

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20120319872**

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

RE: Amy Sue Cermak ("Cermak"), Respondent
Unregistered Sales Assistant
CRD No. 2187839

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

Cermak entered the securities industry in September 1991 when she became employed as an unregistered sales assistant at a FINRA-regulated entity. From March 1997 until her termination on February 29, 2012, Cermak was an unregistered sales assistant with Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch" or the "Firm"). Cermak is not currently associated with a FINRA member.

RELEVANT DISCIPLINARY HISTORY

Cermak has no prior disciplinary history.

OVERVIEW

On February 22, 2012 and February 24, 2012, Cermak effected two wire transfers for \$4,250 and \$9,150, respectively, from a Firm customer's (the "Customer") account to an unrelated third-party account after receiving fraudulent emails from someone purporting to be the Customer. The Firm's policies and procedures required its registered representatives and associated persons to speak to the customer prior to

effecting a transfer of funds to an outside account. Cermak indicated on the Firm's internal system that she spoke with the Customer and verified the Customer's identity despite not having done so prior to executing the transfers.

As a result, Cermak violated FINRA Rule 2010 by making misrepresentations to her FINRA-regulated employer. Cermak also violated NASD Rule 3110 and FINRA Rule 2010 by causing the Firm's books and records to be inaccurate.

FACTS AND VIOLATIVE CONDUCT

Firm policy provides that all outgoing wire transfers are required to be accompanied by a letter of authorization ("LOA") or an acceptable verbal instruction. With respect to emailed LOAs, Firm policy also provides that, when receiving instructions via an LOA, the instructions must be confirmed with the client prior to entry in the Firm's internal wire transfer system. When verbally authenticating an emailed or faxed LOA, Firm employees are required to authenticate the client's identity by verbally obtaining specific identifying information from the client, such as the last four digits of the client's social security number, the client's spouse's name, the client's date of birth, or the client's zip code.

1. The February 22, 2012 Transfer

On February 22, 2012, an email was sent from what appeared to be the Customer's personal email account to Cermak. It was later discovered that the email was sent by someone who had hacked the Customer's email account ("hacker") and was fraudulently transferring money to an account the hacker controlled. The hacker, pretending to be the Customer, requested Cermak to provide the Customer's account balance.

Cermak responded to the email and provided the Customer's account balance. Cermak then received an email from the hacker inquiring how to receive a wire transfer without verbal authorization.

Cermak replied via email that she could process a wire transfer with the Customer's signature on an LOA. Cermak sent a blank LOA to the Customer's email address believing that she was sending the LOA to the Customer.

Cermak then received an email from the hacker with a fully executed LOA, which was fraudulent. The fraudulent LOA authorized a transfer of \$4,250 from the Customer's account to an account at a third-party bank. The fraudulent LOA was purportedly signed by the Customer. Cermak did not authenticate the Customer's signature.

Cermak processed the transfer, noting on the Firm's internal wire transfer system that the Customer "initiated [the] transfer in person," which was not true. Cermak also noted on the Firm's system that she authenticated the Customer's identity "in

compliance with procedure,” which was also not true because Cermak did not authenticate the customer’s identity.

2. The February 24, 2012 Transfer

On Friday, February 24, 2012, Cermak received another email from a hacker via the Customer’s email account requesting a transfer of \$9,150 to the above-referenced third-party bank account.

Cermak then received a second email attaching an executed LOA, which was fraudulent, authorizing a transfer for \$9,150. The fraudulent LOA was purportedly signed by the Customer. Cermak did not authenticate the Customer’s signature.

Cermak processed the transfer, noting on the Firm’s internal wire transfer system that the Customer “initiated [the] transaction in-person,” which was not true. Cermak also noted on the Firm’s system that the Customer’s identity was “recognizable in compliance with procedure,” which was also not true because Cermak did not authenticate the customer’s identity.

3. The February 28, 2012 Wire Attempt and Discovery of the Fraud

On February 28, 2012, the Customer reviewed her account balance online and discovered the improper wire transfers. She immediately called Cermak to inquire about the two transactions. While Cermak was discussing the wire transfers with the Customer, Cermak received a third fraudulent wire request from a hacker using the Customer’s email account, requesting a transfer of \$7,350 to the above-referenced third-party bank account. This email attached an executed fraudulent LOA for the amount requested.

Cermak did not respond to the email, and did not process the wire transfer request. Cermak contacted the Firm’s Office Management Team and advised them of the prior transfers. The Firm subsequently credited the Customer’s account for the full amount of the improper transfers.

VIOLATIONS

FINRA Rule 2010 provides that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.” It is well-settled that a registered person’s preparation of false firm documents is considered conduct that is inconsistent with just and equitable principles of trade and violates the high standard of commercial honor to which FINRA holds registered individuals. Therefore, such conduct violates FINRA Rule 2010. In addition, NASD Rule 3110 requires each member to make and preserve books and records in conformity with Section 17(a) of the Securities Exchange Act of 1934 and Rules 17a-3 and 17a-4, thereunder. Exchange Act Rule 17a-3(a)(1) requires that the Firm create blotters containing an itemized daily record of all purchases and sales of securities, all

receipts and deliveries of securities, all receipts and disbursements of cash and all other debits and credits. Thus, falsification of a firm's required books and records violates NASD Rule 3110 and FINRA Rule 2010.

Cermak's false statements in the Firm wire transfer system that she spoke to the Customer to confirm the wire transfer instructions and that the Customer had initiated the transfers in-person were false and violated FINRA Rule 2010. Cermak also caused the Firm to maintain false books and records related to the wire transfers in violation of NASD Rule 3110 and FINRA Rule 2010.

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

1. A 30-day suspension from association with any FINRA member firm in all capacities; and
2. A \$5,000 fine.

The fine shall be due and payable either immediately upon re-association with a member firm following the 30-day 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).

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:

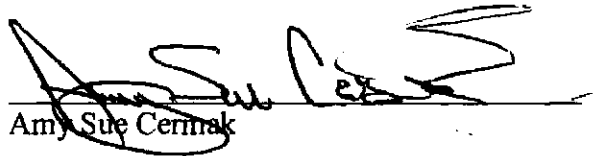
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (“ODA”), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will 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.

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.

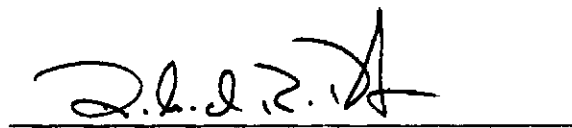
5-16-2013
Date


Amy Sue Cerniak

Accepted by FINRA:

5.29.13
Date

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


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