

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2009017605601**

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

RE: David Herzog
General Securities Representative
CRD No. 1688885

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent David Herzog 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 me 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

Herzog entered the securities industry with Integrated Resources Equity Corp. in May 1987. He has Series 6, 7, 63, and 66 licenses. Herzog was employed by ten registered firms before joining NEXT Financial Group, Inc. on February 14, 2002. Herzog was terminated by NEXT Financial Group, Inc. on April 1, 2009. Since that time he has not been associated with any FINRA registered firm.

Herzog is not currently registered with a member firm; however, he remains subject to FINRA's jurisdiction for the purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's Bylaws, because: (i) the AWC was filed within two years following the termination of his registration with FINRA; and (ii) the AWC charges him with misconduct committed while he was associated with a firm registered with FINRA. FINRA's jurisdiction over Herzog extends until at least March 31, 2011.

RELEVANT DISCIPLINARY HISTORY

Herzog has no relevant disciplinary history.

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OVERVIEW

During the period from September 30, 2009 through the present, David Herzog failed to respond to requests for on-the-record testimony sent pursuant to FINRA Rule 8210.

FACTS AND VIOLATIVE CONDUCT

- A. In connection with a FINRA examination, by letters dated September 16, 2009, June 21, 2010, and July 16, 2010, FINRA staff requested, pursuant to FINRA Rule 8210, for Herzog to appear for on-the-record testimony on September 30, 2009, July 7, 2010, and August 10, 2010. Despite complying with earlier FINRA Rule 8210 requests, Herzog failed to appear for scheduled on-the-record testimony on all three occasions. Accordingly, Herzog has failed to respond and continues to fail to respond to FINRA's requests for on-the-record testimony.

Such acts, practices, and conduct constitute separate and distinct violations of FINRA Rules 8210 and 2010 by David Herzog.

- B. Respondent also consents to the imposition of the following sanctions:

David Herzog shall be barred from associating with any FINRA member in any capacity.

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

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 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, 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 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. Respondent may not take any action or make or permit to be made any

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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 my right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

Respondent David Herzog 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 he 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 him to submit it.

12/13/2010
Date (mm/dd/yyyy)

David Herzog
David Herzog, Respondent

Reviewed by:

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Accepted by FINRA:

12-22-2010
Date

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

Patrick K. Craine / by JOP
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