

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20140394444-04**

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

RE: David Mitchell Elias, Respondent
CRD No. 4209235

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, David Mitchell Elias ("Elias" or "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

Elias entered the securities industry as a floor broker at The New York Stock Exchange LLC ("NYSE") in March 1990. He operated his own firm, David M. Elias, Sole Proprietor, from March 1990 through March 1993. He was associated with Propp & Co., Inc. from March 1993 to June 2000, and in June 2000, he began operating his own floor brokerage firm again, David M. Elias, Sole Proprietor. In February 2001, he organized his business as a limited liability company, DME Securities, LLC ("DME"). DME did not carry customer accounts. Elias was DME's sole owner and control person, its member-manager, and its chief compliance officer. The firm ceased operating on the NYSE in approximately August 2015, but Elias continued conducting a securities business through DME after leaving the NYSE. From 2013 through April 2016, DME Securities engaged in a business that it characterized as investment banking.

Elias became registered with FINRA on April 30, 2008.

Pursuant to FINRA Rule 9552, DME was suspended on April 8, 2016, for failing to file its annual audit report for 2015. On April 14, 2016, DME filed a Form BDW-Full, Uniform Request Withdrawal from Broker-Dealer Registration, to terminate its registration, and Elias filed a Form U5-Full to terminate his individual registration.

On June 6, 2016, pursuant to FINRA Rule 9553, FINRA cancelled DME's membership

for its failure to pay \$2,754.43 in fees rather than pursuant to DME's Form BDW.

Although Elias has not been registered with a FINRA-registered broker-dealer since April 14, 2016, FINRA retains jurisdiction over him pursuant to Article V, Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

Respondent does not have a disciplinary history.

SUMMARY

At all times relevant to this AWC, Respondent owned and controlled DME Securities, LLC, a FINRA member, and was its chief compliance officer. From at least May 2014 and continuing through April 2016, Elias was responsible for ensuring that DME was operating with sufficient net capital. Elias, however, operated the firm while it was in a net capital deficiency. In addition, he impermissibly withdrew capital from the firm. As a result, Elias violated FINRA Rule 2010 by causing DME to violate Section 15(c) of the Securities Exchange Act of 1934 (the "Exchange Act"), Exchange Act Rule 15c3-1, and FINRA Rule 4110(b)(1). In addition, by making the impermissible withdrawals, Elias violated Section 15(c) of the Exchange Act, Exchange Act Rule 15c3-1(e)(2), and FINRA Rules 4110(c)(1) and 2010.

From August 2014 through February 2015, Elias also failed to adequately supervise, or ensure adequate supervision of, an employee of DME who was subject to a plan of heightened supervision due to the employee's disciplinary history. Because of his failures, Elias violated NASD Rule 3010 (before December 1, 2014), FINRA Rule 3110 (on and after December 1, 2014), and FINRA Rule 2010.

In addition, during the investigation of Elias's violations, he refused to appear and continue providing testimony as requested, in violation of FINRA Rules 8210 and 2010.

FACTS AND VIOLATIVE CONDUCT

1. This matter stems from a 2014 cycle examination and a 2015 cause examination of DME conducted by the staff of the Trading and Financial Compliance Examinations Section ("TFCE") in FINRA's Department of Market Regulation. TFCE's examination program supplements the Department of Market Regulation's automated surveillance capabilities through on-site market activity-focused examinations. TFCE primarily conducts yearly cycle trading examinations on behalf of FINRA and various exchanges. The examination program reviews compliance with various rules and regulations that may include, among other areas, the financial operation and associated risks of firms and supervision. As a result of the examination in Matter No. 2014039444, the staff in TFCE issued a report dated June 9, 2015, containing findings of multiple violations from June 2014 through February 2015, several of which continued after the examination report. As a result of the examination in Matter No. 20150467916, the staff issued a report dated September 27, 2016, containing findings of multiple violations from July 1 through December 31, 2015.

