

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2013036524903**

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

RE: Lance J. Ziesemer, Respondent
General Securities Representative and General Securities Sales Supervisor
CRD No. 2342087

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

Ziesemer entered the securities industry as a General Securities Representative in 1993 and first became registered as a General Securities Sales Supervisor in 1997. From May 2007 until February 3, 2016, he was registered with Feltl & Company ("Feltl"). Although Ziesemer is not currently registered with a FINRA broker-dealer, he remains subject to FINRA jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

Ziesemer signed an AWC in 2008 in which FINRA alleged that Ziesemer settled two customer complaints away from his broker-dealer. That AWC imposed a 20-day suspension in all capacities and a \$5,000 fine.

OVERVIEW

While registered with Feltl, Ziesemer implemented a trading strategy and made unsuitable recommendations to two customers to switch from Unit Investment Trusts ("UITs") to other UITs after holding the investments for a short time

period. This conduct constitutes violations of NASD Rule 2310 and FINRA Rules 2111 and 2010.

FACTS AND VIOLATIVE CONDUCT

While registered with Feltl, Ziesemer recommended that a number of his customers buy and sell UITs. UITs are investment companies that offer shares of a fixed portfolio of securities in a one-time public offering, and terminate on a specified date. As such, they are not designed to be used as trading vehicles. In addition, UITs typically carry significant upfront charges,¹ and as with mutual funds that carry front-end sales charges, short-term trading of UITs is generally improper.²

Between January 2011 and December 2012, Ziesemer recommended that two customers, GH and BV, repeatedly sell UITs that they had held for short time periods – all less than twelve months and many in less than one month – and use the proceeds to purchase other UITs. GH and BV, following Ziesemer's recommendations, made 36 short-term UIT switches. The firm's procedures in place at the time required Ziesemer to obtain a "switch letter" signed by the customer before selling any UIT and purchasing another UIT that carried a sales charge. Although all 36 of GH and BV's short-term UIT trades fell into this category, Ziesemer failed to obtain switch letters for any of them.

These short-term UIT transactions resulted in approximately \$160,000 in combined net losses for GH and BV. In addition, they paid total commissions of \$64,815 on these transactions, of which Ziesemer received \$38,889.

Through this conduct, Ziesemer violated NASD Conduct Rule 2310 (for conduct occurring before July 9, 2012), FINRA Rule 2111 (for conduct occurring on or after July 9, 2012), and FINRA Rule 2010.

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

- A three-month suspension from associating with any FINRA broker-dealer in any capacity
- A fine in the amount of \$7,500
- Disgorgement of commissions received, which is ordered to be paid to

¹ A UIT purchased during the initial offering period carries sales charges that typically range from 2.5% to 3.5% of the purchase amount. These charges consist of both an initial sales charge assessed at the time of purchase and a deferred sales charge deducted in installments after the close of the initial offering period.

² See NASD IM-2310-2(b)(3) ("Trading in mutual fund shares, particularly on a short-term basis. It is clear that normally these securities are not proper trading vehicles and such activity on its face may raise the question of Rule violation.").

FINRA³ in the amount of \$38,889, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621, from December 31, 2012 until the date this AWC is accepted by the NAC.

Both the fine and disgorgement shall be due and payable either immediately upon reassociation with a member firm following the three-month 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.

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

I understand that if I am barred or suspended from associating with any FINRA member in a principal capacity, 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 principal capacity during the period of the bar or suspension (*see* FINRA Rules 8310 and 8311). Further, because I am subject to a statutory disqualification during the suspension, if I remain associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

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.

³ No restitution to customers is ordered here because both affected customers have already entered into agreements to settle their claims arising from the conduct described in this AWC.

Further, I specifically and voluntarily waive any right to claim bias or prejudice 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 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. 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 understood 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.

04/19/2016
Date (mm/dd/yyyy)

[Signature]
Respondent

Reviewed by:

Attorney Name
Counsel for Respondent
Firm Name
Address
City/State/Zip
Phone Number

Accepted by FINRA:

5/12/16
Date

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



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