

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20090210823-01**

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

RE: Francis X. Bice, Respondent
Former Registered Representative
CRD No. 3016365

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Francis X. Bice ("Bice" or "Respondent") 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 Bice alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Bice 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

Bice first became registered in the securities industry in 1998 as a General Securities Representative at Merrill Lynch, Pierce, Fenner & Smith, Inc. (the "Firm" or "Merrill Lynch"). Bice remained in that position working at the Firm's Manhasset, New York branch office until he resigned on December 1, 2009. He was registered in the same capacity at another FINRA-regulated broker-dealer from December 18, 2009 until he resigned on November 7, 2011. Although Bice is no longer registered or associated with a FINRA member, FINRA retains jurisdiction over Bice pursuant to Article V, Section 4 of the By-Laws because the conduct that serves as the basis for this action commenced prior to his termination of registration from a FINRA regulated broker-dealer and this AWC has been filed within two years after the effective date of Bice's termination of registration from a FINRA regulated broker-dealer.

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RELEVANT DISCIPLINARY HISTORY

Bice has no prior disciplinary history.

OVERVIEW

Between January 2008 and October 2009 (the "relevant period") while registered with Merrill Lynch, Bice mismarked approximately 190 orders in customer accounts as unsolicited when, in fact, they were solicited. Bice also exercised discretion without written authority in approximately 18 customer accounts. In addition, he miscoded information concerning certain customer accounts on the Firm's internal records. Based on these activities, Bice violated FINRA Rule 2010 and NASD Rules 2110,¹ 3110, and 2510 and caused violations of Securities Exchange Act ("Exchange Act") Section 17a and Rules 17a-3 and 17a-4 thereunder.

FACTS AND VIOLATIVE CONDUCT

A. Mismarking Trades in Securities that were not Covered by the Firm's Equity Research Department

During the relevant period, Bice solicited 13 customers for orders to buy or sell securities for which the Firm did not have a research opinion. At the time, Bice was aware that the Firm prohibited its registered representatives from soliciting transactions in securities for which the Firm's Research Department did not have a research opinion without prior supervisory approval. Rather than obtaining the necessary supervisory approval prior to soliciting the transactions, Bice mismarked approximately 190 orders for these transactions as unsolicited orders when in fact they were solicited.

NASD Rule 2110 and FINRA Rule 2010 require associated persons to observe high standards of commercial honor and just and equitable principles of trade.

NASD Rule 3110 requires members to make and preserve books and records in conformity with all applicable laws, rules, regulations including SEC Rules 17a-3 and 17a-4 under the Exchange Act. SEC Rule 17a-3 requires member firms to make and keep "[a] memorandum of each brokerage order, and of any other instruction, given or received from the purchase or sale of securities," and SEC Rule 17a-4 requires those records to be maintained.² The records required to be maintained by the member must be accurate.

By mismarking orders as unsolicited when, in fact, they were solicited and by falsifying records maintained by his member Firm, Bice engaged in conduct that

¹ NASD Rule 2110 was renumbered as FINRA Rule 2010 effective December 15, 2008.

² 17 C.F.R. §240.17a-3(a)(6)(i).

was inconsistent with the foregoing obligations and violated FINRA Rule 2010 and NASD Rules 2110 and 3110 by causing his member Firm's books and records to be inaccurate in violation of Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder.

B. Miscoding Customer Accounts in the Firm's Records

During the relevant period, Bice serviced numerous customers whose account balances with the Firm averaged less than \$25,000 on a quarterly basis. Bice understood that Merrill Lynch would impose a "low balance fee" on such customers, and that the Firm would not pay him commissions on trades he executed for customers whose aggregate household account relationship with Merrill Lynch averaged less than \$100,000 quarterly. To avoid the Firm's minimum balance requirement, Bice encoded certain unrelated customers' accounts in the Firm's books and records in such a way that the smaller accounts would appear on the Firm's internal-use-only records as part of a household that had an aggregate account relationship with Merrill Lynch valued at \$100,000 or more each quarter.

By intentionally miscoding certain unrelated customer accounts in order to make them appear to be part of a single household relationship on the Firm's internal books and records, Bice committed additional violations of FINRA Rule 2010 and NASD Rules 2110 and 3110 by causing his member Firm's books and records to be inaccurate in violation of Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder.

C. Effecting Discretionary Trades

During the relevant period, Bice effected numerous transactions in the accounts of 18 customers on a discretionary basis. These customer accounts were not designated as discretionary accounts and none of the customers had provided Bice or the Firm with written authorization to exercise discretion in their accounts.

NASD Rule 2510(b) prohibits a registered representative from exercising any discretionary power in a customer's account unless such customer has given prior written authorization and the account has been accepted by the member, as evidenced in writing by the member. Even though Bice's customers agreed either expressly or by implication to allow him to make trades on their behalf without prior consultation, registered representatives may not enter trades without the investor's specific authorization for each trade, with the exception of time and price discretion, or without written authorization to act independently on the customer's behalf.

By exercising discretion in customer accounts without prior written authorization, Bice violated NASD Rules 2510(b), 2110 and FINRA Rule 2010.

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

1. A suspension from associating with any FINRA-regulated firm in any and all capacities for a period of two years; and
2. A fine in the amount of \$10,000.

The fine shall be due and payable either immediately upon reassociation with a member firm following the two year 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.

Bice specifically and voluntarily waives any right to claim that he is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

Bice 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, Bice 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.

II.

WAIVER OF PROCEDURAL RIGHTS

Bice specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against him;
- 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, Bice 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.

Bice 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

Bice 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 him; and
- C. If accepted:
 - 1. this AWC will become part of his permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against him;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about his 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. Bice 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. Bice 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 his right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. Bice may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Bice understands that he 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.

Bice 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.

12/17/11
Date

Francis X. Bice
Respondent Francis X. Bice

Reviewed by:

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12/17/11
Date

Accepted by FINRA:

1/4/12
Date

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

Julie Han Broderick by Brian DeLoach, Sr. Crsl.
Julie Han Broderick, Director
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