

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015046295201**

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

RE: David Lerner Associates, Inc., Respondent
CRD No. 5397

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent David Lerner Associates, Inc. ("DLA" or the "Firm") 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

DLA has been a member of FINRA since 1970. The Firm conducts general securities business. It has approximately 245 registered representatives and nine branch offices, with headquarters in Syosset, New York.

RELEVANT DISCIPLINARY HISTORY

DLA has no relevant disciplinary history.

OVERVIEW

From July 1, 2013 through December 31, 2016 (the "relevant period"), DLA failed to timely file 98 out of 207 (47 percent) of the amendments to the Uniform Application for Securities Industry Registration or Transfer ("Form U4") the Firm submitted to FINRA. DLA also failed to timely file 20 out of 56 (36 percent) of the amendments to the Uniform Termination Notice for Securities Industry Registration ("Form U5") the Firm submitted to FINRA. In addition, DLA failed

to file Form U4 amendments to report four written customer complaints alleging sales practice violations and failed to timely file Forms U5 to report that the Firm had terminated the registration of 14 representatives. As a result, DLA violated FINRA Rules 1122 and 2010 and contravened Article V, Sections 2 and 3 of FINRA's By-Laws.

During the relevant period, DLA also failed to timely report statistical and summary information for 17 written customer complaints as required under FINRA Rule 4530(d). Additionally, DLA failed to report settlements of two securities-related arbitrations against the Firm in amounts greater than \$25,000 as required under FINRA Rule 4530(a). As a result, DLA violated FINRA Rules 4530(a) and (d) and 2010.

In addition, DLA failed to establish and maintain supervisory procedures during the relevant period reasonably designed to achieve compliance with the Firm's obligations to collect and report information to FINRA on Forms U4 and U5 and as required under FINRA Rules 1122 and 4530. Despite generally requiring the timely submission of regulatory filings, DLA lacked adequate procedures for the collection, review and submission of information to FINRA and consequently failed repeatedly to submit regulatory filings on a timely basis. As a result, DLA violated NASD Rule 3010(a) and (b) and FINRA Rules 3110(a) and (b) and 2010.

Finally, during the relevant period, DLA failed to establish and maintain supervisory procedures reasonably designed to achieve compliance with requirements under Regulation T regarding the extension of credit to brokerage customers. DLA lacked adequate procedures for requesting extensions of time pursuant to Regulation T for customers to pay in full for securities transactions and for imposing a 90-day freeze on extensions of credit to customers who sold securities without having paid for them as required under Regulation T. As a result, DLA violated NASD Rule 3010(a) and (b) and FINRA Rules 3110(a) and (b) and 2010.

FACTS AND VIOLATIVE CONDUCT

1. DLA Failed to Comply with its Reporting Obligations.

a. Form U4 and Form U5 Reporting Deficiencies

Pursuant to Article V, Section 2 of FINRA's By-Laws, when a representative applies to be registered with a member firm, the firm must file a Form U4 containing certain disclosures, such as bankruptcies, judgments, liens and customer complaints involving the representative. Article V, Section 2 of FINRA's By-Laws requires every Form U4 filed with FINRA to "be kept current at all times by supplementary amendments." A firm must file each amendment to the Form U4 "not later than 30 days after learning of the facts or circumstances giving rise to the amendment." Article V, Section 3 of FINRA's By-Laws

requires each member firm, not later than 30 days after the termination of association of any registered representative, to give notice to FINRA of such termination by filing a Form U5. If a firm “learns of facts or circumstances causing any information” on the Form U5 “to become inaccurate or incomplete,” it must file an amendment to the Form U5 “not later than 30 days after the member learns of the facts or circumstances giving rise to the amendment.” Failing to timely amend a Form U4 or Form U5 violates FINRA Rule 1122.

