

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2009018601701**

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

RE: David E. Bredenburg, Respondent
CRD No. 2592172

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

David E. Bredenburg ("Bredenburg") first became registered as an Investment Company Products Representative (Series 6) with a FINRA-member firm in March 1995. He was registered as a General Securities Representative with SunTrust Investment Services, Inc. ("STIS") from May 2000 until October 2006, when he transferred to Merrill, Lynch, Pierce, Fenner & Smith, Incorporated ("Merrill Lynch"), where he was registered in the same capacity until March 6, 2009. He is not currently registered or associated with any FINRA member and has not previously been the subject of a FINRA disciplinary action.

On December 8, 2009, Merrill Lynch filed an amended Form U5 Notice of Termination regarding Bredenburg. This amended Form U5 disclosed the existence of a complaint by customer JM against Bredenburg alleging that Bredenburg made unauthorized electronic disbursements from JM's account. FINRA, therefore, retains jurisdiction over Bredenburg until December 8, 2011 pursuant to Article V, Section 4 of the FINRA By-Laws.

OVERVIEW

Between August 2008 and February 2009, Bredenburg wrongfully and without authorization converted funds totaling approximately \$92,712.50 for his own use and benefit from customer JM's Merrill Lynch brokerage account, in violation of NASD Rules 2330(a) and 2110, and FINRA Rule 2010.

Between February 2004 and October 2006, while registered through STIS, Bredenburg recommended to nine customers at least 131 unsuitable short-term Closed-End Fund ("CEF") and Unit Investment Trust ("UIT") transactions ("short-term trading" or "short-term transactions"), including switching. After transferring to Merrill Lynch in October 2006, he recommended to ten customers – including most of the nine customers to whom he made unsuitable recommendations while with STIS – at least 36 unsuitable short term CEF and UIT transactions, including switching, and recommended to three customers unsuitable variable annuity liquidations. Between February 2004 and March 2009 ("the relevant period"), he also recommended to nine customers unsuitable purchases and sales of securities on margin. Bredenburg, therefore, violated NASD Rules 2310 and 2110.

Furthermore, during the relevant period, Bredenburg violated NASD Rule 2110 by failing to disclose to customers the costs and fees associated with short-term CEF and UIT transactions, and between February 2004 and October 2006, failing to obtain for customers the most advantageous sales charge discounts in more than 100 UIT purchases. During the relevant period, he also violated NASD Rules 2110 and 2510(b) by exercising discretion in 14 customer accounts without having obtained written authorization from the customers or the approval of the member firm with which he was associated – STIS or Merrill Lynch.

FACTS AND VIOLATIVE CONDUCT

1. Bredenburg Converted Funds Totaling \$92,712.50 from a Customer's Account

Bredenburg, between August 2008 and February 2009, wrongfully and without authorization converted funds for his own use and benefit from customer JM's Merrill Lynch brokerage account. In May 2008, Bredenburg established internet access to the brokerage account of customer JM who, as Bredenburg was aware, did not own or use a computer. Unbeknownst to customer JM, Bredenburg subsequently accessed customer JM's brokerage account through the internet and transferred funds from JM's account to pay Bredenburg's personal expenses.

In particular, between August 2008 and February 2009, Bredenburg made the following electronic payments using funds from customer JM's on-line brokerage account:

- Nine electronic payments totaling \$46,000 to pay his mortgage;
- Six electronic payments totaling \$12,000 to pay his automobile loan;

- Four electronic payments totaling \$2,000 to pay his loan with a computer retailer; and
- Ten electronic payments totaling \$32,100 to pay his credit card account balances with three credit card issuers.

Bredenburg also wrote one check drawn on customer JM's brokerage account totaling \$612.50 to pay for Bredenburg's legal expenses.

Overall, Bredenburg, on 30 occasions, converted approximately \$92,712.50 in funds from customer JM's brokerage account to his own use and benefit in violation of NASD Conduct Rules 2330(a) and 2110, and FINRA Rule 2010.

