

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013036302501**

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

RE: James Marc Unger, Respondent
General Securities Representative
CRD No. 2492377

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

James Marc Unger ("Unger") entered the securities industry in December 1993, when he became registered with a FINRA-regulated firm. Between September 1995 and June 2014, he worked at several other member firms, including Ryan Beck & Co. ("Ryan Beck") (January 2003-November 2005); SMH Capital Advisors, Inc. ("SMH Capital"), which later became Sanders Morris Harris Inc. ("SMHI") (December 2005-February 2009); Fintegra, LLC ("Fintegra") (March 2009-December 2012); and Hennion & Walsh, Inc. ("H&W") (December 2012-February 2014). In March 2014, he joined Financial America Securities, Inc. ("Financial America"), where he remained until June 10, 2014, when he was terminated for failing to disclose a FINRA investigation and refusing to explain the reason for the investigation.

Although he is not currently employed in the securities industry, FINRA retains jurisdiction over Unger pursuant to Article V, Section 4(a) of the FINRA By-Laws until June 9, 2016.

RELEVANT DISCIPLINARY HISTORY

Unger has no relevant disciplinary history.

OVERVIEW

This matter concerns Unger's unapproved borrowing of at least \$219,000 from member firm customer EC, in violation of NASD Rules 2370 and 2110 and FINRA Rules 3240 and 2110.¹ Unger also made false attestations on six annual compliance questionnaires concerning his borrowing of money from EC in violation of NASD Rule 2110 and FINRA Rule 2010.² Unger further violated FINRA Rule 2010 by creating and using blank, pre-signed documents for two customers. In addition, Unger violated NASD IM-1000-1, NASD Rule 2110, FINRA Rules 1122 and 2010 and Article 5, Section 2(c) of the NASD and FINRA By-Laws,³ by willfully failing to disclose or timely disclose eleven tax liens on his Uniform Application for Securities Industry Registration or Transfer Form (Form U4).

FACTS AND VIOLATIVE CONDUCT

1. Violations of NASD Rules 2370 and 2110 and FINRA Rules 3240 and 2010 – Unapproved Borrowing from a Customer

In or around 2002, EC, who is now 69 years old, became Unger's customer at SMH Capital/SMHI and remained his client at Fintegra, H&W and Financial America. Unger and EC did not have a prior relationship, nor were they immediate family members. Between 2007 and 2014, EC provided money to Unger for various purposes, including personal and family living expenses and a potential personal business opportunity. Unger

¹ FINRA Rule 3240 became effective on June 14, 2010, when it replaced NASD Rule 2370, which first became effective on November 10, 2003. Accordingly, Unger violated: (i) NASD Rule 2370 starting in 2007 and continuing to June 13, 2010; and (ii) FINRA Rule 3240 starting on June 14, 2010 and continuing to June 10, 2014. FINRA Rule 2010 superseded NASD Conduct Rule 2110 on December 15, 2008. Accordingly, as explained herein, Unger violated: (i) NASD Rule 2110 starting in 2007 and continuing to December 14, 2008; and (ii) FINRA Rule 2010 starting on December 15, 2008 and continuing to June 14, 2010.

² Unger's false attestations on six annual compliance questionnaires violated: (i) NASD Rule 2110 starting in 2007 and continuing to December 14, 2008; and (ii) FINRA Rule 2010 starting on December 15, 2008 and continuing to November 2012.

³ FINRA Rule 1122 replaced NASD IM-1000-1 on August 17, 2009. Article V, Section 2(c) of the FINRA By-Laws became effective on July 30, 2007, when it replaced Article V, Section 2(c) of the NASD By-Laws. Accordingly, Unger violated: (i) NASD IM-1000-1 starting in 2007 and continuing to August 16, 2009; (ii) FINRA Rule 1122 starting on August 17, 2009 and continuing to June 10, 2014; (iii) Article V, Section 2(c) of the NASD By-Laws starting in May 2005 and continuing to July 29, 2007; (iv) Article V, Section 2(c) of the FINRA By-Laws starting on July 30, 2007 and continuing to June 10, 2014; (v) NASD Rule 2110 starting in May 2005 and continuing to December 14, 2008; and (vi) FINRA Rule 2010 starting on December 15, 2008 and continuing to June 10, 2014.

accepted these funds as loans. In total, Unger borrowed at least \$219,000 over time from EC. More specifically, Unger received \$150,000 in cash and checks from EC, charged another \$19,000 on her credit card and withdrew \$50,000 of EC's money from a joint bank account he held with her.

FINRA Rule 3240, and its predecessor NASD Rule 2370, prohibit registered persons from borrowing money from their customers unless the firm has written procedures allowing such lending arrangements and certain other conditions are met. The policies and procedures of SMHI, Fintegra, and H&W prohibited registered representatives from borrowing money from customers, except in limited circumstances, and then only with prior written approval. Financial America prohibited registered representatives from entering into any lending arrangements with customers. Unger never sought permission to borrow funds from EC and SMHI, Fintegra, H&W and Financial America were unaware of EC's loans to Unger.

