

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2013035617201**

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

**RE:** Francis Melvin Johnson, Respondent  
Registered Representative  
CRD No. 1607751

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Francis Melvin Johnson ("Johnson") 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 him alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A.** Johnson 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**

Johnson was associated with eight FINRA regulated broker-dealers in his approximate 19 years in the securities industry. His most recent association was with Newport Coast Securities ("Newport") from May 2009 through October 1, 2010.

Newport filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") on October 8, 2010 reporting Johnson's voluntary termination from the firm. Newport subsequently filed an Amended Form U5 dated November 14, 2011 reporting that one of Johnson's customers filed a complaint against him alleging misrepresentation. In January 2013, Newport filed two Amended Forms U5 reporting that a Complaint had been filed against Johnson in Wake County North Carolina State Court alleging breach of fiduciary duty and "breach of constructive fraud" [sic] during the period 2005 through 2011. The allegations concerned Johnson's alleged "borrowing" of approximately \$1.2 million from a customer's family trust.

Although Johnson is no longer registered or associated with a FINRA regulated broker-dealer, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V,

Section 4 of FINRA's By-Laws, because (1) the first Amended Form U5 dated November 14, 2011 was filed within two years of the effective date of the original Form U5 reporting the termination of Johnson's registration with the Firm, namely, October 8, 2010, and disclosed that Johnson may have engaged in conduct actionable under applicable statutes, rules or regulations; and (2) this AWC relates to Johnson's failure, while subject to FINRA's jurisdiction, to provide information and testimony requested by FINRA about events that occurred during his association with a FINRA regulated broker-dealer.

### **RELEVANT DISCIPLINARY HISTORY**

Johnson does not have any prior disciplinary history in the securities industry.

### **OVERVIEW**

Johnson failed to provide a detailed written statement requested by FINRA pursuant to Rule 8210 relating to, among other things, allegations that he may have engaged in misconduct involving the "borrowing" of approximately \$1.2 million from a customer's family trust. Johnson also failed to appear and provide testimony before FINRA regarding such allegations as requested pursuant to Rule 8210.

### **FACTS AND VIOLATIVE CONDUCT**

FINRA Rule 8210(a)(1) authorizes FINRA to require persons associated with a member and others subject to its jurisdiction to provide documents, information and testimony to FINRA in connection with, among other things, an investigation or examination. Rule 8210(c) requires those persons to comply with FINRA's requests.

FINRA Rule 2010 requires members and associated persons, in the conduct of their business, to "observe high standards of commercial honor and just and equitable principles of trade."

By letter dated April 29, 2013, pursuant to FINRA Rule 8210, Enforcement requested that Johnson provide a detailed written statement regarding the events leading to the complaints referred to above. Johnson's response was due May 8, 2013.

On May 8, 2013, Johnson emailed FINRA staff that he had previously voluntarily surrendered his licenses and that he denied the allegations referred to in the staff's letter. Staff emailed Johnson later the same day advising that he was still subject to FINRA's jurisdiction and requested that he contact FINRA to discuss the matter. Johnson did not seek, nor did staff grant, an extension of time for him to comply with the Rule 8210 request for information.

On May 13, 2013, FINRA staff received an email from an attorney advising that he represented Johnson. In a telephone conversation and in an email dated May 29, 2012, staff informed the attorney that Johnson's statement to FINRA did not satisfy FINRA's Rule 8210 request. Johnson's attorney replied that he had advised Johnson not to respond to FINRA's request for a written statement or to speak with FINRA.

On September 18, 2013, pursuant to Rule 8210, FINRA staff sent a letter to Johnson's attorney requesting that Johnson appear and testify before FINRA on September 25, 2013 regarding the allegations relating to the "borrowing" of funds from a customer's trust. The same day, Johnson's attorney emailed staff that he had advised Johnson not to answer any questions from FINRA regarding this area of inquiry and that Johnson would not appear to give testimony as requested.

On September 20, 2013, Johnson's attorney advised FINRA staff that Johnson was interested in resolving this matter by agreeing to a bar from association with any FINRA member firm for failing to cooperate.

To date, Johnson has not provided the detailed written statement requested by FINRA pursuant to FINRA Rule 8210 nor has he appeared and provided testimony before FINRA as requested under that Rule.

By failing to respond to FINRA's requests for a detailed written statement and by failing to appear and provide testimony before FINRA as requested, Johnson violated FINRA Rules 8210 and 2010,

B. Johnson also consents to the imposition of the sanction of a bar.

Johnson understands that if he is barred or suspended from associating with any FINRA member, he becomes 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, Johnson 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

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

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

Johnson 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**

Johnson understands that:

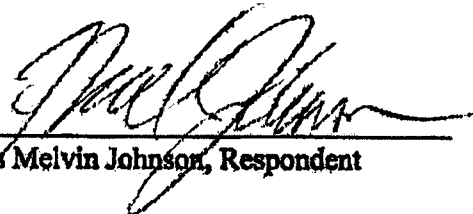
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against him; and
- C. If accepted:
1. this AWC will become part of his permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against him;
  2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Johnson's disciplinary record;
  3. FINRA may make a public announcement concerning this agreement and

the subject matter thereof in accordance with FINRA Rule 8313; and

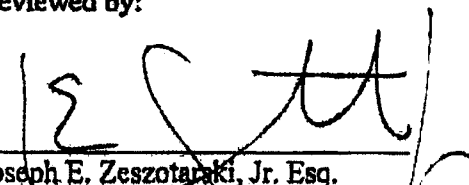
4. Johnson may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Johnson may not take any position in any proceeding 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 Johnson'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.

Johnson certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that he 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 him to submit it.

OCT 25, 2013  
Date

  
Frances Melvin Johnson, Respondent

Reviewed by:

  
Joseph E. Zeszotarski, Jr. Esq.  
Counsel for Respondent  
Gammon, Howard & Zeszotarski, PLLC  
115½ West Morgan Street  
Raleigh, NC 27601  
919-521-5878

Accepted by FINRA:

10-30-13  
Date

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



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Richard Chin  
Chief Counsel  
FINRA Department of Enforcement  
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