

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2013038054201**

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

**RE:** Robert K. Themm  
Registered Representative  
CRD No. 2886714

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Robert K. Themm ("Respondent" or "Themm") 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 Themm 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**

Robert K. Themm entered the securities industry in July 1997 as an Investment Company and Variable Products Representative with a FINRA-registered firm. In October 2006, Themm became registered as a general securities representative with another FINRA-registered firm. In July 2011, he became registered in both capacities with Moloney Securities Co. He remains registered with Moloney Securities. Themm has no prior disciplinary history.

**OVERVIEW**

Themm converted funds given to him by his customer, in violation of FINRA Rule 2010. He also provided false and misleading responses and failed to provide certain records to FINRA staff, in violation of FINRA Rules 8210 and 2010. Additionally, Themm borrowed money from two of his customers, in violation of FINRA Rules 3240 and 2010. Finally, Themm failed to disclose on his Form U4 four judgments entered against him, in violation of Article V, Section 2 of FINRA's By-Laws and FINRA Rules 1122 and 2010.

## **FACTS AND VIOLATIVE CONDUCT**

### **FINRA Rule 2010 Conversion**

1. On or about October 1, 2011, Robert Themm solicited \$2,500 from DM, purportedly to enter into a joint purchase of at least one antique medal coin from another registered representative who was a collector of such coins, DK.
2. Prior to entering into the transaction, Themm represented to DM that the antique medal coin would be held for an unspecified period of time to allow it to appreciate in value. Themm further represented that the antique medal coin would eventually be sold and that the parties would split the profits.
3. The total amount of the purported purchase price of the antique medal coin was \$5,000, with each side contributing \$2,500 to the transaction. On or about October 1, 2011, DM paid her portion by giving Themm a check in the amount of \$2,500, which was made payable to Themm.
4. Unbeknownst to DM, however, Themm never purchased the antique medal coin and used DM's \$2,500 to pay his bills and other personal expenses.
5. At various times thereafter, including, but not limited to January, May and June 2012, DM asked Themm about the status of the purchase. In February 2012, Themm informed DM that an auction to sell the antique medal coin would take place on February 22, 2012. In June 2012, Themm later informed DM that the auction would not likely occur until later in the year. At no time did Themm ever disclose to DM that the coin purchase had never occurred.
6. Based on the foregoing, Themm converted \$2,500 of customer DM's funds, in violation of FINRA Rule 2010.

### **FINRA Rules 8210 and 2010 Providing a False Submission and an Incomplete and Misleading Response to FINRA**

7. On or about October 1, 2013, FINRA staff began investigating a written complaint made by DM involving, among other things, Themm's failure to purchase the antique medal coin.
8. As part of its investigation, FINRA staff met with Themm in November 2013 to discuss, among other things, allegations made by DM in her complaint.
9. During an interview of Themm on or about November 13, 2013, he told FINRA staff the following: that he obtained \$2,500 from DM; that he purchased an antique medal coin for \$5,000 from DK, a registered

representative who was a collector of such coins; that the source of the funds was DM's \$2,500 and his own \$2,500; that the coin was presently in DK's possession; and that the purchase of the coin was evidenced by a receipt, which Themm provided to FINRA staff.

10. On November 14, 2013, FINRA staff sent Themm a letter (along with DM's written complaint), in which it requested, pursuant to FINRA Rule 8210, that he provide information related to, among other things, the purchase of any antique medal coins.
11. Specifically, FINRA staff asked Themm, among other things, to "describe in detail" any antique medal coin purchase involving DM.
12. On November 27, 2013, Themm sent FINRA staff a response to its 8210 request by email. In his response, Themm stated the following: that he asked DK to sell him some medal coins; that DK informed him that the medal coins DK had in his possession were rapidly going up in value at auctions; that DK agreed to sell him \$5,000 worth of medal coins; that he "had \$2,500" of his own money to invest; that he asked DM to also provide \$2,500; and that she paid him \$2,500.
13. On February 21, 2014, Themm testified during an on-the-record interview conducted by FINRA staff that he never, in fact, purchased an antique medal coin on behalf of DM and that he used DM's \$2,500 to pay his bills and other expenses.
14. Based on the above, by providing a receipt to FINRA staff that purportedly evidenced the purchase of the antique medal coin, Themm made a false submission to FINRA, in violation of FINRA Rule 2010.
15. Furthermore, based on the above, by failing to state in his written response to the Rule 8210 request that the purchase of the antique medal coin had not occurred, Themm made incomplete and misleading statements, in violation of FINRA Rules 8210 and 2010.