During the relevant period, 98 out of 207 (47 percent) of the Form U4 amendments submitted by the DLA were filed more than 30 days after the Firm learned of the facts or circumstances giving rise to the amendment. Of these filings, 57 were submitted more than 60 days late. During the relevant period, 20 out of 56 (36 percent) of the Form U5 amendments submitted by DLA were filed more than 30 days after the Firm learned of the facts or circumstances giving rise to the amendment. Of these filings, 13 were submitted more than 60 days late. DLA was informed of its filing deficiencies by FINRA staff in April 2015, as part of FINRA’s cycle examination of the Firm, but continued to submit Form U4 and Form U5 amendments on an untimely basis. In 2016, for example, 24 out of 55 (44 percent) of the Form U4 amendments submitted by DLA were filed late, and four out of ten (40 percent) of the Form U5 amendments submitted by DLA were filed late. Additionally, during the relevant period, DLA completely failed to file Form U4 amendments to disclose four written customer complaints alleging sales practice violations and failed to timely file initial Forms U5 to report that the Firm had terminated the registration of 14 representatives.

By virtue of the foregoing, DLA violated FINRA Rules 1122 and 2010 and contravened Article V, Sections 2 and 3 of FINRA’s By-Laws.

b. Reporting Deficiencies Under FINRA Rule 4530

Under FINRA Rule 4530(a), each member firm must “promptly report to FINRA, but in any event not later than 30 calendar days, after the member knows or should have known of the existence of” certain occurrences. Among other things, a firm must report if it “is a defendant or a respondent in any securities . . . related civil litigation or arbitration” that “has been disposed of by judgment, award or settlement . . . for an amount exceeding \$25,000.” Under FINRA Rule 4530(d), each member firm must “report to FINRA statistical and summary information regarding written customer complaints . . . by the 15th day of the month following the calendar quarter in which customer complaints are received by the member.”

During the relevant period, DLA failed to report two securities-related arbitrations brought by customers that resulted in settlements in amounts exceeding \$25,000. Additionally, during the relevant period, DLA failed to timely report statistical and summary information regarding 17 written customer complaints.

By virtue of the foregoing, DLA violated FINRA Rules 4530(a) and (d) and 2010.

2. DLA Failed to Establish and Maintain Reasonable Supervisory Procedures.

NASD Rule 3010(a) and FINRA Rule 3110(a) (which superseded NASD Rule 3010(a) on December 1, 2014) require each member to establish and maintain a system to supervise its associated persons reasonably designed to achieve compliance with the securities laws and with NASD and FINRA Rules. Under NASD Rule 3010(b) and FINRA Rule 3110(b) (which superseded NASD Rule 3010(b) on December 1, 2014) each member must establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the securities laws and with NASD and FINRA rules. A violation of NASD Rule 3010 or FINRA Rule 3110 also violates FINRA Rule 2010.

a. Failure to Supervise for Compliance with Reporting Obligations

During the relevant period, DLA failed to establish and maintain supervisory procedures reasonably designed to achieve compliance with the Firm's obligation to report information to FINRA on Forms U4 and U5 and as required under FINRA Rules 1122 and 4530. DLA's written supervisory procedures generally required the Firm to timely submit regulatory filings, including Form U4 and U5 amendments and filings pursuant to FINRA Rule 4530. DLA did not, however, adopt any specific written procedures for the collection and submission of information required on the Form U4 or Form U5 until approximately 2015. Further, throughout the relevant period, DLA lacked procedures for supervising whether Form U4 and Form U5 amendments regarding customer arbitrations against the Firm or its registered representatives were submitted on a timely basis. DLA also lacked procedures for supervising whether statistical and summary information regarding written customer complaints was timely reported to FINRA as required under FINRA Rule 4530. Consequently, the Firm repeatedly failed to submit its regulatory filings on a timely basis, as described above.

After FINRA staff informed the Firm of its reporting deficiencies in early 2015, DLA failed to take prompt and reasonable steps to address the deficiencies in its reporting process. For example, DLA informed FINRA staff during FINRA's 2014 and 2015 cycle examinations that the Firm's late filings were due to miscommunications between its legal and compliance departments. Nonetheless, the Firm failed to correct the deficiencies in its reporting process, and in 2016, submitted 47 percent of its Form U4 amendments and 40 percent of its Form U5 amendments on an untimely basis.

