

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20090204321**

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

RE: Nicholas C. Dito, Respondent
CRD No. 4850362

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Nicholas C. Dito, 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

Nicholas C. Dito ("Dito") entered the securities industry in 2006 as a registered representative ("RR"). At the time of the event in question, Dito was employed by John Thomas Financial ("John Thomas" or the "Firm"). Dito joined John Thomas on March 14, 2008 and remained employed there until his voluntary resignation on March 11, 2010. Dito was last employed as a registered representative for a FINRA member firm, but voluntarily resigned on February 7, 2011. Dito is currently not employed in the securities industry in any capacity.

OVERVIEW

On July 3, 2008, Dito, a registered representative formerly associated with John Thomas, viewed non-public customer information and mined out selected excerpts for his own use by e-mailing the information, on two separate occasions, to his Firm e-mail address in violation of NASD Rule 2110. In addition, on February 17, 2011, Dito, after beginning his on-the-record interview, refused to

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answer further questions and complete his on-the-record interview with Enforcement staff in violation of FINRA Rules 8210 and 2010.

FACTS AND VIOLATIVE CONDUCT

1. NASD Rule 2110

In July 2008, Dito obtained possession of a computer flash drive (the "Flash Drive") which contained non-public customer account information. Specifically, the Flash Drive contained, among other things, approximately 350 account statements of customers from a FINRA member firm. Each of the customer account statements contained in the Flash Drive displayed non-public financial information including customer names, addresses, account numbers, financial positions, broker identification numbers and account values.

After obtaining possession of the computer flash drive containing non-public customer account information, Dito took the flash drive to his parents' home, and uploaded the contents of the Flash Drive to his parents' home computer. Dito reviewed the contents of the Flash Drive and determined that it contained non-public customer information. Subsequent to reviewing the contents of the Flash Drive, Dito copied customer account information from the non-public customer account information contained in the Flash Drive. On July 3, 2008, Dito sent two e-mails containing customer information derived from customer account statements contained on the Flash Drive to his Firm e-mail address at John Thomas Financial.

The first e-mail (the "First E-mail") sent by Dito on July 3, 2008 contains the names and addresses of approximately 300 customers which Dito had copied directly from FINRA member firm customer account statements contained in the Flash Drive. Dito intended to use the customer account information contained on the First E-mail to "cold-call" prospective customers. The second e-mail sent by Dito (the "Second E-mail") consists of a listing of financial positions for a FINRA member firm securities account owned by customer "B & JPT." The financial positions detailed in the Second E-mail showed B&JPT's equity stock holdings and their total net value. These financial positions were copied by Dito directly from B&JPT customer account statements contained on the Flash Drive and are identical to the client account positions displayed in a B&JPT customer account statement generated by a FINRA member firm for the period between December 31, 2003 and January 30, 2004.

NASD Rule 2110 provides that "[a] member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade."

Accordingly, Dito violated NASD Rule 2110 by viewing non-public customer information contained in the Flash Drive and mining out selected excerpts for his own use by e-mailing the information to his Firm e-mail address.

2. FINRA Procedural Rule 8210.

On April 27, 2010 and February 17, 2011, Dito appeared before FINRA Enforcement staff pursuant to FINRA Procedural Rule 8210 in order to provide testimony under oath in connection with a FINRA inquiry. On both occasions, Dito was instructed by FINRA Enforcement staff that he was required to answer the staff's questions to the full extent of his knowledge and truthfully. On both occasions, FINRA Enforcement staff also instructed Dito that the failure to answer questions or answer questions truthfully could be viewed as conduct inconsistent with FINRA Procedural Rule 8210 and could lead to disciplinary action and expose him to sanctions including a permanent bar from the securities industry. During FINRA Enforcement's staff's questioning on February 17, 2011, Dito refused to answer any further questions even though staff had not completed their questioning. At the time that Dito refused to answer staff's questions, he was aware that staff had not concluded the on-the-record examination and that his actions could result in disciplinary action and sanctions including a permanent bar from the securities industry.

FINRA Rule 8210 authorizes FINRA, in the course of its investigations, to require persons associated with a FINRA member to "provide information orally, in writing, or electronically... and to testify at a location to be specified by [FINRA] staff, under oath or affirmation...with respect to any matter involved in the investigation."

Accordingly, because Dito failed to fully cooperate with Enforcement staff and answer all of the staff's questions, he is in violation of FINRA Rule 8210 and FINRA Conduct Rule 2010.¹

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

A bar from associating with any FINRA member firm 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 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

¹ On December 15, 2008, NASD Conduct Rule 2110 was superseded, without substantive changes, by FINRA Rule 2010. Accordingly, Dito's conduct is violative of FINRA Rule 2010 because it occurred on February 17, 2011, several years after NASD Conduct Rule 2110 was superseded by FINRA Conduct Rule 2010.

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

6/28/11
Date:

[Signature]
Respondent
Nicholas C. Dito

Reviewed by:

[Signature]
Michael Uthila, Esq.
Counsel for Respondent
26 Court Street - Suite 2810
Brooklyn, New York 11242

Accepted by FINRA:

July 26, 2011
Date

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

[Signature]
Thomas B. Lawson
Chief Counsel
FINRA Department of Enforcement
1735 K St., NW
Washington, DC 20006