

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2008015186001**

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

RE: Brian William Livingston, Respondent
General Securities Representative
CRD No. 1271034

and

Michael Andrew Livingston
General Securities Representative
CRD No. 2525452

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Brian William Livingston and Michael Andrew Livingston (or Respondents) 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 them alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Brian Livingston and Michael Livingston 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

Brian William Livingston became registered as an Investment Company/Variable Contracts Representative (Series 6) on May 22, 1984 and as a General Securities Representative on February 15, 1986. Since becoming registered, he worked in those capacities at Ameriprise Financial Services (Ameriprise) until his registration was terminated on January 24, 2007, at which time he ceased working in a registered capacity. On January 21, 2009, within two years of the date of Brian Livingston's termination, Ameriprise filed an amendment to Brian Livingston's Uniform Termination Notice for Securities Industry Registration (Form U5) to report that

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customers had filed a complaint, which extended jurisdiction until January 21, 2011.

Michael Andrew Livingston became registered as a General Securities Representative (Series 7) on June 6, 1996 and was registered in that capacity at Ameriprise until his registration was terminated on October 16, 2008, at which time he ceased working in a registered capacity. Since October 2008, numerous Form U5 Amendments have been submitted to report customer complaints against Michael Livingston, beginning in approximately December 2008 and continuing until July 2010. Accordingly, jurisdiction over Michael Livingston has been extended to July 2012.

RELEVANT DISCIPLINARY HISTORY

Brian Livingston entered into a Settlement Agreement with the Department of Financial Institutions in the State of Kentucky on July 10, 2009 in which he was barred for five years from the securities industry in any capacity in the State of Kentucky and ordered to pay restitution to customers totaling \$120,877 for fees they paid to Brian Livingston while he was unregistered.

Michael Livingston has no prior disciplinary history.

OVERVIEW

Brian Livingston's registration was terminated by Ameriprise in January 2007 in connection with his alleged exercise of discretionary trading in a customer's account without written authorization, whereupon he purportedly sold his business to his son, Michael Livingston. In connection with the business that Michael Livingston conducted while registered with Ameriprise, several customers complained that Brian Livingston continued to direct the trading in customer accounts, including unsuitable investments for which approximately 30 customers paid a fee.

Brian Livingston failed to amend his Form U4 to report several tax liens filed by the IRS, the Commonwealth of Kentucky, and the State of Indiana. Furthermore, Brian Livingston failed to respond to FINRA's request to appear to give testimony before FINRA to answer questions about his activities.

Michael Livingston failed to amend his Form U4 to report several tax warrants and lien filed by the State of Indiana and the Commonwealth of Kentucky, and civil judgments. Moreover, Michael Livingston failed to respond to FINRA's request to appear to give testimony before FINRA to answer questions about his activities.

FACTS AND VIOLATIVE CONDUCT

Failure to Disclose Tax Liens and Judgments

1. In and around January 2007, Ameriprise terminated the registration of Brian Livingston

in connection with his alleged discretionary trading in a customer's account without discretionary authority. On or about January 17, 2007, Brian Livingston purportedly sold his securities business to his son, Michael Livingston, until Ameriprise terminated Michael Livingston's registration on October 14, 2008.

2. Article V, Section 2 of FINRA By-Laws provides, in pertinent part, that each applicant and member shall ensure that its membership application with FINRA is kept current at all times by supplementary amendments via electronic process, or such other process as FINRA may prescribe to the original application. Such amendments to the Form U4 application shall be filed with FINRA not later than 30 days after learning of the facts or circumstances giving rise to the amendment.
3. While Brian Livingston was registered with Ameriprise, there were filed against Brian Livingston from approximately 1993 until 2006: seven IRS liens; three tax liens by the Commonwealth of Kentucky; two tax liens by the State of Indiana; and two civil judgments, totaling approximately \$250,000.
4. Brian Livingston willfully failed to disclose any of the tax liens and judgments filed against him, through Amendments to his Form U4.
5. Brian Livingston's failure to disclose the federal and state tax liens and judgments within 30 days of their filing against him constitutes separate and distinct, and willful violations of Article V, Section 2 of NASD By-Laws; and violations of NASD Conduct Rule 2110.
6. While Michael Livingston was registered with Ameriprise, there were filed against Michael Livingston from approximately 1997 until 2004: two tax liens by the State of Indiana; one tax lien by the Commonwealth of Kentucky; and two civil judgments, totaling approximately \$10,000.
7. Michael Livingston willfully failed to disclose the tax liens and judgments filed against him, through Amendments to his Form U4.
8. Michael Livingston's failure to disclose the tax liens and judgments within 30 days of their filing against him constitutes separate and distinct, and willful violations of Article V, Section 2 of NASD By-Laws; and violations of NASD Conduct Rule 2110.

