

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2011027667401**

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

RE: Irving M. Burstein, Respondent
Registered Representative
CRD No. 1218326

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. 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

Irving Marvin Burstein ("Burstein") first became associated with a member firm on August 16, 1988, when he joined Stuart, Coleman & Co. Burstein became licensed as a registered representative on January 21, 1989. Burstein became a registered principal on November 21, 1992. In addition to his Series 7 and 24 licenses, Burstein has Series 4, 22, 39 and 63 licenses. During his career in the industry Burstein has been registered with 15 different broker-dealers. Burstein was a registered principal at NSM Securities, Inc. ("NSM" or the "firm") (CRD No. 134357) from September 6, 2005 until July 31, 2011. He is currently registered with R.M. Stark & Co., Inc. (CRD No. 7612) in its Del Ray Beach, Florida office as a registered representative.

OVERVIEW

From March 2007 until July 2011 (the "relevant period") Burstein was the Chief Compliance Officer at NSM. During that time, Burstein failed to supervise the activities of NSM's registered representatives and also failed to implement and enforce the firm's Written Supervisory Procedures ("WSPs"), in violation of NASD Rules 3010(a), (b) and 2110 and FINRA Rule 2010. NSM's business model is to solicit customers who are high net worth individuals of Indian descent, and then engage in a highly active trading strategy in their accounts involving only a

few securities. During the relevant period, many NSM customer accounts were excessively traded in order to generate large fees for NSM registered representatives and the firm. Burstein's failure to supervise the activities of the firm's registered representatives, coupled with his failure to implement and enforce the firm's WSPs helped to create a culture of noncompliance at NSM that resulted in the rampant churning of customer accounts, unsuitable recommendations, unauthorized trading, and significant customer harm.

FACTS AND VIOLATIVE CONDUCT

During the relevant period, the firm's WSPs designated specific duties to Burstein, including, the review of customer accounts to detect and monitor for: (1) unsuitable transactions; (2) excessive trading activity; (3) unauthorized trading/transactions; (4) excessive losses; (4) wholesale recommendations; (5) excessive securities concentrations; (6) and large or routine debit balances. Burstein failed to review customer accounts for any of these things. Rather, his daily activities were limited to reviewing the trade blotter and order tickets and listening to registered representatives make cold calls. Burstein's review of customer account activity was limited to a quarterly review of customer files, which were selected on a random basis. Burstein did not perform the customer file review in conjunction with any review of trading activity in customer accounts.

The firm's 2008 and 2009 WSPs provided that the firm would utilize exception reports to monitor for excessive trading, but NSM did not begin receiving these reports until July 2010. Even when the firm began receiving these exception reports from its clearing firm in July 2010, Burstein failed to review them. As a result, there was no review of customer accounts for excessive trading activity for the majority of the relevant period. The turnover ratios and cost-to-equity ratios in the exception reports indicated that, on average, throughout the relevant period, approximately 30 NSM customer accounts were being excessively traded each month.

Similarly, despite being the designated principal to review customer accounts for suitability, Burstein did not review transactions for suitability. Consequently, NSM registered representatives made unsuitable recommendations to their customers, often concentrating customer accounts in one or two securities and using excessive margin in trading their accounts. As a result, many NSM customers sustained significant losses throughout the relevant period.

The firm's 2008 and 2009 WSPs also provided that customer comfort letters be sent to active accounts. Burstein, however, failed to send customer comfort letters as required by the WSPs until July 2010. Although Burstein began sending customer comfort letters in July 2010, the information contained in the comfort letters was inadequate to explain to the customer why he or she was receiving the letter. The letter also failed to provide any indication that the customer's account was being excessively traded.

Furthermore, Burstein failed to review registered representatives' e-mail and failed to place registered representatives on heightened supervision in accordance with the requirements of the WSPs (*e.g.*, when customer complaints were received). As a result, numerous customer complaints were not reviewed, and registered representatives were allowed to engage in sales practice abuses, such as unauthorized trading and churning, with virtually no oversight.

NASD Rule 3010(a) requires members to “establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules.” The rule also requires the “designation, where applicable, of an appropriately registered principal(s) with authority to carry out the supervisory responsibilities of the member for each type of business in which it engages for which registration as a broker/dealer is required. NASD Rule 3010(b) requires members to “establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of NASD. NASD Rule 2110, now FINRA Rule 2010 (effective December 15, 2008), requires each member to “observe high standards of commercial honor and just and equitable principles of trade.”

As the designated Chief Compliance Officer for NSM during the relevant period, Burstein effectively ignored his responsibilities to supervise the activities of the firm’s registered representatives and also failed to implement and enforce the firms WSPs, in violation of NASD Rules 3010(a), (b) and 2110 and FINRA Rule 2010.

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

1. A one-year suspension from association with any member of FINRA in a principal capacity; and
2. An undertaking to cooperate with FINRA’s Department of Enforcement or any other regulator in any further investigation and hearing related to NSM Securities, Inc., including but not limited to, meeting with and being interviewed by the Department of Enforcement, without the need of the staff to resort to Rule 8210, and testifying at any hearing.

I understand that if I am barred or suspended from associating with any FINRA member in a principal capacity, 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 a suspended capacity during the period of the bar or suspension (see FINRA Rules 8310 and 8311). Furthermore, because I am subject to a statutory disqualification during the principal suspension, if I remain associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

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.

The sanction 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.
- 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.

11/11/13
Date

Irving M. Burstein
Irving M. Burstein, Respondent

Accepted by FINRA:

11/25/2013
Date

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

A handwritten signature in black ink, appearing to read 'Kristy M. Tillman', written over a horizontal line.

Kristy M. Tillman
Senior Counsel
FINRA – Department of Enforcement
15200 Omega Drive, 3rd Floor
Rockville, MD 20850-3241
(301) 258-8524 (ph); (202) 721-8388 (f)
Kristy.Tillman@finra.org