

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2019062183901**

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

RE: Wilson-Davis & Co., Inc. (Respondent)
Member Firm
CRD No. 3777

Pursuant to FINRA Rule 9216, Respondent Wilson-Davis & Co., Inc. 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 accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

Wilson-Davis & Co., Inc. (Wilson-Davis) has been a FINRA member since 1968 and is based in Salt Lake City, Utah. It currently employs approximately 43 registered individuals.¹

OVERVIEW

Between March and July 2018 and June and August 2020, Wilson-Davis had deficiencies in the reserves in its special reserve bank account for the exclusive benefit of customers (Customer Reserve Account) ranging from \$101,468 to \$693,703. Additionally, between February 2018 and August 2018, Wilson-Davis had deficiencies in the reserves in its proprietary securities account of a broker or dealer (PAB Account) ranging from \$100,000 to \$200,000. Therefore, Wilson-Davis violated Section 15(c) of the Securities Exchange Act of 1934 (Exchange Act), Exchange Act Rule 15c3-3(e), and FINRA Rule 2010.

¹ For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

Between September 2019 and November 2020, Wilson-Davis failed to maintain customer securities in an outside money market/sweep account that was a good control location. Therefore, Wilson-Davis violated Exchange Act Section 15(c), Exchange Act Rule 15c3-3(c)(1), and FINRA Rule 2010.

Between February 2018 and March 2021, Wilson-Davis's supervisory system, including its written procedures, was not reasonably designed to achieve compliance with the Customer Protection Rule, specifically the obligation to accurately calculate PAB account requirements and detect errors in that calculation under Exchange Act Rule 15c3-3(e). Therefore, the firm violated FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

This investigation originated from FINRA's examination program.

A. The Customer Protection Rule

Exchange Act Rule 15c3-3, also known as the "Customer Protection Rule," protects customer assets from being improperly used by a broker-dealer for its own purposes and ensures the prompt return of customer assets in the event of a broker-dealer's insolvency. The Rule requires broker-dealers (i) to maintain a Customer Reserve Account and a separate PAB Account for proprietary accounts of other broker-dealers; and (ii) to fund the Customer Reserve and PAB Accounts in an amount determined by using the calculation contained in the Rule.

The Rule requires a broker-dealer to calculate amounts it owes customers, called credits, and compare that amount to any amounts owed to it by customers, called debits. The formula for this calculation is set forth in 17 CFR § 240.15c3-3a, Exhibit A. If credits exceed debits, the broker-dealer must deposit the difference in the reserve account. A hindsight deficiency occurs when a broker-dealer discovers that it previously failed to make a sufficient deposit in one of its reserve accounts.

Exchange Act Rule 15c3-3(c)(5) provides that securities in the custody or control of a bank are deemed to be under the control of a broker or dealer so long as the bank has acknowledged in writing that the securities in its custody or control are not subject to any right, charge, security interest, lien or claim of any kind in favor of a bank or any person claiming through the bank.

FINRA Rule 2010 provides that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." Violations of the federal securities laws, and the rules thereunder, constitute violations of FINRA Rule 2010.

Between March and July 2018, the firm improperly calculated its Customer Reserve Account obligations. Deficiencies ranging from \$101,468 to \$245,837 in the Customer Reserve Account occurred because the firm erroneously debited (1) pre-payments by

Wilson-Davis to customers that were expected to be covered the following day, and (2) fees that customers owed the firm without an agreement permitting the firm to liquidate customer assets to cover such fees. As of July 31, 2018, the firm corrected its customer reserve calculations and deposited additional funds into its Customer Reserve Account to eliminate the deficiency.

Between June and August 2020, Wilson-Davis had deficiencies in its Customer Reserve Account ranging from \$571,958 to \$693,703. The deficiencies resulted from a margin position in one customer account. Pursuant to 17 CFR § 240.15c3-3a, Exhibit A, Item 10, the firm was entitled to a debit in its reserve formula calculation in connection with margin obligations; however, the firm was obligated to reduce the debit by the amount by which a specific security which was collateral for a margin account exceeded 15 percent of all securities which collateralized all margin accounts. At the time, the firm's margin position was concentrated in a single stock, resulting in a significant reduction in the margin account debit. The margin position was liquidated on August 24, 2020, eliminating the deficiency.

