

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015045370601**

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

RE: David Tod, II, Respondent
General Securities Representative
CRD No. 1004317

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, David Tod, II ("Tod"), 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

Tod entered the securities industry in August 1981 when he became associated with a FINRA-regulated broker-dealer as a General Securities Representative ("GSR"). From October 1986 to March 2009, Tod was consecutively registered with four FINRA-regulated broker-dealers as a GSR.

Tod holds the following securities licenses: Series 7 (August 1981), Series 63 (October 1981) and Series 3 (September 1982).

On March 10, 2009, Tod became associated with Stifel, Nicolaus & Company, Incorporated ("Stifel" or the "Firm"), a FINRA-regulated broker-dealer, as a GSR. In a Uniform Termination Notice for Securities Industry Registration ("Form U5") dated May 4, 2015, the Firm reported the termination of Tod's employment on April 7, 2015 for violation of firm policies including, among other things, the "unauthorized sending of correspondence and treatment of received correspondence...."

On August 10, 2015, Tod became associated with another FINRA-regulated broker-dealer as a GSR. Given his continuing employment with a FINRA-regulated broker-dealer, Tod remains subject to FINRA's jurisdiction.

RELEVANT DISCIPLINARY HISTORY

Tod has no prior disciplinary history in the securities industry.

OVERVIEW

During the period of December 2011 to May 2014, Tod created and issued three recommendation letters for TS, a prospective Firm customer. The three recommendation letters were written on Firm letterhead and contained misleading statements regarding TS's investment experience and his source of funding for a prospective real estate transaction.

Tod did not submit the recommendation letters to the Firm for review and approval as required. In addition, in March 2015, without the Firm's knowledge or authorization, Tod took possession of two subpoenas sent to Tod's Stifel branch office and addressed to Tod and the Firm. The subpoenas related to a pending civil suit against TS and sought information about, among other things, Tod's recommendation letters. Tod's failure to submit the recommendation letters and subpoenas to the Firm for review prevented the Firm from fulfilling its supervisory obligations and preserving Tod's correspondence in accordance with applicable recordkeeping requirements.

By virtue of the foregoing conduct, Tod violated FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

FINRA Rule 2010 requires members and associated persons to "observe high standards of commercial honor and just and equitable principles of trade." A registered representative who makes misleading statements or misrepresentations of material facts fails to observe high standards of commercial honor and just and equitable principles of trade and violates FINRA Rule 2010. Similarly, a registered representative's failure to submit correspondence to his firm for review, approval and retention is activity inconsistent with, and a violation of, FINRA Rule 2010.

During the period of December 2011 to March 2015 (the "Relevant Period"), the Firm's written supervisory procedures ("WSPs") required all outgoing correspondence to be reviewed and approved by a branch manager prior to mailing or distribution. The Firm's WSPs also required all incoming written correspondence, including personal or confidential letters, to be opened and reviewed by a branch manager or his/her designee. The Firm's WSPs further required its branch managers to direct all subpoenas to Stifel's legal department.

On December 3, 2011, September 10, 2012, and May 22, 2014, at TS's request, Tod prepared and provided a recommendation letter to TS in support of TS' acquisition of certain parcels of real estate for development. The three recommendation letters were printed on Stifel letterhead and represented, among other things, that TS was an astute and responsible investor, that TS understood the risks associated with the prospective real

estate transaction, and that TS would finance the acquisition with a combination of cash, securities and a credit arrangement or loan.

As drafted, the recommendation letters were misleading because they implied that TS was a Firm client and that Tod and/or the Firm was assisting TS in obtaining financing for the proposed transaction. However, TS was not a client of Tod or the Firm, TS had not obtained a line of credit or loan from Stifel, and Tod conducted no due diligence in connection with his preparation of the recommendation letters.

Although Tod was aware of the Firm's WSPs with respect to correspondence, Tod did not submit the recommendation letters to his branch manager for review, or otherwise obtain approval from the Firm for the December 3, 2011, September 10, 2012, and May 22, 2014 recommendation letters.

On or about March 8, 2015, in connection with civil litigation commenced by a third party against TS, two subpoenas were sent to Tod's branch office addressed to Tod and the Firm, respectively. The subpoenas sought information about Tod's September 2012 and May 2014 recommendation letters as well as any financial services rendered to TS by Tod and/or the Firm.

Tod took possession of the subpoenas without advising, or otherwise discussing them with, his branch manager or the Firm. Tod's failure to submit the recommendation letters and subpoenas to the Firm for review prevented the Firm from fulfilling its supervisory obligations under NASD Conduct Rule 3010(d) and preserving Tod's correspondence in accordance with Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-4 thereunder.

By virtue of the foregoing conduct, Tod violated FINRA Rule 2010.

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

1. A suspension from association with any FINRA member in any capacity for four months; and
2. A fine of \$15,000.

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 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.

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;

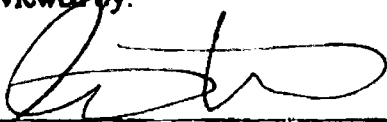
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and**
- C. If accepted:**
- 1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against 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.

06/08/2017
Date

David Tod, II
David Tod, II, Respondent

Reviewed by:


Scott Matasar
Matasar Jacobs LLC
1111 Superior Ave., Suite 1355
Cleveland, OH 44114
Phone: (216) 453-8180
smataras@matasarjacobs.com

Accepted by FINRA:

5/23/17
Date

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


Richard Chin
Chief Counsel
FINRA Department of Enforcement
One Brookfield Place
200 Liberty Street, 11th Floor
New York, New York 10281