

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20130394827 - 01**

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

RE: John D. Wiswell, Respondent
General Securities Representative and General Securities Sales Supervisor
CRD No. 2313243

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, John D. Wiswell ("Wiswell" or "Respondent"), 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

Wiswell first became registered with FINRA in 1993 as a General Securities Representative ("GSR") through his association with a member firm. In October 2003, while employed at another member firm, Wiswell additionally became registered as a General Securities Sales Supervisor ("SU"). Wiswell began working at American Portfolios Financial Services, Inc. (BD No. 18487) ("American Portfolios" or the "Firm") in September 2007, where he continues to be registered as both a GSR and an SU.

RELEVANT DISCIPLINARY HISTORY

Wiswell does not have any disciplinary history with the Securities and Exchange Commission, any state securities regulators, FINRA or any other self-regulatory organization.

OVERVIEW

Wiswell failed to reasonably supervise the activities of a registered representative to prevent unsuitable mutual fund switching, in violation of NASD Conduct Rule 3010(a) and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

NASD Conduct Rule 3010(a) requires each member to "establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD" and FINRA rules. An individual supervisor may be held liable under NASD Conduct Rule 3010(a) when he or she fails to provide reasonable supervision.

During the period from May 2011 through May 2013 (the "Relevant Period"), Wiswell supervised registered representative JD. Wiswell's responsibilities as JD's supervisor included reviewing JD's mutual fund transactions for suitability and, where appropriate, ensuring that switch letters were obtained from customers acknowledging their understanding of the consequences of the transaction. During the Relevant Period, JD recommended 49 unsuitable mutual fund switch transactions in 12 customer accounts. In connection with these unsuitable mutual fund switches, JD's customers incurred approximately \$46,000 in unnecessary sales charges. The Firm has returned that amount to JD's customers.

JD's transactions presented multiple red flags suggesting that he was engaging in unsuitable mutual fund switching. These red flags included that JD's transactions triggered a significant number of potential switch alerts; JD's mutual fund switch transactions involved placing his customers exclusively into Class A shares with significant upfront sales loads; JD's commissions were high; many of the customers to whom JD recommended switch transactions were elderly; and JD failed to obtain signed switch letters from his customers. Wiswell failed to take reasonable steps to follow up on these red flags and approved all of JD's mutual fund switch transactions during the Relevant Period.

By failing to reasonably supervise JD, Wiswell violated NASD Conduct Rule 3010(a) and FINRA Rule 2010.

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

1. A 15-business day suspension from association with any FINRA member firm in any principal capacity; and
2. A \$5,000 fine.

I agree to pay the monetary sanction(s) upon notice that this AWC has been

accepted and that such payment(s) are 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(s) imposed in this matter.

I understand that if I am barred or suspended from associating with any FINRA member in a principal capacity, 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 principal capacity, during the period of the bar or suspension (see FINRA Rules 8310 and 8311). Furthermore, because I am subject to a statutory disqualification during the suspension, if I remain associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

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

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.**

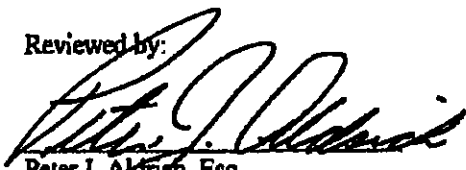
I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

11/23/2015

Date (mm/dd/yyyy)


John D. Wiswell, Respondent

Reviewed by:

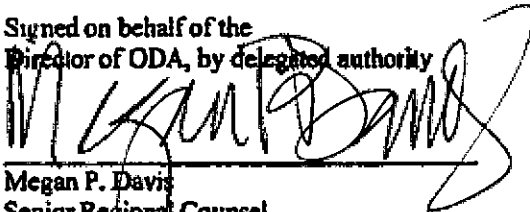

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Accepted by FINRA:

December 30, 2015

Date

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


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