

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013035334201**

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

**RE: Wunderlich Securities, Inc., Respondent
Member Firm
(CRD No. 2543)**

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Wunderlich Securities, Inc. (hereinafter, "WSI" or "the Firm") 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 WSI alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. WSI 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

WSI has been a member of FINRA since March 8, 1984 and is based in Memphis, Tennessee. It employs approximately 415 registered persons that operate from 21 OSJ offices, 27 non-OSJ branch offices, and 23 non-registered branch offices.

RELEVANT DISCIPLINARY HISTORY

On November 21, 2011, FINRA accepted an AWC in which WSI consented to a censure and a fine in the amount of \$50,000 based on findings by FINRA, that WSI had failed to review the personal trading of two research analysts in discretionary accounts they held at other securities firms; that WSI had issued 33 equity-security research reports that failed include various disclosures mandated by NASD Conduct Rule 2711(h); and that WSI had failed to include on its public website disclosures mandated by NASD Conduct Rule 2210(d) and IM-2210-1(6)(A), with respect to potential conflicts of interest. The violations relate to the time period, July 8, 2008 through June 10, 2010. AWC No. 2010020967601.

On May 27, 2011, the SEC issued an Order in which WSI, its CEO, and a former CCO, were censured and fined \$125,000, \$45,000, and \$50,000, respectively, for violations of the Investment Advisers Act of 1940, specifically: (i) overcharging advisory clients for commissions and other transactional fees; (ii) failing to satisfy disclosure and client-consent requirements when engaged in principal trades with clients; (iii) failing to adopt and implement written policies and procedures relating to the Firm's investment-advisory business; and (iv) failing to establish, maintain, and enforce a written code of ethics relating to the Firm's investment-advisory business. In addition to the fines imposed, WSI was required to disgorge approximately \$370,000 in overcharges. Admin. Proc. File No. 3-14403, Order Instituting Administrative Proceedings and Imposing Remedial Sanctions, Exchange Act Rel. No. 64558/Advisers Act Rel. No. 3211 (May 27, 2011).

OVERVIEW

From April 12, 2012, through May 17, 2013, WSI failed to establish, maintain, and enforce an adequate supervisory system and written procedures regarding the preparation and dissemination of consolidated reports, in violation of NASD Conduct Rule 3010, subparts (a), (b), and (d)(2), and FINRA Rule 2010. In addition, from July 1, 2012, through March 31, 2013, WSI failed to establish, maintain, and enforce an adequate supervisory system and written procedures for the supervision of sales of nontraditional ETFs, in violation of NASD Conduct Rule 3010, subparts (a) and (b), and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Supervision of Consolidated Reports

A "consolidated report" is a document provided by a broker to a customer that combines account information regarding most or all of a customer's assets. Consolidated reports supplement, but do not replace, the customer account statements required pursuant to NASD Rule 2340.

On April 8, 2010, FINRA issued Regulatory Notice 10-19 (hereinafter, "Notice"), reminding member firms that consolidated reports are communications with the public by the firm and must be clear, accurate, and compliant with federal securities laws and FINRA rules. The Notice cautioned that consolidated reports present a number of regulatory concerns, including the potential for communicating inaccurate, confusing or misleading information to customers, lapses in supervisory controls, and the use of these reports for fraudulent or unethical purposes. The Notice strongly encouraged member firms to review the overall adequacy and effectiveness of their current policies and procedures relating to their consolidated reporting and warned that any member firm that could not adequately supervise consolidated reports prepared by its registered representatives must prohibit the dissemination of those reports and take the necessary steps to ensure that its registered representatives comply with this prohibition. The Notice also stated that members firms should take reasonable steps to accurately reproduce information obtained regarding outside accounts and not to include information that is false or misleading in consolidated statements. Regardless of which specific practices a firm chooses to adopt, the Notice directs that the firm

must ensure that the size and complexity of its consolidated reporting program does not exceed the firm's ability to supervise the activity and to subject it to a rigorous system of internal controls.

