

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2011026952401**

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

RE: Registered Representative
Jay Michael Nisbet ("Nisbet" or "Respondent")
CRD No. 2169722

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I 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. 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

Nisbet entered the securities industry in or about August 1991 when he became employed with New England Securities Corp., a FINRA regulated broker-dealer. He obtained his Series 63 and Series 6 licenses on October 3, 1991 and November 15, 1991, respectively. On April 18, 2005, after periods of employment with other financial firms, Nisbet joined Merrill Lynch, Fenner & Smith, Inc. ("Merrill"). On September 15, 2005 he received his Series 7 registration, and became a Series 65 representative on October 7, 2005. Thereafter, on January 28, 2011, Nisbet left Merrill and became employed as a Financial Advisor with UBS Financial, Inc. ("UBS" or the "Firm"), until January 13, 2012, when UBS terminated Nisbet's employment.

On February 7, 2012, UBS filed a Uniform Termination Notice of Securities Industry Registration (Form U5), reporting that Nisbet was terminated after a review by the Firm disclosed multiple policy violations, including exercising discretion without written authorization in client accounts and providing a misleading communication to

a third-party.

Although Nisbet has not been associated with another FINRA regulated entity since February 7, 2012, pursuant to FINRA By-Laws Article V, Section 4, Nisbet remains subject to FINRA's jurisdiction until February 6, 2014.

RELEVANT DISCIPLINARY HISTORY

Nisbet has no prior relevant disciplinary history in the securities industry.

OVERVIEW

During the period April 18, 2005 through January 28, 2011, while employed with Merrill, a FINRA regulated broker-dealer, Nisbet failed to timely disclose a judgment to Merrill and timely update his Uniform Applications for Securities Industry Registration or Transfer (Form U4) in violation of Article V, Section 2(c) of the NASD's and FINRA's By-Laws,¹ NASD Rule 2110 and FINRA Rule 2010.

During the period March, 2011 through January 13, 2012, while employed with UBS, Nisbet also exercised discretion in one customer account without prior written authorization. Additionally, on or about September 30, 2011, Nisbet made a false written representation confirming the status of another customer's accounts in a correspondence to a third-party FINRA regulated broker-dealer in violation of NASD Rule 2510(b) and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Nisbet Failed to Disclose a Judgment Entered in October 2004

NASD Rule 2110 and FINRA Rule 2010 require members, in conducting their business, to "observe high standards of commercial honor and just and equitable principles of trade."² Furthermore, Rules 2110 and 2010 articulate a "broad ethical principle" to promote the "professionalization of the securities industry."

Article V, Section 2(c) of FINRA's By-Laws requires that registrations filed with FINRA be kept current at all times and that amendments must be filed with FINRA "not later than 30 days after learning of the facts or circumstances giving rise to the amendment." Moreover, failing to promptly amend a Form U4 is also a violation of FINRA Rule 2010, which requires the observance of high standards of commercial

¹ On July 30, 2007, Article V, Section 2(c) of the NASD's By-Laws was replaced with Article V, Section 2(c) of FINRA's By-Laws.

² On December 15, 2008, FINRA Rule 2010 superseded NASD Rule 2110, however, the relevant text of the rule remained the same.

honor and just and equitable principles of trade.

Between April 2005 and January 2011, while employed with Merrill, Nisbet willfully failed to disclose to Merrill a civil judgment entered against him in Tarrant County Court, Chicago, IL on October 11, 2004 for \$21,886. In addition to failing to disclose the judgment when he became employed with Merrill in April 2005, Nisbet failed to ensure that amended Forms U4 were filed timely to reflect the judgment. Nisbet's failure to disclose his civil judgment was willful. Nisbet received notice of the judgment on or about October 18, 2004, prior to becoming employed with Merrill in April 2005. Nevertheless, he repeatedly failed to inform Merrill of this judgment or update his Form U4 to reflect the judgment.

By virtue of the aforementioned conduct, Nisbet violated Article V, Section 2(c) of the NASD's By-Laws, and NASD Rule 2110 between April 18, 2005 and July 29, 2007, and violated Article V, Section 2(c) of FINRA's By-Laws, NASD Rule 2110 and FINRA Rule 2010 between July 30, 2007 and January 28, 2011.

Nisbet Exercised Discretion in a Customer's Account

NASD Rule 2510(b) states in relevant part: No member or registered representative shall exercise any discretionary power in a customer account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the member, as evidenced in writing by the member or the partner, officer or manager, duly designated by the member, in accordance with Rule 3010.

During the period March 4, 2011 through January 13, 2012, while employed with UBS, Nisbet exercised discretion in the account of a customer with verbal authorization but without the required written authorization. During this time period, there were approximately 86 trades entered in the customer's account. Nisbet exercised discretionary trading authority for the majority of these 86 trades.

By virtue of exercising discretion in a customer's account without written authorization, Nisbet violated NASD Rule 2510(b) and FINRA Rule 2010.

Nisbet Made a False Written Representation to a FINRA regulated broker-dealer

On September 28, 2011, Nisbet's client, an employee of a FINRA regulated broker-dealer, sent an email to Nisbet requesting a letter representing that she maintained a managed securities account with Nisbet at UBS ("managed account letter"). The client's accounts serviced by Nisbet at UBS were, in fact, not managed.

On September 30, 2011, Nisbet signed and sent the managed account letter to his customer's employer misrepresenting that the customer maintained managed advisory accounts with Nisbet at UBS. Nisbet sent this letter knowing that the customer did not

have any managed advisory accounts with UBS. By making this false representation to his customer's FINRA regulated employer, Nisbet violated FINRA Rule 2010.

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

- a six-month suspension from association with any FINRA member in any capacity; and
- a \$15,000 fine.

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(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).

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 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: (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.

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.

1/28/14
Date

Jay M. Nisbet
Respondent
Jay M. Nisbet

Accepted by FINRA:

1/28/14
Date

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

Richard Chin
Richard Chin
Chief Counsel
FINRA Department of Enforcement
One World Financial Center
New York, NY 10281
646-315-7322