Net Capital Violations

2. **FINRA Rule 2010** requires members and associated persons to “observe high standards of commercial honor and just and equitable principles of trade.” A principal of a firm can violate Rule 2010 by causing or allowing his firm to violate the Exchange Act, the rules under the Exchange Act, and FINRA rules.
3. **Exchange Act Rule 15c3-1** establishes minimum net capital requirements for broker-dealers. A broker-dealer must maintain net capital that is the greater of the highest minimum requirement applicable to its ratio requirement under Exchange Act Rule 15c3-1(a)(1) or to any of its activities under Exchange Act Rule 15c3-1(a)(2). Under the aggregate indebtedness standard in Rule 15c3-1(a)(1), a broker-dealer’s minimum net capital must equal at least 6 2/3 percent of its aggregate indebtedness. Under Exchange Act Rule 15c3-1(a)(2)(vi), a broker-dealer must maintain at least \$5,000 of net capital if it does not receive or hold funds or securities for customers or owe funds or securities to customers, and if it does not carry customer accounts or engage in certain other activities.
4. Under subparagraphs (1) and (2) of Exchange Act Rule 15c3-1(a), DME was required to maintain the higher of \$5,000 or 6 2/3 percent of its aggregate indebtedness as its minimum net capital.
5. Section 15(c)(3)(A) of the Exchange Act prohibits a broker-dealer from engaging in a securities business if its net capital falls below the minimum amount required by Exchange Act Rule 15c3-1.
6. **FINRA Rule 4110(b)(1)** requires a member to suspend all business operations during any period in which it does not comply with the net capital requirements in Exchange Act Rule 15c3-1.
7. **NASD Rule 1014(a)** sets forth requirements for FINRA to consider in granting membership to applicants. NASD Rule 1014(a)(7) requires that a firm be “capable of maintaining a level of net capital in excess of the minimum net capital requirements set forth in SEC Rule 15c3-1 adequate to support the Applicant’s intended business operations on a continuing basis.” A firm that fails to maintain its net capital level may be charged under Rule 1014 with violating its membership agreement.
8. An owner of a firm can be held liable for violating FINRA Rule 2010 by failing to ensure that his firm ceases conducting a securities business while the firm’s net capital is deficient and for causing a firm to violate its membership agreement by failing to maintain its required minimum net capital.
9. As Elias was aware, from at least May 31, 2014, through February 18, 2015, and from May through at least October 2015, DME repeatedly conducted a securities business while in a net capital deficiency in violation of Section 15(c) of the Exchange Act, Exchange Act Rule 15c3-1, FINRA Rule 4110(b)(1), and NASD Rule 1014. Appendix A, attached hereto and incorporated by reference, shows DME’s minimum net capital requirement when it reported a deficiency, DME’s net capital, and the

amount of the deficiency. The firm attributed the deficiencies to a substantial loss in May 2014 and decreases in income thereafter.

10. As the firm's sole owner and control person, Elias was responsible for ensuring DME's compliance with its net capital requirement and for DME's continuation of business while in a net capital deficiency.
11. In addition, TFCE cited DME for net capital deficiencies in its examination report dated June 9, 2015. Notwithstanding the specific notice of the deficiencies as provided by TFCE's examination report, Elias repeatedly conducted a securities business through DME while in a net capital deficiency through December 2015. Appendix B, attached hereto and incorporated by reference, shows DME's minimum net capital requirement when it reported a deficiency, DME's net capital, and the amount of the deficiency. DME continued filing Financial and Operational Combined Uniform Single ("FOCUS") Reports showing net capital deficiencies through April 2016 when its registration was terminated.
12. As a result of the foregoing, Elias violated FINRA Rule 2010 by causing DME to violate Section 15(c) of the Exchange Act, Exchange Act Rule 15c3-1, FINRA Rule 4110(b)(1), and NASD Rule 1014.

Elias's Improper Withdrawals of Capital

13. Exchange Act Rule 15c3-1(e)(2), 17 C.F.R. § 15c3-1(e)(2), states that no equity capital of a broker-dealer may be withdrawn if, after giving effect to that and any other withdrawals, the broker-dealer's net capital would be less than 120 percent of the minimum amount required by Exchange Act Rule 15c3-1(a). FINRA Rule 4110(c)(1) states that no equity capital of a member may be withdrawn for a period of one year from the date the equity capital is contributed unless otherwise permitted by FINRA in writing.
14. On Friday, January 30, 2015, Elias contributed \$35,000 to the firm to rectify a net capital deficiency of \$30,479 that the firm had reported the same day. The following Monday, on February 2, Elias withdrew \$35,000 from the firm without seeking permission from FINRA.
15. On February 19, 2015, Elias deposited \$23,000 to rectify a net capital deficiency of \$18,109. DME's FOCUS report for the quarter April 1 to June 30, 2015, reported a net capital deficiency of \$68 as of June 30, 2015. On July 21, 2015, Elias withdrew \$3,500 from DME without seeking permission from FINRA, and the firm ended the month with a net capital deficiency of \$68,741.
16. By withdrawing \$35,000 in February 2015 and \$3,500 in July 2015, Elias willfully violated Section 15(c) of the Exchange Act and Exchange Act Rule 15c3-1(e)(2) and also violated FINRA Rules 4110(c)(1) and 2010.

