

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NOS. 2008015360001,
20080144239, 20090183939**

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

RE: Max J. Silberman, Respondent
CRD No. 423803

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Max J. Silberman (Silberman or Respondent) 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 Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent hereby accepts and consents, 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

Max J. Silberman became registered as a General Securities Representative and a General Securities Principal in 1980 and worked in those capacities for several FINRA registered broker-dealers, including Sanders Morris Harris Capital, Inc. (SMH). After Silberman's termination of employment with SMH, he became registered with Wunderlich Securities, Inc. ("Wunderlich"), a FINRA registered firm, until June 2009, when he was permitted to resign as a result of violating firm policies and procedures. He is not currently registered with any FINRA registered firm.

RELEVANT DISCIPLINARY HISTORY

Silberman's disciplinary history contains two regulatory actions related to the same conduct. On January 4, 2005 Silberman accepted an NASD offer of settlement related to his exercise of discretion in a customer's account without written authorization from the customer and without prior written acceptance of the account as discretionary by his firm. As a result, he was fined \$5,100 and suspended for five business days. Also due to these proceedings, on August 11,

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2006, Silberman consented to withdrawing his salesperson registration in Illinois for a period of two years.

OVERVIEW

FINRA staff sent Silberman three requests for information regarding his activities while at SMH and Wunderlich. To date, none of the requested information has been received. Additionally, Silberman failed to appear at a scheduled on-the-record interview.

FACTS AND VIOLATIVE CONDUCT

Failure to Respond to Requests for Information

1. In connection with ongoing FINRA examinations, on November 20, 2009, staff sent Silberman a request for information, a response to which was due by December 8, 2009, pursuant to Rule 8210. The request was sent via First Class U.S. Mail and certified mail to Silberman's CRD address of record. The regular mail was not returned to FINRA; the certified mail receipt was returned to FINRA undelivered.
2. On or about December 1, 2009, Silberman telephoned FINRA staff to acknowledge receipt of FINRA's Rule 8210 request. Silberman also stated that an attorney would represent him and provide his response.
3. On or about December 2, 2009, an attorney contacted FINRA staff by telephone and identified himself as a legal representative of Silberman. The staff informed Silberman's attorney of the nature of the request for information and explained that the requested information related to several customer complaints about Silberman during the time of his employment at SMH and at Wunderlich.
4. On or about December 15, 2009, staff telephoned and forwarded to Silberman's attorney a copy of the initial request pursuant to Rule 8210 that was sent to Silberman on November 20, 2009, a response to which was required by December 29, 2009. The written request was sent to Silberman's attorney's office by First Class U.S. Mail and by certified mail. The certified mail receipt was returned to FINRA dated December 18, 2009, signed by Ivey Stone. The First Class Mail was not returned to FINRA.
5. On or about December 18, 2009, Silberman's attorney telephoned the staff and stated that he would not be able to respond by December 29, 2009, and could not specify a date by which the information would be forwarded. Furthermore, Silberman's attorney sent to FINRA a letter dated December 18, 2009, acknowledging that he represented Silberman and confirming his receipt of FINRA's request for information and his previous telephone conversation with FINRA staff on that same date.
6. On or about April 9, 2010, staff telephoned Silberman's attorney to ask about the requested information. Silberman's attorney stated that Silberman had started collecting the information, but most of the requested documentation was left at SMH when

Silberman's employment there was terminated.

7. On April 15, 2010, staff sent another letter to Silberman's attorney requesting the information originally sought in the November 9, 2009 letter. This letter required, pursuant to Rule 8210, that the information be submitted to FINRA on or before April 28, 2010. This letter was sent via facsimile and First Class U.S. Mail to the office of Silberman's attorney.
8. To date, the information requested in staff's letters of November 20, 2009, December 15, 2009 and April 15, 2010, has not been received.
9. The acts, practices or conduct described above constitute violations of FINRA Rules 2010 and 8210.

