

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2018057602801**

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

RE: Gerard N. Whelan, Respondent
Associated Person
CRD No. 2445147

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Gerard Whelan 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 Whelan alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Whelan 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

From April 5, 2016 to April 13, 2018, Whelan was associated with Ameriprise Financial Services, Inc. ("Ameriprise" or the "Firm") as a non-registered fingerprint person. On April 19, 2018, the Firm filed an NRF Amendment for Whelan disclosing that the Firm had terminated its relationship with him.

Although Whelan is not currently registered with FINRA or associated with a FINRA member, FINRA retains jurisdiction over him under Article V, Section 4(iii) of the FINRA By-Laws.

RELEVANT DISCIPLINARY HISTORY

Whelan has no relevant disciplinary history.

OVERVIEW

Between April 2016 and November 2017 (the “Relevant Period”), Whelan participated in private securities transactions without notice to his employer firm, in violation of FINRA Rules 3280 and 2010.

FACTS AND VIOLATIVE CONDUCT

FINRA Rule 3280(b) requires an associated person to, prior to participating in any private securities transaction, provide written notice to the member with which they are associated. This notice must give a detailed description of the proposed transaction and the person’s proposed role therein, and it must state whether they have received or may receive selling compensation in connection with the transaction. The member firm is then required to either approve or disapprove the person’s participation. If the member firm disapproves, the person shall not participate in the transaction in any manner, directly or indirectly.

FINRA Rule 3280(e) defines a private securities transaction as, “any securities transaction outside the regular course or scope of an associated person’s employment with a member, including, though not limited to, new offerings of securities which are not registered with the Commission.”

FINRA Rule 2010 requires associated persons, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade. Violations of FINRA Rule 3280 are also violations of FINRA Rule 2010.

In April 2016, around the time that Whelan became associated with Ameriprise as a non-registered fingerprint person, he entered into an agreement with one of his former investment advisory customers, MC, to continue to manage her brokerage account. MC had a brokerage account at another FINRA member firm throughout the Relevant Period.

During the Relevant Period, Whelan executed 132 securities transactions in MC’s brokerage account, primarily in blue chip or large-cap stocks in the technology, energy, and financial sectors. In that time, MC’s account increased in value from \$9,339 to \$12,476.40.¹ Whelan did not receive any selling compensation in connection with the transactions he executed in MC’s account. Whelan, however, did not provide written notice to Ameriprise prior to participating in these private securities transactions, and he did not obtain written approval from the Firm.

By virtue of the foregoing, Whelan violated FINRA Rules 3280 and 2010.

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

1. A suspension from associating with any FINRA member in any capacity for a

¹ This reflects a return of over 33% in MC’s account during the Relevant Period.

period of three months; and

2. A \$7,500 fine.

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.

Whelan specifically and voluntarily waives any right to claim that he is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

Whelan understands that if he is suspended from associating with any FINRA member, he becomes 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, he 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).

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

II.

WAIVER OF PROCEDURAL RIGHTS

Whelan specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against him;
- 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, Whelan 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 acceptance or rejection of this AWC.

Whelan 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

Whelan 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 Whelan; and
- C. If accepted:
 - 1. this AWC will become part of Whelan's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against him;
 - 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. Whelan 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. Whelan 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 his: (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. Whelan may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Whelan understands that he 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.

Whelan certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that he understands and acknowledges that FINRA does not represent or advise him and he cannot rely on FINRA or FINRA staff members for legal advice; that he has 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 him to submit it.

04/23/2019
Date (mm/dd/yyyy)

Gerard Whelan
Respondent Gerard N. Whelan

Accepted by FINRA:

04/30/2019
Date

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

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