Failure to Supervise Statutorily Disqualified Individual

17. From August 2014 to February 2015, Elias failed to supervise a clerk, S.H., who was subject to a plan of heightened supervision because he was subject to a statutory disqualification. In 2010, S.H. violated New York Stock Exchange Rules 342 and 476(a)(6) by failing to supervise a sponsored visitor, which resulted in the sponsored visitor's conducting business on the NYSE Amex Options trading floor.
18. DME had hired S.H. as a floor clerk in July 2012 when his association with his prior firm ended. After the disciplinary action in June 2014, FINRA sent a letter to Elias to ensure S.H. did not act in any principal capacity during the suspension period. The letter stated that Elias needed to outline the steps taken by DME to ensure compliance with S.H.'s sanction, including actions taken to preclude association with the firm in the suspended capacity. Under DME's heightened supervisory plan, S.H. was to be supervised by Elias as the primary supervisor and by another individual, T.M., as S.H.'s interim supervisor if Elias was out on vacation or out of the office for an extended period. Elias never informed T.M. about his potential role in S.H.'s heightened supervision.
19. Under the heightened supervisory plan, S.H. was prohibited from sponsoring visitors to the NYSE trading floor. Elias was responsible for reviewing and approving S.H.'s securities account and reviewing S.H.'s incoming written correspondence, including emails, and outgoing correspondence. Elias also had to certify quarterly that S.H. and Elias had complied with the conditions of heightened supervision.
20. Elias, however, lived in Florida and operated DME from there. The staff in TFCE visited DME's booth on the NYSE trading floor, was informed that Elias "would be away for an extended period of time," and was informed by T.M. that T.M. was unaware of the plan to monitor S.H.'s activities and of his own supervisory position. Thus, Elias failed to supervise S.H. and failed to implement the part of the heightened plan of supervision that called for T.M. to supervise S.H. in Elias's absence. In addition, Elias failed to review S.H.'s email correspondence as required by the plan.
21. By failing to supervise S.H. as required by DME's plan of heightened supervision, Elias violated NASD Rule 3010 (for conduct before December 1, 2014), FINRA Rule 3110 (for conduct on and after December 1, 2014), and FINRA Rule 2010.

Failure to Appear and Testify

22. Beginning in June 2016 and pursuant to FINRA Rule 8210, FINRA's staff requested Elias's testimony in connection with its review of this matter and began attempting to work with Elias, and later his counsel, to schedule it. The staff and Elias's counsel agreed that Elias would testify on October 4, 2016. On October 3, Elias's counsel notified that staff that because of an illness, the testimony had to be rescheduled. Ultimately, the staff sought to schedule Elias's testimony for November, but his attorney insisted that the testimony could not take place until December. In a telephone discussion with the staff on October 26, his attorney offered December 1 as a date for Elias's testimony. The staff agreed, and by letter dated October 26, the staff

requested, pursuant to FINRA Rule 8210, that Elias appear and testify at 9:00 a.m. on December 1, 2016, at One Liberty Plaza, 165 Broadway, 48th Floor, New York, New York 10006. The letter repeated earlier warnings that unless and until a postponement was agreed to, Elias was obligated to appear and testify when scheduled, and that failing to do so could result in disciplinary action against him, including a bar from the securities industry.

23. On November 29, 2016, the staff sent Elias's counsel an email confirming that Elias was scheduled to appear and testify on December 1, 2016, at 9:00 a.m., and that the staff's request for testimony was pursuant to FINRA Rule 8210. In response to a question from Elias's counsel, the staff sent an email indicating its anticipation that the testimony would last the entire day. That evening, Elias's counsel sent an email to the staff stating that counsel had "a hard stop at 11:30. If you need additional time we will have to arrange an additional day." His counsel did not provide an explanation for his demand. On November 30, the staff sent a letter to Elias's counsel stating, among other things, that Elias and his counsel were required appear for the testimony on December 1, 2016, prepared with dates of availability for a second day of testimony between December 1 and 15, 2016, with the expectation that Elias would testify for the entire day.
24. On December 1, 2016, Elias testified from 9:12 a.m. to 11:27 a.m. During his testimony and while on the record, Elias's counsel offered December 12 and 14, 2016, as additional dates for testimony. Therefore, the staff scheduled the second day of testimony for December 14 and informed Elias and his counsel that the second day of testimony would be in another building, the former World Financial Center. On the record, Elias agreed to return on December 14 to testify and affirmed he understood that it was being scheduled as an all-day interview.
25. On December 2, the staff followed up with a letter stating, among other things, that Elias had agreed to appear for a full day of testimony on December 14, 2016, and stated the following:

Accordingly, in connection with Matter No. 20140394444, Mr. Elias is requested pursuant to FINRA Procedural Rule 8210...to appear for an on-the-record interview ("OTR"), which has been scheduled for December 14, 2016, at 9:00 a.m., with the expectation that the interview will continue through the entire business day, until at least 5:00 p.m. On December 14, 2016, at 9:00 a.m., Mr. Elias is to report to 200 Liberty Street, 12th Floor, New York, New York 10281-1003, formerly known as the World Financial Center.

