

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2017055718001**

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

RE: Deming Anthony Payne, Respondent
Former General Securities Representative and General Securities Sales Supervisor
CRD No. 5696678

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

Payne entered the securities industry in July 2009. He became associated with Charles Schwab & Co., Inc. (“Schwab”) in January 2014 as a General Securities Representative and a General Securities Sales Supervisor. On September 25, 2017, Schwab filed a Uniform Termination Notice for Securities Industry Registration (Form U5) reporting that, on September 8, 2017, Payne voluntarily resigned following a “violation of Schwab’s Business Conduct Policy for inaccurate documentation of outbound calls to a client.” Payne is not currently associated with any FINRA member but remains subject to FINRA’s jurisdiction under Article V, Section 4(a)(i) of FINRA’s By-Laws.

RELEVANT DISCIPLINARY HISTORY

Payne has no prior disciplinary history in the securities industry.

OVERVIEW

On six occasions during August 2017, Payne received requests via email from an individual posing as a customer to process eight wire transfers from the customer's account. Payne failed to obtain verbal verification of the instructions from the actual customer, who was unaware of the imposter's requests, even though the imposter's requests presented multiple red flags. On five occasions, Payne falsely attested to the Firm that he had obtained such verbal verification. On one occasion, Payne instructed another Schwab employee to falsely attest that she had verbally verified one of the requests. In total, Payne effected wire transfers totaling \$794,860 in response to the imposter's requests. By making false statements to Schwab, Payne violated FINRA Rule 2010. In addition, Payne violated FINRA Rules 4511 and 2010 by causing Schwab to maintain inaccurate books and records.

FACTS AND VIOLATIVE CONDUCT

On six occasions between August 8 and August 29, 2017, Payne received requests from a customer's email account to effect eight wire transfers from the customer's Schwab account. Unbeknownst to Payne, the requests were made by an imposter who had gained access to the customer's email account.

On each occasion, Payne failed to follow Schwab's policies and procedures requiring him to obtain verbal verification from the customer of a wire transfer request before processing the request. Payne did not verify the requests verbally even though the requests presented multiple red flags. For example, the customer had not requested wire transfers of this type before, and there were multiple requests for wire transfers during a short period. On one occasion, Payne scheduled a telephone call with the imposter but the imposter cancelled the call without an explanation. In addition, even though the customer had eight accounts at the Firm, the imposter did not specify which of the accounts Payne should use to obtain the wired funds. Further, the recipient bank for one of the wire transfers raised questions about the purpose of the transaction before accepting the funds. For another wire transfer, the imposter provided incorrect routing information. Additionally, the imposter requested that Payne refer to several wires as "personal loans" even though documents the imposter supplied to Payne purported to reflect that the wires were commission payments.

On five occasions, Payne falsely attested on a Schwab document that he had verbally verified the wire requests with the customer and had authenticated the customer's identity. He then requested that a registered General Securities Sales Supervisor approve the document, as required by Schwab's policies and procedures. On the sixth occasion, Payne could not locate a General Securities Sales Supervisor to approve the document. Payne therefore instructed another employee who had recently joined Schwab to falsely attest on the Schwab document that she had verbally verified the wire requests with the customer and

had authenticated the customer's identity. He then approved the document in his capacity as a registered General Securities Sales Supervisor.

Further, Payne provided false information to a Schwab Move Money Specialist who expressed concern about the frequency of the wire requests and who requested confirmation from Payne that he was not receiving the requests via email. In response to her inquiries, Payne falsely stated that the customer sent the requests via fax.

In total, Payne effected eight wire transfers totaling \$794,860 from the customer's account to five third-party accounts at three external banks. Schwab, which was only able to recover \$51,469 of the transferred funds, compensated the customer.

FINRA Rule 2010 requires associated persons to "observe high standards of commercial honor and just and equitable principles of trade" in the conduct of their business. By making false statements to the Firm, Payne violated FINRA Rule 2010.

FINRA Rule 4511 requires member firms to make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, and regulations. An associated person who enters inaccurate information into a firm's books and records violates FINRA Rules 4511 and 2010. By virtue of the foregoing, Payne violated FINRA Rule 4511 and 2010.

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

A \$5,000 fine and a 90 calendar-day suspension from association with any FINRA member in all capacities.

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 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

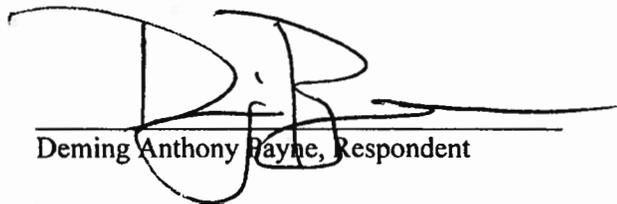
C. If accepted:

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 understand and acknowledge that FINRA does not represent or advise me and I cannot rely on FINRA or FINRA staff members for legal advice; 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.

12/12/2018
Date (mm/dd/yyyy)


Deming Anthony Payne, Respondent

Accepted by FINRA:

01/10/2019
Date

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



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