

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20100239467**

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

RE: Chad David Kelly
General Securities Representative
CRD No. 2712230

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

I.

ACCEPTANCE AND CONSENT

- A. Respondent 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

Respondent first became associated with a FINRA member firm in April 1995. From August 21, 2000 to May 31, 2006, Respondent was registered with FINRA as a General Securities Representative through his association with Morgan Stanley. From May 2006 until his termination on July 29, 2010, Respondent was registered with FINRA as a General Securities Representative through his association with Wells Fargo Advisors, LLC (Wells Fargo). On July 29, 2010, Wells Fargo terminated Respondent's employment for "failing to discuss transactions with non-discretionary clients prior to execution and excessive trading in client accounts." From September 21, 2010 until October 31, 2011, Respondent was registered with FINRA as a General Securities Representative through his association with Petersen Investments, Inc. Respondent has not been registered with any FINRA member firm since his resignation from Petersen Investments in October 2011. Although Respondent is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

Respondent has no disciplinary history.

OVERVIEW

Between October 2006 and June 2010 (the "Relevant Period"), while associated with Wells Fargo, Respondent engaged in unsuitable excessive trading, churning and made unauthorized trades in six of his customers' accounts (the "Relevant Customers"). The Relevant Customers were unsophisticated investors, with no education beyond the high school level. They each had annual income levels of less than \$100,000, and a total net worth of under \$500,000. During the Relevant Period, most of the Relevant Customers lost a significant percentage of their retirement savings. The trading in the Relevant Customers' accounts during the Relevant Period resulted in average annualized cost-to-equity ratios of over 30% and average turnover rates of 5.47. For two of the Relevant Customers, the average turnover rates for this period exceeded six, and were as high as 8.3. In addition, during extended periods within the Relevant Period, ranging from six to 15 months, average turnover rates were above six and significantly higher. Further, generated more in commissions in two accounts than those accounts had in equity at the end of the Relevant Period. In sum, Respondent made over \$73,000 in commissions while the Relevant Accounts lost approximately \$37,000 in equity. In addition, Respondent made unauthorized trades in at least 15 additional customers' accounts.

As a result of the foregoing conduct, Respondent willfully violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), Rule 10b-5 thereunder, and violated FINRA Rules 2020, and 2010, NASD Rules 2120, 2110, 2310, and IM-2310(a) and (b).

FACTS AND VIOLATIVE CONDUCT

Respondent engaged in unsuitable excessive trading and churning

Section 10(b) of the Exchange Act of 1934 prohibits the use of "any manipulative or deceptive act or practice" in connection with the purchase or sale of a security. Exchange Act Rule 10b-5, likewise prohibits "any device, scheme, or artifice to defraud" and "any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security."

NASD Rule 2310(a) provides that when recommending the purchase, sale, or exchange of any security, registered representatives "shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs." The rule requires that a broker's recommendations "be consistent with his customer's best interests." NASD IM-2310-2(a)(1) likewise provides that representatives have a responsibility to deal fairly with their customers and others.

Registered representatives must "have reasonable grounds to believe that the number of recommended transactions within a particular period is not excessive." NASD IM-2310-2(b)(2) specifically prohibits registered representatives from excessively trading customer accounts.

An excessive trading violation occurs when (i) a registered representative has control over trading in an account and (ii) the level of activity in that account is inconsistent with the customer's objectives and financial situation. Where an additional element is present—intent to defraud or reckless disregard for the customer's interests (*i.e.*, scienter)—the activity is also churning. The Relevant Customers relied entirely on Respondent's investment advice, and Respondent exercised *de facto* control over their accounts. The level of activity in the Relevant Customers' accounts, as reflected in the accounts' turnover rates and cost to equity ratios, was inconsistent with the Relevant Customers' objectives and financial situation. Respondent violated Section 10(b) and Rule 10b-5 by using "instrumentalit[ies] of interstate commerce, or of the mails or of any facility of any national security exchange," to make material misrepresentations or omissions "in connection with" the purchase or sale of a security. Respondent acted with scienter and churned the Relevant Customers' accounts in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder as well as NASD Rule 2110 and FINRA Rule 2010.