26. The letter included an addendum with a warning that, in substance, had also been attached or included in six previous letters and stated, "If you fail to appear and testify at the OTR you may be subject to FINRA ...disciplinary action[] and the imposition of sanctions, including a bar from the securities industry, suspension, censure, a fine, or a combination of these sanctions."

27. On December 14, 2016, Elias failed to appear for his testimony.

28. By failing to appear and testify, Elias violated FINRA Rules 8210 and 2010.

- B. Respondent also consents to the imposition of a bar from associating with a member firm in all capacities.

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, as amended. Accordingly, he 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.)

Respondent understands that this settlement includes a finding that he willfully violated Section 15(c) of the Exchange Act and Exchange Act Rule 15c3-1(e)(2), and that under Article III, Section 4 of FINRA's By-Laws, this makes him subject to a statutory disqualification with respect to association with a member.

A bar or expulsion shall become effective upon approval or acceptance of this AWC.

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 Respondent;
- 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 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.

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 Respondent;**
 - 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 Respondent's: (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.**

Respondent has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; understands and acknowledges that FINRA does not represent or advise him and cannot rely on FINRA or FINRA staff members for legal advice; has agreed to the AWC's 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 Respondent to submit it.

12/21/17
Date

Respondent

David M. Elias
David Mitchell Elias

Accepted by FINRA:

2/12/18
Date

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

Robert A. Marchman
Robert A. Marchman
Executive Vice President
FINRA Department of Market Regulation

Exhibit A				
No.	Dates of Deficiency	DME's Minimum Net Capital Requirement	DME's Reported Net Capital	Amount of Deficiency
1(a).	May 31, 2014	8,666	(52,998)	61,664
1(b).	May 31, 2014	\$8,666	\$(58,627)	67,293
2(a).	May 31–June 30, 2014	7,887	(45,754)	53,641
2(b).	June 30, 2014	7,887	(51,464)	59,351
3(a).	July 31, 2014	8,273	(2,129)	10,402
3(b).	July 31, 2014	8,273	(6,291)	14,564
4.	August 31, 2014	7,078	4,525	2,553
5(a).	September 30, 2014	7,252	(7,126)	14,378
5(b).	September 30, 2014	7,253	(12,177)	19,430
6.	Oct. 31, 2014	8,040	(5,918)	13,958
7.	Oct. 31–Nov. 24, 2014	8,040	(5,918)	13,958
8.	Dec. 17, 2014	7,467	(11,028)	18,495
9.	Nov. 30–Dec. 18, 2014	7,467	(11,028)	18,495
10.	Dec. 31, 2014	8,219	(14,129)	22,348
11.	Dec. 31, 2014–Jan. 29, 2015	8,182	(22,297)	30,479
12.	Dec. 31, 2014–Feb. 18, 2015	7,541	(10,568)	18,109
13.	May 31, 2015	5,000	(15,822)	20,822
14.	June 30, 2015	5,315	5,247	68
15.	Jul. 31, 2015	5,000	(63,741)	68,741
16.	Aug. 31, 2015	5,000	(57,645)	62,645
17.	Sept. 30, 2015	5,000	(59,613)	64,613
18.	Oct. 31, 2015	5,000	(70,826)	75,826

DME reported the numbers in items 1(a), 2(a), 3(a), and 5(a), highlighted in gray, inaccurately. On June 10 and 17, 2015, as a result of the examination report, DME corrected the reports, as reflected in items 1(b), 2(b), 3(b), 4, and 5(b).

Appendix B

Matter No. 20150467916, Review Period July - December 2015				
No.	Dates of Deficiency	DME's Minimum Net Capital Requirement	DME's Reported Net Capital	Amount of Deficiency
1.	May 31, 2015*	5,000	(15,822)	20,822
2.	June 30, 2015*	5,315	5,247	68
3.	Jul. 31, 2015	5,000	(63,741)	68,741
4.	Aug. 31, 2015	5,000	(57,645)	62,645
5.	Sept. 2015	5,000	(59,613)	64,613
6.	Oct. 2015	5,000	(70,826)	75,826
7.	Nov. 2015	5,000	(72,207)	77,207
8.	Dec. 2015	5,000	(85,269)	90,965

*Outside of examination review period