

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2012034630801**

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

RE: Gregory Philip Day, Respondent  
General Securities Principal  
CRD No. 5255105

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Gregory Phillip Day ("Respondent"), 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**

Respondent entered the securities industry in March 2006 when he became associated with Duxbury Financial LLC ("Duxbury" or the "Firm"). On June 22, 2007, Respondent became registered as a General Securities Principal and General Securities Representative with the Firm.

On November 21, 2012, Duxbury filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") reporting that Respondent was terminated, effective October 23, 2013, for opening "additional financial accounts in the name of the Firm without notifying the Firm's Financial and Operations Principal." At the time of his resignation, Respondent held the title of Chief Executive Officer and Compliance Officer at Duxbury.

Since October 23, 2012, Respondent has not been associated with any FINRA regulated entity. FINRA retains jurisdiction over Respondent pursuant to Article V, Section 4 of FINRA's By-Laws.

### **RELEVANT DISCIPLINARY HISTORY**

Respondent has no prior relevant disciplinary history.

### **OVERVIEW**

From November 2009 to October 2012, Respondent misappropriated at least \$359,000 from his Firm. Respondent also made false statements and created false documentation, which he submitted to the Firm, in furtherance of the misappropriation.

### **FACTS AND VIOLATIVE CONDUCT**

FINRA Rule 2010 states that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."

Respondent opened an account controlled by him at an outside third-party bank in the name of the Firm without disclosing the bank account to the Firm.

From November 2009 to October 2012, Respondent misappropriated Firm funds by making 25 unauthorized fund transfers totaling at least \$309,000 from a Firm bank account to the aforementioned outside third party bank account. Respondent falsified documents and invoices that he submitted to the Firm for payment to effect the transfers. Additionally, in or around July 2010, Respondent misappropriated Firm funds by causing a \$50,000 receivable for the Firm, related to a Firm transaction, to be wired directly to the aforementioned outside third party bank account.

Respondent controlled the aforementioned outside third party bank account and used the Firm funds that were transferred to it for his own personal use.

In October 2012, when the Firm questioned Respondent about the above-referenced misappropriations involving fund transfers and a wire, Respondent made false statements to the Firm and submitted additional falsified documents to the Firm. Respondent misappropriated these funds from his Firm and not from Firm clients.

Based on the foregoing, Respondent violated FINRA Rule 2010 by misappropriating funds from the Firm for his personal use, falsifying documents and by making false statements to the Firm when asked about the misappropriations.

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

- A bar in all capacities with any FINRA firm.

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:

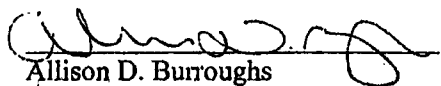
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will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

11/3/2013  
Date (mm/dd/yyyy)

  
Gregory Day, Respondent

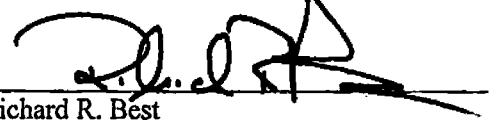
Reviewed by:

  
Allison D. Burroughs  
Counsel for Respondent  
Nutter McClennen & Fish LLP  
Seaport West, 155 Seaport Boulevard, Boston, MA 02210  
Phone Number (617) 439-2684; Fax (617) 310-9684

Accepted by FINRA:

1.2.14  
Date

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

  
Richard R. Best  
Chief Counsel  
FINRA Department of Enforcement  
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