

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2016047845201**

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

RE: Infinity Financial Services (Respondent)
Member Firm
CRD No. 144302

Pursuant to FINRA Rule 9216, Respondent Infinity Financial Services 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 in this AWC.

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

Respondent Infinity Financial Services has been a FINRA member firm since November 2007. It is headquartered in Oakland, California and conducts a general securities business. Infinity Financial currently has approximately 60 registered representatives and approximately 45 branch offices.

Respondent does not have any relevant disciplinary history.

OVERVIEW

From March 2014 through April 2017, Infinity Financial failed to establish, maintain, and enforce a supervisory system, including written supervisory procedures, reasonably designed to ensure that the firm conducted required background investigations into disciplinary histories, financial circumstances, and qualifications of its new hires. Based on the foregoing, Infinity Financial violated NASD Rules 3010(a), (b), and (e)¹ and FINRA Rules 3110(a), (b) and (e) and FINRA Rule 2010.

¹ NASD Rule 3010 was superseded by FINRA Rule 3110 on December 1, 2014, except that NASD Rule 3010(e) was superseded by FINA Rule 3110(e) on July 1, 2015.

From November 2016 through May 2017, Infinity Financial expanded the number of its associated persons and branch offices beyond its membership agreement without filing a continuing membership application (CMA) for a material change in business and without the requisite approval from FINRA. Based on the foregoing, Infinity Financial violated NASD Rule 1017(a)² and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA’s 2016 cycle examination of Infinity Financial.

Infinity Financial Failed to Conduct Reasonable Background Investigations

FINRA Rule 3110(a) and former NASD Rule 3010(a) require each member to “establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with . . . applicable FINRA [and NASD] rules,” and provide that “[f]inal responsibility for proper supervision shall rest with the member.” FINRA Rule 3110(b) and former NASD Rule 3010(b) further require each member to “establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with . . . applicable FINRA [and NASD] rules.”

FINRA Rule 3110(e) and former NASD Rule 3010(e) require firms to conduct a background investigation of the good character, business reputation, qualification, and experience of persons the firm seeks to register with FINRA. Since July 1, 2015, FINRA Rule 3110(e) requires firms to establish and implement written procedures reasonably designed to verify the accuracy and completeness of the information contained in an applicant’s initial or transfer Uniform Application for Securities Registration (Form U4) no later than 30 calendar days after the form is filed with FINRA. This verification process must, at a minimum, provide for a national search of reasonably available public records conducted by the firm or a third-party service provider. In Regulatory Notice 15-05, FINRA reminded firms that public records include: criminal records, bankruptcy records, judgments and liens. The Form U4 also requires firms to attest to contacting an applicants’ former employers from the last three years.

From March 2014 through April 2017, Infinity Financial failed to establish, maintain, and enforce a supervisory system and written supervisory procedures (WSPs) reasonably designed to address background investigations of new hires. Infinity Financial’s WSPs required the firm to: “conduct an extensive interview with the applicant,” conduct a “CRD/background check,”³ and obtain and review, among other things, the applicant’s Form U4, an FBI Report, a fingerprint card, and the applicant’s Form U5 from his or her

² NASD Rule 1017(a) was superseded by FINRA Rule 1017(a) on May 8, 2019. Because the conduct at issue took place before May 8, 2019, NASD Rule 1017(a) applies.

³ The pre-registration search feature in the Central Registration Depository (CRD) allows a firm to search for an individual that is not currently associated with the firm but is being considered for employment. A firm must obtain written consent from the individual prior to conducting a pre-registration search.

previous employing broker-dealer. Infinity Financial also used a “New Hire & New Registered Rep Checklist” that required the firm obtain and review the applicant’s Form U5, obtain disclosure forms (*e.g.*, outside business activities), fingerprint the applicant, and save the records in the applicant’s personnel file. The New Hire Checklist, (and the Form U4), in contrast to the WSPs, required the firm to verify the applicant’s prior employment by contacting the applicant’s prior employers from the past three years.

The firm’s WSPs and New Hire Checklist did not include a procedure to conduct searches of public records. Because the firm relied upon Google searches and the accuracy of CRD disclosures made by prior employers to investigate applicants, it recruited registered representatives with reportable disciplinary histories and financial events. In order to verify the accuracy of an applicant’s Form U4, the firm used a “CRD Authorization/Rep Summary” form. This form required applicants to indicate whether they were aware of a pending disciplinary action, customer complaint, regulatory investigation, arbitration, or criminal complaint/indictment against them, but did not clarify that financial events, such as liens or judgments, should be disclosed. Although required by the New Hire Checklist, and the Form U4, Infinity Financial did not contact its applicants’ former employers.

From March 2014 through April 2017, due to Infinity Financial’s inadequate background check procedures, the firm hired 16 registered representatives without conducting a pre-registration search in CRD. The firm failed to detect pending bankruptcies, judgments, and tax liens for five registered representatives.

Therefore, Respondent violated NASD Rules 3010(a), (b), and (e) and FINRA Rules 3110(a), (b) and (e), and FINRA Rule 2010.

Infinity Financial Failed to Seek Prior Approval for a Material Change in Business

NASD Rule 1017(a) required a member firm to file an application with FINRA for approval of certain changes to its ownership, control or business operations, including a material change to the firm’s business operations. NASD Interpretive Material IM 1011-1 establishes a safe harbor for certain business expansions, which are presumed not to be a material change in business operations, and thus, would not trigger the filing of a continuing membership application with FINRA. For increases in sales personnel, the safe harbor allows firms with 11 or more associated persons involved in sales to add 10 more such persons or to increase such persons by 30%, whichever number is greater, over a one-year period. It further provides that firms with six or more offices (registered or unregistered) to add three offices or to increase such offices by 30%, whichever number is greater, over a one-year period.

Infinity Financial’s Membership Agreement, dated November 14, 2013, provided that the firm could employ 41 associated persons (registered and unregistered) having direct contact with customers in the conduct of the member’s securities business, and maintain 36 offices (registered and unregistered).

Between November 2016 and May 2017, Infinity Financial expanded its business by increasing the number of its associated persons to 60, and the number of its branch offices to 49, thereby expanding beyond what was allowed by its membership agreement by an additional 19 persons and an additional 13 offices. Through these expansions, the firm exceeded the safe harbor by six associated persons and two offices. Infinity Financial did not file a continuing membership application with FINRA seeking prior approval of the expansion, as required.

Therefore, Respondent violated NASD Rule 1017 and FINRA Rule 2010.

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

- A censure;
- A \$35,000 fine; and
- An undertaking to file a continuing membership application with FINRA, consistent with FINRA Rule 1017, within 30 calendar days of acceptance of this AWC.

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 an inability to pay, now or at any time after the execution of this AWC, the monetary sanction imposed in this matter.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

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 its acceptance or rejection.

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 action 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 its subject matter 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 testimonial obligations or 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.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's 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 Respondent has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

November 24, 2020

Date

GREGORY GILBERT

Infinity Financial Services
Respondent

Print Name: GREGORY GILBERT

Title: CCO

Reviewed by:

Kevin J. Woods

Kevin J. Woods
Counsel for Respondent
White & Woods PC
235 Montgomery St., Suite 460
San Francisco, CA 94104

Accepted by FINRA:

12/08/2020

Date

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



Chandana Kolavala

Principal Counsel

FINRA

Department of Enforcement

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