Failure to Appear at an On-the-Record Testimony

10. In connection with ongoing examinations, pursuant to FINRA Rule 8210, staff sent Silberman a letter on November 20, 2009 requesting that he attend an on-the-record interview on December 8, 2009 at FINRA's office in Chicago, Illinois. The request was sent via First Class U.S. Mail and certified mail to Silberman's CRD address of record. The regular mail was not returned; the certified mail receipt was returned to FINRA undelivered.
11. On or about December 1, 2009, Silberman called staff to acknowledge receipt of FINRA's Rule 8210 written request and stated that he would not attend an on-the-record interview in Chicago because he was ill and could not travel. Silberman also stated that an attorney would represent him and provide his response.
12. On or about December 2, 2009, an attorney contacted FINRA staff by telephone and identified himself as Silberman's legal representative. The staff informed Silberman's attorney of the nature of the request for information and explained that the requested information related to several customer complaints about Silberman during the time of his employment at SMH and at Wunderlich.
13. On or about December 15, 2009, staff spoke to Silberman's attorney to re-schedule the on-the-record interview, at which time Silberman's attorney stated that it would be virtually impossible for Silberman to travel to FINRA's office in Chicago due to his ill health and the ill health of his wife.
14. On December 15, 2009, staff sent Silberman's attorney a letter confirming the conversation that day about Silberman's on-the-record interview, pursuant to FINRA Rule 8210. Staff's letter asked for statements from Silberman's physician addressing his condition and inability to travel to Chicago. Staff also asked for a statement from Silberman's wife's physician addressing the care that she required, which reportedly prevented Silberman from travelling. The written request was sent to Silberman's attorney's office by First Class U.S. Mail and by certified mail. The certified mail receipt was returned to FINRA dated December 18, 2009, signed by Ivey Stone. The First Class

U.S. Mail was not returned to FINRA. No response to the staff's request was provided to FINRA.

15. On or about April 9, 2010, FINRA staff telephoned Silberman's attorney to inform him that the staff was prepared to travel to Cleveland, Ohio, to take Silberman's on-the-record interview and proposed dates during May 4-7, 2010. Silberman's lawyer stated that he would contact the staff by April 13, 2010 to confirm the date for Silberman's on-the-record interview, however, he never contacted the staff.
16. On April 23, 2010, pursuant to FINRA Rule 8210, staff notified by letter Silberman's attorney that the on-the-record interview of Silberman would be conducted at 9:30 a.m. on May 7, 2010 in Cleveland, Ohio. This letter was sent via facsimile and First Class U.S. Mail to Silberman's attorney's office.
17. On May 7, 2010, staff travelled to Cleveland, Ohio for Silberman's on-the-record interview as scheduled pursuant to FINRA Rule 8210, however, Silberman failed to appear at the scheduled time.
18. At the time of Silberman's scheduled on-the-record interview on May 7, 2010, staff telephoned Silberman's attorney at his office to inquire as to Silberman's whereabouts. During the telephone call, Silberman's attorney stated that Silberman did not intend to appear for an on-the-record interview with FINRA on that day or at any time in the future.
19. The acts, practices, and conduct described above constitute violations of FINRA Rules 2010 and 8210.

- B. Respondent also consents to the imposition of the following sanctions: a bar from associating with any FINRA registered firm, in all capacities.

Respondent understands that if he is barred or suspended from associating with any FINRA member, Respondent becomes 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, Respondent 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).

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

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against Respondent;
- 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, Respondent specifically and voluntarily waives 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.

Respondent further specifically and voluntarily waives 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

Respondent understands 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 Respondent; and
- C. If accepted:

1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Respondent;
2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondent's 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. Respondent 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. Respondent 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 Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

Respondent certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Respondent has 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 Respondent to submit it.

4-12-11

Date

Max J. Silberman

Max J. Silberman

Reviewed by:

Marc Silberman

Marc Silberman, Esq.
Counsel for Respondent
200 Public Square, Suite 2560
Cleveland, OH 44114

Accepted by FINRA:

May 4, 2011
Date

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

Pamela Shu

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