

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2015044745701**

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

**RE: Thomas J. Buck, Respondent  
General Securities Representative  
CRD No. 1024868**

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**

Respondent Thomas J. Buck entered the securities industry in October 1981 when he became associated with Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"). He has held General Securities Representative (Series 7), General Securities Sales (Series 8), State Law (Series 63), and Investment Adviser (Series 65) licenses. He was registered with Merrill Lynch from October 1981 until his registration was terminated on April 2, 2015.

Buck became registered with RBC Capital Markets, LLC on April 9, 2015. He resigned from that firm on July 21, 2015, but the firm has not yet terminated his registration. FINRA possesses jurisdiction over Buck because he is currently registered with a FINRA member firm.

**OVERVIEW**

Buck engaged in misrepresentations and other misconduct in the handling of customer accounts. Beginning by at least 2009, Buck has pursued unethical and improper business practices which generated increased commissions and

revenues and enhanced his status as a top-producing broker. He held customer assets in commission-based accounts instead of fee-based accounts in order to generate higher revenues, although he knew that some customers would have paid substantially lower fees by using fee-based accounts. Buck misled customers about the relative costs of fee-based or commission-based trading for their accounts. In addition, Buck exercised discretion in customer accounts without written or oral authorization, and made unauthorized trades in certain customer accounts.

## **FACTS AND VIOLATIVE CONDUCT**

### **Background**

Buck was a registered representative in Merrill Lynch's Carmel, Indiana office, which was part of the firm's Indiana complex, from October 1981 until April 2015. He conducted business with fifteen to twenty other registered and unregistered persons under the designation "The Buck Group." The Buck Group's customer base was comprised of approximately 800 households with more than 3,000 customer accounts and \$1.3 billion under management by the time Buck left Merrill Lynch. Some of his customers had accounts worth tens of millions of dollars.

Since at least 2009, The Buck Group generated annual revenues ranging from \$6 million to more than \$10 million, at least 85% of which was directly attributable to Buck's individual production. Approximately 80% of the revenues generated by Buck came from commission-based activity, whereas approximately 70% of the Indiana complex's revenue was generated through fee-based accounts.

### **Misconduct Relating to the Use of Commission-Based Accounts**

Registered representatives are required to assess the comparative costs to customers of fee-based or commission-based accounts and discuss those alternatives with their customers. FINRA's predecessor, NASD, noted in 2003:

It is generally inconsistent with just and equitable principles of trade – and therefore a violation of Rule 2110 – to place a customer in an account with a fee structure that reasonably can be expected to result in a greater cost than an alternative account offered by the member that provides the same services and benefits to the customer.<sup>1</sup>

Beginning in or before 2009, Buck not only failed to fully assess the suitability of the fee structure for certain clients, but decided to use commission-based accounts when he knew that it would have been less expensive for those clients to maintain fee-based accounts. In some instances, clients paid substantially more in commissions than they would have paid in fee-based accounts.<sup>2</sup> During this same time period, Buck also misled clients about the potential advantages of using fee-

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<sup>1</sup> Notice to Members 03-68 (November 2003). NASD Rule 2110 was superseded by FINRA Rule 2010 in December 2008. The Notice to Members also noted that the failure to assess the suitability of the type of transaction or account (fee-based or commission-based) could violate NASD Rule 2310 (now FINRA Rule 2111).

<sup>2</sup> The fee-based accounts generally incurred fees of 1-1.25% or less of the value of the accounts.

based accounts in order to keep the clients in higher-cost commission-based accounts. As noted above, approximately 80% of Buck's accounts were commission-based, whereas approximately 70% of the accounts in the Indiana complex were fee-based.

By virtue of the foregoing conduct, Buck engaged in unethical business practices in violation of FINRA Rule 2010 and violated the suitability requirements under NASD Rule 2310 (for conduct prior to July 9, 2012) and FINRA Rule 2111 (for conduct on or after July 9, 2012) by conducting business in commission-based accounts which should have been conducted in fee-based transactions. By virtue of the foregoing conduct, Buck also willfully committed fraud in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and violated FINRA Rules 2010 and 2020.

**Unauthorized trading and exercise of discretion without oral or written authorization**

Beginning in or before 2011, Buck at times made unauthorized trades and exercised discretion in certain customer accounts without prior authorization from the customers or his firm. He at times unilaterally placed trades in customer accounts without getting the customers' acquiescence in advance, or even after placing the trade. In some instances, he exercised discretionary authority without obtaining written authorization. He placed trades which he assumed the customers would want without obtaining their authorization to do so. In other instances, customers explicitly or implicitly allowed him to place trades in their accounts without prior discussion. Buck did not obtain written authorization to do so from either the customers or from Merrill Lynch.

Unauthorized trading violates a broker's obligation to observe high standards of commercial honor and just and equitable principles of trade. By engaging in this conduct, Buck violated FINRA Rule 2010. In addition, he violated NASD Rule 2510(b) by exercising discretionary power in customers' accounts without obtaining written authorization to do so from the customers and from his firm.

\* \* \*

By engaging in the foregoing conduct, Respondent Buck willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder; violated FINRA Rules 2010, 2020, and 2111; and violated NASD Rules 2310 and 2510(b).

- B. I also consent to the imposition of the sanction of a bar from association with any FINRA member.

The sanctions imposed herein shall be effective on a date set by FINRA staff. A bar shall become effective upon approval or acceptance of this AWC.

I understand that if I am barred 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 (see FINRA Rules 8310 and 8311).

I also understand that this settlement includes a finding that I willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and that under Article III, Section 4 of FINRA's By-Laws, this makes me subject to a statutory disqualification with respect to association with a member.

## 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.

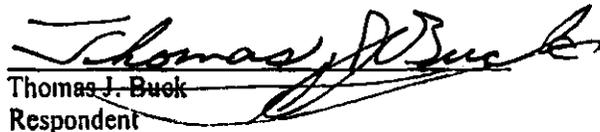
OTHER MATTERS

I understand that:

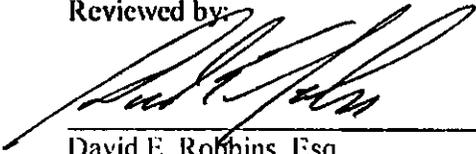
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will 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.

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.

7/23/15  
Date

  
Thomas J. Buck  
Respondent

Reviewed by:



David E. Robbins, Esq.  
Kaufmann Gildin & Robbins LLP  
767 Third Avenue  
New York, NY 10017  
(212) 755-3100

Accepted by FINRA:

7/24/15  
Date

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



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