

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013036717601**

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

RE: Magnolia Gaerlan ("Gaerlan"), Respondent
General Securities Representative
CRD No. 2786243

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

Gaerlan entered the securities industry in March 1996, when she became employed as a registered sales assistant with a FINRA member firm. She worked at two other FINRA-regulated entities before joining Morgan Stanley Smith Barney, LLC (the "Firm") in June 2009. She remained employed at the Firm until September 24, 2013.

On October 3, 2013, the Firm filed a Uniform Termination Notice for Securities Industry Registration reporting that Gaerlan had voluntarily resigned on September 24, 2013. Although Gaerlan has not been employed in the securities industry since September 24, 2013, she remains subject to FINRA's jurisdiction until at least October 2, 2015, pursuant to Article V, Section 4 of the FINRA By-Laws.

RELEVANT DISCIPLINARY HISTORY

Gaerlan has no prior disciplinary history.

OVERVIEW

On July 14, 2011, and July 15, 2011, Gaerlan effected wire transfers for \$250,000 and \$15,000, respectively, from the account of Firm customer RB to unrelated third-party accounts. Gaerlan processed the wires at the direction of a broker for whom she worked, BS, after he received a series of fraudulent emails from RB's personal email account requesting the funds transfers. Gaerlan did not speak to RB prior to processing the wire transfers, but believed that BS had spoken to RB.

The Firm's policies and procedures required verbal authorization by a customer for all wire transfer requests. Although Gaerlan did not get the required verbal authorization for the wire transfers, she completed several documents on which she falsely stated that she had spoken to RB, including a Verbal Client Instructions (VCI) for Same Name or Third Party Fed Funds (\$100,000 or Less) form ("VCI Form"), a Fed Funds Verification Checklist form ("Verification Form") and a Letter of Authorization ("LOA").

Gaerlan violated FINRA Rule 2010 by making misrepresentations to the Firm. Gaerlan also violated NASD Rule 3110¹ and FINRA Rule 2010 by causing the Firm's books and records to be inaccurate.

FACTS AND VIOLATIVE CONDUCT

1. FINRA Rules 2010 and NASD Rule 3110

FINRA Rule 2010 provides that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." A registered person's creation of false documents represents conduct that is inconsistent with the just and equitable principles of trade and violates the high standards of commercial honor required of individuals associated with member firms.

NASD Rule 3110 requires each member to make and preserve books and records in conformity with Section 17(a) of the Securities Exchange Act of 1934 and Rules 17a-3 and 17a-4 thereunder. Rule 17a-4(b)(4) requires that a firm preserve accurate records relating to communications concerning the firm's business. Falsification of a firm's books and records violates NASD Rule 3110 and FINRA Rule 2010.

¹ Effective December 5, 2011, FINRA Rule 4511 superseded NASD Rule 3110. The conduct at issue occurred prior to December 5, 2011. NASD Rule 3110, therefore, applies to the facts of this case.

2. The Firm's Policies and Procedures

The Firm's policies and procedures required that registered representatives receive verbal authorization before processing wire transfer requests and confirm that they were speaking with the customer or authorized agent through their personal relationship with the customer or a series of questions to confirm the customer's identity. Registered representatives also were required to complete either a VCI Form or a Verbal Wire Processing Form before executing the transfer, indicating that they had spoken with the customer and verified the customer's identity. For wire transfers over \$100,000, registered representatives also had to complete a Verification Form and submit an LOA on which they indicated that they had spoken to the customer.

The Firm's policies and procedures also prohibited employees from creating any Firm documents that were or false or misleading.

3 The July 14, 2011 Wire Transfer

On July 11, 2011, BS received an email from RB's personal email account. It was later discovered that the email was sent by someone who had hacked RB's email account (the "Hacker"). The email requested that BS wire \$250,000 to a third-party's account and explained that RB needed the money to finance a new business.

In a series of emails sent later that day, the Hacker and BS discussed the timing of the transfer, source of funds and where it should be sent. The Hacker told BS that he needed the funds immediately and instructed him to liquidate an account valued at \$265,000 ("Account A"). At BS's request, the Hacker provided the routing instructions for the wire transfer and requested an LOA.

BS then asked Gaerlan to send the LOA to the Hacker and process the wire transfer request. BS did not tell Gaerlan that he had spoken to RB. As requested, Gaerlan sent a blank LOA to the Hacker in an email. BS later received an email from the Hacker attaching a fraudulently executed LOA, which authorized a transfer of \$250,000 to a foreign bank account.

Gaerlan falsely stated on two Firm documents that she had spoken to RB regarding the wire transfer. She affixed a stamp to the LOA on which she indicated that she had spoken to RB on July 12, 2011. She falsely stated on a Verification Form dated July 14, 2011, that she had spoken to RB and verified the wire instructions. The Firm subsequently processed a wire transfer in the amount of \$250,000 on the basis of the Verification Form and the LOA.

4. The July 15, 2011 Wire Transfer

On July 15, 2011, BS received an email from the Hacker requesting that the remaining \$15,000 in Account A be sent to a third-party's bank account for repairs on the RB's home.

BS immediately forwarded this email to Gaerlan, asking her to process the \$15,000 wire transfer, which she did. BS did not tell Gaerlan that he had spoken to RB.

On a VCI Form dated July 15, 2011, Gaerlan falsely stated that she had spoken to RB. The Firm subsequently processed a wire transfer in the amount of \$15,000 on the basis of this VCI Form.

5. Gaerlan's Violations of FINRA Rule 2010 and NASD Rule 3110

Gaerlan violated FINRA Rule 2010 by falsely stating on the VCI and Verification Forms and the LOA that she had spoken to RB and confirmed the wire transfer instructions.

By making false statements on the VCI and Verification Forms and the LOA, Gaerlan violated NASD Rule 3110 and FINRA Rule 2010 in that she caused the Firm to maintain false books and records

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

- A one-month suspension from association with any FINRA member firm in all capacities; and
- a \$5,000 fine.

The fine shall be due and payable either immediately upon reassociation with a member firm following the one-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(s) 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

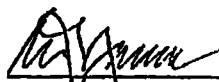
C. If accepted:

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
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.

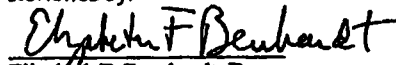
- D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

I certify that I have read and 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 the Firm to submit it.

12-12-13
Date


Magnolia Gaerlan

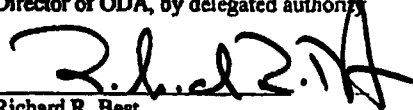
Reviewed by:


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Accepted by FINRA:

1.15.14
Date

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



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