

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015046315101**

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

RE: John Rothrock McKinstry, Respondent
CRD No. 1012658

Pursuant to FINRA John Rothrock McKinstry ("McKinstry" or "Respondent") submits 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

McKinstry entered the securities industry in December 1981 when he became associated with a FINRA registered firm. McKinstry obtained his Series 7 license in November 1981. In April 2004, McKinstry started his employment as a General Securities Representative with Moloney Securities Co., Inc. (the "Firm"), a FINRA registered firm. On August 7, 2015, the Firm filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") with FINRA reporting that Moloney had terminated McKinstry on August 7, 2015.

McKinstry is not currently associated with a FINRA registered firm, but remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

On June 19, 1998, McKinstry entered into a Stipulation of Facts and Consent to Penalty filed by the New York Stock Exchange ("NYSE") Division of Enforcement. Without admitting or denying the findings, McKinstry consented to findings by a hearing panel that he: (1) engaged in conduct inconsistent with the just and equitable principles of trade by effecting margin transactions in the account of a customer that were unsuitable in view of the customer's investment objectives, securities

experience, and financial resources; and (2) that he violated Exchange Rule 408(a) by exercising discretionary power in the account of a customer without obtaining the customer's prior written authorization. For this conduct, on September 10, 1998, McKinstry was censured by the NYSE and suspended for one month from employment or association in any capacity with any NYSE member or member organization.

On May 7, 1997, McKinstry entered a Consent Order with the Missouri Secretary of State, Securities Division in which he agreed he would not open new margin accounts for customers and would not make discretionary trades for customers without obtaining written discretionary authority. McKinstry was further ordered to pay \$200 for the costs of the investigation.

McKinstry has no other prior disciplinary history in the securities industry.

OVERVIEW

In March 2016, during the course of an ongoing FINRA investigation, McKinstry declined to continue to fully respond to Rule 8210 requests for documents and information and declined to appear for on-the-record testimony ("OTR") requested pursuant to FINRA Rule 8210. As a result, McKinstry violated FINRA Rules 8210 and 2010.

FACTS AND VIOLATIVE CONDUCT

In January 2016, FINRA began investigating whether McKinstry had made unsuitable securities recommendations to four customers, and whether he had entered into lending arrangements on behalf of a certain 501(c)(3) charitable entity (the "Association") with at least two of his customers through the issuance of promissory notes. FINRA was investigating whether McKinstry's recommendations to his customers violated FINRA rules, and whether McKinstry made materially misleading statements and omissions in connection with lending arrangements his customers entered into with the Association, for which McKinstry serves as an unpaid director.

In connection with FINRA's investigation, on February 21, 2016, FINRA emailed McKinstry's attorney to request that McKinstry appear and provide sworn testimony on March 30, 2016, pursuant to FINRA Rule 8210. Additionally, on March 7, 2016, FINRA emailed a letter to McKinstry's attorney requesting documents and information, pursuant to FINRA Rule 8210, to be produced by March 14, 2016.

On March 2, 2016, McKinstry's attorney represented that he would appear for his scheduled on-the-record testimony ("OTR") on March 30th. On March 11, 2016, McKinstry's attorney requested additional time to respond to the March 7th request for documents and information and requested that the OTR be rescheduled because McKinstry had obtained new counsel who was unavailable on March 30th. FINRA agreed to provide McKinstry with additional time to respond to the March 7th request and agreed to reschedule the OTR.

On March 28, 2016, after discussions with his new counsel, McKinstry stated in an email to FINRA staff, and by this agreement McKinstry acknowledges, that he received FINRA's requests, that he will no longer continue to cooperate in the investigation of this matter, will not provide any additional response to FINRA's March 7th request for information and documents, and will not appear for an OTR.

By declining to continue to provide information and documents and by declining to appear for an OTR, both requested pursuant to FINRA Rule 8210, McKinstry violates FINRA Rules 8210 and 2010.

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

- A bar from associating with any FINRA registered firm in any capacity.

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).

The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to FINRA Rule 8313(e), a bar shall become effective upon approval or acceptance of this AWC.

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.

[Remainder of Page Intentionally Left Blank]

I certify that I have read and understand all of the provisions of this AWC and I 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.

4/13/2016
Date (mm/dd/yyyy)

John Rothrock
John Rothrock McKinstry, Respondent

Reviewed by

Natalia McKinstry
Natalia McKinstry
Attorney at Law
Counsel for Respondent
Natalia McKinstry LLC
1000A Geyer Ave.
St. Louis, MO 63104
(314) 621-8006 (office)

Accepted by FINRA

4-26-16
Date

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

Seema Chawla
Seema Chawla
Senior Regional Counsel
FINRA Department of Enforcement
120 W. 12th Street, Suite 800
Kansas City, Missouri 64105
(816) 802-4712

By: *Mark A. Kierner*
Regional Chief Counsel
MK