

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2008015214901**

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

RE: Rafael A. Calleja, Respondent
Former Registered Representative
CRD No. 2777245

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I [or Respondent] 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

Respondent entered the securities industry in a registered capacity with a FINRA member firm in 1996. In June 1998, Respondent became a registered representative with UBS Financial Services Inc. ("UBS"), where he remained until January 2004. In January 2004, Respondent became a registered representative with Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch" or the "Firm"). He remained at the Firm until June 2009, when he became a registered representative with another FINRA member firm. He remained at that firm until October 2011. Respondent is currently not associated in any capacity with any FINRA member firm. Pursuant to Article V, Section 4 of FINRA's By-Laws, FINRA retains jurisdiction over Respondent until at least November 17, 2013.

RELEVANT DISCIPLINARY HISTORY

Respondent has no relevant disciplinary history.

OVERVIEW

Between July 2005 and April 2007, Respondent converted approximately \$67,300 from a customer by using an automated teller machine ("ATM") card linked to the customer's securities account to make approximately 115 withdrawals. The customer authorized these withdrawals based upon Respondent's false representations that Respondent was not receiving compensation from his member firm employer for brokerage services Respondent was providing to the customer.

In addition, between February 2004 and March 2007, Respondent falsely told the customer that Respondent transferred all 14 of the customer's accounts from one brokerage firm to another firm when Respondent had in fact closed four of the accounts at the prior firm and opened only 10 accounts at the new firm. Moreover, between February 2004 and June 2008, Respondent recommended and effected unsuitable transactions in the customer's accounts and in at least two instances in December 2006, effected unauthorized transactions. As a result of his conduct, Respondent violated NASD Rules 2330, 2310 and 2110.

FACTS AND VIOLATIVE CONDUCT

Background of Customer

Customer CC was born in the [REDACTED] and worked in labor intensive positions his entire life, including mechanical maintenance and landscaping. He also earned money collecting recyclables. CC has been diagnosed with having Aspergers-like tendencies and fits the criteria for obsessive-compulsive disorder. His mental disabilities have been characterized by a psychologist who interviewed CC as "severe and disabling."

Despite his disabilities, CC has been investing his entire adult life. Since the 1960s, CC has maintained securities accounts, has funded the accounts with money earned from various jobs, and has always set his investments on dividend reinvestment. Generally, CC was a "buy and hold" investor and did not engage in other trading strategies. There were certain securities that CC purchased that he considered to be "legacy" or "real" stocks that he always wanted to maintain. CC did not purchase items on credit or margin. He generally did not liquidate securities even to purchase food or pay utility bills.

CC always maintained his investment accounts at a single brokerage firm. When CC changed brokerage firm, he would open similar accounts at the new firm. Many of the accounts were cash accounts and were established for different purposes, including accounts to hold funds sufficient to pay his taxes ("T" account), to pay his attorneys ("A" account), to hold funds for his

mother ("M" account), to supplement his social security benefits ("SS" account), and to hold funds he earned from his part-time jobs ("P" account). In addition, CC had accounts that held securities, including an account that contained his "legacy" or "real" stocks ("S" account), an account that held his bonds ("B" account) and an account that held securities he purchased via dividend reinvestment ("D&I" account).

In or around 1998, CC's accounts were maintained at UBS. When the registered representative handling his accounts left UBS, Respondent was assigned to service CC's accounts. Over time, Respondent and CC developed a close relationship.

In February 2004, Respondent accepted a position with Merrill Lynch. At the time, CC believed he had 14 accounts at UBS and agreed to transfer his accounts to Merrill Lynch.

Misrepresentation

When CC moved his securities accounts to Merrill Lynch, CC instructed Respondent to open accounts that corresponded to the 14 accounts that CC believed he held at UBS. CC told Respondent that the accounts should have similar designations and holdings as the ones that CC held at UBS. Respondent agreed to do so and represented to CC that he had transferred the 14 accounts to Merrill Lynch in accordance with CC's instructions. However, Respondent had already closed the T, SS, M and A accounts at UBS and did not open similar accounts at Merrill Lynch, although he told CC that the accounts were opened at Merrill Lynch. From 2004 to approximately March 2007, Respondent continued to make false representations to CC that all 14 accounts existed and that certain trades and transfer of funds and securities were effected in the accounts that no longer existed.

By making false representations that he had opened all the accounts as instructed by CC, Respondent violated NASD Rule 2110.

Unsuitable Recommendation

Despite the fact that CC had been a "buy and hold" investor his entire life, did not believe in selling his "legacy" or "real" stocks to purchase other securities, and had accumulated his assets over decades of saving small amounts of money. Respondent recommended and effected hundreds of securities transactions between 2004 and 2007 that were inconsistent with CC's objectives for his accounts and risk tolerance.

