

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20120332728 01**

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

**RE: Patrick J. Donohue, Respondent
General Securities Representative
[CRD No. 4439545]**

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

Patrick J. Donohue ("Donohue") entered the securities industry on February 9, 1982 when he began working at Morgan Stanley DW Inc. Donohue first became registered as a Series 7 General Securities Representative on or around August 17, 2001. From February 9, 1981 through June 15, 2012 Donohue was associated with various predecessor entities of Morgan Stanley & Co Inc. In particular, from January 1, 2007 through June 1, 2009, Donohue worked at Morgan Stanley & Co Inc., and from June 1, 2009 through June 15, 2012, Donohue worked at Morgan Stanley Smith Barney. On June 15, 2012 Donohue voluntarily retired from Morgan Stanley Smith Barney ("Morgan Stanley" or the "Firm"). On November 20, 2012, the Firm filed an amended Form U5 that stated that after Donohue retired, the Firm conducted an investigation related to payments Donohue received from a variety of customer accounts.

Donohue has no prior disciplinary history in the securities industry. He has not been associated with a FINRA regulated broker-dealer since he retired from the Firm on June 15, 2012. Pursuant to Article V, Section 4 of FINRA's By-Laws,

Donohue remains subject to FINRA's jurisdiction.

RELEVANT DISCIPLINARY HISTORY

Donohue does not have any regulatory disciplinary history.

OVERVIEW

During January 1, 2007 through June 1, 2012 (the "Relevant Period"), Patrick Donohue engaged in an outside business activity without providing written notice to his Firm, in violation of NASD Rules 3030 and 2110 and FINRA Rules 3270 and 2010. Donohue's outside business activity involved services provided to elderly customers or to the estates of deceased or incapacitated customers who maintained trust accounts at the Firm. In total, Donohue received approximately \$57,897 in compensation in connection with his outside business activity.

During 2012, Donohue's outside business activity involved assisting the JS Trust with the preparation of a 2012 financial audit. On May 26, 2012, Donohue drafted and signed a check from the JS Trust's Firm account for \$4,200, that was made payable to himself. However, Donohue was not authorized to withdraw any funds from that Firm account. By virtue of this conduct, Donohue converted customer funds in violation of FINRA Rules 2150(a) and 2010.

In addition, Donohue made false statements relating to his outside business activity on six annual compliance questionnaires during the Relevant Period. Further, during November of 2011, Donohue made misstatements on two Firm forms in connection with processing two wire transfers from a customer account. Donohue falsely indicated that he had received the wire transfer instructions via telephone. However, Donohue actually received the instructions via email. Unbeknownst to Donohue, an imposter had emailed the wire transfer instructions to him after hacking into the customer's email account. As a result of Donohue's misstatements, the Firm effected two unauthorized wire transfers, for a total of \$63,000. By falsifying documents, Donohue violated NASD Rule 2110 and FINRA Rule 2010, and caused the Firm to maintain inaccurate books and records in violation of NASD Rule 3110 and FINRA Rule 4511.

FACTS AND VIOLATIVE CONDUCT

Donohue engaged in an undisclosed outside business activity

NASD Rule 3030 prohibited persons associated with a member firm from accepting employment or compensation from any other person for business activities outside the scope of his relationship with his employer firm unless prompt written notice was provided to the member firm. On December 15, 2010, NASD Rule 3030 was superseded by FINRA Rule 3270. FINRA Rule 3270 prohibits persons associated with a member firm from being compensated, or having the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member.

NASD Rule 2110 required adherence to high standards of commercial honor and just and equitable principles of trade. On December 15, 2008, NASD Rule 2110 was superseded by FINR Rule 2010, which states the same requirements.

The Firm's applicable Written Supervisory Policies and Procedures prohibited Firm employees from engaging in outside business activities without submitting a written request and obtaining Firm approval prior to engaging in those activities.

During the Relevant Period, Donohue engaged in an undisclosed outside business activity by providing tax preparation assistance and various other services to four customer accounts. In connection with this activity, Donohue received payments of approximately \$57,897. Donohue did not provide the Firm with written notice of this activity and did not obtain the Firm's approval to engage in the activity. The services performed for each customer account are described below:

1. **SH:** Throughout the Relevant Period, Donohue provided assistance to SH who was a former Morgan Stanley registered salesperson. In 1996, after SH's retirement from the Firm, Donohue performed various tasks for SH, including paying SH's personal bills, assisting SH with personal affairs, and taking SH to medical appointments. In connection with these activities, Donohue received 64 checks from SH's Morgan Stanley trust account for the total amount of \$35,900.

