

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20100220-6001**

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

RE: Richard Mark Schmetzman, Respondent
CRD No. 1302988

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent 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 Respondent alleging violations based on the same factual findings described herein.

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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

Respondent entered the securities industry in 1984. He was associated with Mutual Service Corporation from March 31, 1999 through March 12, 2008, where he was registered as a general securities representative, general securities principal and a registered options principal. Respondent was associated with United Planners' Financial Services of America a Limited Partner (UPF) from May 13, 2008, the date he signed his Uniform Application for Securities Industry Registration or Transfer (Form U4), through March 10, 2010, where he was registered as a general securities representative, general securities principal and a registered options principal. Respondent conducted his securities business through his dba Diversified Financial Planners (DFP). Respondent is not currently associated with a member firm and has no relevant prior disciplinary history.

OVERVIEW

On or about March 10, 2010, Respondent was terminated from UPF for "coming[ing] client assets with his checking account." Shortly thereafter, FINRA staff commenced an investigation. Initial information obtained from UPF and Respondent indicated that Respondent may have misused/misappropriated both customer and non-customer funds. Consequently, on November 23, 2010, staff sent Respondent a Rule 8210 request seeking information and documentation regarding the same. After receiving multiple extensions of time to respond to FINRA's Rule 8210 request, Respondent, through counsel, advised FINRA staff that he would not provide the requested information and documentation.

Notwithstanding Respondent's decision to not respond to the November 23, 2010 Rule 8210 request, FINRA continued its investigation and obtained sufficient evidence to establish that Respondent misused funds belonging to GA and EA. Additionally, FINRA found that Respondent failed to disclose both a federal tax lien and a judgment lien on his Form U4.

FACTS AND VIOLATIVE CONDUCT

Misuse of Non-Customer Funds

During the period of May 2005 through March 12, 2008, and May 13, 2008 through March 10, 2010, Respondent misused funds belonging to GA and/or EA without their knowledge, consent or authorization. As discussed in greater detail below, Respondent failed to invest GA's and EA's funds in CS brokerage accounts as represented, and as GA and EA intended and believed.

In May 2005, GA tendered \$175,000 to Respondent for investment purposes, which Respondent deposited into his DFP bank account. Respondent told GA that her investment funds were held in an institutional brokerage account with FINRA member firm, CS. Respondent provided GA with account statements and made regular monetary distributions to her with funds purportedly from her CS brokerage account. On or about August 14, 2008, GA gifted the funds remaining in her purported CS brokerage account (totaling approximately \$117,204) to EA. Respondent advised that the funds were transferred to a CS institutional brokerage account that he had established in EA's name. Respondent provided EA with account statements and made regular distributions to her with funds purportedly from her CS brokerage account. In February 2010, after Respondent failed to make requested distributions from the CS brokerage account, EA contacted CS directly. At that time, CS told EA that her CS brokerage account had never been funded. Similarly, GA's investment funds, prior to being gifted to EA, had never been held in a CS brokerage account. By mid-March 2010, all of EA's investment funds had been returned to her.

Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and FINRA Rule 2010 on the part of Respondent.

Failure to Respond to Rule 8210 Request for Information

On November 23, 2010, FINRA staff sent a Rule 8210 request to Respondent to obtain information and documentation regarding Respondent's possible misuse or misappropriation of customer and non-customer funds. After being granted two extensions of time to respond, Respondent, through counsel, advised FINRA that he would not provide FINRA staff with the requested information and documentation. By failing to provide requested information and documents, Respondent violated FINRA Rules 8210 and 2010.

Failure to Disclose Both a Tax Lien and a Judgment Lien

On September 18, 2007, the IRS filed a tax lien against Respondent and his wife in the total amount of \$93,273.50. The lien was for unpaid taxes for the years 2002, 2003 and 2004. To date, this tax lien remains unsatisfied. Respondent signed his Form U4 for UPF on May 13, 2008. In response to question 14M – "Do you have any unsatisfied judgments or liens against you?" – Respondent answered "no." This answer was not correct since a tax lien had been filed against Respondent in September 18, 2007. Respondent never amended his Form U4 to disclose this federal tax lien.

On February 21, 2008, CB USA NA brought suit against Respondent and his spouse in the Maricopa County, Arizona Superior Court. A judgment in the approximate amount of \$500 was subsequently entered in favor of CB USA NA and against Respondent and his spouse. A judgment lien was filed in this matter on August 6, 2008. While the judgment lien remained unsatisfied through December 30, 2009, Respondent never amended his Form U4 to disclose the CB USA NA judgment lien.

On October 21, 2008, Respondent completed UFP's 2008 Annual Compliance Questionnaire. Respondent responded "No" to question number 6 which reads as follows: In the past year have any judgments or tax liens been entered against you. Respondent also responded "no" to this question on December 14, 2009 when he completed UFP's 2009 Annual Compliance Questionnaire.

Respondent violated Rule 2110 and IM-1000-1 when he failed to disclose the 2007 federal tax lien on the Form U4 he completed for UPF on May 13, 2008. He violated Article V, Section 2(c), NASD Conduct Rule 2110, IM-1000-1, FINRA Rule 1122 and FINRA Rule 2010 when he failed to amend his Form U4 to disclose the tax lien and the CB USA NA judgment.

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

A bar from association with any FINRA member 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 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 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:

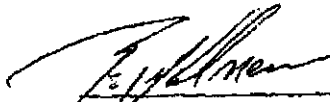
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will 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.

08-02-2011

Date


Richard Mark Schmeitzman

Reviewed by:


Alan Baskin, Esq.
Bade & Baskin, PLC
80 E. Rio Saldo Parkway, Suite 511
Tempe, Arizona 85281

Accepted by FINRA:

8-15-2011
Date

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


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