

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2015043417501**

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

RE: Shearson Financial Services, LLC, Respondent  
CRD No. 38619

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Shearson Financial Services, LLC ("SFS" or "Firm" 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 SFS alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. SFS 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**

SFS has been a FINRA member since September 15, 1995. The firm is headquartered in Boca Raton, Florida and has approximately 30 registered representatives. SFS is approved to conduct business in corporate debt, corporate equities, day trading, mutual funds, mortgage or asset backed securities, municipal debt/bonds, options, proprietary trading and variable contracts.

**RELEVANT DISCIPLINARY HISTORY**

SFS does not have any relevant prior disciplinary history.

**OVERVIEW**

During the time period between June 10, 2013 through October 6, 2015 (hereinafter the "relevant time period"), SFS maintained inaccurate books and records reflecting that 1,873 transactions were unsolicited, when in fact, the transactions were solicited, in violation of FINRA Rules 4511(a), 2010, and Section 17(a) and SEC Rule 17a-3 of the



Securities Exchange Act of 1934 (hereinafter "Exchange Act"). In addition, during the relevant time period, SFS, acting through 15 registered representatives, exercised discretion in 231 transactions in 56 customer accounts, without written authorization from the account holders, in violation of NASD Rule 2510(b) and FINRA Rule 2010.

### **FACTS AND VIOLATIVE CONDUCT**

#### *Mismarked Order Tickets*

On June 25, 2012, SFS received a Cautionary Action Letter from FINRA staff, which warned the firm that it had inaccurately marked 47 order tickets as unsolicited, when in fact, the orders were solicited. Despite the 2012 Cautionary Action, during the relevant time period, SFS continued to inaccurately mark orders as unsolicited when the orders were solicited. Specifically, during the relevant time period, 18 registered representatives and principals of the firm marked order tickets as unsolicited when the orders were solicited for 1,873 transactions in customer accounts. As a result of the foregoing, SFS violated FINRA Rules 4511(a), 2010, and Section 17(a) and SEC Rule 17a-3 of the Exchange Act.

#### *Improper Exercise of Discretion in Customer Accounts*

NASD Rule 2510(b) sets forth that no member or registered representative shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the member, as evidenced in writing by the member or the partner, officer or manager, duly designated by the member, in accordance with Rule 3010.

Despite the requirements of NASD Rule 2510(b), during the relevant time period, SFS, through its registered representatives, exercised discretion in customer accounts without written authorization from customers and without acceptance by SFS of the accounts as discretionary. Specifically, at various times during the relevant time period, 15 registered representatives at SFS exercised discretion in approximately 231 transactions in 56 customer accounts without prior written approval of the customers and without the accounts being accepted as discretionary by the firm. As a result of the foregoing, SFS violated NASD Rule 2510(b) and FINRA Rule 2010.

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

A censure and a \$100,000 fine.

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

We specifically and voluntarily waive any right to claim that we are unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

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

## II.

### WAIVER OF PROCEDURAL RIGHTS

We specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against us;
- 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, we 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.

We 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

We 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 us; and

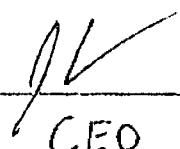
C. If accepted:

1. this AWC will become part of our permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against us;
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. We 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. We 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. We may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. We understand that we 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.

The undersigned, on behalf of SFS, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that SFS has 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 SFS to submit it.

Shearson Financial Services, LLC

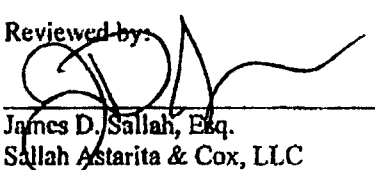
By: 

Title

CEO

Date

6/1/16

Reviewed by: 

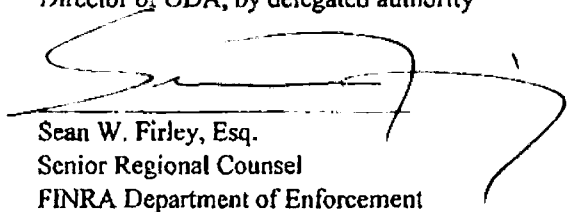
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Accepted by FINRA:

Date

6/21/16

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

  
Sean W. Firley, Esq.  
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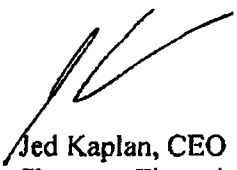
# **SHEARSON**

FINANCIAL SERVICES, LLC

## **STATEMENT OF CORRECTIVE ACTION**

**This Statement of Corrective Action does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its Staff.**

Immediately following the FINRA Staff's inquiry into the issues giving rise to the instant AWC, Shearson's senior management proactively engaged an outside, independent consultant to (a) review the issues raised FINRA Staff's examination, (b) make recommendations in light of those issues, and (c) to do a subsequent review of the firm to ensure that the recommendations have been implemented. Shearson will provide the FINRA Staff with access to the independent consultant on an ongoing basis, as well as any reports, recommendations, or follow up audits of the issues covered in its undertaking. In addition, Shearson's management has provided training to its entire staff concerning Rule 2510 and the use of discretion in customer accounts. Additional training will be provided following the independent consultant's review. Moreover, Shearson's management has implemented a formal policy to penalize representatives who do not properly mark order tickets when discretion is exercised and transactions are solicited. The firm will require those individuals to take steps, including, but not limited to, additional training, to better understand and appreciate the distinction between "solicited" and "unsolicited" to ensure that there are no mistakes going forward. Finally, Shearson also demoted the CCO who supervised the individuals engaged in the conduct at issue, and hired a more experienced non-producing full time Chief Compliance Officer.



Jed Kaplan, CEO  
Shearson Financial Services, LLC