

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015048041101**

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

RE: James L. Fonseca, Respondent
Former Registered Representative
CRD No. 2679797

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, James L. Fonseca, 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

Fonseca entered the securities industry in 1994. He became registered in 1999 as a General Securities Representative. He was registered with nearly 20 different NASD- and FINRA-member firms before becoming registered with Rothschild Lieberman, LLC ("Rothschild" or the "Firm") in November 2014. Rothschild terminated Fonseca's employment and registration in November 2015 because the Firm believed Fonseca had commingled customer funds in a personal family account and converted some of those funds.

Fonseca has not been employed in the securities industry since his departure from Rothschild, but he remains subject to FINRA jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

Fonseca has no formal disciplinary history.

OVERVIEW

Between August and October 2015, while registered with Rothschild, Fonseca accepted \$25,000 from AR, an individual Fonseca was soliciting to become a Firm customer, who agreed to invest in a day trading endeavor with Fonseca. Fonseca deposited and comingled AR's funds in a bank account controlled by Fonseca and his wife. As a result, Fonseca violated FINRA Rule 2010. Fonseca then converted some of those funds at a time when AR was a customer, in violation of FINRA Rules 2150 and 2010.

In October 2016, Fonseca failed to appear for on-the-record testimony ("OTR") requested pursuant to FINRA Rule 8210. He also failed to provide information requested pursuant to FINRA Rule 8210 in anticipation of his OTR. Fonseca has informed FINRA staff by telephone that he would not appear at a later date for an OTR and would not cooperate in FINRA's investigation. As a result, Fonseca violated FINRA Rules 8210 and 2010.

FACTS AND VIOLATIVE CONDUCT

In August 2015, Fonseca received permission from the Firm to engage in a day trading endeavor with his colleague, NE. As a first step, Fonseca received permission from the Firm for NE to attend a day trading training course for a fee of \$25,000.

Fonseca obtained \$25,000 from AR, an individual Fonseca was soliciting to be a Firm customer, with AR understanding that the funds would be used to pay for Fonseca's day trading endeavor. Fonseca had AR wire \$25,000 on August 28, 2015, to a savings account held by Fonseca's wife. On August 31, 2015, that money was transferred to a checking account held by Fonseca's wife and wired to the day trading course provider.

AR became a customer of the Firm on or around September 17, 2015. NE continued with the day trading course but not successfully. The course provider therefore refunded the remaining funds to Fonseca, who planned to return those funds to AR. On October 6, 2015, the course provider wired \$19,702.17 into Fonseca's wife's savings account and it was then transferred to Fonseca's wife's checking account. At the time of the transfer, Fonseca's wife's checking account was overdrawn. Thus, only \$19,476.72 of the \$19,702.17 was wired back to AR. As a result, Fonseca converted \$225.45 of AR's funds. By comingling AR's funds, Fonseca violated FINRA Rule 2010. By converting AR's funds, Fonseca violated FINRA Rules 2150 and 2010.

In connection with its investigation into whether Fonseca comingled and converted customer funds, on September 12, 2016, FINRA staff issued a request pursuant to FINRA Rule 8210 that Fonseca appear for testimony on October 6, 2016. On September 27, 2016, FINRA staff sent Fonseca, pursuant to FINRA Rule 8210, a Background Questionnaire for Fonseca to complete and return by October 5, 2016, in advance of and for use in his testimony. On October 5, 2016, FINRA staff agreed to postpone Fonseca's testimony until October 19, 2016, so that Fonseca could obtain counsel.

Fonseca did not appear for testimony on October 19, 2016, nor did he complete and submit the Background Questionnaire. Instead, Fonseca informed FINRA staff by phone on October 19, 2016, that he received FINRA's request but would not appear on the scheduled date, would not appear for an OTR at any time and would not otherwise cooperate in FINRA's investigation.

By failing to appear for his scheduled testimony and providing information as requested pursuant to FINRA Rule 8210 and by refusing to cooperate in FINRA's investigation, Fonseca violated FINRA Rules 8210 and 2010.

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

- A bar from association with any FINRA member firm in any capacity.

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).

The sanctions imposed herein shall be effective on a date set by FINRA staff. A bar or expulsion shall become effective upon approval or acceptance of this AWC.

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.

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.

11/24/2014
Date (mm/dd/yyyy)

James L. Fonseca
James L. Fonseca, Respondent

Accepted by FINRA:

11/28/16
Date

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

James E. Day
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