

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2016048629001**

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

**RE:** Mitchell G. Behm, Respondent  
General Securities Representative  
CRD No. 2828588

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Mitchell G. Behm ("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**

Respondent first entered the securities industry in November 1996 when he became employed by a FINRA-regulated broker-dealer in a non-registered capacity. Respondent left that firm in March 1997.

In May 1997, Respondent became registered with Edward Jones (the "Firm"), receiving his Series 7 (General Securities Representative ("GSR") and 63 (Uniform Securities Agent State Law) licenses during that month. Respondent left that firm in October 1998.

Between October 1998 and December 2005, Respondent was registered as a GSR with three FINRA-regulated broker-dealers. In February 1999 and January 2005, Respondent received his Series 65 (Uniform Investment Advisor Law) and 24 (General Securities Principal) licenses, respectively.

In December 2005, Respondent again became registered as a GSR with the Firm.

On January 4, 2016, Respondent was permitted to resign from the Firm while under internal review for failing to seek Firm approval to purchase a customer's vacation property, which the customer financed.

In January 2016, Respondent became registered as a GSR with another FINRA-regulated broker-dealer. On May 17, 2017, that firm filed a Form U5 stating that Respondent's employment voluntarily terminated on May 16, 2017.

Respondent is not currently associated with a FINRA regulated broker-dealer, however, pursuant to Article V, Section 4 of FINRA's By-Laws, he remains subject to FINRA's jurisdiction.

### **RELEVANT DISCIPLINARY HISTORY**

Respondent has no disciplinary history in the securities industry.

### **OVERVIEW**

In June 2013, Respondent purchased a vacation home from an elderly customer of his FINRA-registered firm employer. Respondent was the registered representative assigned to the customer's accounts. In violation of FINRA Rules 3240 and 2010, Respondent financed the purchase by taking a \$180,000 loan from the customer without prior written permission from or notice to the firm.

In April 2009, Respondent filed a Chapter 13 bankruptcy petition. During May 2009 through mid-February 2014, Respondent willfully failed to file an amended Form U4 disclosing the bankruptcy. Further, each of the 24 Form U4s that Respondent filed during this period falsely represented that he had no reportable bankruptcies. Respondent therefore violated Article V, Section 2(c) of the NASD's and FINRA's By-Laws, NASD IM-1000-1 and FINRA Rules 1122 and 2010.

### **FACTS AND VIOLATIVE CONDUCT**

#### **1. Respondent Borrows \$180,000 from a Firm Customer in Violation of FINRA Rules 3240 and 2010**

FINRA Rule 3240(a) provides, in relevant part: "No person associated with a member in any registered capacity may borrow money from ... any customer of such person unless ... the member has written procedures allowing the borrowing ... of money between such registered persons and customers of the member" and the borrowing arrangement meets certain other enumerated criteria.

FINRA Rule 2010 requires that members and associated persons observe high standards of commercial honor and just and equitable principles of trade. Conduct that violates FINRA Rule 3240 also violates FINRA Rule 2010.

On June 4, 2013, Respondent purchased a vacation home for \$180,000 from his elderly Firm customer who was not a member of Respondent's immediate family. Respondent was the registered representative assigned to the customer's accounts. Respondent financed the purchase by taking a \$180,000 loan from the customer without prior written permission from or notice to the Firm. The loan agreement provided that Respondent would make monthly payments on the loan, with a balloon payment of the outstanding principal and accrued interest at the rate of 2% per year due in ten years. To date, Respondent made monthly payments on the loan totaling approximately \$27,300.

The Firm's written policies prohibited loans with customers.

By virtue of the foregoing, Respondent violated FINRA Rules 3240 and 2010.

**2. Respondent Willfully Fails to Amend His Form U4 to Disclose the Filing of a Bankruptcy Petition in Violation of Article V, Section 2(c) of the NASD's and FINRA's By-Laws, NASD IM-1000-1 and FINRA Rules 1122 and 2010**

Article V, Section 2(c) of FINRA's By-Laws, formerly NASD's By-Laws, provides that every application for registration filed with FINRA shall be kept current at all times by supplementary amendments which must be filed within thirty days after learning of the facts or circumstances giving rise to the amendment.

NASD IM-1000-1 requires registered representatives to fully and accurately disclose information required in the Form U4. NASD IM-1000-1 provides that the filing of registration information that "is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead . . . may be deemed to be conduct inconsistent with just and equitable principles of trade." FINRA Rule 1122, which as of August 17, 2009 replaced IM-1001, provides that no member or person associated with a member shall file incomplete or inaccurate information so as to be misleading.

Failing to update timely information required on the Form U4 is inconsistent with high standards of commercial honor and just and equitable principles of trade and, therefore also violates FINRA Rule 2010.

On April 29, 2009, Respondent filed a voluntary Chapter 13 bankruptcy petition.

Question 14K of Form U4 asks, among other things: "[w]ithin the past 10 years . . . have you made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition?"

Respondent's Form U4 was amended 24 times from the time of the bankruptcy petition on April 29, 2009 through January 2014. On each of these amendments, respondent answered "no" to Question 14K, which was false, as he had filed the April 2009 bankruptcy petition. It was not until February 19, 2014 that Respondent first disclosed the bankruptcy filing on his Form U4. Respondent's failure to disclose the filing on his Form U4 during the above period was willful.

In addition, Respondent represented on a July 2, 2009 Firm compliance questionnaire that he had not filed for bankruptcy since his last Firm compliance audit, which occurred in February 2008. Since Respondent filed for bankruptcy in April 2009, this representation was false.

By virtue of the foregoing, Respondent violated Article V, Section 2(c) of the NASD's and FINRA's By-Laws, NASD FM-1000-1 (with respect to conduct occurring before August 17, 2009) and FINRA Rules 1122 (with respect to conduct occurring on or after that date) and 2010.

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

- A seven-month suspension from associating with any FINRA member broker-dealer in any capacity; and
- A fine in the amount of \$10,000.

The fine shall be due and payable either immediately upon reassociation with a member firm, 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(s) imposed in this matter.

I understand that this settlement includes a finding that I willfully misrepresented a material fact on a Form U4, and that under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 and Article III, Section 4 of FINRA's By-Laws, this misrepresentation makes me subject to a statutory disqualification with respect to association with a member.

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

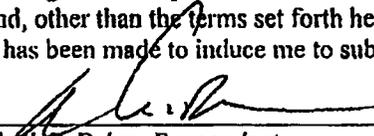
I understand that:

- 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; 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;

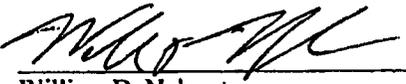
2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
  3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
  4. I may not take any action or make or permit 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.

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Date: 05/16/2017

  
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Mitchell G. Bach, Respondent

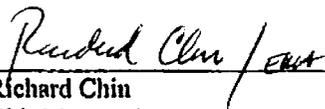
Reviewed by:

  
\_\_\_\_\_  
William D. Nelson  
Counsel for Respondent  
Lewis Roca Rothgerber Christie LLP  
90 South Cascade Avenue, Suite 1100  
Colorado Springs, Colorado 80903-1662  
Telephone: (719) 386.3057  
Facsimile: (202) 689-3415  
wnelson@lrtc.com

Accepted by FINRA:

June 27, 2017  
Date 6/27 2017

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

  
Richard Chin  
Chief Counsel  
FINRA Department of Enforcement  
One World Financial Center  
200 Liberty Street  
New York, New York 10281-1003  
Telephone: (646) 315-7322  
Facsimile: (202) 689-3415  
richard.chin@finra.org