2. Bredenburg Recommended Unsuitable Short-Term Closed-End Fund and UIT Transactions

Between February 2004 and October 2006, Bredenburg recommended and engaged in a pattern of unsuitable short-term CEF and UIT trading in the accounts of nine customers,¹ and after transferring to Merrill Lynch, recommended unsuitable short-term CEF and UIT transactions in the accounts of ten customers² (collectively, "the 13 customers"). Many of the short-term transactions involved switching, whereby Bredenburg, for example, sold one CEF and invested some or all of the sale proceeds in another CEF, without any economic benefit to the customer. Most of the short-term CEF transactions involved CEFs purchased at initial public offering, whereby the sales charges to the customer are built into the offering price of the CEF. During the relevant period, the CEFs at issue typically included a sales load of 4.5%, while the UITs at issue typically included a sales load of between 4 and 5%.

In at least 87 instances during the relevant period, Bredenburg recommended that customers sell their CEF positions less than one year after the customers, at Bredenburg's recommendation, purchased them. Even though the CEFs generally were intended for use as long-term investments, Bredenburg recommended that customers sell their positions as soon as two months after purchase. UITs, likewise, were long-term investment products with maturity dates ranging from approximately 15 months to seven years. Yet Bredenburg, in at least 80 instances during the relevant period, recommended that customers sell their positions in UITs less than one year after the customers, at his recommendation, purchased them.

Bredenburg made these recommendations to purchase and sell CEFs and UITs on a short-term basis without having reasonable grounds for believing that such recommendations were suitable in view of the frequency and size of the transactions, and each customer's investment objectives, financial situation and needs. The short-term trading did not meet the needs of the customers, who were elderly, retired, or infirm, and had conservative to moderate investment

¹ The nine customers, all but one of whom was elderly, were RW, SN, EC, AS, MH and two married couples – EG and EG, and PP and LP.

² The ten customers included six of the STIS customers to whom Bredenburg recommended unsuitable short-term transactions – RW, MH, SN, AS, and EG and EG – and four other customers – JM, GB, LF, and TM.

profiles that were inconsistent with the aggressive, short-term transactions. As a result of these 167 transactions, the 13 customers incurred unnecessary sales charges and fees and suffered significant losses, while Bredenburg profited. In particular, Bredenburg, while associated with STIS, earned gross commissions of approximately \$218,700 while the nine customers lost almost \$93,000.

For example, Bredenburg, while associated with STIS, recommended unsuitable UIT transactions in the accounts of customers PP and LP. PP and LP were conservative investors in their eighties. After PP passed away in August 2004, LP opened an individual account with Bredenburg in May 2005. Between February 11 and 14, 2005, LP, based upon Bredenburg's recommendation, purchased an income-producing UIT for approximately \$65,000. Bredenburg earned \$2,251.80 in gross commissions from the transaction. On or about July 20, 2005, and based upon Bredenburg's recommendation, LP sold the units for a loss of approximately \$4,500. On or about July 26, 2005, and based upon Bredenburg's recommendation, LP used the proceeds from the sale of the UIT to purchase an income-producing CEF. While associated with STIS, Bredenburg, in 24 instances, recommended that PP and/or LP sell their positions in CEFs and UITs less than one year after the customers purchased them, which generated over \$33,000 in gross commissions for Bredenburg and approximately \$5,600 in losses for PP and LP.

In another instance, Bredenburg, while associated with Merrill Lynch, recommended unsuitable CEF transactions in the account of customer SN. SN, a conservative widowed investor in her eighties, intended to leave her estate to charity, including a university where her husband taught. On or about March 30, 2007, SN, based upon Bredenburg's recommendation, purchased a CEF at IPO for approximately \$60,000. Bredenburg earned \$1,800 in gross commissions from the transaction. Less than one year later – between on or about February 11 and 22, 2008 – and based upon Bredenburg's recommendation, SN sold the entire position for a loss of approximately \$8,000. That same month, SN, based upon Bredenburg's recommendation, used a portion of the proceeds from the sale of the CEF to purchase two other CEFs. While associated with ML, Bredenburg, in three instances, recommended that SN sell her positions in CEFs and UITs less than one year after she purchased them, which generated nearly \$5,000 in gross commissions for Bredenburg and approximately \$66,100 in losses for SN.

By recommending unsuitable short-term CEF and UIT transactions, Bredenburg violated NASD Rules 2310 and 2110.

