

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013036479301**

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

RE: Donna Sunada, Respondent
Former Registered Sales Assistant
CRD No. 2857084

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, 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. Respondent 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

Donna Sunada ("Sunada") entered the securities industry in January 1997 with Dean Witter Reynolds Inc., where she remained until September 1999. Sunada obtained her Series 7 and Series 66 licenses in June 1999 and July 1999, respectively.

Between November 1999 and March 2013, Sunada was employed as a registered sales assistant with Morgan Stanley (the "Firm") in California. Although Sunada is not currently registered with a FINRA member firm, she remains subject to FINRA's jurisdiction since this action falls within two years of Sunada's registration with the Firm, making Sunada subject to FINRA's jurisdiction pursuant to Article V Section 4 of the FINRA by-laws.

RELEVANT DISCIPLINARY HISTORY

In a Form U-5 dated April 2, 2013, the Firm stated that on March 11, 2013, Sunada's employment was terminated for failing to follow Firm policy regarding the processing of third party wire transfers.

OVERVIEW

On March 1, 2013, an individual posing as a Firm customer ("CB"), sent an e-mail to CB's broker's sales assistant, not Sunada, requesting a wire transfer totaling \$68,300 from CB's account to a domestic third-party beneficiary.

Although Firm policies and procedures require verbal confirmation from the customer prior to processing wire transfer requests, Sunada, under the mistaken belief that a verbal confirmation had been obtained, processed the wire transfer without first getting verbal confirmation of the wire request from CB. Sunada then falsely indicated on an LOA that she had obtained verbal approval from CB and on March 5, 2013 submitted the wire transfer request for processing.

The imposter had provided the incorrect account number for the receiving bank account and the funds were returned to CB's account the next day. CB did not incur any losses to his account.

On March 6, 2013, the imposter submitted another signed LOA with instructions to wire \$168,300 from CB's account to a different third party. Sunada attempted to reach CB on his cell phone, but was only able to leave a voicemail. Sunada again falsely indicated on the LOA that she had obtained verbal approval from CB and submitted the wire transfer request for processing. Based on the foregoing, Sunada violated FINRA Rule 2010 and FINRA Rule 4511.

FACTS AND VIOLATIVE CONDUCT

Facts

A. Firm Policies and Procedures – Wire Transfer Requests

The Firm's policies and procedures require employees to only accept oral orders from clients. They prohibited any other form of order submission (such as voicemail, facsimile or e-mail).

B. Wire Transfer Requests

In March 2013, Sunada worked for the Firm as a registered sales assistant in one of the Firm's California offices.

On March 1, 2013, another sales assistant forwarded an e-mail request to Sunada to wire \$68,300 from CB's account to a domestic third-party beneficiary. The request and wire instructions came from CB's email account. At the time of the March 1st request, the Firm, Sunada and the client were unaware that an imposter had hacked into CB's email account and sent a request that the funds be sent to a third-party account. Upon receiving the email, Sunada responded that she needed a signed LOA in order to process the request. The imposter sent the LOA, bearing a forgery of the client's signature.

After receiving the LOA, Sunada did not attempt to call the client to confirm the request. Instead, she falsely indicated on the LOA that she had obtained verbal approval from CB and on March 5, 2013 submitted the wire transfer request for processing. The funds were returned to CB's account the next day because the imposter had provided the incorrect account number for the receiving bank account. On March 6, 2013, the imposter submitted another signed LOA with instructions to wire \$168,300 from CB's account to a different third party. Sunada tried to reach the client on his cell phone, but was only able to leave a voicemail. Despite not being able to verbally confirm the request with the client, Sunada falsely indicated on the LOA that she had obtained verbal approval from the client and submitted the wire transfer request for processing. Later that afternoon, the customer returned Sunada's call and informed her that he did not make the requests. The Firm was able to recall the wire successfully. As a result, CB did not incur any losses in his account.

The Firm terminated Sunada's employment on March 11, 2013 in connection with this matter since it had previously, on November 13, 2012, issued Sunada a Letter of Education for falsely indicating on an LOA that she had received the client's verbal authorization to transfer funds. In that instance, an imposter hacked into the client's e-mail account and sent the Firm a forged a letter of authorization ("LOA") requesting a \$10,000 transfer to a third party account. Despite Firm policy, Sunada did not confirm the request verbally. Sunada discovered the fraudulent attempt before the transfer of funds occurred.

Violations

FINRA Rule 2010 requires members and associated persons to "observe high standards of commercial honor and just and equitable principles of trade." FINRA Rule 2010 articulates a "broad ethical principle" to promote "professionalization of the securities industry."¹ FINRA Rule 2010 "encompasses a wide variety of conduct that may operate as an injustice to investors or other participants in the marketplace."² A violation occurs when there is unethical conduct that is related to the respondent's business. Submitting false information to a FINRA registered member in order to complete a wire transfer request clearly constitutes unethical behavior that violates FINRA Rule 2010.

¹ See *Timothy L. Burkes*, 51 S.E.C. 356, 360 n.21 (1993); *DOE v. Shvarts*, 2000 NASD Discip. LEXIS 6, *11 (NAC June 2, 2000).

² *Daniel Joseph Alderman*, 52 S.E.C. 366, 369 (1995).

FINRA Rule 4511 requires each member to make and preserve books and records in conformity with Rules 17a-3 and 17a-4 of the Securities Exchange Act of 1934 ("Exchange Act"). Implicit in the requirement to make records is the requirement to make accurate records. Rule 17a-4(b)(4) requires that a firm preserve records relating to communications concerning the firm's business, and those records must be accurate. Thus, falsification of a firm's required books and records violates FINRA Rule 4511 as well as FINRA Rule 2010.

By falsely stating that she spoke with CB to confirm wire transfer instructions Sunada violated FINRA Rule 2010.

Sunada also violated FINRA Rule 4511 by causing the Firm to maintain false books and records. As a result of that violation, Sunada also violated FINRA Rule 2010.

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

1. A suspension from association with any FINRA member firm in all capacities for 30 days; and
2. A \$5000 fine.

I agree that the fine shall be due and payable either immediately upon reassociation with a member firm following the 30 day suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

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.

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

3. 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.

D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I 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.

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.

December 9, 2013
Date

Donna Sunada
Donna Sunada
Respondent

Accepted by FINRA:

1/6/14
Date

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

Susan Light
Susan Light
Senior Vice President and Chief Counsel
FINRA Department of Enforcement
One World Financial Center
200 Liberty Street, 11th Floor
New York, NY 10281