By virtue of the foregoing, DLA violated NASD Rule 3010(a) and (b) and FINRA Rules 3110(a) and (b) and 2010.

b. Failure to Supervise for Compliance with Regulation T

Section 7(c) of the Securities Exchange Act of 1934 makes it unlawful for any broker-dealer “to extend or maintain credit . . . to or for any customer . . . in contravention of the rules and regulations which the Board of Governors of the Federal Reserve System . . . shall prescribe.” The Board of Governors of the Federal Reserve System has issued Regulation T to govern the extension of credit by broker-dealers. Under subpart (b) of Regulation T, a broker-dealer that extends credit to a customer must “promptly cancel or otherwise liquidate a transaction for which the customer has not made full cash payment” within five business days. Subpart (c) of Regulation T provides that, if a security is sold “without having been previously paid for in full by the customer, the privilege of delaying payment beyond the trade date shall be withdrawn for 90 calendar days following the date of the sale of the security.”

Under Regulation T, member firms may apply to FINRA for extensions of time for customers to make full payment for securities transactions prior to cancellation or liquidation of the transaction. FINRA limits firms to five extension requests per customer during any rolling 12-month period. Multiple extension requests for the same customer on the same day may be aggregated to count as only one request for purposes of the five-request limit.

During the relevant period, DLA failed to establish and maintain supervisory procedures reasonably designed to achieve compliance with Regulation T. Prior to approximately 2014, DLA lacked any written procedures for filing and supervising extension requests under Regulation T. After adopting written procedures regarding Regulation T in 2014, DLA failed to take adequate steps to ensure that its employees, including those responsible for filing Regulation T extension requests, reviewed and understood the procedures.

Throughout the relevant period, DLA lacked adequate procedures for compliance with the requirement that each customer be limited to five Regulation T extension requests per year. Prior to approximately 2015, for customers who sought multiple extensions in one day, DLA requested an extension for each transaction rather than aggregating all extensions requests for each customer in a given day, as permitted by FINRA. As a result, customers reached their annual limit of extension requests sooner than if DLA had aggregated their requests.

The Firm’s procedures for conducting supervisory reviews for compliance with Regulation T were also deficient. Although the Firm’s written procedures regarding Regulation T, adopted in approximately 2014, required a “Designated Supervisor” to “[m]onitor Reg T extensions of credit,” the procedures failed to describe how supervisors were to monitor for compliance with Regulation T. In practice, no Firm supervisor reviewed extension requests before or after the requests were filed. As a result, DLA did not detect erroneous information

entered on extension requests, including errors that resulted in a customer exceeding the annual limit of extension requests. Further, throughout the relevant period, DLA lacked procedures for monitoring extension requests by each customer to detect whether customers may have exceeded the annual limit of requests.

In addition, DLA failed to establish and maintain procedures for imposing a 90-day freeze on extensions of credit to customers who sold securities without having paid for them as required under subpart (c) of Regulation T. Prior to approximately 2015, DLA had no procedures for monitoring whether customers had sold securities without having paid for them or for imposing a 90-day freeze on extensions of credit to such customers. From approximately 2015 through 2016, DLA lacked procedures for imposing a 90-day freeze on extensions of credit to customers who sold securities prior to payment in full, other than in circumstances when the sale occurred due to the transaction being cancelled.

By virtue of the foregoing, DLA violated NASD Rule 3010(a) and (b) and FINRA Rules 3110(a) and (b) and 2010.

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

- Censure; and
- Fine in the amount of \$75,000.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is 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 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 it;
- 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 it;
 - 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

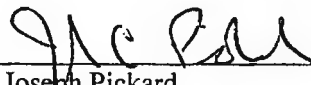
4. Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Respondent may not take any position in any proceeding 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 it 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.

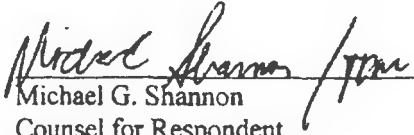
The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that the Firm has agreed to its provisions voluntarily; and that no offer, threat, 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.

10/12/2017
Date (mm/dd/yyyy)

David Lerner Associates, Inc.

By: 
Joseph Pickard
Senior Vice President, General Counsel

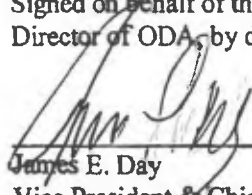
Reviewed by:


Michael G. Shannon
Counsel for Respondent
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New York, New York 10017
(212) 908-3954

Accepted by FINRA:

11/21/17
Date

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


James E. Day
Vice President & Chief Counsel
FINRA Department of Enforcement
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Rockville, MD 20850
(301) 258-8520