

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013039312001**

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

RE: James Bertero, Respondent
General Securities Representative
CRD No. 3126691

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

Bertero first became registered with FINRA as a General Securities Representative ("GSR") in December 1998, through an association with a FINRA regulated broker-dealer. He remained with FINRA as a GSR through that association and two other consecutive associations with two other FINRA regulated broker-dealers until June 2009. In June 2009, Bertero joined Morgan Stanley Smith Barney LLC (CRD No. 149777) ("Morgan Stanley" or the "Firm") where he currently remains registered as a GSR at a Santa Rosa, CA branch.

RELEVANT DISCIPLINARY HISTORY

Bertero has no relevant disciplinary history with the Securities and Exchange Commission, any state securities agency, FINRA or any other self-regulatory organization.

OVERVIEW

On two dates in September 2012, Bertero violated FINRA Rules 4511 and 2010 by stating to his assistant that he had verbally confirmed two wire requests totaling \$30,500 with a customer, when he had not done so. He also authored a misleading email that he forwarded to his assistant; statements in the email made it appear as if Bertero had spoken to the customer and had verbally confirmed the request. As a result of Bertero's false statements, the assistant completed the required forms to process the transfers. On the forms, she stated that Bertero had verbally confirmed the wires with the customer. Bertero's false statements caused the assistant to create inaccurate books and records and caused the Firm to process wire transfer requests that were fraudulent.

FACTS AND VIOLATIVE CONDUCT

FINRA Rule 4511 requires each member to make and preserve books and records in conformity with applicable FINRA and Securities Exchange Rules, including Exchange Act Rules 17a-3 and 17a-4. Exchange Act Rule 17a-4(b)(4) requires a firm to preserve inter-office memoranda and communications relating to the firm's business.

FINRA Rule 2010 requires associated persons to observe high standards of commercial honor and just and equitable principles of trade.

Falsification of a firm's books and records violates FINRA Rules 4511 and 2010. Making false statements on firm records and to firm personnel in an effort to process transactions are independent violations of FINRA Rule 2010.

The Firm's verbal documenting procedures in effect during September 2012 required employees to verbally confirm with the customer wire transfer requests to third-party bank accounts prior to processing the wire transfers. The Firm also required employees to memorialize the client contact in the Firm's internal systems, through an attestation form.

On September 18, 2012, an imposter (the "Imposter") posing as Firm customer LZ, hacked into customer LZ's email account and emailed a wire transfer request to Bertero from LZ's email account. The email requested \$22,000 to be wired to a third party bank account in Oklahoma that the Imposter indicated belonged to a relative. Bertero believed that the email was legitimate as it was not unusual for LZ to request a wire transfer. The Imposter claimed via email to be unavailable for any telephone conversation. To facilitate the transfer, Bertero sent an email to LZ's email address in which Bertero stated "[g]lad we had a chance to talk I will get the wire out as soon as I get the instructions." Bertero had not spoken to the customer or the Imposter. Bertero then forwarded the inaccurate email to his assistant for processing. He also verbally misrepresented to his assistant that he

had verbally confirmed the wire request with the customer. His assistant completed the required forms and submitted the request for processing. The Firm effected the wire transfer that day, September 18, 2012.

On September 19, 2012, the Imposter again emailed Bertero and requested another wire transfer to California in the amount of \$8,500, for investment purposes. While Bertero tried to ascertain a mutually agreeable time to contact LZ via telephone, the Imposter made excuses and verbal contact was not made. Nonetheless, without verbally confirming the wire request with LZ, Bertero again directed his assistant to process the request and misrepresented that he had verbally confirmed the request with LZ. Bertero's assistant completed the required forms and submitted the request for processing. The Firm effected the wire transfer on September 20, 2012.

The Firm subsequently learned that these wire transfers were fraudulent. The Firm recovered \$30,460 and reimbursed the difference of \$40. As such, LZ was made whole for the \$30,500 fraudulently transferred from LZ's accounts.

By falsely stating on Firm documents and making false statements to Firm personnel that he received verbal confirmation from LZ, Bertero violated FINRA Rule 2010. Further, by falsifying firm records and causing the creation of inaccurate records as a result of his misrepresentation to his assistant, Bertero caused the Firm to create and maintain inaccurate books and records in violation of FINRA Rule 4511. Therefore, Bertero's misconduct violated FINRA Rules 4511 and 2010.

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

- a 30 calendar day suspension from association with any FINRA regulated firm in all capacities; and
- a \$7,500 fine.

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

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

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

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).

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

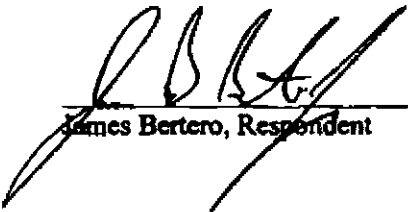
I understand that:

- 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.**
- D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I 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.**

I certify that I have read and understood 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.

10-2-2015

Date (mm/dd/yyyy)


James Bertero, Respondent

Reviewed by:



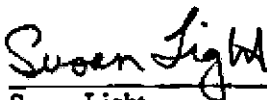
Elizabeth Bernhardt
Counsel for Respondent
Cohen & Gresser LLP
800 Third Avenue
New York, NY 10022
(212) 957-7564

Accepted by FINRA:

11/3/15

Date

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



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