By accepting unapproved or prohibited loans from EC, Unger violated NASD Rules 2370 (for the period 2007 to June 13, 2010), FINRA Rule 3240 (for the period June 14, 2010 to June 10, 2014), NASD Rule 2110 (for the period 2007 to December 14, 2008) and FINRA Rule 2010 (for the period December 15, 2008 to June 10, 2014).

2. Violation of NASD Rule 2110 and FINRA Rule 2010 – False Statements to SMHI and Fintegra

While employed at SMHI and Fintegra, Unger was required to make certain annual attestations to his employers concerning, among other things, borrowing money from customers. Unger made the following false statements to his member firms concerning the borrowings from EC:

- At SMHI, Unger falsely stated on his 2007 and 2008 annual compliance questionnaires that he had not solicited or accepted a loan or cash from a customer.
- At Fintegra, Unger falsely stated on his 2009, 2010, 2011 and 2012 annual compliance questionnaires that he had not solicited or accepted a loan from a customer.

By making false attestations to his member firms, Unger failed to observe high standards of commercial honor and just and equitable principles of trade in violation of NASD Rule 2110 (for the period 2007 to December 14, 2008) and FINRA Rule 2010 (for the period December 15, 2008 to November 2012).

3. Violation of FINRA Rule 2010 – Creating and Using Blank, Pre-Signed Forms

Between October 2010 and December 2012, Unger created and used blank, pre-signed forms for the purpose of making ongoing distributions from the accounts of two Fintegra customers. The two customers had requested that Unger create a blank template for them so that they could conveniently receive distributions without generating new paperwork.

As requested, Unger photocopied blank forms that had been signed by the customers and then used them to make distributions pursuant to the clients' specific instructions.

By creating and using blank, pre-signed client forms, Unger failed to observe high standards of commercial honor and just and equitable principles of trade in violation of FINRA Rule 2010.

4. Violation of NASD IM-1000-1, NASD Rule 2110, FINRA Rules 1122 and 2010 and Article V, Section 2(c) of the NASD and FINRA By-Laws – Willful Failure to Disclose or Timely Disclose Liens

Article V, Section 2(c) of the NASD and FINRA By-Laws requires that registered representatives disclose certain information, including unsatisfied liens. Registered representatives are required to keep their Forms U4 "current at all times," and amendments to Forms U4 must be filed "not later than 30 days after learning of the facts or circumstances giving rise to the amendment." NASD IM-1000-1 states that the filing of any information with "respect to membership or registration as a Registered Representative which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade..." Additionally, FINRA Rule 1122, which, as of August 17, 2009, replaced NASD IM-1000-1, states that "[n]o . . . person associated with a member shall file with FINRA information with respect to . . . registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof."

Between May 2005 and December 2008, Unger was the subject of nine unsatisfied federal, state, city and town tax liens, which totaled \$157,825. Unger knew about each of the liens at or near the time they were filed against him. Unger also knew or should have known that he was required to disclose these liens within 30 days of learning about them. Unger, however, did not disclose any of these liens on his Form U4 until April 3, 2009, when he reported that he had two federal tax liens that totaled \$103,644 and five state tax liens in the amount of \$23,850. Unger never disclosed his outstanding town tax lien of \$6,982 or city tax lien of \$7,610. Unger's failure to disclose or timely disclose these liens was willful.

In November 2011 and May 2012, the IRS filed two additional tax liens against Unger, which totaled \$8,484. Unger knew about each of the unsatisfied liens at or near the time they were filed against him. Unger also knew or should have known that he was required to disclose these liens within 30 days of learning about them. Although Unger was aware of his disclosure obligations and on notice of the 2011 and 2012 liens, he never disclosed the liens on his Form U4. Unger's failure to disclose these liens was willful.

By willfully failing to disclose or timely disclose his unsatisfied liens, Unger violated: (i) NASD IM-1000-1 (for the period 2007 to August 16, 2009); (ii) FINRA Rule 1122 (for the period August 17, 2009 to June 10, 2014); (iii) Article V, Section 2(c) of the

NASD By-Laws (for the period May 2005 to July 29, 2007); (iv) Article V, Section 2(c) of the FINRA By-Laws (for the period July 30, 2007 to June 10, 2014); (v) NASD Rule 2110 (for the period May 2005 to December 14, 2008); and (vi) FINRA Rule 2010 (for the period December 15, 2008 to June 10, 2014).

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

- A bar from association with any FINRA member firm in all capacities.

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).

I understand that this settlement includes a finding that I willfully omitted to state a material fact on a Form U4, and that under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 and Article III, Section 4 of FINRA's By-Laws, this omission makes me subject to a statutory disqualification with respect to association with a member.

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 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.

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.

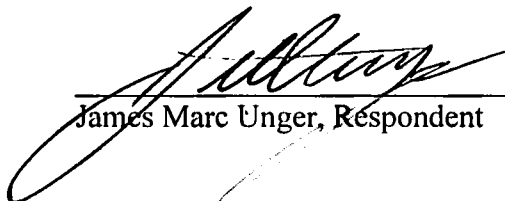
OTHER MATTERS

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.

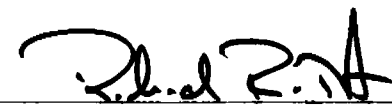
9/12/2014
Date


James Marc Unger, Respondent

Accepted by FINRA:

9.30.14
Date

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


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