

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2012031496901**

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

RE: David Stephen Kinnear, Respondent
General Securities Representative
CRD No. 2769750

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, 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 Respondent 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

Kinnear became a general securities representative ("RR") with Firm 1 in 1997. In 2005, Kinnear joined UBS Financial Services, Inc. ("UBS"), a FINRA regulated broker-dealer, as a RR, and he remained associated with UBS until February 13, 2012. On February 13, 2012, Kinnear ceased his association with UBS and joined Wells Fargo Advisors, LLC ("Wells Fargo"), a FINRA regulated broker-dealer, as a RR, and he is currently associated with Wells Fargo. Kinnear received his Series 7, 66 and 3 registrations in 1997.

RELEVANT DISCIPLINARY HISTORY

Kinnear has no disciplinary history in the securities industry.

OVERVIEW

On February 13, 2012, Kinnear voluntarily resigned from UBS and joined Wells Fargo. Prior to his resignation from UBS, Kinnear transferred customer account

information onto personal universal serial bus (USB) thumb drives and sent these thumb drives to customers without UBS's authorization in violation of FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

On February 13, 2012, Kinnear submitted his resignation to UBS and on the same day became associated with Wells Fargo. Kinnear was only permitted to bring limited information about his UBS customers pursuant to a Protocol for Broker Recruiting, of which both UBS and Wells Fargo were signatories. Additionally, UBS's policies and procedures prohibited Kinnear from taking UBS customer information following his resignation. On or about February 9, 2012, in anticipation of his resignation from UBS and his move to Wells Fargo, Kinnear transferred customer account information for approximately 47 of his UBS customers from UBS systems to USB thumb drives, which were encrypted and password protected. On or about February 9, 2012, Kinnear sent these thumb drives to his customers with the expectation that he would retrieve the information after he joined Wells Fargo if he reestablished his relationships with these customers.

Kinnear did not have permission to transfer and send this UBS customer information for the purpose of recapturing it after he joined Wells Fargo. In taking these actions, Kinnear violated UBS's policies and procedures. FINRA Rule 2010 requires associated persons to observe high standards of commercial honor and just and equitable principles of trade. By reason of the forgoing, Kinnear failed to comply with these standards and thereby violated FINRA Rule 2010.

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

A five business day suspension from associating with any FINRA member in any capacity and a \$5,000 fine.

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 Chief Legal Officer, 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

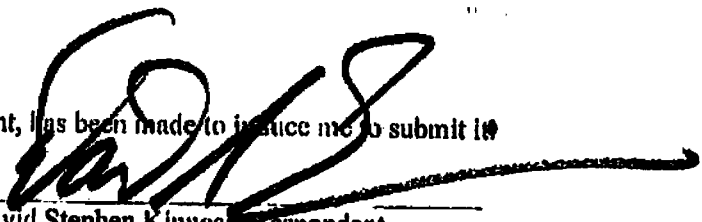
I understand that:

- 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 accordance with FINRA Rule 8313;
 - 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 to

02/31/2015
Date (mm/dd/yyyy)


David Stephen Kincaid, Respondent

Reviewed by:



Steven M. Malina
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Counsel for Respondent

Accepted by FINRA:

Date 4/13/15

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



Richard Chin
Chief Counsel
FINRA Department of Enforcement
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