

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013037497001**

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

RE: David Michael Mitchell, Respondent
Registered Representative
CRD No. 3091132

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent 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 Respondent 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

David Michael Mitchell ("Mitchell") entered the securities industry in 1998. Beginning in 1998 and through June 2013, Respondent was registered with Morgan Stanley ("Morgan Stanley" or the "Firm") or one of its predecessor firms in its Portland, ME branch, as a registered representative.¹ From June 2013 through the present, Mitchell has been registered with a different FINRA regulated broker-dealer. He currently holds Series 7 (General Securities Representative), Series 31 (Futures Managed Funds), Series 63 (Uniform Securities – State Law) and Series 65 (NSAA Investment Advisor) securities licenses.

By Uniform Termination Notice for Securities Industry Registration ("Form U5") filed on July 2, 2013, Morgan Stanley reported Mitchell's voluntary termination effective June 20, 2013. The Form U5 further reported that Mitchell was "subject to internal review in connection with the alteration of several client phone numbers in the firm's records" at the time his termination was tendered.

¹ In or about early 2009, the FINRA-regulated broker dealer where Respondent had worked since 1998 was acquired by Morgan Stanley Smith Barney, presently known as Morgan Stanley.

RELEVANT DISCIPLINARY HISTORY

Mitchell has no relevant disciplinary history.

OVERVIEW

In June 2013, in anticipation of becoming associated with a new FINRA registered broker-dealer employer and while still registered with Morgan Stanley, Respondent altered customer contact information maintained in the Firm's books and records for at least nine of his customer accounts. Specifically, by accessing the Firm's computer systems, Respondent altered a total of 30 items of customer information, including 17 customer telephone numbers and 13 customer e-mail addresses. Mitchell's conduct violated FINRA Rules 4511(a) and 2010.

FACTS AND VIOLATIVE CONDUCT

FINRA Rule 4511(a) provides that "members shall make and preserve books and records as required under the FINRA Rules, the Exchange Act and the applicable Exchange Act rules." Section 17(a) of the Exchange Act and Rule 17a-3 promulgated thereunder require every member of a national securities exchange who transacts business in securities to make and keep current certain identified books and records related to its business. These include customer account records such as a customer's name, address and telephone number.

FINRA Rule 2010 requires a member, in the conduct of his business, to observe high standards of commercial honor and just and equitable principles of trade.

In or about June 12, 2013, in anticipation of transferring his registration to a different FINRA regulated broker-dealer, Mitchell altered a total of 30 items of customer contact information for nine of his customers, including 17 telephone numbers and 13 e-mail addresses for 13 accounts. Mitchell's actions were driven by a desire to delay competing Morgan Stanley registered persons from contacting his customers, with the hope of persuading these customers to move their accounts to Respondent's new FINRA regulated broker-dealer employer. Mitchell altered the Firm's books and records by accessing the Firm's computer systems using his Firm-issued unique user identification number and password and manually entering the changes, which consisted mostly of transposing, omitting or adding numbers and/or letters. Mitchell acted without the knowledge or authorization of the affected customers or the Firm.

By altering the telephone and e-mail records of the Firm's customers, Mitchell failed to uphold high standards of commercial honor in violation of FINRA Rule 2010 and caused the Firm's books and records to be inaccurate in violation of FINRA Rules 4511(a) and 2010.

B. Respondent also consents to the imposition of the following sanctions:

- A 30 business-day suspension from association with any FINRA member in any capacity, and
- A \$5,000 fine.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which he proposes to pay the fine imposed.

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.

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 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.

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:

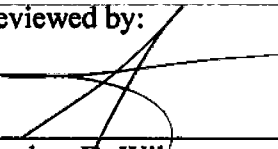
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; 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 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. 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 had 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 him to submit it.

12/8/15
Date

David M. Mitchell
David Michael Mitchell

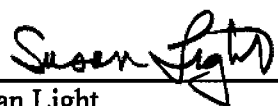
Reviewed by:


Stephen D. Wilson
Counsel for Respondent
Preti, Flaherty, Beliveau & Pachios, Chartered, LLP
One City Center
Portland, ME
207.791.3257

Accepted by FINRA:

January 5, 2016
Date

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


Susan Light
Sr. Vice President & Chief Counsel
FINRA Department of Enforcement
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