

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2013035576601**

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

RE: Douglas William Finlay, Jr. (CRD No. 2984422),  
Respondent

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Douglas William Finlay, Jr. ("Finlay" 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**

In April 1998, Finlay first became registered with FINRA as a General Securities Representative through Cadaret Grant & Co., Inc. ("Cadaret Grant" or the "Firm"). In April 2001, he became registered through Cadaret Grant as a General Securities Principal. On December 20, 2013, Cadaret Grant filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") stating that Finlay's termination was voluntary. His last date of employment was December 31, 2013.

Finlay is not currently registered or associated with any member firm. However, Finlay remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

## **RELEVANT DISCIPLINARY HISTORY**

Finlay does not have any relevant formal disciplinary history with the Securities and Exchange Commission, any self-regulatory organization or any state securities regulator.

## **OVERVIEW**

Finlay recommended and effected an unsuitable transaction in the account of a Cadaret Grant customer, EP, by over-concentrating EP's assets in an illiquid real estate investment trust ("REIT"). Further, Finlay failed to adequately disclose information to EP in connection with the sale of the REIT. Additionally, Finlay falsified a Cadaret Grant document, and caused the Firm's books and records to be inaccurate, by submitting a new account form that misrepresented EP's net worth and income. Through this misconduct, Finlay violated NASD Conduct Rules 2310 and 3110 and FINRA Rule 2010.

## **FACTS AND VIOLATIVE CONDUCT**

NASD Conduct Rule 2310(a) states that "in recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs."

NASD Conduct Rule 3110 required member firms to "make and preserve books and records" in conformity with FINRA Rules, the Exchange Act and applicable Exchange Act Rules, including SEC Rule 17a-3.<sup>1</sup> Implicit in this Rule is the requirement to make accurate records. Individuals who create inaccurate books and records violate NASD Rule 3110.

FINRA Rule 2010 requires that registered representatives observe high standards of commercial honor and just and equitable principles of trade.

In 2009, Finlay recommended to EP that she invest 100% of her retirement funds in a REIT. At the time, EP was approximately 55 years old, had an investment objective of "growth and income," and had a moderate risk tolerance. During his discussions with EP, Finlay failed to adequately disclose information regarding the REIT, including that the investment was illiquid and highly speculative.

At the time Finlay recommended the REIT to EP, Cadaret Grant's procedures limited the amount of a customer's assets that could be invested in REITs and similar alternative investments to "10% of the investor's net worth (exclusive of home) as stated on the new account form."

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<sup>1</sup> NASD Rule 3110 was superseded by FINRA Rule 4511 on December 5, 2011.

On or about July 8, 2009, pursuant to Finlay's recommendation, EP invested approximately \$116,625, which constituted 100% of EP's retirement funds and nearly 100% of her liquid net worth, in the REIT. Finlay received \$6,639.23 in commissions.

To evade the Firm's limitation on the concentration of certain investments in customers' accounts, Finlay falsified EP's account form. Specifically, Finlay handwrote on the account form that EP's net worth was \$1,355,000 and EP's annual income was \$150,000. In fact, EP's net worth was approximately \$135,000 and EP's annual income was approximately \$70,000. As a result of Finlay's misrepresentations on EP's account form, EP's concentration in the REIT, gauged as a percentage of her purported net worth, remained below Cadaret Grant's limitations.

Finlay's recommendation that EP invest her retirement savings in a single REIT was not suitable for her in light of her moderate risk tolerance, investment objective of growth and income, the concentrated nature of the investment, and her financial circumstances. By recommending an unsuitable transaction, Finlay violated NASD Conduct Rules 2310 and FINRA Rule 2010. By falsifying documents and causing the Firm's books and records to be inaccurate, Finlay violated NASD Conduct Rule 3110 and FINRA Rule 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 18-months;
- disgorgement of \$6,639.23; and
- a \$15,000 fine.

The fine shall be due and payable either immediately upon reassociation with a member firm following the suspension noted above, 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 sanction imposed in this matter.

Disgorgement of commissions received, which is ordered to be paid to FINRA in the amount of \$6,639.23, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621, from July 8, 2009 until the date this AWC is accepted by the NAC. Disgorgement shall be due and payable either immediately upon reassociation with a member firm following the suspension noted above, 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 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).

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.

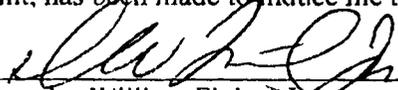
#### OTHER MATTERS

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;
- 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; and
- 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.

03/24/2015  
Date (mm/dd/yyyy)

  
\_\_\_\_\_  
Douglas William Finlay, Jr.

Accepted by FINRA:

4/9/15  
Date

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

  
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Noel C. Downey  
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FINRA Department of Enforcement  
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