

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015046649901**

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

**RE: David Newman, Respondent
General Securities Representative and General Securities Principal
CRD No. 1407201**

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

Respondent David Newman entered the securities industry in 1985, and has been registered with three firms. He has held General Securities Representative (Series 7), General Securities Principal (Series 24), and State Law (Series 63) licenses. Newman was registered with First Western Securities, Inc. from April 1, 2008 until January 5, 2016, when his registration was voluntarily terminated.

Although Newman is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding pursuant to Article V, Section 4 of FINRA's By-Laws because this AWC (1) is being issued within two years after the date upon which he ceased to be registered with a FINRA member, namely January 5, 2016, and (2) charges him with conduct committed while he was registered with a FINRA member.

OVERVIEW

Between the fall of 2012 and the spring of 2015, Newman participated in undisclosed private securities transactions by introducing a married couple and two other individuals to an outside investment. The people introduced by

Newman invested a total of at least \$895,000 in the outside investment, and Newman received 10% of that amount as a commission from the promoter of the investment. The investment turned out to be part of a fraudulent scheme perpetrated by another individual.

Newman violated NASD Rule 3040 by participating in these transactions without providing notice to, or receive permission from, the member firm with which he was registered. In addition, he violated the suitability obligations of FINRA Rule 2111 by recommending the investment to one of his customers without a reasonable basis for believing that it was suitable for her, and he violated FINRA Rule 2010 by falsely certifying to his firm on two separate occasions that he had not participated in any private securities transactions.

FACTS AND VIOLATIVE CONDUCT

The Collins Notes

Bobby Collins was an insurance agent living in Wichita Falls, Texas. In or before 2005, Collins began to sell notes to investors with the promise of paying back the principal and interest over a set period of time (usually two years) in equal monthly installments. He told investors the money would be used to purchase insurance lead cards or for other business development, such as advertising, and that he would pay them back through insurance commissions. However, Collins put the money he raised from investors into a bank account which he used for both business and personal purposes, and used only 2% of the funds to expand his business as promised.

By 2015, Collins was not generating sufficient insurance commissions to pay the notes. As of May 2015, he owed noteholders more than \$1 million and was supposed to make payments of approximately \$100,000 per month, but had only \$40,000 and was making only \$1,000 to \$12,000 per month in commissions. He then began using funds raised from new investors to repay existing noteholders.

On November 10, 2015, the SEC brought a civil injunctive action against Collins alleging that he orchestrated an investment scheme targeting elderly investors. The SEC charged that he had induced at least 36 people to invest more than \$4.6 million since at least 2010, and that he had made false promises about the intended use of the proceeds. Collins was charged with fraud and with selling unregistered securities. He entered into a settlement with the SEC whereby he agreed to be enjoined, to disgorge \$573,234, and to pay a \$160,000 civil penalty.

Newman's Participation in the Sale of the Notes

In 2012, Newman entered into an arrangement with Collins to introduce potential note investors in return for 10% of the amount invested by the people he introduced. Between the fall of 2012 and the spring of 2015, Newman introduced

a retired married couple and two other senior investors to Collins as potential investors. These people invested a total of at least \$895,000 with Collins, generating approximately \$89,500 in commissions paid to Newman. In addition to telling the investors about the Collins notes and receiving compensation for doing so, Newman specifically recommended that one customer invest in the notes and purchased some of them for her through a power of attorney she had given him.

Newman did not conduct adequate due diligence into the notes or into Collins' business. He did not check Collins' financial statements or the solvency of his company, nor did he verify that Collins had successfully generated revenue from the leads he was supposedly purchasing with money raised through the sale of the notes. Newman also did not review how Collins was spending the money he raised from investors in the notes. Instead, Newman relied solely on Collins' representations.

Collins paid back most of the principal and interest to which the investors referred to him by Newman were entitled, but stopped making payments by September 2015. At that time, he owed them a total of approximately \$129,000 in principal and interest.

Resulting Violations

NASD Rule 3040, in effect at the time of the alleged violations, prohibited an associated person from participating in any private securities transaction without obtaining written approval from his or her firm.¹ Newman did not tell First Western about the Collins arrangement until June 2015. Newman violated NASD Rule 3040 by participating in the foregoing private securities transactions without providing the required notice or obtaining permission from his firm. By virtue of this violation, Newman also violated FINRA Rule 2010.

On or about October 25, 2013 and November 7, 2014, Newman falsely certified on First Western's compliance documentation that he had not participated in any private securities transactions. Newman violated FINRA Rule 2010 by submitting false answers on his annual firm compliance certifications.

Lastly, FINRA Rule 2111 requires that an associated person have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for his or her customer prior to making the recommendation. The suitability obligation requires an associated person to have a basis to believe, based on reasonable diligence, that the recommendation is suitable for at least some investors. By recommending the Collins notes to one of his customers without conducting adequate due diligence, Newman violated FINRA Rule 2111. By virtue of this violation, Newman also violated FINRA Rule 2010.

¹ NASD Rule 3040 was superseded by FINRA Rule 3280 as of September 21, 2015.

* * *

By virtue of the foregoing, Newman violated NASD Rule 3040 and FINRA Rules 2010 and 2111.

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

1. a fifteen-month suspension from association with any FINRA member firm in all capacities;
2. disgorgement of the financial benefits received, which is ordered to be paid to FINRA in the amount of \$89,500, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. §6621, from March 31, 2015 until the date this AWC is accepted by the NAC; and
3. a \$15,000 fine.

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

The fine and disgorgement shall be due and payable either immediately upon reassociation with a member firm following the 15-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 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.

I understand that if I am 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 suspension (see FINRA Rules 8310 and 8311).

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.

5-2-2016
Date

David Newman
David Newman
Respondent

Reviewed by:

Robert Long, Esq.
Bell Nunnally
3232 McKinney Ave., Suite 1400
Dallas, Texas 75204
(214) 740-1489

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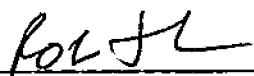
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Date

David Newman
Respondent

Reviewed by:



Robert Long, Esq.
Bell Nunnally
3232 McKinney Ave., Suite 1400
Dallas, Texas 75204
(214) 740-1489

Accepted by FINRA:

May 20, 2016
Date

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



Jonathan Golomb
Senior Special Counsel
FINRA Department of Enforcement
15200 Omega Drive
Rockville, MD 20832