

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2014041504101**

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

RE: Giustino Destefano, Respondent  
CRD No. 4926924

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Giustino Destefano, 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**

Respondent first became registered with FINRA in May 2005 as a General Securities Representative. From October 2009 through May 2014, he was registered in that capacity through Merrill Lynch, Pierce, Fenner and Smith Incorporated (CRD 7691) ("Merrill Lynch" or the "Firm"). Respondent is not currently registered with FINRA, but remains subject to FINRA's jurisdiction pursuant to FINRA By-Laws Article V, Section 4.

**RELEVANT DISCIPLINARY HISTORY**

Respondent has no relevant disciplinary history.

**OVERVIEW**

Between July 2013 and May 2014, Respondent exercised discretion in four customer accounts and executed trades without written authorization, in violation of NASD Conduct Rule 2510(b) and FINRA Rule 2010. During the same time period, Respondent mismarked over 100 order tickets as unsolicited trades when, in fact, the trades were solicited, causing the Firm to maintain inaccurate books

and records in violation of FINRA Rules 4511 and 2010.

### **FACTS AND VIOLATIVE CONDUCT**

#### **1. Use of Discretion without Prior Written Authorization**

NASD Conduct Rule 2510(b) prohibits registered representatives from exercising any discretionary power in a customer's account unless such customer has given prior written authorization to the registered representative and the registered representative's member firm has provided prior written acceptance of the account as discretionary.

From July 2013 through April 2014, Respondent exercised discretion in four customer accounts and executed trades without written authorization from the customers and without obtaining prior written acceptance of the accounts as discretionary from Merrill Lynch. As a result of the foregoing conduct, Respondent violated NASD Conduct Rule 2510 and FINRA Rule 2010.

#### **2. Mismarking Order Tickets**

FINRA Rule 4511 provides, *inter alia*, that "Members shall make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules." An individual may violate FINRA Rule 4511 by causing his or her Member Firm to maintain inaccurate books and records.

From July 2013 through April 2014, Respondent mismarked over 100 order tickets as unsolicited when, in fact, the trades were solicited, thereby causing the Firm to maintain inaccurate books and records. As a result of the foregoing conduct, Respondent violated FINRA Rules 4511 and 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 three months; and
- A \$10,000 fine.

The fine shall be due and payable either immediately upon reassociation with a member firm following the three-month 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.

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 prejudice 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.

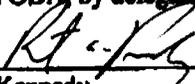
02/23/2016  
Date (mm/dd/yyyy)

  
Respondent Giustino Destefano

Accepted by FINRA:

3/9/16  
Date

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

  
Robert C. Kennedy  
Regional Counsel  
FINRA Department of Enforcement  
99 High Street, Suite 900  
Boston, MA 02110  
(617) 532-3423  
Fax: (202) 721-8393