

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2017056130301**

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

RE: Andrew J. Lowe, Respondent  
General Securities Representative  
CRD No. 4636118

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Andrew J. Lowe ("Lowe" or "Respondent"), 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**

Lowe first became registered with FINRA in May 2003, as a General Securities Representative of a member of FINRA. From January 13, 2009 through September 4, 2014, Lowe was associated with Sterne Agee Financial Services, Inc. ("Sterne Agee") and was registered with FINRA under Article V of the By-Laws as a General Securities Representative. From September 4, 2014 through November 1, 2017, Lowe was associated with Berthel, Fisher & Company Financial Services, Inc. ("Berthel Fisher") and was registered with FINRA under Article V of the By-Laws as a General Securities Representative. From November 16, 2017 through May 29, 2018, Lowe was associated with another FINRA member firm and registered with FINRA. Lowe is not currently associated with a FINRA member firm or registered with FINRA, but remains subject to the jurisdiction of FINRA, pursuant to Article V, Section 4 of FINRA's By-Laws, which provides for a two-year period of retained jurisdiction over formerly registered persons. Lowe has no prior disciplinary history.

## **OVERVIEW**

Lowe recommended and engaged in unsuitable trading of Class A mutual fund shares in violation of NASD Rule 2310 and FINRA Rules 2111 and 2010. In addition, Lowe willfully failed to timely amend his Uniform Application for Securities Industry Registration or Transfer ("Form U4") to disclose three federal tax liens in violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

## **FACTS AND VIOLATIVE CONDUCT**

### **Unsuitable Recommendations Of Class A Mutual Fund Shares**

Between January 1, 2012 and September 4, 2014, while at Sterne Agee, Lowe recommended that 24 customers purchase Class A mutual fund shares. Certain portions of those investments were then liquidated within a short time period. This activity was unsuitable.

Class A mutual fund shares typically include substantial upfront sales charges, known as "front end loads." They generally are suitable only as long-term investments and are not a proper vehicle for short-term trading because an investor must typically hold the A share for a long period of time to account for the front end load. Conversely, instead of front end loads, Class C shares incur ongoing, annual fees that are a fixed percentage of a mutual fund's average net assets and are more appropriate for investors who intend to redeem shares in the short-term.

Lowe's investment strategy was to recommend Class A shares over Class C shares based on his belief that A shares typically provide a higher rate of return than C shares, and that C share annual fees negatively affect investment returns. Lowe reasoned that by paying the A share front end load an investor would not incur increased fees in an up-market. Conversely, in a down-market, an A share investor would not continue to incur fees on top of losses. When A share investments yielded positive returns, Lowe would recommend that his customer sell the shares to capture capital gains even though the customer had only held the A shares for a short period of time. Lowe believed that the capital gains would offset the front end load.

At the time Lowe recommended A shares, he knew that these customers had short-term income needs and would need to make complete or partial liquidations of their investments within a year to meet those needs. Nevertheless, Lowe recommended that these customers purchase A shares because of his belief that, in the long term, the A share investments provided a better value to the customers. Subsequently, over a two year period, Lowe effected 186 total or partial liquidations of A shares, over half of which were held for less than 12 months, to

meet his clients' income needs. When comparing the costs for all A shares sold by these customers within 12 months of purchase to the costs they would have incurred if they had originally purchased C shares, in each instance, the C shares would have been more financially beneficial to the clients.

Lowe generated approximately \$36,180.87 in net commissions from the complete or partial liquidations. Sterne Agee has since reimbursed customers \$102,446.47 in sales charges as a result of the unsuitable recommendations.

Lowe did not have reasonable grounds for believing that his investment strategy or A shares in general were suitable for these customers in light of the long-term time horizon required for A shares and each customer's short-term financial needs. Lowe's recommendations caused the customers to incur unnecessary sales charges, and were unsuitable in view of the short holding periods and cost of the transactions.

Through this conduct, Lowe violated NASD Rule 2310 (for conduct prior to July 9, 2012), FINRA Rule 2111 (for conduct on or after July 9, 2012), and FINRA Rule 2010.

