

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2011025553601**

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

**RE: James A. Issel, Respondent
General Securities Representative
CRD No. 1350223**

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, James A. Issel ("Issel" 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 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

Issel entered the securities industry in March 1985 as an Investment Company & Variable Contracts Products Representative at a FINRA registered firm. Issel became registered with Mack Investment Securities, Inc ("Mack Investment"), as an Investment Company & Variable Contracts Products Representative, a General Securities Representative, and a Direct Participation Program Representative in January 2004, and remained registered in such capacities with Mack Investment until December 2011. In February 2012, Issel became registered at a FINRA registered firm as an Investment Company & Variable Contracts Products Representative, a General Securities Representative, and a Direct Participation Program Representative, and, therefore, is subject to FINRA's jurisdiction.

RELEVANT DISCIPLINARY HISTORY

Issel has no prior disciplinary history.

OVERVIEW

Between October 2006 and December 2007, Issel engaged in a pattern of unsuitable mutual fund recommendations in the accounts of 26 customers of Mack Investment. Specifically, Issel recommended that each of the referenced customers switch share classes for their existing mutual investments within the same mutual fund family. In each case, the transactions whereby the customer switched share class generated additional compensation for Issel, but provided no economic benefit to the customer.

FACTS AND VIOLATIVE CONDUCT

1. Beginning in 2001, for those clients interested in investing in mutual funds, Issel began recommending that they purchase Class-T shares within the Fidelity Advisors mutual fund family.
2. At the time, Fidelity Class-T shares had an upfront sales charge that could reach a maximum of 3.5% of the amount invested, and ongoing annual fees of .25% of the amount held in the fund. Other Fidelity share classes had different combinations of upfront sales charges and ongoing annual fees. For example, relative to the Class-T shares, Fidelity Class-A shares had a higher upfront sales charge, but lower ongoing annual fees. After reviewing the various share class options offered by Fidelity, Issel concluded that Fidelity Class-T shares provided his customers the best balance of upfront sales charges and ongoing annual fees.
3. In 2006, however, Issel began recommending to new mutual fund customers that they invest in Fidelity Class-C shares. The Fidelity Class-C shares had no upfront sales charge, but ongoing annual fees that were approximately .5% higher than those of Class-T shares. Issel's rationale for recommending Fidelity Class-C shares to his new customers was that eliminating the upfront sales charge would generate a higher return for the new customer in the short term and, therefore, increase the likelihood of the new customer remaining with Issel for the long term.
4. In October 2006, Issel also began recommending to his existing customers that were invested in Fidelity Class-T shares that they switch to Fidelity Class-C shares. The customers to whom Issel made these recommendations had not

experienced any change in their financial situation or investment objectives. Rather, Issel made the recommendations because he wanted all of his Fidelity mutual fund customers to be invested in the same Fidelity Class-C shares which he believed would result in easier record-keeping and more efficient exchanges within the various mutual funds.

5. Based upon Issel's recommendation, between October 2006 and December 2007, 26 customers that held Fidelity Class-T shares (and who had paid the upfront sales charge associated with those shares), switched to Fidelity Class-C shares.
6. Although the customers that converted to Class-C shares did not pay an upfront sales charge, the amount of ongoing annual expenses paid by each customer increased by .5%, such that the overall return on their mutual fund investments was reduced. In addition, each of the customers was subjected to a one year Contingent Deferred Sales Charge ("CDSC") that did not exist with their Class-T shares. Finally, at least some of the customers lost the opportunity to take advantage of break-point reductions in annual expenses that may have been available for new investments had they remained in Fidelity Class-T shares.
7. Conversely, as a result of these customers' conversion to Class-C shares, the ongoing fees paid to both Mack Investment and Issel increased commensurate with the increase in annual fees attributable to Class-C shares.
8. The above-described acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 2310(a) and 2110 by Issel.

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

1. A suspension of ten (10) business days from association with any FINRA registered broker-dealer in any capacity;
2. a fine in the amount of \$15,000.

I agree to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. I have submitted an Election of Payment form showing the method by which I propose to pay the fine imposed.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

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.

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.
- 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.

01/18/2013
Date (mm/dd/yyyy)

James A. Issel
James A. Issel, Respondent

Reviewed by:

Harvey P. Herman 1/18/2013
Harvey P. Herman
Counsel for Respondent
Clausen Miller P.C.
10 South LaSalle Street
Chicago, IL 60603

Accepted by FINRA:

1/24/13
Date

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

Dean M. Jeske
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Deputy Regional Chief Counsel
FINRA Department of Enforcement
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