

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2008015078601**

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

RE: Barry Michael Donald, Respondent
Registered Representative
CRD No. 2534882

Pursuant to FINRA Rule 9216 of the FINRA Code of Procedure, Barry Michael Donald ("Respondent" or "Donald") 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

Donald first became registered with First Allied Securities (CRD No. 23737) on August 23, 1994. Donald was registered with various firms from 1994 until 2002. Donald became registered with Banc One Securities Corporation (CRD No. 16999) on March 6, 2002, which was later acquired by Chase Investment Services Corp. (CRD No. 25574) ("Chase" or "the firm") on July 6, 2005. Donald's registration with Chase was terminated on June 1, 2007. Donald has not been registered with a member firm since June 1, 2007. However, on March 11, 2008, Chase submitted an amendment to Donald's U5 notice of termination. The amendment was filed within two years of the original notice and disclosed that Donald may have engaged in conduct actionable under any applicable statute, rule, or regulation. The U5 amendment therefore operated to recommence the running of the two-year period under Article V, § 4(a)(i) of the By-Laws. FINRA therefore retains jurisdiction over Donald since the conduct which serves

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as the basis for this action commenced prior to his termination of registration from a member firm and this AWC is filed within two years after the effective date of the US amendment.

OVERVIEW

While registered with Chase and in connection with transactions involving Unit Investment Trusts ("UITs"), Donald made unsuitable UIT recommendations to one customer, negligently misrepresented material facts to another customer regarding his UIT investment, and failed to reasonably ensure that a third customer understood the features and risks of UITs when it became apparent that there was a language barrier that may have prevented the customer from understanding the information Donald provided to him. Donald's conduct constitutes violations of NASD Conduct Rules 2310 and 2110.

FACTS AND VIOLATIVE CONDUCT

A. Customer AC

While registered with Chase, Donald had a customer, AC, who was 85 years old. AC's accounts documentation incorrectly identified her risk tolerance as moderate instead of conservative. In 2005, AC had purchased a UIT. Between February and June 2007, Donald recommended to AC (who was accompanied by her son to whom she granted power of attorney) that she purchase UITs with funds she received from the sale of a farm. Based upon Donald's recommendations, AC invested a total of \$315,000 in three UITs, which were not conservative investments. Given AC's risk tolerance and her over-concentration (in excess of 52%) in these UIT investments, Donald's recommendations were not suitable. AC sold the investments several months later, prior to maturity, at a loss. Chase compensated AC for her losses in the amount of \$36,363.21.

At the time that Donald recommended each of the three UITs to AC, he did not have reasonable grounds to believe that the recommendations were suitable for AC given her risk tolerance level and the overly concentrated nature of the recommended investments. Donald's conduct constitutes violations of NASD Conduct Rules 2310 and 2110.

B. Customer RS

On or about February 16, 2006, Donald's customer RS purchased a UIT that Donald recommended. RS invested \$603,000 in the UIT. That same day, in response to inquiries from RS, Donald instructed that a letter be sent to RS which stated that for the first 12 months RS owned the UIT, the interest rate would be 5.90% and for the second 12 months the interest rate would be 6.10%. In addition, the letter stated that there would be no penalty for withdrawal at any time. A few weeks later, on March 1, 2006, Donald sent RS a second letter which stated that the first year distribution rate for the UIT would be 5.9% and the second year rate would be 6.1%.

The statements made to RS in the letters regarding interest rates failed to state that these were estimated yields as opposed to guaranteed rates of return. This additional information was necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. In addition, the statement made to RS in the February 16, 2006 letter that there would be no penalty for withdrawal at any time was a material misrepresentation of fact because it was incorrect. There was a penalty for selling the UIT within 90 days from the purchase. On February 22, 2006 and March 1, 2006, RS sold all positions held in the UIT at a loss, which included a penalty for selling within 90 days. Chase compensated RS for his losses in the amount of \$11,848, towards which Donald contributed \$5,924. Donald acted negligently in sending, or instructing to be sent, these letters to RS that contained these material misrepresentations of fact.

Accordingly, in connection with the sale of the UIT to RS, Donald negligently made material misrepresentations of facts regarding the UIT's sales charges and estimated yields, in violation of NASD Conduct Rule 2110.

C. Customer WL

In or about 2005, Donald recommended that his customer WL purchase a UIT, and WL invested approximately \$60,000 in the UIT. In the process of obtaining customer information from WL prior to recommending the purchase of the UIT, it became apparent to Donald that there was a language barrier that may have prevented WL from understanding the information Donald provided about the UIT. Donald failed to reasonably ensure that WL understood the features and risks of investing in the UIT prior to recommending the purchase of the UIT. In fact, WL did not understand the risks to principal associated with buying the UIT. In or about October 2005, WL sold a portion of his investment in the UIT, prior to maturity, at a loss. Chase compensated WL for the fees incurred in his early redemption of the UIT in the amount of \$525.

As a result, Donald did not observe high standards of commercial honor and just and equitable principles of trade because, despite being aware of the language barrier, he failed to reasonably ensure that WL properly understood the product and risks of the investment before WL bought it. Donald's conduct constitutes a violation of NASD Conduct Rule 2110.

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

1. A 20 business-day suspension from association with any member of FINRA in any capacity; and
2. A fine of \$10,000.

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 twenty business-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.

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).

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 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 NAG, 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 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.

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.

3/1/2010

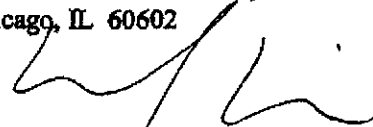
Date



Barry Michael Donald

Reviewed by counsel for
Respondent:

Phillip Stern, Esq.
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street, Suite 1700
Chicago, IL 60602



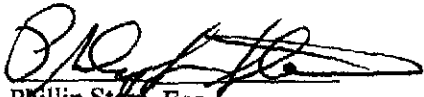
Michael Wise, Esq.
Lawrence, Kamin, Saunders & Uhlenhop, LLC
300 South Wacker Drive, Suite 500
Chicago, IL 60606

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Date

Barry Michael Donald

Reviewed by counsel for
Respondent:


Phillip Stern, Esq.
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Chicago, IL 60606

Accepted by FINRA:

3/8/10
Date

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

A handwritten signature in black ink, appearing to read 'Samuel L. Israel', written over a horizontal line.

Samuel L. Israel
Associate Vice President and Chief
Counsel
FINRA Department of Enforcement
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