

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20110262946**

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

RE: James M. Wessel
CRD #3273979

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

Wessel, age 52, entered the securities industry in 1999. He was associated with New England Securities ("NES" or the "Firm") as a registered representative ("RR") from May 2004 through January 2011. On January 21, 2011, NES filed a Uniform Termination Notice for Securities Industry Regulation (the "Form U-5") reporting that it discharged Wessel for borrowing funds from at least one customer. Respondent has not been employed in the securities industry since his termination from the Firm in January 2011. FINRA retains jurisdiction over the Respondent, pursuant to Article V, Section 4 of FINRA's By-Laws

RELEVANT DISCIPLINARY HISTORY

In April 2006, Wessel submitted an AWC consenting to findings that he failed to follow certain customer instructions when he received two checks from a customer who wished to make a supplemental deposit to an annuity contract. Wessel only forwarded the funds, \$18,145, after the customer inquired about the missing deposits. Wessel also attempted

to settle the customer complaint, without notifying his firm's compliance department, by depositing \$2,796.18 into the customer's trust account to cover the customer's losses suffered as a result of the delayed deposits. As part of the settlement with FINRA, Wessel agreed to a 30 day suspension and \$5,000 fine.

OVERVIEW

During the period from August 2008 to approximately May 2010, while an RR with NES, Wessel borrowed a total of approximately \$90,000 from three customers. The customers and loans did not meet the criteria set out in NASD Conduct Rule 2370 and FINRA Rule 3240. By engaging in this conduct, Respondent violated NASD Rules 2370 and 2110 and FINRA Rules 3240 and 2010.¹

FACTS AND VIOLATIVE CONDUCT

NASD Conduct Rule 2370 and FINRA Rule 3240 prohibit registered persons from borrowing money from, or lending money to, anyone who is their customer unless the employing firm has written procedures allowing such activity and the lending or borrowing arrangement meets one of the five conditions: (1) the customer is a member of the associated person's immediate family; (2) the customer is engaged in the business of lending money; (3) the customer is an associated person of the same firm; (4) the lending arrangement is based on a personal relationship outside the broker/customer relationship, and the loan would not have been made but for that relationship; or (5) the loan is based on a business relationship outside the broker/customer relationship.

The Firm's written procedures prohibited RR's from borrowing money from customers, unless that customer was a member of the RR's immediate family, and the RR had requested and received prior written permission from the Firm.

In or about August 2008, Wessel, while associated with the Firm in a registered capacity, borrowed approximately \$75,000 from Firm Customer JR, without the knowledge or approval of the Firm. Later in approximately May 2010, Wessel borrowed an additional \$24,000 from Customer JR, without the Firm's knowledge or permission. JR was not a relative of Wessel's, nor did Wessel notify the Firm of these loans. These loans were thus prohibited under the Firm's written procedures.

On December 31, 2010, a day after Customer JR complained to the Firm about the funds he gave to Wessel, Wessel deposited a personal check in the amount of \$117,500 into Customer JR's personal bank account as repayment for the loans. The check was returned for insufficient funds.

In addition, on two occasions between May and July 2010, Wessel borrowed a total of approximately \$4,000 from Customer BB, without the knowledge or permission of the

¹ 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. As a result of certain changes to FINRA's rules, NASD Rule 2370 became FINRA Rule 3240, effective June 14, 2010.

Firm. Wessel first borrowed \$3,000 from Customer BB in May 2010, and then subsequently borrowed approximately \$1,000 in July 2010. BB was not a relative of Wessel's, nor did Wessel notify the Firm of these loans. These loans were thus prohibited under the Firm's written procedures.

On September 24, 2010, Wessel borrowed \$3,500 from a third customer, Customer BK. Wessel was not related to Customer BK and did not provide notice of the loan to the Firm. This loan was, therefore, prohibited under the Firm's written procedures.

In October 2010, prior to the Firm becoming aware that Wessel had borrowed money from Customer BK, Wessel repaid the loan from Customer BK in full.

Accordingly, by borrowing money from Customer JR, Customer BB, and Customer BK, under the circumstances described above Wessel violated NASD Rule 2370 for the period from August 2008 to June 13, 2010 and FINRA Rule 3240 for the period after June 13, 2010. By virtue of that violation, Wessel violated NASD Rule 2110, for the period from August 2008 to December 14, 2008 and violated FINRA Rule 2010 for the period after December 14, 2008.²

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

1. A six-month suspension from association with any FINRA member in any capacity; and
2. A fine in the amount of \$30,000.

I understand that if I am barred or suspended from associating with any FINRA member, I become subject to statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the suspension. (See FINRA Rule 8310 and IM-8310-1).

The fine shall be due and payable either immediately upon reassociation with a member firm following the six-month suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

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

The sanctions imposed herein shall be effective on a date set by FINRA staff.

² A violation of a FINRA Rule that imposes specific requirements or proscribes particular conduct also constitutes a violation of NASD Rule 2110. *John D. Audifferen*, Securities Exchange Act of 1934 Rel. No. 41628, 2008 SEC LEXIS 1740, *37 (July 25, 2008).

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against me;
- B. To be notified of the Formal 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 any 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.

11/1/2011
Date

James M. Wessel
James M. Wessel

Accepted by FINRA:

11/30/11
Date

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

Thomas B. Lawson
Thomas B. Lawson
Chief Counsel
FINRA Department of Enforcement
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