Between February and August 2018, the firm failed to establish and maintain a required PAB Account. This occurred after the firm reentered the correspondent clearing business when it enrolled an introducing firm as a customer. The customer provided the firm with a \$100,000 clearing deposit. Although the firm was supposed to establish a PAB account to hold this clearing deposit and set aside associated reserves, it failed to do so. The firm also failed to code accounts of the introducing firm as PAB accounts, which resulted in hindsight deficiencies in the firm's PAB reserves. On August 2, 2018, the firm deposited \$200,000 into a PAB reserve account and reclassified the relevant accounts.

Between September 2019 and November 2020, the firm failed to maintain customer securities in good control location because its agreement with the custodian for the firm's money market/sweep account did not provide the securities were held for the exclusive benefit of customers and free of liens, security interests or encumbrances by the bank or any party acting through the bank. The amounts at issue during the relevant period ranged from \$10,000 to approximately \$43 million. On November 24, 2020, the firm resolved the issue by modifying its agreement with the bank to state that the securities in the bank's custody or control were not subject to any right, charge, security interest, lien or claim of any kind in favor of a bank or any person claiming through the bank.

None of the foregoing deficiencies caused the firm to be out of compliance with its net capital requirements.

Based on its failure to accurately calculate its customer and PAB reserves and maintain good control over securities in its customer sweep account, Respondent violated Exchange Act Section 15(c), Exchange Act Rules 15c3-3(c) and 15c3-3(e), and FINRA Rule 2010.

B. Supervision

FINRA Rule 3110(a) requires a member firm to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. FINRA Rule 3110(b) requires a member firm 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 securities laws and regulations, and with applicable FINRA Rules. Violations of FINRA Rule 3110 constitute violations of FINRA Rule 2010.

As noted above, on February 1, 2018, the firm reentered the correspondent clearing business. From February 2018 to December 2019, the firm did not have written supervisory procedures addressing its correspondent clearing business or PAB reserve obligations under the Customer Protection Rule. In December 2019, the firm established written supervisory and operational procedures to address PAB Accounts. However, between December 2019 and March 2021, the firm's supervisory system remained not reasonably designed to accurately calculate PAB reserve obligations and detect errors in the reserve calculation. Specifically, the firm failed to have any system to review accounts to ensure that they were properly classifying introducing and clearing accounts. For example, on July 31, 2020, during the firm's 2020 exam by FINRA, the firm discovered that it had erroneously opened one clearing account and three introducing firm customer accounts as non-PAB and non-customer accounts, which resulted in errors in the firm's PAB reserve calculations, although these errors did not result in any deficiency in the firm's PAB reserves. In March 2021, the firm established a new procedure to review a firm-wide account report prior to running its reserve calculations to ensure the accuracy of its PAB reserves.

Based on its failure to establish a supervisory system reasonably designed to ensure compliance with the PAB reserve requirements of the Customer Protection Rule, the firm violated FINRA Rules 3110 and 2010.

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

- a censure, and
- a \$100,000 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 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

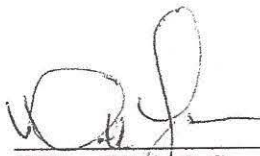
C. If accepted:

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 right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.

- 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.

7-1-2022
Date



Wilson-Davis & Co., Inc.
Respondent

Print Name: William L. Walker

Title: CDO / CFO

Reviewed by:



7/1/22

Richard F. Ensor
Counsel for Respondent
Michael Best & Friedrich LLP
1700 South Main Street, Suite 1000
Salt Lake City, UT 84101

Accepted by FINRA:

July 18, 2022
Date

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



Andrew M. Friedman
Principal Counsel
FINRA
Department of Enforcement
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