

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2016052219202**

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

RE: Benjamin S. Burton, Respondent
Former General Securities Representative
CRD No. 4207173

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Benjamin Burton ("Burton"), 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

Burton entered the securities industry in June 2000 with Dean Witter Reynolds Inc. (n/k/a Morgan Stanley), a FINRA regulated broker-dealer, in a non-registered capacity. He subsequently became registered as a Series 7 General Securities Representative ("GSR") with Morgan Stanley ("the Firm") beginning in September 2012.

On or about October 28, 2016, the Firm terminated Burton's employment. Thereafter the Firm filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") on November 23, 2016, reporting the termination of Burton's employment based on, among other things, Burton's discretionary trading in a Firm customer account.

Burton is not currently associated with a FINRA-regulated broker-dealer, but remains subject to FINRA's jurisdiction, pursuant to Article V, Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

Burton has no prior relevant disciplinary history in the securities industry.

OVERVIEW

From October 2013 through August 2016 (the "Relevant Period"), Burton violated NASD Rule 2510(b) and FINRA Rule 2010 by exercising discretion on at least 40 occasions in a customer account without the customer's prior written authorization or the Firm's approval of the account as discretionary. In addition, during the Relevant Period, Burton made false statements on three Firm compliance questionnaires concerning his use of discretion, in violation of FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Exercising Discretion Without Prior Written Customer Authorization

NASD Rule 2510(b) states that: "[n]o member or registered representative shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the member, as evidenced in writing by the member or the partner, officer or manager, duly designated by the member, in accordance with Rule 3010." A violation of Rule 2510(b) is also a violation of FINRA Rule 2010.

During the Relevant Period, the Firm permitted discretionary trading only when approved by the Firm. Burton exercised discretion without Firm approval on at least 40 occasions in the securities account of Customer R. Although Customer R had given Burton her verbal authorization to exercise discretion in her account, Burton failed to obtain prior written authorization from Customer R. Burton also never obtained the Firm's approval of Customer R's account as a discretionary account.

By exercising discretion without prior written authorization from Customer R and Firm approval of the account, Burton violated NASD Rule 2510(b) and FINRA Rule 2010.

False Statements to the Firm

Making false statements to a FINRA regulated broker-dealer violates FINRA Rule 2010. The Firm required its registered representatives to complete annual compliance questionnaires ("Questionnaires") and to attest to the veracity of their responses.

On March 7, 2014, September 25, 2015 and June 15, 2016, Burton completed and submitted Questionnaires to the Firm. Each of these Questionnaires contained the question, "Do you have any accounts in which business is transacted on a discretionary basis?" In each instance, Burton falsely responded to this question with the answer "No." Burton's answers were false because, at the time Burton responded to this question, he had effected transactions for Customer R's account on a discretionary basis.

By making false statements to the Firm in three Questionnaires, Burton violated FINRA Rule 2010.

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

A suspension for three months from associating with any FINRA member firm in any capacity; and

A fine of \$7,500.

The fine shall be due and payable either immediately upon reassociation with a member firm, 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(s) imposed in this matter.

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.

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 understand and acknowledge that FINRA does not represent or advise me and I cannot rely on FINRA or FINRA staff members for legal advice; 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.

8/11/17
Date

Benjamin S. Burton
Benjamin S. Burton, Respondent

Accepted by FINRA:

9/7/2017
Date

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

Richard Chin
Richard Chin
Chief Counsel
FINRA Department of Enforcement
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