

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 20100252455**

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

RE: James Alan Nowicki, Respondent  
CRD No. 2263143

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, James Alan Nowicki ("Nowicki"), 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**

Nowicki entered the securities industry and was approved as a registered representative with MONY Securities Corporation ("MONY") in July 1992. In June 2005, Nowicki became associated with AXA Advisors, LLC ("AXA" or the "Firm") after AXA and its parent and affiliate companies acquired MONY. On or about November 17, 2010, AXA terminated Nowicki's employment and filed a Uniform Termination Notice for Securities Industry Registration, which stated, "Failure to notify the firm of a financial matter that required Form U4 disclosure, which is a violation of company policy, regulatory rules and the terms of his enhanced supervision." While Nowicki is not currently associated with any FINRA member, pursuant to Article V, Section 4 of FINRA's By-Laws, FINRA maintains jurisdiction over Nowicki.

**OVERVIEW**

Between November 2004 and November 2010, while associated with AXA,

0 06/07/12 AM 10:02 FLN

Nowicki willfully failed to disclose tax liens and judgments on his Uniform Application for Securities Industry Registration ("Form U4").

Accordingly, Nowicki violated NASD Conduct Rule 2110, NASD IM-1000-1, and FINRA Rules 1122 and 2010.

### **FACTS AND VIOLATIVE CONDUCT**

#### ***Relevant Rules and Firm Procedures***

Article V, Section 2 of FINRA's By-Laws requires that a person applying for registration with FINRA disclose certain information, including whether he has an unsatisfied judgment or lien. At all times, the applicant is required to keep his application current by timely filing amendments.<sup>1</sup>

NASD Membership and Registration IM-1000-1 requires registered representatives to fully and accurately disclose information required in the Form U4. FINRA Rule 1122, which replaced NASD IM-1000-1 as of August 17, 2009, likewise forbids registered representatives from filing incomplete or inaccurate registration information on the Form U4.

NASD Conduct Rule 2110 and FINRA Conduct Rule 2010<sup>2</sup> provide that "[a] member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade." The failure to disclose all information required by the Form U4, including unsatisfied judgments or liens, constitutes a violation of NASD Rule 2110, FINRA Rules 2010 and 1122, and NASD IM-1000-1.

In July 1992, Nowicki signed and submitted an initial Form U4 for registration with MONY. The Form U4 contained the following attestation:

I understand and certify that the representations in this form apply to all employers with whom I seek registration as indicated in Items 4 and 10 of this form. I agree to update this form by causing an amendment to be filed on a timely basis whenever changes occur to answers previously reported. Further, I represent that, to the extent any information previously submitted is not amended, the information provided in this form is currently accurate and complete.

---

<sup>1</sup> See Article V, Section 2(c) of the NASD By-Laws and FINRA By-Laws. The applicant is required to file an amendment to his application within 30 days of learning of facts that are required to be disclosed.

<sup>2</sup> See FINRA Regulatory Notice 08-57, which describes certain changes to FINRA's rules, including the change of NASD Rule 2110 to FINRA Rule 2010, effective December 15, 2008.

Question 14K(1) of the Form U4 asks “[w]ithin the past 10 years, have you made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition?” Question 14M of the Form U4 asks, “[d]o you have any unsatisfied judgments or liens against you?”

During the course of Nowicki’s employment at MONY and AXA, he completed numerous annual compliance questionnaires in which he affirmed his understanding that he was required to disclose certain financial information on his Form U4, including any unsatisfied judgments and liens. The Firm also had written policies and procedures related to judgments and liens that required employees to promptly report such occurrences by filing an amended Form U4.

#### ***Judgments and Liens Against Nowicki***

Between January 2, 2002 and May 29, 2009, eleven judgments and liens - ten federal and state tax liens, and one judgment - totaling approximately \$203,137, were issued against Nowicki. Although Nowicki was aware of the judgments and liens, he failed to timely disclose them on his Form U4.

In or about April 2010, Nowicki requested an insurance license from the State of Pennsylvania. As part of the application process, AXA and the Pennsylvania Insurance Department requested a report of Nowicki’s credit history, which revealed the eleven judgments and liens. Upon receipt of Nowicki’s credit report, the Firm discovered that Nowicki had not previously reported any of these judgments or liens by filing an amended Form U4.

On June 6, 2010, the Firm filed an amended Form U4 on Nowicki’s behalf to disclose the eleven judgments and liens. On July 26, 2010, the Firm fined Nowicki \$500 and placed him on enhanced supervision for one year for failing to disclose the judgments and liens. As part of the enhanced supervision, Nowicki was required to meet with his supervisor on a monthly basis to review his financial matters. Nowicki was reminded of his obligation to disclose any reportable financial matters such as judgments and liens. Nowicki was also notified by the Firm that his failure to timely report any additional judgments and liens could be grounds for his employment termination.

On or about June 22, 2010, a new judgment for \$25,778 was filed against Nowicki. Nowicki was aware of this judgment but failed to timely disclose it on his Form U4. On or about October 25, 2010, AXA learned of the judgment when it requested an updated credit report for Nowicki.

#### ***Nowicki’s Failure to Update his Form U4***

Pursuant to NASD IM-1000-1, NASD Rule 2110, and FINRA Rules 1122 and 2010, Nowicki was obligated to update his Form U4 to disclose the judgments and liens filed against him between January 2, 2002 and June 22, 2010. Although

Nowicki was aware that he was required to disclose these judgments and liens and update his Form U4, Nowicki willfully failed to do so. Nowicki's willful failure to update his Form U4 to disclose the judgments and liens constitutes a willful violation of NASD Conduct Rule 2110, NASD IM-1000-1, and FINRA Rules 1122 and 2010.

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

- Censure; and a
- Three-month suspension in all capacities

Respondent has submitted a sworn financial statement and demonstrated an inability to pay. In light of the financial status of Respondent, no monetary sanctions have been imposed.

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).

I understand that this settlement includes a finding that I willfully omitted to state a material fact on a Form U4, and that under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 and Article III, Section 4 of FINRA's By-Laws, this omission makes me subject to a statutory disqualification with respect to association with a member.

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 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 prejudice 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

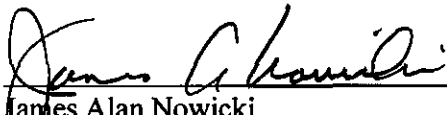
the subject matter thereof in accordance with FINRA Rule 8313; and

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.

- D. 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.

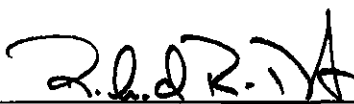
06/05/2012  
Date (mm/dd/yyyy)

  
James Alan Nowicki  
Respondent

Accepted by FINRA:

6-25-12  
Date

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

  
Richard R. Best  
Chief Counsel  
FINRA Department of Enforcement  
One World Financial Center  
200 Liberty Street  
New York, NY 10281-10003  
646-315-7308