Additionally, in April 2007, Respondent recommended that CC open a Loan Management Account ("LMA") with the bank affiliated with Merrill Lynch ("Bank"). An LMA was a line of credit through the Bank for personal and business financing. CC completed an application for the LMA on April 7, 2007, pledging his Firm accounts as collateral for the LMA. The Bank authorized a \$1 million line of credit. The LMA terms precluded CC from using the proceeds to purchase securities.

Without CC's knowledge or consent, Respondent transferred funds from the LMA to CC's various securities accounts, including the T and SS accounts, which Respondent opened two weeks prior to the LMA application and funded with nominal amounts of money. By July 2007, CC's LMA balance was \$531,863.11, all of which had been transferred to the accounts CC pledged as collateral.

With the proceeds from the LMA deposited into the various securities accounts, Respondent recommended and effected numerous unsuitable transactions in CC's securities accounts at Merrill Lynch.

By recommending and effecting unsuitable transactions and recommending an unsuitable loan, Respondent violated NASD Rule 2310(a) and 2110.

Misrepresentation and Conversion

At the time that CC transferred his accounts to Merrill Lynch in February 2004, CC's securities accounts were opened as fee-based accounts rather than commission-based accounts. Respondent received a percentage of the fees charged to CC's accounts.

In or around July 2005, Respondent falsely told CC that Respondent was no longer receiving any compensation related to servicing CC's securities accounts. CC told Respondent that he wanted Respondent to receive compensation so that Respondent would closely monitor CC's accounts and provide quality customer service. CC agreed to allow Respondent to withdraw funds each week from one of CC's accounts ("FORF" account) using an ATM card linked to that account, based on the false premise that the funds would compensate Respondent for his services.

Between July 2005 and April 2007, Respondent used the ATM on 115 occasions and withdrew \$67,300 for his personal use. Without the knowledge or consent of CC, Respondent funded the FORF account to make these withdrawals by transferring money from CC's other securities accounts and from the LMA, thereby incurring interest expenses for CC in addition to the money being withdrawn.

In or around January 2007, CC told Respondent to stop making withdrawals from CC's accounts. Respondent continued to make such withdrawals until April 2007, when CC told Respondent that he would contact Respondent's supervisor about the withdrawals.

Beginning in July 2007, Respondent began to repay CC the money he had withdrawn from the FORF account. So that the Firm would not become aware of any such payments to CC, Respondent instructed CC to open a bank account at another bank where Respondent would deposit the repayment.

In addition, Respondent wired \$45,000 to one of CC's accounts from an account Respondent

controlled, which did not list Respondent's name because Respondent did not want Merrill Lynch to learn that he was wiring money to a Firm customer. Although Respondent repaid the funds to CC, at the time Respondent took the money, he had no intention of repaying CC and falsely represented to CC that the money was for services rendered.

By withdrawing funds from a customer's account under false pretenses, Respondent converted customer funds and violated NASD Rules 2330 and 2110.

Unauthorized Transactions

During December 2006, CC was hospitalized and had surgery.

On December 11, 2006, Respondent effected the purchase of 100 shares of ABC stock into CC's securities account without the knowledge or authorization of CC.

On December 18, 2006, Respondent effected the purchase of an additional 100 shares of ABC stock into CC's securities account without the knowledge or authorization of CC.

When CC saw the account statement that reflected the purchases of ABC stock, he confronted Respondent and explained that he never authorized the purchases and that he did not want ABC stocks because they did not pay dividends. CC sold the shares in March 2007.

By effecting securities transactions in a customer's account without the knowledge or authorization of the customer, Respondent violated NASD Rule 2110.

* * *

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

- Censure and a bar from association with any FINRA member in any capacity.

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.

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 Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. 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).

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 prejudice 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

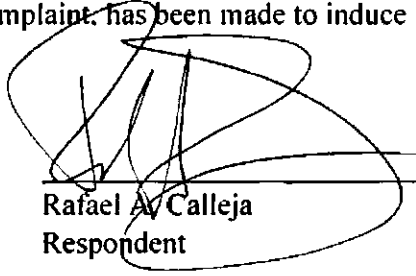
C. If accepted:

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.

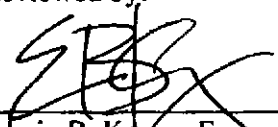
I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

08/17/2012

Date (mm/dd/yyyy)


Rafael A. Calleja
Respondent

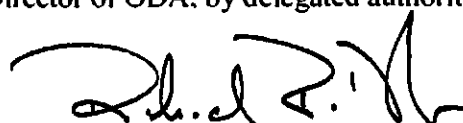
Reviewed by:


Edwin B. Kagan, Esq.
Attorney for Respondent
2709 Rocky Point Drive, Suite 102
Tampa, Florida 33607

Accepted by FINRA:

9-5-12
Date

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

A handwritten signature in black ink, appearing to read "Richard R. Best", written over a horizontal line.

Richard R. Best
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