

FINRA
FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20090206183

RECEIVED

SEP 24 2010

To: Department of Enforcement
FINRA

FINRA District 4

Re: Daniel L. Kurtz
Investment Company and Variable Contracts Products Representative
CRD No. 4894211

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Daniel L. Kurtz, 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

Kurtz entered the securities industry in January 2005. He became associated with broker-dealer Waddell & Reed, Inc. (Waddell & Reed), in January 2005. On November 24, 2009, Waddell & Reed filed a Form U5. Consequently, FINRA retains jurisdiction over Kurtz pursuant to Article V, Section 4 of its By-Laws.

Relevant Disciplinary History

Kurtz has not been the subject of prior formal disciplinary action by FINRA.

Overview

Kurtz intentionally misrepresented the balance of an IRS Section 529 plan account that he established for the benefit of his daughter, a minor. Kurtz put this misrepresentation into a false document that he created and provided to his then father-in-law (M.S.), who also served as opposing counsel in Kurtz's divorce case, and who had contributed \$5,000 to the Section 529 plan account.

Through this conduct, Kurtz violated FINRA Rule 2010.

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Facts and Violative Conduct

In September 2009, when Kurtz was in the midst of a divorce, M.S., informally inquired about the value of a 529 plan account established for the benefit of Kurtz's daughter. M.S., who represented Kurtz's then wife in the divorce action, had contributed \$5,000 to the account in June 2007, but Kurtz was the sole owner of the 529 plan account.

M.S.'s inquiry was made informally, and not as part of the divorce proceeding, such as through a subpoena. Kurtz may not have had an obligation to respond to M.S.'s inquiry.

But instead of either refusing M.S.'s request or providing M.S. with an authentic account statement, Kurtz created a false document, which he labeled a "Contact Investment Summary." He placed a Waddell & Reed logo on the document, even though the firm did not authorize his use of either the form of the document or the information contained in it.

Kurtz's document misrepresented the account's value. The falsified document showed a balance of \$9,193.36, whereas the actual value at the time was less than \$500. Kurtz had withdrawn funds from the account to pay for household expenses. Kurtz provided the document to M.S. in a manner that suggested that it was an authentic and official Waddell & Reed document.

Through this conduct, Kurtz violated FINRA Rule 2010.

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

1. A six-month suspension from associating with any FINRA broker-dealers in any capacity, and
2. A \$5,000 fine. The fine shall be due and payable to FINRA either immediately upon reassociation with a FINRA broker-dealer following the six-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.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II. WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against me;
- B. To be notified of the Formal 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

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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.
- D. 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 FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rules 8310 and 8311).
- E. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

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: 9-23-2010


DANIEL L. KURTZ

Reviewed by:

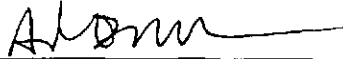

9/23/10
Counsel for Daniel L. Kurtz

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Accepted by FINRA:

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

10-12-10
Date


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