

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2008015411501**

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

RE: Jennifer V. Himes, Respondent
General Securities Representative
CRD No. 1485199

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

Jennifer V. Himes ("Himes") was Series 7 registered as a general securities representative with FINRA from approximately May 1986 through November 2008. Himes was employed by three different FINRA regulated entities. In approximately February 2006, Himes became associated with Brecek & Young Advisors, Inc. ("BYA" or the "Firm")¹ as a registered sales assistant and remained in that position until the Firm terminated her employment in November 2008. Himes has not been affiliated with any FINRA regulated entity since her November 2008 termination of employment, but she remains subject to FINRA's jurisdiction pursuant to FINRA By-law Article V, Section 4. Himes has

¹ In or about January 2009, after the conduct at issue occurred, FINRA-regulated firm Securities America, Inc., acquired a successor firm to BYA.

000050294 2010

no FINRA disciplinary history.

OVERVIEW

During the period 2007 through September 2008 (the "Relevant Period"), while employed as a registered sales assistant with BYA, Himes violated NASD Rule 2110 when she engaged in undisclosed activities that required written notice to BYA under its policies and procedures. Himes also violated NASD Rules 3110 and 2110 in that she failed to use BYA's e-mail system when communicating with regard to BYA's business and its customers thereby causing BYA not to retain certain communications in violation of Section 17(a) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 17a-4 thereunder and NASD Rules 3110 and 2110.

FACTS AND VIOLATIVE CONDUCT

HIMES' VIOLATIONS OF FIRM POLICIES AND PROCEDURES

Himes worked as a registered sales assistant in a BYA affiliated office that KS, a registered representative, managed. KS recommended that certain of his customers invest in Forward Investment Group (FIG), an investment group outside of BYA that operated as a commodity pool. During the Relevant Period, Himes violated BYA's policies and procedures when she facilitated the day-to-day interactions between certain of KS's customers and FIG. These activities required written notice to BYA under its policies and procedures, which she did not provide. The operator of FIG represented that it traded "E-mini S & P 500" futures contracts.² Additionally, Himes personally invested in "E-mini S & P 500" futures contracts through FIG.

Despite her having engaged in these activities, Himes failed to provide any notice to BYA even though the Firm's policies and procedures required registered persons to disclose any outside business activities. By virtue of this conduct, Himes violated NASD Rule 2110.

² E-Mini Futures are listed by and offered through the Chicago Mercantile Exchange. E-Mini S & P 500 futures contracts are traded solely electronically allowing the investor to buy or sell the value of the Standard & Poor's 500 Stock Index, at one fifth the size of the standard S & P 500 futures contract.

HIMES' FAILURE TO USE BYA'S E-MAIL SYSTEM

During the Relevant Period, Himes failed to use BYA's e-mail system on numerous occasions when communicating regarding BYA's business and its customers. Himes was required to use BYA's e-mail systems when communicating regarding BYA's business and its customers, and the Firm relied on her compliance to meet its requirements under Section 17(a) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 17a-4 thereunder.

At KS's direction, however, Himes instead communicated with FIG via non-BYA e-mail addresses. Himes also relayed messages from KS that specifically advised customers not to use BYA email addresses for communications regarding FIG. Himes engaged in this conduct to prevent BYA from detecting that she and KS were involved with FIG.

As such, BYA failed to retain certain e-mail communications relating to its business in violation of Exchange Act Rule 17a-4 and NASD Rules 3110 and 2110. By failing to use BYA's e-mail system when communicating regarding BYA's business and its customers, Himes violated NASD Rule 3110 and 2110, in that she caused BYA to violate Exchange Act Rule 17a-4 and NASD Rules 3110 and 2110.

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

- A two-month suspension in all capacities from any FINRA-regulated firm, and a fine of \$5,000.

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).

The fine shall be due and payable either immediately upon reassociation with a member firm following the two-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 have submitted an Election of Payment form showing the method by which I propose to pay the fine imposed.

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.

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.

10-15-10
Date

Jennifer V. Himes
Jennifer V. Himes
Respondent

Reviewed by:

Thomas J. Callaway
Thomas J. Callaway, Esq.
43537 Ridge Park Drive, Suite 135
Temecula, CA 92590
(951) 201-6982

Accepted by FINRA:

10-19-10
Date

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

Linda Riefberg
Linda S. Riefberg
Vice President and Chief Counsel
FINRA Department of Enforcement
14 Wall Street, 14th Floor
New York, NY 10005
(646) 315-7383