

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013036047601**

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

RE: Barry M. Wyman, Respondent
Non-Registered
CRD No. 6048304

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Barry M. Wyman ("I" or "Respondent") 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 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 commenced work in the securities industry on January 30, 2001, when he became associated with Morgan Stanley Smith Barney LLC (the "Firm") as a non-registered Service Associate. Respondent continued working in that capacity throughout his tenure at the Firm. On February 20, 2013, the Firm filed a Rule 4530 Application (Form 4530) reporting that Respondent's employment was terminated on February 13, 2013. The Form 4530 stated that Respondent's employment had been terminated because he had transferred approximately \$9,216.51 from a Firm proprietary account to a personal account he held at the Firm without authorization.

FINRA retains jurisdiction over Respondent pursuant to Article V, Section 4(a) of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

Respondent has no prior disciplinary history in the securities industry.

OVERVIEW

Between August 2011 and January 2013, Respondent misappropriated \$8,340.49 from a Firm proprietary account. By engaging in this misconduct, Respondent violated FINRA Rule 2010. In addition, during February 2013, Respondent converted \$876.02 of a customer's funds by transferring those funds from the Firm's proprietary account to his own account, even though he had been instructed to provide those funds to the customer. By virtue of this misconduct, Respondent violated of FINRA Rules 2150(a) and 2010.

FACTS AND VIOLATIVE CONDUCT

From time to time during the period of August 2011 through February 2013, the Firm elected to waive or reverse transaction fees by crediting customer accounts with amounts obtained from the Firm's "Fee Waivers/Reversals Account," a propriety account maintained at the Respondent's branch office. Respondent's duties included effecting these credits when a branch office supervisor instructed him to do so.

On 43 occasions between August 2011 and January 2013, after Respondent was instructed to credit a customer's account with amounts from the Firm's account, he did so. However, on these occasions, he also credited his own account with those same amounts. Respondent was not authorized to transfer any of these funds to himself. In total, on these occasions, Respondent misappropriated \$8,340.49 from the Firm.

In addition, on three occasions during February 2013, after Respondent was instructed to transfer funds to a customer's account, he failed to do so. He instead credited his own account with those amounts. Respondent was not authorized to obtain any of these funds. In total, on these occasions, Respondent converted a total of \$876.02. After detecting the Respondent's conduct, the Firm provided the customer with the amounts that the Respondent had failed to transfer to the customer's account.

FINRA Rule 2010 requires adherence to high standards of commercial honor and just and equitable principles of trade. By misappropriating funds from the Firm, between August 2011 and January 2013, Respondent failed to adhere to those standards, in violation of FINRA Rule 2010.

Further, FINRA Rule 2150(a) states that "[n]o member or person associated with a member shall make improper use of a customer's securities or funds." By converting customer funds during February 2013, Respondent violated FINRA Rules 2150(a) and 2010.

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

- A bar from association with any FINRA regulated broker-dealer 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 to submit it.

09/25/2013
Date (mm/dd/yyyy)

Barry M. Wyman
Barry M. Wyman, Respondent

Accepted by FINRA:

10/11/13
Date

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

Susan Light
Susan Light
Senior Vice President & Chief Counsel
FINRA, Department of Enforcement
One World Financial Center
200 Liberty Street, 11th Floor
New York, NY 10281
T: (646) 315-7333; F: (646) 315-7441
E-mail: susan.light@finra.org