*Willful Failure To Amend Form U4 To Disclose Outstanding Liens*

Article V, Section 2(c) of FINRA's By-Laws requires registered representatives to keep their Form U4 "current at all times" and amendments to the Form U4 must be filed "not later than 30 days after the learning of the facts or circumstances giving rise to the amendment."

FINRA Rule 1122 provides that "[n]o member or person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such foiling after notice thereof."

Question 14M of the Form U4 asks an associated person: "Do you have any unsatisfied judgments or liens against you?"

Between September 4, 2015 and December 14, 2016, the Internal Revenue Service filed three tax liens against Lowe, totaling \$183,380.57. Lowe was aware of these liens at the time they were filed against him; however, he willfully failed to timely amend his Form U4 to disclose the outstanding liens until May 12, 2017, after they came to the attention of Berthel Fisher. Lowe was required to amend his Form U4 to report the liens within 30 days of learning of them, but failed to do so.

Berthel Fisher's Written Supervisory Procedures ("WSPs") required Lowe to promptly report unsatisfied liens to Compliance and promptly notify the firm of any updates that may require an amendment to the Form U4. On March 26, 2016,

Berthel Fisher sent Lowe a letter reminding him of his responsibilities to update his Form U4 and requiring his signed acknowledgement. On March 28, 2016, Berthel Fisher issued Lowe a Letter of Caution fining him \$1,000 for failing to disclose three other state tax liens to the firm and requiring him to acknowledge that he understood the firm's WSPs. Additionally, on August 1, 2016, Lowe signed and submitted to Berthel Fisher a Registered Representative Questionnaire acknowledging that he understood that he must immediately contact the firm if he has outstanding or new liens to disclose so that it could update his Form U4 within 30 days of the event.

By willfully failing to amend his Form U4, Lowe violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

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

- A suspension from association with any FINRA member, in any and all capacities, for a period of nine months;
- A fine of \$20,000; and
- Disgorgement of commissions received, which is ordered to be paid to FINRA in the amount of \$36,180.87, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621, from September 4, 2014, until the date this AWC is accepted by the NAC.

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.

Disgorgement 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 sanctions 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).

I understand that this settlement includes a finding that I willfully omitted to state a material fact on a Form U4, and that under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 and Article III, Section 4 of FINRA's By-Laws, this omission makes me subject to a statutory disqualification with respect to association with a member.

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:

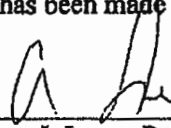
- A. Submission of this AWC is voluntary and will not resolve this matter unless and

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;

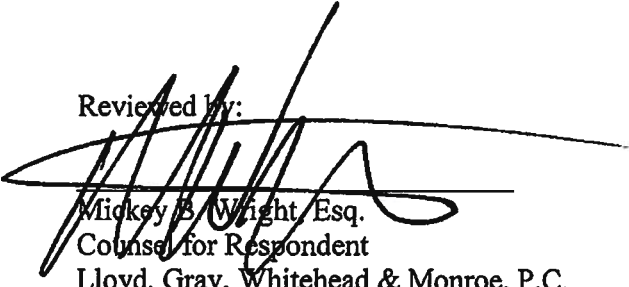
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and
- C. If accepted:
1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against 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 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.

06/08/2018  
Date (mm/dd/yyyy)

  
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Andrew J. Lowe, Respondent

Reviewed by:



Mickey B. Wright, Esq.  
Counsel for Respondent  
Lloyd, Gray, Whitehead & Monroe, P.C.  
880 Montclair Road, Ste. 100  
Birmingham, AL 35213  
Phone: (205) 967-8822  
Facsimile: (205) 967-2380  
Email: mwright@lgwmlaw.com

Accepted by FINRA:

June 11, 2018

Date

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



Sarah B. Belter-Pylant, Senior Regional Counsel  
FINRA, Department of Enforcement  
1100 Poydras Street, Suite 850  
New Orleans, Louisiana 70163-1108  
Phone: (504) 412-2406  
Facsimile: (202) 721-6520  
Email: sarah.belter-pylant@finra.org