

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2018059433001**

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

RE: David Jin Kyu Chong (Respondent)
General Securities Representative
CRD No. 2679656

Pursuant to FINRA Rule 9216, Respondent David Jin Kyu Chong 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

Chong entered the securities industry in September 1995 when he became associated with Citigroup Global Markets Inc. (BD No. 7059) (Citi), a FINRA member firm. Since December 1995, Chong has been registered with FINRA as a General Securities Representative (GSR) through consecutive associations with three FINRA member firms: Citi (September 1995 to June 2009), Morgan Stanley Smith Barney (BD No. 149777) (Morgan Stanley) (June 2009 to December 2009), and Wells Fargo Clearing Services, LLC (BD No. 19616) (Wells Fargo) (December 2009 to August 2018).

In a Uniform Termination Notice for Securities Industry (Form U5) dated August 3, 2018, Wells Fargo reported Chong's voluntary resignation for "[a]mong other issues, ... arranging loans out of a client trust account for which his wife serves as trustee and is a beneficiary, and recommending an unapproved investment to the client trust account."

From October 2018 until the present, Chong has been registered with FINRA as GSR through consecutive associations with two FINRA member firms.

Given Chong's current association with a FINRA member firm, he remains subject to FINRA's jurisdiction.

Respondent does not have any relevant disciplinary history.

OVERVIEW

During the period of July 2006 through January 2010, Chong failed to disclose to his three FINRA member firm employers that he was a beneficiary of his Firm customer's Trust, appointed healthcare power of attorney for the same customer, and/or empowered to remove and/or appoint a successor trustee for the Trust, in violation of NASD Rule 2110 and FINRA Rule 2010.¹

In addition, from October 2012 through May 2018, Chong participated in two outside business activities without providing prior written notice to Wells Fargo, in violation of FINRA Rules 3270 and 2010.

During the same period, Chong also participated in three private securities transactions without first notifying or receiving prior written approval from Wells Fargo, in violation of NASD Rule 3040 and FINRA Rules 3280 and 2010.²

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's review of the August 3, 2018 Form U5.

A. Chong's Failure to Disclose his Beneficiary Status and Fiduciary Appointments

NASD Rule 2110 and FINRA Rule 2010 require associated persons to observe high standards of commercial honor and just and equitable principles of trade.

During the period of July 2006 to January 2010, the written supervisory procedures (WSPs) of Citi, Morgan Stanley and Wells Fargo required Chong to obtain written approval from the firm before accepting any beneficiary or fiduciary appointment from a firm customer.

In 1997, Chong became the registered representative of record for Customer A's brokerage accounts. Later that year, Customer A created a Revocable Living Trust to hold all of her assets, including her brokerage account.

In July 2006, Customer A appointed Chong to act as her healthcare power of attorney. In May 2009, Customer A amended the Trust and granted the power to remove and appoint its successor trustee to Chong. In November 2009, Customer A amended the Trust again to, among other things, name Chong as a beneficiary. Chong also began acting on Customer A's behalf in reliance on the HPOA.

From July 2006 to June 2009, Chong did not disclose his appointment as HPOA or Trust-related powers to, or seek approval to accept them from, Citi. Chong also failed to disclose his HPOA, Trust-related powers and beneficiary status to Morgan Stanley while associated with the firm from June 2009 to December 2009. Chong also did not disclose or seek approval for any of the appointments when he associated with Wells Fargo in December

¹ FINRA Rule 2010 superseded NASD Rule 2110 on December 15, 2008.

² FINRA Rule 3280 superseded NASD Rule 3040 on September 21, 2015.

2009; instead, Chong disclosed the appointments on January 5, 2010, when Customer A passed away.

Wells Fargo did not approve Chong's request and instructed him to resign the appointments. However, Chong still appointed a new trustee in January 2010 and concealed the fact that he remained a beneficiary while he was also the registered representative for the Trust's firm account by making false statements on Wells Fargo's annual compliance questionnaires from 2014 to 2016, and again in 2018.

By virtue of the foregoing, Chong violated NASD Rule 2110 and FINRA Rule 2010.

