

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20100253447**

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

RE: Thomas Edward Kelly, Respondent
CRD No. 1386403

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Thomas Edward Kelly ("Kelly" or the 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 me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Kelly 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

Kelly first became registered in the securities industry in March 1985. Before becoming associated with M&T Securities Inc. ("M&T" or "Firm") in September 1999, Kelly was registered with three other member firms. Kelly became associated with M&T when M&T acquired a branch of Kelly's previous member firm, Chase Investment Services Corp. Kelly was registered as a General Services Representative until the Firm terminated his employment on or about November 17, 2010. Since November 17, 2010, Kelly has not been associated with a FINRA member firm. FINRA retains jurisdiction over Kelly pursuant to Article V, Section 4(a) of the FINRA 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 Kelly's termination of registration from a FINRA regulated broker-dealer.

Kelly has no prior disciplinary history.

OVERVIEW

Between 1992 and November 2010 (the "Relevant Period"), Kelly engaged in a scheme to defraud at least 12 investors, including at least 11 customers of M&T, of funds totaling approximately \$1 million. Kelly's scheme involved persuading potential investors to invest in an entity called "Seneca Group" or "Seneca Financial" (collectively, "Seneca"), which was not a Firm approved investment. Kelly did not inform these investors that he was the principal owner of Seneca. Nor did Kelly inform the Firm of his activities with Seneca or that he was recommending that customers invest in Seneca. Additionally, Kelly falsely represented to the investors that they were purchasing safe and stable investments, including "FDIC insured" certificates of deposit and savings accounts. Kelly converted the investors' funds, totaling approximately \$1 million, for his own use, including repaying earlier investors, investing in the stock market and paying personal expenses. To conceal the conversion, Kelly provided investors with fictitious account statements and tax Forms-1099, which falsely purported to reflect a return on their investments.

On or about January 19, 2011, a criminal complaint against Kelly was filed in the United States District Court for the Northern District of New York in connection with the above-described conduct. (Case No. 11-MJ-20) This proceeding is currently pending.

By virtue of this conduct, Kelly willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, NASD Rule 2110, and FINRA Rules 2020 and 2010 by making fraudulent misrepresentations to investors in connection with the sale of securities. In addition, Kelly violated NASD Rules 2330(a) and 2110 and FINRA Rules 2150(a) and 2010 by improperly using and converting customer funds. Kelly also violated NASD Rules 3030, 3040, 2110 and FINRA Rule 2010 by engaging in an outside business activity and private securities transactions, without requesting or receiving approval from his member firm.

FACTS AND VIOLATIVE CONDUCT

Seneca

During the Relevant Period, Kelly was the principal owner of Seneca. Kelly did not request or receive approval from M&T for this business. Nor did M&T approve Seneca as an investment for its customers. Kelly falsely represented to investors that their Seneca investments were stable and secure, and included products such as interest bearing certificates of deposit. In addition, Kelly told investors that their investments with Seneca were FDIC insured. Kelly did not inform investors that he was the principal owner of Seneca, and that the Firm had not approved Seneca as an investment. Nor did Kelly inform the Firm of his activities with Seneca or that he was recommending that customers invest in Seneca.

Kelly's Fraudulent Misrepresentations and Conversion

During the Relevant Period, at least 12 investors, including at least 11 customers of M&T, invested approximately \$1 million in Seneca. Rather than investing the investors' funds, Kelly used their funds for other purposes, including investing in the stock market, making purported "interest" payments to investors, returning a portion or all of an investment and paying personal expenses. To conceal his fraud, Kelly provided investors with fictitious documents, including documents purporting to be Seneca account statements and tax Forms 1099. In these documents, Kelly falsely stated that investors had earned interest in their Seneca accounts. Through these misrepresentations, Kelly converted approximately \$1 million from the investors described below, including approximately 11 customers of the Firm. The Firm reimbursed these customers for their stated account values, which equaled approximately \$1 million.

For example, EV was a customer of Kelly's at the Firm, who invested in Seneca based on Kelly's recommendation. Rather than investing EV's funds, Kelly converted them for his own use. To conceal the conversion, on or about June 30, 2010, Kelly provided EV with a purported Seneca account statement, which stated, among other things, that (1) EV's "Balance" was \$27,031.45; (2) EV had "Interest earned" of \$237.15 since April 1, 2010 and "Interest year to date" of \$469.66; (3) EV was invested in a "Brokered Fixed Interest" account with "3.55% APY Due 12/1/2010;" and (4) EV's investment was "FDIC insured." Those statements were false. Upon discovery that the account statement was fictitious, the Firm reimbursed EV the stated account value. Kelly did not contribute to this payment.

Accordingly, based on the conduct described above, Kelly willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, NASD Rule 2110, and FINRA Rules 2020 and 2010 by making fraudulent misrepresentations to investors in connection with the sale of securities. In addition, Kelly violated NASD Rules 2330(a) and 2110 and FINRA Rules 2150(a) and 2010 by improperly using and converting customer funds. Kelly also violated NASD Rules 3030, 3040, 2110 and FINRA Rule 2010 by engaging in an outside business activity and private securities transactions, without requesting or receiving approval from his member firm.

SANCTIONS

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

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

Kelly 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, he 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 become effective on a date set by FINRA staff. Pursuant to FINRA Rule 8313(e), a bar 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 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

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 right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that Respondent 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.

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 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 Respondent to submit it.

2/25/2012
Date

Reviewed by:

2/25/12
Date



Thomas Edward Kelly
Respondent



Counsel for Respondent
Paul Battisti, Esq.
Battisti, Gartenman & Thayne, P.C.
168 Water Street, Third Floor
Binghamton, NY 13901

Accepted by FINRA:

4/10/12
Date

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



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