In addition, during 2004, SH named Donohue as his Health Care Power of Attorney, and Donohue continued to serve in that capacity until SH's death in May of 2012. Although the Firm's Written Supervisory Policies and Procedures required Donohue to complete a "Fiduciary Appointment Exception Request Form" for Firm review and approval, Donohue neither submitted such a form nor provided the

Firm with any other type of notice of his appointment to this fiduciary position.

2. **PB Trust:** During the Relevant Period, until SH's death in May 2012, SH was designated as the successor trustee for his sister's Morgan Stanley trust account ("the PB Trust"). During the Relevant Period, Donohue performed services related to the PB Trust, including calculating estimated tax payments and assisting with related tax filings. In connection with this activity Donohue received two checks from the PB Trust for a total of \$5,000.
3. **JS Trust:** During the Relevant Period, Donohue performed services for another trust for which SH served as successor trustee, the JS Trust. Donohue assisted this trust in distributing funds to JS' surviving children and helped prepare the trust for a financial audit in 2012. The JS Trust maintained an account at the Firm during the entire Relevant Period. During the Relevant Period, Donohue received 17 checks from the JS Trust for a total of \$10,026 for services he provided to the trust.
4. **EB Trust:** During the Relevant Period, Donohue performed services for the EB Trust, for which SH was the successor trustee. Donohue's tasks included preparing tax filings and calculating estimated tax payments. In connection with this activity Donohue received four checks from the EB Trust for a total of \$10,000.

By engaging in an outside business activity without providing any notice to his Firm, Donohue violated NASD Rules 3030 and 2110 and FINRA Rules 3270 and 2010.

Donohue converted customer funds

FINRA Rule 2150(a) states that no member or person associated with a member shall make improper use of customer's securities or funds. A violation of FINRA Rule 2150(a) also constitutes a violation of FINRA Rule 2010.

During 2012, Donohue assisted the JS Trust with preparing a 2012 financial audit. For this service, Donohue anticipated receiving \$4,200. On May 26, 2012, Donohue drafted and signed a check for \$4,200 from the JS Trust account, payable to himself. However, on May 26, 2012 Donohue was neither an authorized signer nor a fiduciary for this account and therefore was not authorized to sign a check from this Firm account. As of May 26, 2012, SH who was recently deceased, was the only authorized signer for the JS Trust account. Donohue was not appointed as successor trustee for the JS Trust until June 7, 2013, and did not obtain check-writing authority for the JS Trust account at the

Firm until July 26, 2012. Based on the foregoing, on May 26, 2012, Donohue converted customer funds in violation of FINRA Rules 2150(a) and 2100.

In addition, on August 15, 2012, Donohue drafted and signed an additional check from the JS Trust account for \$4,200 that was made payable to himself. Donohue was not entitled to this amount because he had previously obtained the \$4,200 via the May 26, 2012 check described above. Donohue subsequently repaid this amount to the JS Trust.

Donohue falsified Firm documents

NASD Rule 3110 required that member firms make and preserve books, accounts, records, memoranda and correspondence in conformity with all applicable laws, rules, regulations and statements of policy promulgated thereunder and with the Rules of FINRA and as prescribed in Exchange Act Rule 17a-4. On December 5, 2011, FINRA Rule 4511 became effective and replaced NASD Rule 3110. FINRA Rule 4511 requires member firms to make and preserve books and records as required under FINRA rules, the Exchange Act and the applicable Exchange Act Rules.

Annual Compliance Questionnaire for 2007

Donohue completed a Firm questionnaire dated March 5, 2007. He falsely indicated that he did not engage in any outside business activities. In addition, he stated that he was not named as a beneficiary on a non-family member account. Yet, as early as 2000, Donohue was aware that SH had designated him as a beneficiary of SH's estate, which maintained a trust account with the Firm.

In addition, the Firm's Written Supervisory Policies and Procedures required employees to immediately notify their supervising managers if they learned that they had become the beneficiary of a customer's estate. Donohue did not follow these procedures.

