised Discretion in Customers Accounts without Written Authorization**

From mid 2008 to early 2009, Messinger exercised discretion in 40 customer fee-based brokerage accounts without written authorization. Messinger employed a stop-loss strategy for these customers in which he entered stop-loss orders to manage volatility and to protect profits, for individual equities and Exchange-Traded Funds ("ETFs"). As a stock price increased, Messinger entered a Good 'til Canceled ("GTC") sell order at the original purchase price; as the price continued to rise, Messinger cancelled the GTC sell order and replaced it with a GTC sell order at a higher price, maintaining a consistent spread between the market price and stop-loss price.

Messinger cancelled and replaced the stop-loss orders without first contacting the customer to obtain contemporaneous authorization. By so doing, Messinger exercised discretion in 40 customer accounts without written authorization.

Messinger did not contact all of the customers specifically to inform them that he had changed the stop-loss price. The Firm's policy, however, was to mail to customers GTC confirmations for open orders that were entered for their accounts and provide customers with monthly account statements that detailed the quantity and order price of all open orders. The Firm did not accept any of Messinger's customer accounts as discretionary.

Messinger's conduct violated NASD Rules 2510(b) and 2110 in that he exercised discretion without written authorization in the accounts of his customers and without the Firm's acceptance of these accounts as discretionary.

SANCTIONS

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

A fine in the amount of \$5,000 and a suspension of ten (10) business days from association with any member firm in any capacity.

I agree to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. I have submitted an Election of Payment form showing the method by which I propose to pay the fine imposed.

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

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 sanction imposed herein shall be effective on a date set by FINRA staff.

IL

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.

12/2/09
Date

Accepted by FINRA:

12/30/09
Date

Robert E. Messinger
Robert E. Messinger

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

S/Mykes Orisco by K. Maffa
Mykes L. Orisco
Director

FINRA Department of Enforcement
14 Wall Street
New York, NY 10005
646-315-7383 (Telephone)
646-315-7425 (Fax)

Attachment