

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013037843201**

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

RE: David Lomedico, Respondent
General Securities Representative
CRD No. 1531676

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

Respondent first became registered as an Investment Company Products/Variable Contracts Representative ("IR") with a FINRA member firm in August 1986. He became registered as a General Securities Representative ("GSR") in November 1988 through an association with another member firm. Subsequently, he was associated with various member firms where he was registered as a GSR. From November 3, 2006 through March 27, 2013, he was registered as a GSR with FINRA member firm Rockwell Global Capital LLC ("Rockwell"). Between April 2013 and May 2016, Respondent was associated with another member firm where he was registered as a GSR. That firm filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") on May 26, 2016, terminating Respondent's registration. Respondent is not currently registered with FINRA or associated with a FINRA member firm but remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

Respondent has no prior disciplinary history with the Securities and Exchange Commission, FINRA, any self-regulatory organization, or any state securities regulator.

OVERVIEW

Respondent recommended unsuitable transactions in the accounts of two of his customers, AH and MC. By recommending unsuitable transactions, Respondent violated NASD Conduct Rule 2310 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

NASD Conduct Rule 2310 requires associated persons to have reasonable grounds for believing that recommendations are suitable for a customer based on the facts disclosed by the customer as to his or her other security holdings and financial situation and needs. FINRA Rule 2010 requires that a member, in the conduct of its business, observe high standards of commercial honor and just and equitable principles of trade.

Unsuitable Recommendations in AH's Account

From June 2007 to July 2011, Respondent was the registered representative for husband and wife WH and AH, while they were customers at Rockwell. WH and AH were 72 and 64, respectively, at the time their joint trust account was opened. During that time, the investment objective for WH's and AH's account was speculation. Respondent communicated with WH about the couple's Rockwell account and he made recommendations to buy and sell securities in that account solely to WH.

In July 2011, WH died. AH had little investment knowledge or experience. Prior to her husband's death, AH had relied entirely on WH to manage the couple's finances and investments, including their Rockwell account. Now 68 years old and a widow, AH's investment objective was long-term capital appreciation.

But Respondent did not take any steps upon WH's death to assess AH's changed circumstances. He did not speak with AH to determine her investment objective and investment experience, instead relying on the account's prior investment objective of speculation for his recommendations. As a result, Respondent continued to recommend short-term trading and use of margin that was inconsistent with AH's investment objective and risk tolerance and thus was unsuitable under NASD Conduct Rule 2310.

Unsuitable Recommendations in MC's Account

In June 2009, FINRA advised its membership through Regulatory Notice 09-31 concerning leveraged and inverse Exchange-Traded Funds ("non-traditional ETFs") that "[d]ue to the effect of compounding, their performance over longer periods of time can differ significantly from the performance . . . of their underlying index or benchmark during the same period of time." Due to these risks and the inherent complexity of the products, FINRA Regulatory Notice 09-31 advised broker-dealers and their representatives that non-traditional ETFs "typically are not suitable for retail investors who plan to hold them for more than one trading session, particularly in volatile markets."

In December 2008, customer MC opened an account with Respondent at Rockwell. MC explained to Respondent that she was looking for a steady return with limited risk. MC had minimal investment experience and no prior experience trading in non-traditional ETFs. From June 2009 through May 2010, Respondent recommended the purchase of non-traditional ETFs for MC's account.

Although the prospectuses for the non-traditional ETFs recommended by Respondent warned that the non-traditional ETFs were intended to be used as short-term trading vehicles for investors who sought "investment results for a single day only," those investments remained in MC's account through June 2012, when the account was transferred out of Rockwell. Respondent's recommendations to purchase non-traditional ETFs as long-term investments was inconsistent with MC's investment objective and risk tolerance and thus was unsuitable under NASD Conduct Rule 2310.

By virtue of the foregoing, Respondent violated NASD Conduct Rule 2310 and FINRA Rule 1010.

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

- A four-month suspension from association with any FINRA member firm in any capacity; and,
- A \$5,000 fine.

The fine shall be due and payable either immediately upon re-association with a member firm, 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 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 prejudice 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 Respondent; 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 his: (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 understands and acknowledges that FINRA does not represent or advise him and Respondent cannot rely on FINRA or FINRA staff members for legal advice; that he 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.

06/29/2017
Date (mm/dd/yyyy)

David Lomedico
Respondent David Lomedico

Accepted by FINRA:

8/3/17
Date

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

Vaishali Shetty
Vaishali Shetty
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FINRA, District 10
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