Annual Compliance Questionnaire for 2008

Donohue completed a Firm questionnaire dated October 3, 2008 in which he denied that he was compensated outside of Firm payroll. Yet as early as January 2008, Donohue knowingly accepted compensation from RC, a registered salesperson of the Firm for whom Donohue worked as a sales assistant, by way of RC's wife's checking account. During the Relevant Period, the Firm required that all Financial Advisors pay any bonuses to their sales assistants through Morgan Stanley's Online Payroll System. RC and Donohue deliberately sought to conceal these payments from the Firm by routing the payments through a checking account held by RC's wife away from the Firm. During the Relevant Period, Donohue received compensation in the form of 18 checks written from RC's wife's personal checking account and payable to Donohue for a total of \$18,001.

In the 2008 questionnaire, Donohue also denied that he: (a) engaged in any outside business; (b) served as a beneficiary on a non-family member account; (d) served in a fiduciary capacity on any accounts; and (e) accepted checks and/or securities from clients within the past 12 months. All of these statements were false.

Annual Compliance Questionnaires for 2009, 2010, 2011 and 2012

Donohue also completed compliance questionnaires for 2009, 2010, 2011, and 2012. In each of these questionnaires, Donohue denied that he (a) received any compensation from Financial Advisors outside of Firm payroll systems; (b) engaged in any outside business activities; (c) was named as a beneficiary on a non-family member account; and (d) acted in a fiduciary capacity for customer accounts. All of these statements were false.

In addition, in the 2009 questionnaire, Donohue denied receiving any checks or securities from clients within the last 12 months. However, Donohue received a check from the JS Trust during this period of time. Therefore, Donohue's statement was false.

In the 2011 and 2012 questionnaires, Donohue also denied receiving any gifts from clients worth over \$100 within the last 12 months. Yet Donohue had accepted cash gifts from SH in 2011 and accepted gifts of stock from SH during 2012. During the Relevant Period, the Firm required that its employees disclose any gifts received from customers that were valued at \$100 or more. However, Donohue worked with SH to circumvent this policy by arranging for SH to transfer shares of stock to Donohue via a third party. The shares of stock were routed from SH's Morgan Stanley account to a brokerage account that SH's personal trainer held at a different firm. Later, SH's personal trainer transferred the shares to Donohue's Morgan Stanley account. For example, on February 3, 2012, Donohue received a gift of 100 shares of Stock A from SH's trust account that was worth \$10,550 as of the date Donohue received it. In addition, in the same manner, Donohue received 150 shares of Stock B from SH, which was worth \$10,620 on March 23, 2012.

Moreover, in the 2010, 2011 and 2012 questionnaires Donohue indicated that he had not provided any false information in the questionnaires for those years. These statements were also inaccurate.

November 2011 Verbal Wire Processing Forms

During November 2011, unbeknownst to Donohue, a fraudster impersonated a Firm customer named VR and hacked into VR's email account. On November 10, 2011, Donohue received emails from the email address on file for VR, who was a signatory on a Morgan Stanley account for ABC Associates. The emails

contained instructions for two separate wire transfers to be made from the ABC Associates Firm account to third party destinations.

The Firm's applicable policies required employees to have direct verbal communication with customers prior to effecting wire transfer requests of this type. However, Donohue did not speak with VR regarding either of the two wire transfer requests. Nevertheless, on November 10, 2011, Donohue completed two Verbal Wire Processing Forms in which he falsely indicated that he spoke to VR on the previous day (November 9, 2011) at 9:45 AM regarding both of the wire requests.

After Donohue submitted these false forms to the Firm, two wire transfers from ABC Associates' account for the total amount of \$63,000 were effected. Subsequently, it was discovered that VR had not authorized these transfers on behalf of ABC Associates and the Firm reimbursed ABC Associates for its losses.

By virtue of the above-described conduct, Donohue violated NASD Rule 2110 and FINRA Rule 2010. Further, by falsifying Firm documents, Donohue caused the Firm to maintain inaccurate books and records, in violation of NASD Rule 3110 and FINRA Rule 4511.

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

A bar from association with any FINRA member in any capacity.

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. Pursuant to FINRA Rule 8313(e), a bar or expulsion shall become effective upon approval or acceptance of this AWC.

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

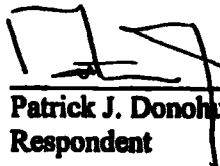
I understand that:

- 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 [the Firm] to submit it.

10/31/2013
Date (mm/dd/yyyy)


Patrick J. Donohue
Respondent

Accepted by FINRA:

November 18, 2013
Date

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



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