

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20130368711**

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

RE: David Phillip Morabito, Respondent
Former General Securities Representative
CRD No. 2799155

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, David Phillip Morabito ("Morabito"), 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. Morabito 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

Morabito began in the securities industry in August 1996 when he became employed as operations manager with a FINRA-regulated firm. He remained with that firm until April 1998 and subsequently held several positions at a series of FINRA-regulated firms until February 2007, when he became employed with Oppenheimer & Co., Inc. ("Oppenheimer" or the "Firm") as a registered representative. Morabito's employment with Oppenheimer was terminated on May 3, 2013. Between August 2013 and February 3, 2014, Morabito was employed as a registered representative by another FINRA-regulated firm. Since then he has not been employed in the securities industry.

On May 3, 2013, Oppenheimer filed a Uniform Termination for Securities Industry Registration reporting that Morabito's employment was terminated the same day for soliciting Oppenheimer customers to make unapproved loans totaling approximately \$50,000 to a private company.

Although Morabito is not currently employed with a FINRA-regulated firm, pursuant to Article V, Section 4 of FINRA's By-Laws, he remains subject to

FINRA's jurisdiction until at least February 2, 2016.

RELEVANT DISCIPLINARY HISTORY

Morabito has no relevant disciplinary history.

OVERVIEW

Between December 2007 and January 2010 (the "Relevant Period"), Morabito, participated in private securities transactions with TOG, a private investment company, without providing notice of the transactions to his FINRA-regulated employer. Specifically, Morabito recommended and facilitated Oppenheimer customers to invest in DFT, a technology company, through TOG. Morabito failed to provide notice of the transactions to Oppenheimer or obtain its written approval prior to participating in the transactions. By failing to notify Oppenheimer of the transactions or obtaining its written approval prior to participating in them, Morabito violated NASD Rule 3040 and FINRA Rule 2010.

In addition, in or about June 2007, Morabito loaned Firm customer PM \$25,000 without notifying the Firm of the loan or receiving its approval. As a result, Morabito violated NASD Rules 2370 and 2110.

Morabito also wilfully failed to update and disclose on a Uniform Application for Securities Industry Regulation or Transfer ("Form U-4") that on March 30, 2012 he filed for Bankruptcy under Chapter 7 of Title 11 of the United States Code, and that on March 11, 2009, a lien was filed against him in Nassau County State Court for \$8,600.

Morabito failed to report his bankruptcy and his lien to the Firm.

FACTS AND VIOLATIVE CONDUCT

NASD Rule 3040(b) requires associated persons to provide written notice to their FINRA-regulated employer "prior to participating in any private securities transaction." The term "private securities transaction," as defined in NASD Rule 3040(e)(1), is any security transaction outside the regular course or scope of an associated person's employment with a member, and applies to both sales and purchases of securities.

FINRA Rule 2010 requires that registered representatives observe high standards of commercial honor and just and equitable principles of trade. A violation of NASD Rule 3040 is also a violation of FINRA Rule 2010.

1. Private Securities Transactions

The Firm's written policies and procedures required that registered representatives submit a written request to the Firm's Compliance department prior to participating in a private securities transaction. The Firm provided a written acknowledgement to the registered representative if it approved the transactions.

The Transactions with LM

In December 2008, Morabito contacted LM, a Firm customer, and recommended that LM invest in DFT. Morabito told LM that TOG was accepting funds from customers interested in investing in DFT and that DFT was going to engage in a profitable deal with another well-known company. After LM decided to invest in DFT, Morabito helped LM withdraw funds from the Firm and communicated with TOG on LM's behalf. On or about December 19, 2008, LM sent \$4,000 to TOG to invest in DFT. LM subsequently received a promissory note from TOG dated December 20, 2008 stating that LM would receive 20 percent annual interest due and payable in a single installment on or before December 20, 2009, or an appropriate amount of DFT common stock.

In January 2010, Morabito recommended that LM invest an additional \$6,000 in DFT through TOG. LM withdrew \$6,000 from her Firm account and Morabito instructed LM where to send the money. LM subsequently received a promissory note from TOG dated January 15, 2010 stating that LM would receive 20 percent annual interest due and payable in a single installment on or before January 15, 2011, or an appropriate amount of DFT common stock.

To date, LM has not received repayment of her loan, interest or any stock in DFT.

The Transactions with JS

In December 2009, Morabito contacted JS, a Firm customer, and recommended that JS invest in DFT. As a result, on or about December 10, 2009, JS invested \$15,000 with TOG and received a promissory note stating JS would receive 20 percent annual interest within one year of his investment or an appropriate amount of DFT common stock.

To date, JS has not received repayment of his loan, interest or any stock in DFT.

2. Borrowing From or Lending to Customers

NASD Rule 2370 prohibits registered persons from borrowing money or lending money to his or her customers unless the firm has written procedures that permit lending arrangements and the lending arrangements meets one of five permissible conditions. One condition in which loans are permissible is when the loan is with

a relative of the registered representative.

The Firm's written policies prohibited employees from borrowing money from or lending money to any customer, except in limited circumstances involving immediate family members. When an employee wanted to loan money to a Firm customer, who was also an immediate family member, the employee was required to obtain written approval for the loan from a branch or department manager and the Firm's Compliance Department.

In or about June 2007, Morabito loaned PM, one of his immediate family members, \$25,000 to invest in DFT. At the time, PM held an account with the Firm that was serviced by Morabito. Morabito failed to notify the Firm of the loan or obtain written approval from the Firm to make the loan.

By loaning \$25,000 to PM to invest in TOG and failing to notify the firm of the loan or obtain written approval for it, Morabito violated NASD Rules 2370 and 2110.

3. Failure to Disclose Bankruptcy and Liens

Article V, Section 2(c) of the 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 no later than 30 days after learning of the facts or circumstances giving rise to the amendment." FINRA Rule 1122 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."

On March 30, 2012, Morabito filed for bankruptcy in the United States District Court for the Eastern District of New York. Question 14K of the Form U4 asks, "[w]ithin the past 10 years...have you made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition? Morabito was required to amend his Form U4 within 30 days of filing the bankruptcy petition with a "Yes" response to Question 14K. However, Morabito wilfully failed to update his Firm U4 to report that he filed for bankruptcy.

On March 12, 2009, a judgment for \$8,600 was entered in favor of Bayles Properties, Inc. against Morabito in the Second District Court in Nassau County, New York. Question 14M of the Form U4 asks, "[d]o you have any unsatisfied judgments or liens against you?" Morabito was required to amend his Form U4 within 30 days of filing the bankruptcy petition with a "Yes" response to Question 14M. Although Morabito received notice of this unsatisfied judgment, he wilfully failed to update his Form U4 to report it.

B. Morabito consents to the imposition of the following sanctions:

- a six month suspension from association with any FINRA-regulated 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 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 wilfully 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.

Morabito has submitted a sworn financial statement and demonstrated an inability to pay. In light of the financial status of Morabito, no monetary sanctions have been imposed.

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 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.

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 this 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.

09/22/2014
Date (mm/dd/yyyy)

David Morabito
David Morabito

Reviewed by:

Martin P Unger
Martin Unger
Wexler Burkhardt Hirschberg & Unger LLP
377 Oak Street
Concourse Level C2
Garden City, New York 11530

Accepted by FINRA:

10.27.14
Date

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

Richard R. Best
Richard R. Best
Chief Counsel
FINRA Department of Enforcement
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