1. Customer HW

HW was a customer of Respondent's at Morgan Stanley. HW was 55 years old when his account was transferred to Wells Fargo in 2006. HW was discharged from the U.S. Navy for medical reasons. HW is disabled and unable to work. HW has no education beyond high school.

The average monthly equity in HW's account during the Relevant Period was \$11,999. Respondent earned commissions of \$9,889 during the Relevant Period. For the Relevant Period as a whole, the annual turnover rate in HW's account was 4.87 and the annual cost to equity ratio was 24%. In April 2009, HW's account had \$11,755 in equity. Between April 2009 and September 2010, Respondent received \$5,087 in commissions from trading in HW's account. Between April 2009 and September 2010, the annual turnover rate was 17.29 and the annual cost to equity ratio was 110%.

2. Customer MS

MS was Respondent's client at Morgan Stanley. MS was a 45-year old service technician at an energy company when he opened his account at Wells Fargo in December 2006, and had an annual income between \$50,000 and 99,999, a net worth between \$200,000 and \$499,999 and liquid assets between \$100,000 and 199,999. His investment objective was "Long Term Growth & Income."

At the beginning of the Relevant Period, MS's equity in his account was \$39,590. At the end of the Relevant Period, MS's equity was \$19,751. During this Relevant Period,

Respondent generated \$20,534 in commissions from trading in MS's account. For the Relevant Period as a whole, the annual turnover rate was 4.15 and the cost to equity ratio was 23%. Between April 2009 and June 2010, Respondent received \$14,060 in commissions from trading in MS's account. Between April 2009 and June 2010, the annual turnover rate was 9.78 and the annual cost to equity ratio was 43%.

3. Customer DL

DL was Respondent's client at Morgan Stanley. DL was 60 when he opened his account at Wells Fargo on March 20, 2007. DL reported an annual income between \$50,000 and 99,999, a net worth between \$200,000 and 499,999 and liquid assets below \$49,999. DL did not attend school beyond high school. He was "self" employed in the "construction" business. He listed his objectives as "Long Term Growth & Income."

At the beginning of the Relevant Period, DL's equity in his account was \$20,008. At the end of the Relevant Period, DL's equity was \$4,746. DL withdrew \$6,172 in March 2007, and \$7,000 in July 2008. During the Relevant Period, Respondent made \$9,528 in commissions from trading in DL's account. For the Relevant Period as a whole, the annual turnover rate in DL's account was 4.70 and the cost to equity ratio was 24%. In April, 2009, DL had \$5,586 in equity in his account. Between April 2009 and July 2010, Respondent earned \$7,011 in commissions. Between April 2009, and June 2010, the annual turnover rate was 13.75 and the annual cost to equity ratio was 102%.

4. Customer LT

LT was Respondent's client at Morgan Stanley. When he opened his account at Wells Fargo on February 23, 2007, LT was 46-years old, and a foreman with an energy company. LT had an annual income between \$50,000 and 99,999, a net worth between \$200,000 and 499,999 and liquid assets between \$100,000 and 200,000. LT did not attend school beyond high school. LT's investment objectives were "Long Term Growth & Income."

From November 2007 to January 2010, LT was enrolled in a fee-based account, which did not generate commissions. In January 2010, LT converted his account to a commission-based account. Between January 2010 and June 2010, Respondent generated \$6,215 in commissions on an average monthly equity of \$21,344. Between January 2010 and June 2010 the annual cost to equity ratio was 58%.

5. Customer SP

SP was Respondent's client at Morgan Stanley. SP was 47 when he opened his account at Wells Fargo on September 7, 2007. SP had an annual income between \$50,000 and 99,999, a net worth between \$200,000 and \$499,999 and liquid assets below \$49,999. SP did not attend school beyond high school. He worked in "Transport Services" with a logistics company. SP's stated investment goal was "Long Term Investment & Growth."

At the start of the Relevant Period, SP transferred more than \$25,000 into his account. At the end of the Relevant Period, only \$12,172 remained. However, during the Relevant Period, Respondent generated \$14,112 in commissions. For the Relevant Period, the overall annual turnover rate was 8.30 and the overall cost to equity ratio was 40%. Between April 2009 and June 2010, the annual turnover rate was 15.69 and the cost to equity ratio was 76%.

