

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015043651401**

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

RE: First Midstate Incorporated, Respondent
CRD. No. 4300

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, 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

First Midstate Incorporated ("First Midstate" or the "Firm") became a FINRA member in 1963. The Firm is also a municipal securities dealer. First Midstate employs five registered representatives and is headquartered in Bloomington, IL.

RELEVANT DISCIPLINARY HISTORY

First Midstate does not have relevant formal disciplinary history.

OVERVIEW

Between September 12, 2011 and October 31, 2015 (the "Relevant Period"), First Midstate failed to maintain business related email communications in the format required by SEC Rule 17a-4, thereby violating NASD Conduct Rule 3110 (prior to December 5, 2011) and FINRA Rules 4511 (after December 5, 2011) and 2010. In addition, First Midstate failed to adequately supervise the Firm's electronic communications during the Relevant Period, as the Firm did not review its representative's email communications sent via handheld devices, thereby

violating NASD Rule 3010 (prior to December 1, 2014) and FINRA Rules 3110 (after December 1, 2014) and 2010 over that same period.

FACTS AND VIOLATIVE CONDUCT

FINRA Rule 3110(b) and its predecessor, NASD Conduct Rule 3010(d), set forth several provisions for the supervision of incoming and outgoing correspondence by registered representatives. FINRA Rule 3110(b) states:

The supervisory procedures...shall include procedures for the review of incoming and outgoing written (including electronic) correspondence and internal communications relating to the member's investment banking or securities business... Reviews of correspondence and internal communications must be conducted by a registered principal and must be evidenced in writing, either electronically or on paper.

In addition, NASD Conduct Rule 3110(a) and FINRA Rule 4511 require members to make and preserve records as required by all applicable laws, rules, and regulations, including the Securities Exchange Act of 1934 (the "Exchange Act"). Member firms are required to preserve their business-related email correspondence in the format and media required under SEC Rule 17a-4. Specifically, a member must:

preserve for a period of not less than three years, the first two years in an easily accessible place...[o]riginals of all communications received and copies of all communications sent by the member...(including inter-office memoranda and communications) relating to their business as such...

Under SEC Rule 17a-4, a member firm may maintain communications on electronic storage media if, among other things, the communications are stored "exclusively in a non-rewriteable, non-erasable format," and provided that the member has given FINRA advance notice of its use of electronic storage media. The member must also have in place an audit system providing for accountability regarding inputting of records to be maintained and preserved to electronic storage media.

Prior to its retention of a third-party electronic storage media provider in 2015, First Midstate stored its business-related electronic correspondence on the Firm's email server (the "Server"), which had off-site duplicate retention. The Server (and thus the communications stored on it) was not readily accessible, did not maintain images and organize indices available for easily readable projection, production, and enlargement, was not subject to an audit system, and the Firm was not able to promptly provide information from the Server upon request to FINRA Examination Staff. Further, the Server did not preserve emails exclusively in a non-rewriteable, non-erasable format; did not automatically verify the quality and accuracy of the storage media recording process; did not

serialize the original and duplicate units of storage media; and did not have the capacity to readily download indices and records.

Also during the Relevant Period, the Firm failed to establish, maintain, and enforce a reasonable supervisory system designed to achieve compliance with applicable rules governing the review of its email correspondence. Specifically, First Midstate's procedures required the review and supervision of all electronic communications, stating that all electronic correspondence would be subject to supervisory review. The computer application the Firm used to review electronic communications did not capture email communications sent by representatives from handheld devices while out of the office. As a result, those handheld communications were not subject to supervisory review during the Relevant Period.

Based on the foregoing, between September 12, 2011 and October 31, 2015, First Midstate failed to comply with SEC Rule 17a-4 during the Relevant Period, thereby violating NASD Conduct Rule 3110 (for the conduct prior to December 5, 2011) and FINRA Rules 4511 (for the conduct on and after December 5, 2011) and 2010. Similarly, the Firm's email review failures also resulted in violations NASD Conduct Rule 3010 (for the conduct prior to December 1, 2014), and FINRA Rules 3110 (for the conduct on and after December 1, 2014) and 2010 over that same period.

B. Respondent also consents to the imposition of the following sanctions:

- A censure, and
- A fine in the amount of \$12,500

Respondent agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that it is 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

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 me; 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.

D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that Respondent 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 the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that such person 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 the Firm to submit it.

12/16/2016
Date (mm/dd/yyyy)

Respondent

First Midstate Incorporated

By: _____

Its: President

Reviewed by:

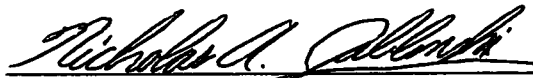


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Accepted by FINRA:

13 JAN 17
Date

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



Nicholas A. Jablonski
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