

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015045890001**

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

RE: Richard S. Botkin, Respondent
Registered Representative
CRD No. 1571729

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

Botkin first entered the securities industry in August 1986 when he associated with a member firm. He obtained his Series 7 and 63 licenses in October 1986, his Series 3 license in November 1986, and his Series 65 license in May 1992. Botkin was registered with a number of other member firms before registering with Morgan Stanley in January 2008. Botkin’s registration with Morgan Stanley was terminated in June 2015 as a result of the misconduct described herein. Botkin has been registered with another member firm since June 2015.

RELEVANT DISCIPLINARY HISTORY

Botkin was previously disciplined by FINRA in April 2011 for violating NASD Rules 2330(f) and 2110 for improperly sharing in a customer’s losses. For his misconduct, Botkin was censured and fined \$5,000.

OVERVIEW

From January 2013 to August 2014, while registered with Morgan Stanley, Botkin participated in private securities transactions without first providing notice to his employer member firm. Botkin's conduct violated NASD Rule 3040¹ and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

NASD Rule 3040 prohibits registered representatives from participating "in any manner in a private securities transaction," without first providing written notice to the registered representative's firm. Rule 3040 defines a private securities transaction as "any securities transaction outside the regular course or scope of an associated person's employment with a member [firm]." A violation of NASD Rule 3040 is also a violation of FINRA Rule 2010, which requires members, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.

In September 2012, Botkin sought and received Morgan Stanley's approval to participate in an outside business, a production company designed to create a documentary film ("the production company"). In January 2013, Botkin began selling shares in the production company, including \$170,000 worth of shares to four Firm customers and another \$75,000 worth of shares to two non-customers. Botkin participated in the customers' and non-customers' investments in the production company by advertising the production company to potential investors; communicating with investors about their investments; receiving investment checks from the investors and depositing them into the production company's bank account; sending subscription agreements and suitability questionnaires to each investor, who then mailed signed copies back to Botkin; and, as one of only two managing members, running the production company.

Morgan Stanley prohibited its registered representatives from participating in private securities transactions without providing prior written notice of the transactions to the Firm and obtaining Firm approval. Botkin did not provide written notice to, or obtain Morgan Stanley's approval for, the \$245,000 worth of investments from January 2013 to August 2014. Also, in 2013 and 2014, Botkin provided false answers in response to the Firm's annual compliance attestations regarding his participation in private securities transactions.

By virtue of the foregoing, Botkin violated NASD Rule 3040 and FINRA Rule 2010.

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

¹ NASD Rule 3040 was replaced by FINRA Rule 3280 on September 21, 2015. The misconduct described herein occurred prior to September 2015 and, therefore, only NASD Rule 3040 applies.

1. A suspension in all capacities for four months; and
2. A fine of \$15,000.

I agree to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is 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 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 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:

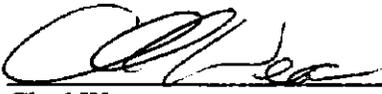
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will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

05/29/2017
Date (mm/dd/yyyy)


Richard S. Botkin, Respondent

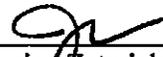
Reviewed by:


Chad Weaver
Counsel for Respondent
Freeman Mathis & Gary LLP
3030 Old Ranch Parkway, Suite 280
Seal Beach, California 90740
Telephone: 562-583-2124

Accepted by FINRA:

6/30/2017
Date

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


Jessica Zetwick-Skryzhynskyy
Senior Counsel
FINRA Department of Enforcement
15200 Omega Drive, Suite 300
Rockville, Maryland 20850
Telephone: (301) 258-8506
Facsimile: (202) 721-8397