

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013036632201**

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

RE: Daryl R. Lemon, Respondent
General Securities Representative
CRD No. 2473133

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Daryl R. Lemon, 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

Lemon was associated with Sagepoint Financial, Inc. ("SFI" or "the Firm") from October 31, 2005 through June 21, 2013 as a General Securities Representative. He is not currently associated with a FINRA member.

RELEVANT DISCIPLINARY HISTORY

In New York Stock Exchange Hearing Panel Decision 00-192, issued on November 7, 2000, Lemon consented to a censure and a bar for a period of three months from membership, allied membership, approved person status and from employment or association in any capacity with any New York Stock Exchange member or member organization. The Hearing Panel found that Lemon caused a violation of Securities Exchange Act Rules 17a-3 and 17a-4 and Exchange Rule 440 by causing the books and records of his employer member firm to be inaccurate by signing the name of a customer on a letter of authorization for the transfer of assets between the customer's accounts.

OVERVIEW

Lemon violated NASD Conduct Rule 3040 and FINRA Rule 2010 by executing 1,236 transactions in a customer's securities account maintained at another broker-dealer without providing any notice to his Firm.

FACTS AND VIOLATIVE CONDUCT

NASD Rule 3040 prohibits an associated person from participating in any manner in a private securities transaction without written prior notification to the member. "Private securities transactions" are "any transactions outside the regular course or scope of any associated person's employment with a member . . ." NASD Rule 3040 applies to both purchases and sales of securities. It "serves not only to protect investors, but also to permit securities firms, which may be subject to liability in connection with transactions in which their representatives become involved, to supervise such transactions." *Mark H. Love*, Exchange Act Rel. No. 49248, 2004 SEC LEXIS 318, at *9 (Feb. 13, 2004).

SFI customer DML, born in June 1929, maintained a separate securities account at a discount broker. In early 2009, Lemon, who had known DML and her late husband for many years, suggested to DML that he "manage" her discount brokerage account. DML's husband had previously managed the account. However, there was virtually no account activity after his death in March 2001.

From April 2009 through 2011, Lemon accessed DML's discount brokerage account online on more than 1000 occasions. During that period, Lemon executed 1,236 transactions (621 purchases that collectively totaled approximately \$23.5 million and 615 sales that collectively totaled about \$23.3 million), and periodically charged DML amounts that he characterized as "Advisory Fees." Lemon engaged in this activity without providing prior written notice, or any notice at all, to the Firm.¹

As a result of the foregoing conduct, Lemon violated NASD Conduct Rule 3040 and FINRA Rule 2010.

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

A bar from associating in any capacity with any FINRA member firm.

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

¹ On February 21, 2013, DML filed a lawsuit against Lemon and his Firm alleging various claims including Breach of Contract, Fraud & Deceit, Negligent Misrepresentation, Breach of Fiduciary Duty and Elder Abuse. That matter was settled in September 2013.

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 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.

Nov 25 2014
Date (mm/dd/yyyy)

Daryl R. Lemon
Daryl R. Lemon

Reviewed by:

Jonathan Schwartz
Jonathan Schwartz, Esq.
Counsel for Respondent
4640 Admiralty Way, Fifth Floor
Marina del Rey, CA 90292
(310) 496-5770

Accepted by FINRA:

12/23/14
Date

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

Joel T. Kornfeld
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