At various times between April 12, 2012 and May 17, 2013, approximately 15 WSI registered representatives prepared and disseminated consolidated reports for customers. During that same time period, WSI's written supervisory procedures expressly permitted the preparation and dissemination of consolidated reports; however, WSI's procedures did not adequately address how the Firm would supervise the use of consolidated reports. In addition, the Firm failed to establish, maintain, and enforce an adequate supervisory system or written procedures to ensure the accuracy of any valuation information that was provided by a registered representative in a consolidated report. Moreover, the Firm failed to establish, maintain and enforce written procedures mandating the inclusion in consolidated reports of specific disclosures regarding the source and accuracy of any valuation information that was provided by a registered representative. In addition, the Firm failed to establish, maintain, and enforce an adequate supervisory system and written procedures to ensure that supervisory reviews of consolidated reports were performed and documented by the applicable supervisors and readily available for review by the Firm or any regulatory authority.

As a result of the foregoing, WSI violated NASD Conduct Rule 3010, subparts (a), (b), and (d)(2), and FINRA Rule 2010.

Supervision of Sales of Nontraditional ETFs

Exchange-traded funds, or ETFs, are typically registered unit investment trusts or open-end investment companies whose shares represent an interest in a portfolio of securities that track an underlying benchmark or index. Shares of ETFs are typically listed on national securities exchanges and trade throughout the day at prices established by the market. Nontraditional ETFs differ from other ETFs in that they seek to return a multiple of the performance of the underlying index or benchmark, the inverse of that performance, or both. To accomplish their objectives, nontraditional ETFs use swaps, futures contracts, and other derivative instruments. In addition, nontraditional ETFs are typically designed to achieve their stated objectives only over the course of one trading session. Between trading sessions, the fund manager typically must rebalance the fund's holdings in order to meet its objective. For most nontraditional ETFs, this happens on a daily basis, and is known as the "daily reset." The correlation between a nontraditional ETF and its target index or benchmark is often inexact, and there can be a difference between a nontraditional ETF's actual performance and that of its target index or benchmark. That difference is called "tracking error," and it can increase substantially over longer periods of time, especially during periods of high volatility in the target index or benchmark.

In June 2009 FINRA issued Regulatory Notice 09-31 highlighting the unique characteristics and risks of nontraditional ETFs, including tracking error and the effect of daily resets, and cautioning members that nontraditional ETFs "are typically not suitable for retail investors who plan to hold them for more than one trading session, particularly in volatile markets."

At various times between July 1, 2012 and March 31, 2013, WSI permitted its registered representatives to recommend nontraditional ETFs; however, the Firm's written supervisory procedures did not adequately address the particular characteristics and risks associated with nontraditional ETFs. In addition, WSI did not utilize an effective system or report to enable its supervisors to readily identify instances in which a customer might be holding a position in a nontraditional ETF for an extended period of time. Moreover, WSI failed to provide formal training to its registered representatives and supervisory personnel regarding the unique characteristics and risks of nontraditional ETFs.

As a result of the foregoing, WSI failed to establish, maintain, and enforce an adequate supervisory system and written procedures to address the sale of nontraditional ETFs, in violation of NASD Conduct Rule 3010, subparts (a) and (b), and FINRA Rule 2010.

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

A censure and a \$50,000 fine.

WSI agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. WSI has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

WSI specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

WSI specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against it;
- 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, WSI specifically and voluntarily waives 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.

WSI further specifically and voluntarily waives 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

WSI understands 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 WSI; and
- C. If accepted:
 - 1. This AWC will become part of WSI's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
 - 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. WSI 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. WSI 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 WSI's: (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. WSI may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. WSI understands that it 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.

The undersigned, on behalf of WSI, certifies that a person duly authorized to act on WSI's behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that WSI has 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 WSI to submit it.

10/19/2015
Date (mm/dd/yyyy)

James T. Witt
Wunderlich Securities, Inc.

By: James T. Witt

Reviewed by:

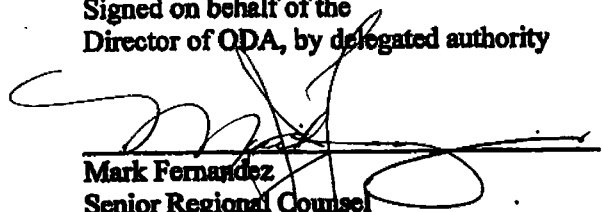
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Counsel for Wunderlich Securities, Inc.

Accepted by FINRA:

October 26, 2015
Date

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

A handwritten signature in black ink, appearing to read 'Mark Fernandez', is written over a horizontal line.

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