**FINRA Rules 8210 and 2010**  
**Failure to Provide Bank-Related Documents**

16. On or about November 14, 2013, FINRA staff sent Themm a written request that he provide certain information by November 22, 2013, pursuant to and in accordance with the provisions of FINRA Rule 8210. Specifically, the staff requested that Themm provide "bank statements and checks showing deposits and withdrawals for the medals purchase." The request for information was sent by email. No bank statements and checks were ever provided to FINRA staff.

17. On or about February 7, 2014, FINRA staff sent Themm a second letter asking that he provide certain information by February 14, 2014. The request was made pursuant to and in accordance with the provisions of FINRA Rule 8210 and was sent by first class mail and by certified mail, return receipt requested, to Themm's CRD address of record. Additionally, the request was sent to Themm's email address. According to information provided by the U.S. Post Office, the letter sent by certified mail was received by Themm on February 19, 2014. The letter sent by regular mail was never returned. Additionally, during Themm's on-the-record interview on February 21, 2014, FINRA staff again requested that he produce the bank statements and checks. To date, the requested documentation has not been produced to FINRA staff.
18. By failing to provide certain records requested by FINRA staff, Themm violated FINRA Rules 8210 and 2010.

**Borrowing Money from Customers DM and SP  
FINRA Rules 3240 and 2010**

19. On or about November 5, 2011, Themm borrowed \$4,000 from DM, Themm's customer and a customer of the firm.
20. Under the terms of the agreement signed by both parties, Themm was obligated to return the principal, plus 8% interest, by January 5, 2012. To date, Themm has repaid DM only \$2,400, and has not paid back the balance of the loan plus interest.
21. On or about August 1, 2012, Themm borrowed \$5,000 from SP, Themm's customer and a customer of the firm. Themm has failed to repay any portion of the loan obtained from SP.
22. At the time of the loans, Moloney Securities' compliance manual explicitly prohibited a representative from borrowing money from his customer.
23. By borrowing money from his customers contrary to his firm's written procedures, Themm violated FINRA Rules 3240 and 2010.

**Willful Failure to Disclose on a Form U4  
Article V, Section 2 of FINRA's By-Laws and  
FINRA Rules 1122 and 2010**

24. In or about July 2011, Themm submitted, or caused to be submitted, a Uniform Application for Securities Industry Registration or Transfer (Form U4) in connection with his FINRA registration through Moloney Securities.
25. Pursuant to Article V, Section 2(c) of FINRA's By-Laws, every application for registration with FINRA shall be kept current at all times by supplementary

amendments to be filed no later than 30 days after learning of the facts or circumstances giving rise to the amendment.

26. Question 14M on the Form U4 asks, "Do you have any unsatisfied judgments or liens against you?"
  27. On or about February 17, 2010, a judgment was entered in favor of PRS against Themm in the amount of \$1,943. Although Themm was aware of the judgment, he never disclosed it on his Form U4 that he submitted to Moloney Securities July 6, 2011.
  28. On or about March 23, 2010, a judgment was entered in favor of ZLO against Themm in the amount of \$2,182. Although Themm was aware of the judgment, he never disclosed it on his Form U4 that he submitted to Moloney Securities on July 6, 2011.
  29. On or about October 10, 2013, a judgment was entered in favor of DM against Themm in the amount of \$1,729.76 (\$1,600, the unpaid balance of the loan, plus costs and attorney fees). Although Themm was aware of the judgment, he never amended his Form U4 to disclose the judgment obtained by DM.
  30. In or about October 23, 2013, a judgment was entered in favor of SP, Themm's customer, in the approximate amount of \$5,000. Although Themm was aware of the judgment, he never amended his Form U4 to disclose the judgment obtained by SP.
  31. Themm's failures to disclose the above-mentioned unsatisfied judgments on his Form U4 in response to Question 14M were willful.
  32. By reason of Themm's failure 1) to make an initial disclosure on his Form U4 of the judgments obtained by PRS and ZLO and 2) to timely amend his Form U4 to disclose the judgments obtained by DM and SP, he acted in contravention of Article V, Section 2 of FINRA's By-Laws, and thus, violated FINRA Rules 1122 and 2010.
- B. I also consent to the imposition of the following sanctions: a bar from association with any member of FINRA in any capacity.

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 willfully omitted to state a material fact or willfully misrepresented 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 or misrepresentation makes me subject to a statutory disqualification with respect to association with a member.

The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to FINRA Rule 8313(e), a bar or expulsion shall become effective upon approval or acceptance of this AWC.

## **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.

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 to submit it.

3/12/14  
Date

Robert K. Themm  
Robert K. Themm

Accepted by FINRA:

3/14/14  
Date

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

Richard A. March  
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