

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2014039763101**

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

RE: Charles A. Lavery, Respondent
Former Registered Representative
CRD No. 4875386

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Charles A. Lavery ("Lavery"), 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

Lavery first entered the securities industry in October 2004 and since that time has been registered with six member firms. He was registered with FINRA member Oppenheimer & Co. Inc. ("Oppenheimer") from January 14, 2008 until May 14, 2010 and again from November 3, 2011 until March 14, 2014. He was registered with FINRA member UBS Financial Services Inc. ("UBS") from May 13, 2010 until November 3, 2011. Lavery is not currently registered with a FINRA member, but remains subject to FINRA jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

Lavery has no disciplinary history.

OVERVIEW

From October 2009 to April 2013, while registered, Lavery borrowed a total of \$1,205,000 from two married couples - HG and AG and EL and LL - who were his customers. In the fall of 2013, Lavery accepted two other loans, totaling \$32,500, from a third customer, JA. Both Oppenheimer and UBS, his respective employers, prohibited such customer loans. Lavery did

not notify them of, or obtain their approval for, any of the loans. Although he has repaid the loans from JA, Lavery has not fully repaid the other loans.

Lavery also falsely denied that he had borrowed from customers in annual questionnaires submitted to UBS in 2011 and to Oppenheimer in 2012 and 2013, and falsely claimed in the 2012 and 2013 certifications to Oppenheimer that he had kept current information in his Uniform Application for Securities Industry Registration or Transfer, or Form U4. In fact, from around May 2010 to January 2014, Lavery willfully failed to amend his Form U4 to report the existence of at least two unsatisfied judgments.

By borrowing money from customers in contravention of firm policies and without firm approval, Lavery violated NASD Rule 2370 and FINRA Rules 3240 and 2010.¹ He violated FINRA Rule 2010 by falsely denying the loans and by claiming to have kept his Form U4 information current in firm certifications. Finally, by willfully failing to report two unsatisfied judgments on his Form U4, Lavery violated FINRA By-Laws, Article V, Section 2(c), and FINRA Rules 1122 and 2010.

FACTS AND VIOLATIVE CONDUCT

A. Lavery Accepted Loans from Customers

1. Loans from HG and AG

During 2009 and 2010, Lavery accepted three loans totaling \$585,000 from his customers HG and AG. On October 21, 2009 and April 15, 2010, while registered with Oppenheimer, Lavery borrowed \$85,000 and \$365,000, respectively, from HG and AG. On or about December 8, 2010, while registered with UBS, Lavery borrowed another \$135,000 from them. Lavery signed agreements promising to repay each of the three loans by June 30, 2011, and each loan agreement provided for interest to accrue at the rate of 10% per year. Lavery has not yet fully repaid these loans, despite repeated promises to do so.

2. Loans from EL and LL

From January 29, 2010 to April 5, 2013, while registered with Oppenheimer or UBS, Lavery borrowed a total of around \$620,000 from his customers, EL and LL. EL and LL loaned Lavery \$140,000 on January 29, 2010 which he promised to, but did not, repay by March 1, 2010. Lavery borrowed another \$300,000 on July 26, 2010 which he promised to, but did not, repay on August 31, 2010. On March 1, 2011, Lavery borrowed \$81,000 and on April 15, 2013 \$100,000 from EL and LL. Interest on all of the loans accrued at 10% per year. Lavery has not yet fully repaid these loans, despite repeated promises to do so.

¹ On June 14, 2010 FINRA Rule 3240 replaced NASD Rule 2370.

3. *Loans from JA*

In the fall of 2013, while registered with Oppenheimer, Lavery borrowed a total of \$32,500 from another customer, JA, in order to make payments on a judgment obtained against him by a third party. On October 12, 2013, Lavery borrowed \$15,000 from JA, which was repaid on October 16, 2013. Lavery borrowed another \$17,500 from JA on November 21, 2013, and repaid it on December 5, 2013.

4. *Oppenheimer and UBS Prohibited Borrowing from Customers*

During the periods when Lavery accepted the loans discussed above, he was registered with Oppenheimer and UBS and both firms had written policies that prohibited registered representatives from borrowing money from any customer. The sole exception to the policies related to loans from an immediate family member, and then only if the representative obtained advance approval from both a branch manager and the legal or compliance group.

None of the customers was a member of Lavery's immediate family. Moreover, Lavery never notified Oppenheimer or UBS about, or obtained approval for, any of the loans. Oppenheimer and UBS learned of the loans from HG and AG and EL and LL when HG, AG and LL filed an arbitration claim in the fall of 2014.² Oppenheimer learned of the loans from JA when JA contacted it regarding one of his investments.

By borrowing from customers when his member firms prohibited such arrangements and by borrowing without obtaining advance approval from his member firms, Lavery violated NASD Rule 2370 and FINRA Rules 3240 and 2010.

B. Lavery Made False Statements to Oppenheimer and UBS

Lavery denied that he had borrowed from customers in annual questionnaires he completed for UBS in 2011 and for Oppenheimer in 2012 and 2013. In addition, Lavery claimed on the annual certifications to Oppenheimer that he had kept information on his Form U4 current when, as discussed below, Lavery failed to report on his Form U4 at least two unsatisfied judgments. As a result, Lavery violated FINRA Rule 2010.

C. Lavery Failed to Report Unsatisfied Judgments

On August 31, 2012, Oppenheimer filed an amendment to Lavery's Form U4 to report that it had received an earnings' withholding order in connection with a \$493,175.15 judgment against Lavery entered on May 20, 2010. Lavery learned of the \$493,175.15 judgment shortly after May 20, 2010 and made partial payments on it. By July 16, 2012, when Oppenheimer received the earnings withholding order, the remaining balance on the judgment was \$87,199.98.

On January 10, 2014, Oppenheimer amended Lavery's Form U4 to report a second unsatisfied judgment against Lavery. The second judgment was entered on October 19, 2012 and Lavery learned of it shortly thereafter. He had intended to use the October and November 2013 loans

² EL died in November 2013 and was not a party to the arbitration claim.

from JA to make partial payments on this judgment. When Oppenheimer learned of the judgment on January 7, 2014, upon receipt of another earnings' withholding order, the amount outstanding was \$59,600.87. Lavery has satisfied both judgments.

By willfully failing to amend his Form U4 to report the two unsatisfied judgments, material information, Lavery violated Article V, Section 2(c) of the FINRA By-Laws, and FINRA Rules 1122 and 2010.

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

- a suspension from association with any FINRA member in any capacity for a period of eighteen (18) months; and
- a fine of \$5,000, which shall be due and payable either immediately upon reassociation with a member firm following the eighteen-month suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

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 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 makes me subject to a statutory disqualification with respect to association with a member.

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.

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.

11/23/14
Date (mm/dd/yyyy)

Charles A. Lavery
Charles A. Lavery
Respondent

Accepted by FINRA:

12/9/15
Date

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

James E. Day
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