B. Chong's Undisclosed Outside Business Activities

FINRA Rule 3270 provides, in relevant part: "No registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member."

A violation of FINRA Rule 3270 is also a violation of FINRA Rule 2010.

During the period of October 2012 through May 2018, Wells Fargo's WSPs required registered representatives to disclose and receive the Firm's approval before engaging in any outside business activity. Chong was aware of the WSPs, which defined outside business activities as including, among other things, ownership in any privately held business or income-generating real estate and serving as an officer or director of any non-family owned business.

In October 2012, Chong was named an officer and member of the Board of Directors for Company A, a start-up coffee farm and land venture in Panama. In December 2012, he received 750 shares of company stock, representing a 50% ownership interest. In 2013, Chong was named President of Company A. As an officer and board member, Chong participated in at least one board meeting where the board made management decisions and discussed potential business plans. However, Chong did not disclose his ownership interest and positions with Company A until July 8, 2014.

In July 2010, Chong and his wife purchased residential property in Florida. Although Chong began collecting rent on the property in 2015, he did not disclose or receive approval from the Firm for this outside business activity until July 21, 2017. Chong also falsely stated that his involvement with this rental property began in November 2016.

Chong falsely stated on one compliance questionnaire that he was not involved with any outside business activities and failed to disclose in writing his involvement with Company A and his rental property on three compliance questionnaires.

By engaging in outside business activities without providing prior written notice to Wells Fargo, Chong violated FINRA Rules 3270 and 2010.

C. *Chong's Undisclosed Private Securities Transactions*

NASD Rule 3040 and FINRA Rule 3280(b) prohibit any person associated with a member firm from participating in any private securities transaction without first providing written notice to their member firm that describes in detail the proposed transaction and the person's proposed role therein, and states whether he or she has received or may receive selling compensation in connection with the transaction. A violation of NASD Rule 3040 and FINRA Rule 3280 is also a violation of FINRA Rule 2010.

From October 2012 through May 2018, Wells Fargo's WSPs prohibited registered representatives from soliciting customer participation in any private securities transaction not associated with the Firm whether or not the representative received compensation.

In October 2012, the Trust invested approximately \$26,000 in Company A. Chong introduced the Trust to Company A, and facilitated its investment by, among other things, receiving and forwarding the investment agreement, stock certificates, draft board of directors minutes, and other investment updates, to the Trust.

In February 2014, the Trust invested \$25,000 in Company B, a leggings manufacturing company. Chong introduced the Trust to the investment opportunity and shared his favorable opinion on the business venture. Chong also received and forwarded the convertible note purchase agreement, closing documents and wiring instructions, as well as the company's marketing materials and other investment updates, to the Trust.

In March 2015, the Trust invested \$250,000 in Company C, an investment company. Chong facilitated the Trust's investment by, among other things, receiving and forwarding the loan agreement and promissory note, and other information and updates, to the Trust.

The Trust's investments in Companies A, B, and C were securities. Chong did not receive compensation for, and did not disclose to Wells Fargo, his participation in the Trust's investments. Chong also falsely stated on seven compliance questionnaires that he was not engaged in any private securities transactions.

By participating in three private securities transactions without providing prior written notice to or receiving written approval from Wells Fargo, Chong violated NASD Rule 3040 and FINRA Rules 3280 and 2010.

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

- an eleven-month suspension from associating with any FINRA member in any capacity; and
- a \$20,000 fine.

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 he 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.

Respondent understands that if he/she is barred or 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 bar or suspension. See FINRA Rules 8310 and 8311.

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 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, 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

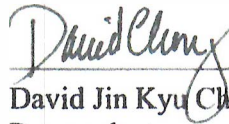
Respondent understands that:

- 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 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.

Respondent 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; Respondent has agreed to the AWC's provisions voluntarily; and 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 him to submit this AWC.

12-3-2020

Date



David Jin Kyu Chong
Respondent

Reviewed by:



David A. Gehn
Counsel for Respondent
Ellenoff Grossman & Schole LLP
1345 Avenue of the Americas - 15th Floor
New York, NY 10105-0302

Accepted by FINRA:

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

~~12/4/2020~~

Date

12/22/20 RA



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