

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2012032731801**

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

RE: Anthony B. Kerrigone, Respondent
Registered Representative
CRD No. 2612581

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, I 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

Anthony B. Kerrigone (“Kerrigone”) was first registered as a General Securities Representative (Series 7) in September 1995. From September 1995 to August 2008, he was registered with seven different FINRA member firms. Kerrigone became registered as an Equity Trader (Series 55) in November 1999. From September 29, 2008 to July 9, 2013, Kerrigone was registered with Wilson-Davis & Co., Inc. (“Wilson-Davis” or “Firm”). From July 26, 2013 to May 7, 2014, and since September 21, 2015, he has been registered with another FINRA member firm.

OVERVIEW

Between May 25, 2011 and April 29, 2013 (the “Relevant Period”), Kerrigone, while registered with Wilson-Davis, failed to find locates for 149 short transactions and instead, improperly relied on the bona fide market maker exemption under Rule 203(b)(2) of Regulation SHO (“Reg. SHO”) promulgated under the Securities Exchange Act of 1934. By virtue of the foregoing, Kerrigone

violated FINRA Rule 2010 by causing the Wilson-Davis to violate Rule 203(b)(1) of Reg. SHO.

FACTS AND VIOLATIVE CONDUCT

Pursuant to the locate requirement of Rule 203(b)(1) of Reg. SHO, a broker or dealer may not effect a short sale in an equity security unless, prior to accepting a short sale order in an equity security from another person, or effecting a short sale in an equity security for its own account, it has "(i) borrowed the security, or entered into a bona-fide arrangement to borrow the security; or (ii) [r]easonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due; and (iii) [d]ocumented compliance with [these requirements]."

Reg. SHO Rule 203(b)(2)(iii) sets forth an exception to the locate requirement for short sales executed by market makers but only in connection with bona-fide making activities.

FINRA Rule 2010 requires members to observe high standards of commercial honor and just and equitable principles of trade.

On 149 occasions during the Relevant Period, Kerrigone placed orders to sell ~~short ten low-priced stocks through the Firm's proprietary trading account~~ and failed to locate the securities, claiming the market maker exemption to the locate requirements. The market maker exemption was not available to the Firm because Kerrigone was not engaging in bona-fide market marking activities in these securities. The Firm generated over \$158,239 in profits from these short transactions.

By virtue of the foregoing conduct, Kerrigone violated FINRA Rule 2010 by causing the Firm to violate Rule 203(b)(1) of Reg. SHO.

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

- A six-month suspension from association with any FINRA member in any capacity; and,
- A \$10,000 fine.

I agree to pay the monetary sanction upon notice that this AWC has been accepted and that such payments are due and payable. I have submitted an Election of Payment form showing the method by which I propose to pay the fine imposed.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or any time hereafter, the monetary sanction 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 II, 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 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.

Date (mm/dd/yyyy)

Anthony B. Kerrigone, Respondent

Reviewed by



Randall J. Fong
Counsel for Respondent
Morrison & Foerster LLP
5200 Republic Plaza, 370 Seventeenth Street
Denver, CO 80202
(303) 592-2257

Accepted by FINRA:

Date

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

Jennifer L. Crawford
Director
FINRA Department of Enforcement
1520 Omega Drive, Suite 300
Rockville, MD 20850
(301) 258-8500

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9/24/15

Date (mm dd yyyy)



Anthony B. Kerrigone, Respondent

Reviewed by

Randall J. Fons
Counsel for Respondent
Morrison & Foerster LLP
5200 Republic Plaza, 370 Seventeenth Street
Denver, CO 80202
(303) 592-2257

Accepted by FINRA:

11/3/2015
Date

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



Jennifer L. Crawford
Director
FINRA Department of Enforcement
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Rockville, MD 20850
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