

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20130374171**

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

RE: James G. Kardell, Respondent
Capital Markets Front Office Applications Program Consultant
CRD No. 5217717

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

In September 2006, James G. Kardell ("Kardell") became associated with Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch" or "the Firm"), a FINRA registered broker-dealer, as a non-registered information systems employee in a Jersey City office of the Firm. Kardell subsequently was associated with the Firm as a non-registered systems programmer. At the time of the misconduct described herein, Kardell was a systems developer for the Firm's Liquidity Risk Technology team, with the title of Applications Program Consultant/Capital Markets Front Office.¹

On or about June 5, 2013, the Firm terminated Kardell's employment. He is not currently associated with a FINRA member firm. However, FINRA retains

¹ As a systems developer for the Firm's Liquidity Risk Technology team, Kardell's duties included responsibility for programming systems that aggregated information on liquidity for use by Merrill Lynch and other affiliates of Merrill Lynch's parent firm. This position directly supported the Firm's capital markets systems and assisted the Firm in calculating and assessing its financial status and position. By virtue of his activities in the securities industry, Kardell was an Associated Person as that term is defined by FINRA By-Laws.

jurisdiction over Kardell until June 4, 2015, pursuant to Article V, Sec. 4 of the FINRA By-Laws.

RELEVANT DISCIPLINARY HISTORY

Kardell has no prior relevant disciplinary history in the securities industry.

OVERVIEW

Between April 25, 2013 and May 10, 2013 (the "Relevant Period"), Kardell deposited into his personal checking account a total of three checks, totaling \$523, drawn on his joint checking account. Kardell then immediately withdrew funds from his personal checking account, knowing that there were insufficient funds in the joint account to cover these checks. The bank returned all three checks for insufficient funds ("NSF"). By doing so, Kardell violated FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

FINRA Rule 2010 states that a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade. Writing checks and depositing checks without having sufficient funds to cover the checks at the time they are deposited, or "check kiting," is a violation of Rule 2010.

During the Relevant Period, Kardell deposited three checks totaling approximately \$523 into his personal checking account drawn from a joint checking account that he owned with his wife. Kardell knew the joint account was overdrawn and did not have sufficient funds to cover the checks that he had issued from the account. Following the deposit of these checks, Kardell then immediately withdrew \$523 from his personal account.

The three checks were later returned for insufficient funds because the joint account was overdrawn at the time that each check was deposited. Kardell knew there were insufficient funds in his joint account at the time he deposited each check into his personal account. By depositing checks with insufficient funds to cover the checks, and then immediately withdrawing funds, Kardell obtained unauthorized loans from his bank and was thereby engaged in "check kiting."

By engaging in the aforementioned conduct, Kardell violated FINRA Rule 2010.

- B. Respondent also consents to the imposition of the following sanctions:
- a three-month suspension from association with any FINRA member in any capacity; and
 - a fine of \$5,000.

The fine 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.

Respondent specifically and voluntarily waives any right to claim that he is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

Respondent understands that if he is barred or suspended from associating with any FINRA member, he becomes 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, Respondent 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

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against him;
- 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, Respondent specifically and voluntarily waives 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.

Respondent further specifically and voluntarily waives 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

Respondent understands 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 him; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against him;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about his 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. Respondent 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. Respondent 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 Respondent's: (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. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that he 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.

Respondent certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Respondent has 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 Respondent to submit it.

12/12/2014
Date (mm/dd/yyyy)

James G. Kardell
James G. Kardell

Accepted by FINRA:

1/23/15
Date

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

Richard Chin, Esq.
Richard Chin, Esq.
Chief Counsel
FINRA Department of Enforcement
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