3. Bredenburg Recommended Unsuitable Transactions on Margin

Bredenburg, during the relevant period, recommended to nine customers³ unsuitable purchases and sales of securities on margin. Bredenburg's recommendations were unsuitable for two reasons. First, he failed to disclose to the customers the risks and costs associated with

³ The nine customers to whom Bredenburg recommended unsuitable purchases and sales of securities on margin were SN, RW, MH, LF, JK, GB, JM, and PP and LP.

trading on margin. Second, he made these recommendations without having a reasonable basis for believing that such recommendations were suitable given each customer's investment objectives, financial situation and needs. Bredenburg's recommendations to actively trade securities – including CEFs and UITs – on margin, which exposed the customers to significant risk, increased costs, and sizable margin balances, were inconsistent with the nine customers' investment objectives.

By recommending unsuitable transactions on margin, Bredenburg violated NASD Rules 2310 and 2110.

4. Bredenburg Recommended Unsuitable Variable Annuity Liquidations

Bredenburg, while registered through Merrill Lynch, recommended unsuitable variable annuity liquidations to three retired customers who were unsophisticated investors. One of the three customers relied upon monthly income produced by the variable annuity to pay living expenses. By liquidating the variable annuity at Bredenburg's recommendation, each customer paid thousands of dollars in early withdrawal penalties and/or taxes. Bredenburg used the liquidation proceeds to purchase other securities, including CEFs. The transactions were unsuitable given each customer's financial situations, needs, and investment objectives.

By recommending unsuitable variable annuity liquidations, Bredenburg violated NASD Rules 2310 and 2110.

5. Bredenburg Failed to Disclose Material Facts Regarding CEF and UIT Transactions

During the relevant period, Bredenburg repeatedly sold CEFs and UITs less than one year after purchase, and often switched from one CEF or UIT to another in the 13 customers' accounts, which caused the customers to effectively pay higher fees on the original CEF or UIT purchase and incur additional costs on subsequent CEF and UIT purchases. But Bredenburg never disclosed to the customers the costs and fees associated with the short-term CEF and UIT transactions, which were material facts.

By failing to disclose to his customers the costs associated with CEF and UIT transactions, Bredenburg violated NASD Rule 2110.

6. Bredenburg Failed to Ensure that Customers Received Sales Charge Discounts

UIT sponsors typically offered sales charge discounts to investors (disclosed in prospectuses) known as "rollover" sales charge discounts. This rollover discount applied when an investor used redemption or termination proceeds from a UIT to purchase a new UIT from the same sponsor. Generally, UIT sponsors required an investor to use redemption or termination proceeds from a UIT to purchase a new UIT within 30 days to receive a rollover discount.

UIT sponsors also typically offered “breakpoint” discounts on the amount of a UIT purchase. A breakpoint discount constituted a reduction in the percentage sales charge that was applied to incrementally larger purchases based upon the dollar amount being invested.

Sponsors permitted investors to receive either the rollover or breakpoint discount, but not both. Rollover discounts generally were more advantageous than breakpoint discounts on UIT purchases up to \$250,000.

Between February 2004 and October 2006, Bredenburg, in more than 100 UIT purchases, none of which exceeded \$250,000, involving more than 20 customers, failed to apply the rollover discount to which each customer in those transactions was entitled. The customers instead received the less-advantageous breakpoint discount or received no discount, and thereby incurred higher sales charges on UIT purchases than they were entitled to.

By failing to apply, and provide customers the benefit of applicable rollover sales charge discounts on eligible UIT purchases, Bredenburg violated NASD Rule 2110.

7. Bredenburg Effected Discretionary Trades in Fourteen Customers’ Accounts without Prior Written Authorization

During the relevant period, Bredenburg routinely exercised discretion in hundreds of purchase and sale transactions in the accounts of 14 customers without having obtained prior written authorization from any of the customers and prior written acceptance of any of the accounts as discretionary by STIS or Merrill Lynch. By exercising discretion in the accounts of 14 customers without having obtained written authorization from the customers, or STIS or Merrill Lynch, Bredenburg violated NASD Rules 2510(b) and 2110.

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

A bar from association with any member of FINRA in any capacity.

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 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

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 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.

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.

Date

1/3/2010

David E. Bredenburg

Reviewed by:

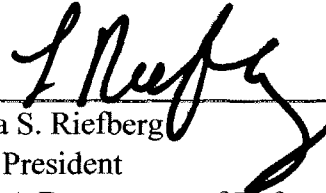
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Accepted by FINRA:

Date

7/20/10

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



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