6. Customer GB

GB was 42 when he opened his account at Wells Fargo on October 18, 2007. GB was a senior service technician with an energy company. GB had an annual income between \$50,000 and \$99,999, a net worth between \$200,000 and \$499,999 and liquid assets between \$50,000 and \$99,999. GB did not attend school beyond high school. GB's stated investment objective was "Long Term Growth."

At the start of the Relevant Period, GB had over \$30,000 under advisement with Respondent. At the end of the Relevant Period, only \$9,742 remained. However, during the Relevant Period, Respondent generated \$11,352 in commissions. For the Relevant Period, the overall annual turnover rate was 6.64 and the overall cost to equity ratio was 30%. In April 2009, GB had \$11,512 in equity. During the next 16 months, the equity in GB's account declined to only \$9,742.99. During the same 16-month period, Respondent generated commissions of \$8,977. During this period, the annual turnover rate was 14.17 and the cost to equity ratio was 75%.

* * *

At the beginning of the Relevant Period, the Relevant Customers had approximately \$170,000 collectively in their respective accounts. At the end of the Relevant Period, the equity remaining in the Relevant Accounts was about \$56,000. Five of the Relevant Customers lost substantial amounts of money during the Relevant Period.

As a result of the foregoing, Respondent violated NASD Rules 2310 and 2110 and IM-2310-2 and FINRA Rule 2010. By violating NASD Rule 2310 and IM-2310-2, Respondent also violated NASD Rule 2110 and FINRA Rule 2010.¹ By churning the customers' accounts, Respondent also willfully violated of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder as well as NASD Rule 2110 and FINRA Rule 2010.

¹ Effective December 15, 2008, NASD Rule 2110 was superseded by FINRA Rule 2010. Kelly's conduct occurred both before and after this date.

Respondent Engaged in Unauthorized Trading

An associated person is responsible for obtaining his or her customer's consent prior to purchasing or selling a security for the customer's account. Unauthorized trading in a customer's account violates NASD Rule 2110 and FINRA Rule 2010, which require adherence to high standards of commercial honor and just and equitable principles of trade.

1. March 2010 Unauthorized Trading

On March 18, 2010, Respondent entered sell orders in a publicly traded security in 20 non-discretionary client accounts (including accounts of five of the Relevant Customers), without obtaining client approval. On the morning of March 18, 2010, while Respondent was attending a Wells Fargo sales conference in Atlanta, the price of the publicly traded security rose from \$3.97 to over \$9 a share after the issuer announced that it had received approval from the FDA to market a drug. That morning, Respondent instructed his assistant to sell the clients' positions at the market price without seeking client approval. At Respondent's direction, the assistant sold all of the shares within five minutes.

2. Unauthorized Trading in the Relevant Customer's Accounts

Respondent effected numerous additional trades in the Relevant Customers' accounts during the Relevant Period, without obtaining their approval. Each of those Relevant Customers expressed surprise when they learned about the trading in their accounts over the Relevant Period. For example, on June 24, 2010, customer MS said that he had not spoken to Respondent since May 2010. Nonetheless, Respondent placed trades in MS's account during June 2010. MS also was surprised to learn that Kelly had reinvested the proceeds from a recent sale without discussing it with him. None of the Relevant Customers' accounts were discretionary accounts.

As a result of the foregoing, Respondent violated NASD Rule 2110 and FINRA Rule 2010.

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

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

Respondent understands that this settlement includes a finding that he willfully violated Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, and that under Article III, Section 4 of FINRA's By-Laws, this makes him subject to a statutory disqualification with respect to association with a member.

Respondent understands that if he is barred or suspended from associating with any FINRA member, Respondent becomes 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, Respondent 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).

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

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

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

Respondent 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

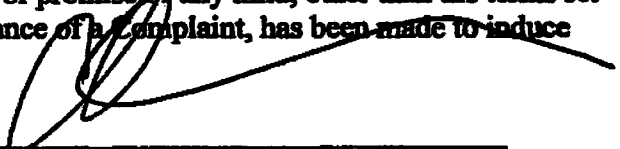
Respondent understands that:

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

Respondent 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 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 Respondent to submit it.

Date

6/17/13

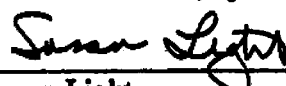

Chad David Kelly, Respondent

Accepted by FINRA:

Date

June 19 2013

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


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