Failure to Respond to Requests for Information and Testimony

9. After Brian Livingston's registration was terminated by Ameriprise, the firm submitted numerous Amendments to his Form U5 disclosing the receipt of customer complaints against him.

10. In connection with the customer complaints, FINRA submitted to Brian Livingston a letter dated May 25, 2010 requesting that he appear and give testimony before FINRA pursuant to FINRA Rule 8210.
11. On May 26, 2010 and June 2, 2010, Brian Livingston acknowledged receipt of FINRA's Rule 8210 request and notified FINRA staff that he would not appear to give testimony and he did not in fact appear to give testimony.
12. Based on the foregoing, Brian Livingston failed to appear and give testimony as requested by FINRA in violation of FINRA Rules 2010 and 8210.
13. On or about October 14, 2008, Ameriprise terminated Michael Livingston's registration in connection with a customer complaint.
14. After Michael Livingston's registration was terminated by Ameriprise, the firm submitted numerous Amendments to Michael Livingston's Form U5 disclosing the receipt of additional complaints from customers.
15. In connection with the customer complaints, FINRA submitted to Michael Livingston a letter dated May 25, 2010, requesting that he appear and give testimony before FINRA pursuant to FINRA Rule 8210.
16. On or about May 26, 2010 and June 2, 2010, Michael Livingston acknowledged receipt of FINRA's Rule 8210 request and notified FINRA staff that he would not appear to give testimony, and he did not in fact appear to give testimony.
17. Based on the foregoing, Michael Livingston failed to appear and give testimony as requested by FINRA in violation of FINRA Rules 2010 and 8210.

As a result of the foregoing conduct, Respondents Brian Livingston and Michael Livingston both willfully violated Article V, Section 2 of NASD By-Laws, and violated NASD Rule 2110. Respondents Brian Livingston and Michael Livingston also both violated FINRA Rules 2010 and 8210.

Respondents Brian Livingston and Michael Livingston both understand that this settlement includes a finding that they both 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 both Respondents subject to a statutory disqualification with respect to association with a member.

- B. Respondent Brian William Livingston consents to the imposition of a bar from associating with any FINRA broker-dealer in any capacity.

Respondent Michael Andrew Livingston consents to the imposition of a bar from associating with any FINRA broker-dealer in any capacity.

Respondents Brian Livingston and Michael Livingston both understand that if they are barred or suspended from associating with any FINRA member, they both become subject to a statutory

disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, Respondents 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

Respondents Brian Livingston and Michael Livingston specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against Respondents;
- 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, Respondents Brian Livingston and Michael Livingston 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.

Respondents Brian Livingston and Michael Livingston 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

Respondents Brian Livingston and Michael Livingston 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 Respondents; and
- C. If accepted:
 - 1. this AWC will become part of Respondents' permanent disciplinary records and may be considered in any future actions brought by FINRA or any other regulator against Respondents;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondents' 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. Respondents 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. Respondents 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 Respondents' rights to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

Respondents certify that they have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that Respondents 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 Respondents to submit it.

19 JANUARY 2011

Date

Brian W. Livingston
Brian William Livingston, Respondent

1-19-2011

Date

Michael A. Livingston
Michael Andrew Livingston, Respondent

Reviewed by:

Attorney Name
Counsel for Respondent
Firm Name
Address
City/State/Zip
Phone Number

Accepted by FINRA

January 20, 2011
Date

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

Pamela Shu
Pamela Shu, Senior Regional Counsel
FINRA Department of Enforcement
55 West Monroe Street, 27th Floor
Chicago, IL 60603
Phone Number: (312) 899-4353
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