

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20080151472**

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

RE: Barry Eden Gitarts, Respondent
Former General Securities Representative
CRD No. 4746150

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

Barry Eden Gitarts ("Gitarts") entered the securities industry in September 2003 as a registered representative trainee with Jesup & Lamont Securities Corp. and was approved as a registered representative in January 2004. In May 2007, Gitarts became employed with AXA Advisors, L.L.C. ("AXA" or the "Firm") as a registered representative. On September 25, 2008, AXA terminated Gitarts' employment for cause. Gitarts is not currently employed in the securities industry. Accordingly, pursuant to Article V, Section 4 of FINRA's By-Laws, FINRA maintains jurisdiction over Gitarts until September 24, 2010.

RELEVANT DISCIPLINARY HISTORY

Gitarts has no relevant disciplinary history.

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OVERVIEW

On or about November 23, 2007, while employed by AXA, a FINRA member, Gitarts received a summons notifying him that an indictment had been filed in the United States District Court for the Eastern District of Virginia (the "District Court") charging him with one felony count of Conspiracy in violation of Section 371 of Title 18 of the United States Code. On January 14, 2008, Gitarts was formally arraigned in the District Court. On May 22, 2008, Gitarts was found guilty of the felony conspiracy charge. On September 19, 2008 Gitarts was sentenced to an 18-month prison term and fined \$2,500. Gitarts failed to amend his Uniform Application for Securities Industry Registration or Transfer ("Form U4") to reflect that he had been charged with a felony. Accordingly, Gitarts violated NASD Conduct Rule 2110 and IM-100-1 by willfully failing to update his Form U4.

FACTS AND VIOLATIVE CONDUCT

Indictment, Trial, and Conviction

On or about November 23, 2007, Gitarts received a summons and indictment notifying him that he had been indicted for one felony count of Conspiracy in violation of 18 U.S.C § 371. The indictment alleged that Gitarts was a member of an internet music piracy group that unlawfully conspired to reproduce and distribute thousands of copyrighted songs over the Internet between June 2003 and June 2004. The summons required that Gitarts appear in the District Court on November 30, 2007. By letter dated November 26, 2007, sent to the Honorable Liam O'Grady, Gitarts requested a continuance of the criminal case. The court granted Gitarts' request and adjourned his appearance before the court until January 14, 2008.

On January 14, 2008, Gitarts appeared in the District Court and was formally arraigned on the felony conspiracy charge. Gitarts was released on a personal recognizance bond with special conditions, one of which was to maintain employment. The trial date was set for April 16, 2008. Subsequently, on May 22, 2008, a jury found Gitarts guilty of Conspiracy, a felony, in violation of 18 U.S.C § 371.

On September 19, 2008, Gitarts was sentenced to 18 months in prison, two years of supervised release and a fine of \$2,500. On or about September 22, 2008 Gitarts notified AXA that he had been convicted of a felony. AXA investigated the matter and terminated Gitarts' employment on September 25, 2008.

Failure to Disclose Felony Charge

Gitarts received a summons and indictment notifying him that he had been indicted for one felony count of Conspiracy in violation of 18 U.S.C § 371, while he was employed at the Firm. Despite Gitarts' awareness of the felony indictment, Gitarts did not update his Form U4 to reflect the pending felony charge promptly after he received the summons. In addition, Gitarts failed to promptly notify AXA of the felony charge. Specifically, for a period of ten months, from December 2007 through September 2008, Gitarts did not report his indictment for a felony charge to anyone at the Firm and, Gitarts allowed his Form U4 to contain a false response to a criminal disclosure question.

Question 14A(1)(b) in a Form U4 asks "Have you ever been charged with a felony." Gitarts' charge for one felony count of Conspiracy falls under the purview of Question 14A(1)(b), as it is a felony charge, therefore requiring an affirmative response. Accordingly, Gitarts should have amended his Form U4 to reflect a "Yes" response to Question 14A(1)(b) and willfully failed to do so.

Relevant Rules

NASD Rule 2110 states that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." IM-1000-1 states that "the filing with the Association of information with respect to membership or registration as a Registered Representative which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade and when discovered may be sufficient cause for appropriate disciplinary action."

Pursuant to IM-1000-1, Gitarts was required to update his Form U-4 after he was notified that he had been indicted for a felony. On or about November 23, 2007, Gitarts was notified that he had been indicted for one count of Conspiracy, a felony, in violation of 18 U.S.C § 371. However, Gitarts willfully failed to update his Form U-4. Gitarts' failure to update his Form U4 to reflect that he had been charged with a felony is a violation of NASD Conduct Rule 2110 and IM-1000-1.

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

A censure, six-month suspension from association with any member in any capacity, and a \$5,000 fine.

The fine shall be due and payable either immediately upon reassociation with a member firm following the six-month 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 FINRA Rules 8310 and 8311).

I understand that this settlement includes a finding that I willfully omitted to state 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 of FINRA's By-Laws, this omission 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.

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

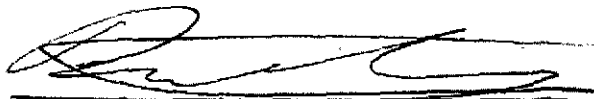
I understand that:

- 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.

- 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.

5/17/2010
Date


Barry Eden Gitarts

Accepted by FINRA:

5-21-10
Date

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


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