

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013039046302**

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

RE: Xavier R. Endress, Respondent
Registered Representative
CRD No. 5466273

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Xavier R. Endress, submit 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. 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

Xavier Endress first became registered with FINRA as a general securities representative in September 2008, while he was employed at a FINRA-registered Firm. Endress registered with Merrill Lynch, Pierce, Fenner & Smith ("Merrill" or the "Firm") in November 2008 and was employed as a Financial Advisor when he voluntarily left the Firm. The Firm terminated his registration by filing a Form U5 on March 19, 2013. On November 7, 2013, Merrill filed an amended Form U5 for Endress, disclosing its internal review of his conduct.

RELEVANT DISCIPLINARY HISTORY

Endress does not have any relevant disciplinary history.

OVERVIEW

From November 2012 to March 2013, while working as a registered representative at Merrill, Endress created a limited liability company, engaged in outside business activities through that company, opened a brokerage account at Merrill for that company and provided false information to Merrill on the documents required to establish the company's brokerage account. Endress did not disclose to Merrill his outside business activities through the company or his beneficial interest in the company's brokerage account, as was required by FINRA Rules and Merrill's written policies and procedures.

As a result of the above conduct, Endress violated FINRA Rules 2010, 3270 and 4511.

FACTS AND VIOLATIVE CONDUCT

FINRA Rule 2010 provides that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."

FINRA Rule 3270 provides that "[n]o registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member." A violation of FINRA Rule 3270 is also a violation of FINRA Rule 2010.

FINRA Rule 4511 requires, *inter alia*, that "(a) Members shall make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules." A registered representative's creation of false documents related to a Firm account is a violation of FINRA Rules 4511, as well as FINRA Rule 2010.

In November 2012, Endress created E&H Consulting, LLC ("E&H Consulting"). Endress was the only individual who owned and controlled E&H Consulting. In December 2012, Endress opened and funded a brokerage account at Merrill in the name of E&H Consulting, which account Endress solely controlled. As part of the account opening process for E&H Consulting, Endress completed required account opening documents, including a Merrill Working Capital Management Account (WCMA) application, a Merrill Business Account Beneficial Owner Form and other account-related documents (collectively, the "E&H account documents"). In completing the E&H account documents, Endress falsified certain information as follows: (i) Endress established the E&H Consulting account under another registered representative's number; (ii) Endress signed that registered representative's name to the Beneficial Owner Form without the registered representative's knowledge or consent; and, (iii) Endress failed to identify himself as the beneficial owner of that account. Endress placed more than sixty securities transactions directly into the E&H account using a strategy that he designed, between January 8 and March 19, 2013.

Based on the above conduct, Endress failed to provide written notification to his Firm of his ownership of and business activities through E&H Consulting in violation of FINRA Rules 3270 and 2010. In addition, Endress falsified the E&H account documents and failed to notify the Firm of his beneficial ownership of the E&H Consulting account, as he was required to do under Merrill's written policies and procedures, in violation of FINRA Rules 4511 and 2010.

B. I also consent to the imposition of the following sanction:

A bar from association with any FINRA-registered firm in all capacities.

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).

The sanctions imposed herein shall be effective on a date set by FINRA staff. 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 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.

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.

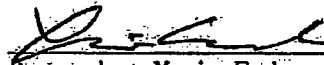
OTHER MATTERS

I understand that:

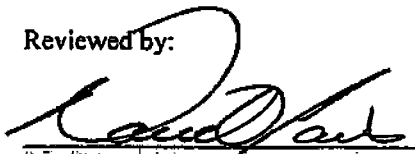
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will 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 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. 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 [the Firm] to submit it.

10/29/2015
Date (mm/dd/yyyy)


Respondent, Xavier Endress

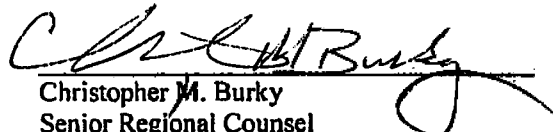
Reviewed by:


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Accepted by FINRA:

11/3/15
Date

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


Christopher M. Burky
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