

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2017056550601**

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

RCUD 2018SEP13 PM 12:18

RE: Daniel K. Kittner ("Kittner" or "Respondent")  
Former Registered Representative  
CRD No. 4377296

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**

Kittner entered the securities industry in 2001. From 2001 to 2011, Kittner was associated with two FINRA member firms. In 2011, Kittner became associated with FINRA member Ameritas Investment Corp. ("Ameritas" or the "Firm") and registered with FINRA as a Series 7, General Securities Representative, and a Series 24, General Securities Principal. On November 29, 2017, Ameritas filed a Uniform Termination Notice of Securities Industry Registration ("Form U5") on Kittner's behalf disclosing that Kittner had been permitted to resign during the Firm's investigation into a customer's verbal complaint.

Although Kittner has not been associated with a FINRA member since his association with Ameritas, FINRA retains jurisdiction over him pursuant to Article V, Section 4(a) of FINRA's By-Laws.

## **RELEVANT DISCIPLINARY HISTORY**

Kittner has no relevant disciplinary history in the securities industry.

### **OVERVIEW**

From June 2015 to September 2017 (the “Relevant Period”), Kittner exercised his discretion in the accounts of two customers without written authorization from the customers and without acceptance of the accounts as discretionary by his FINRA member firm, thereby violating NASD Rule 2510(b) and FINRA Rule 2010. Kittner also violated FINRA Rules 4511 and 2010 by failing to mark the order tickets for these trades to reflect that they were discretionary, thereby causing his firm’s books and records to be inaccurate, in violation of Section 17(a) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 17a-3 thereunder.

### **FACTS AND VIOLATIVE CONDUCT**

NASD Rule 2510(b) prohibits a registered representative from exercising discretion in a customer’s account unless the customer has given the registered representative prior written authorization to do so and the member firm has accepted the account as discretionary in writing.

FINRA Rule 4511 requires each member to make and preserve books and records in conformity with applicable FINRA and Exchange Act Rules, including Exchange Act Rule 17a-3.

FINRA Rule 2010 requires members and persons associated with a member to observe high standards of commercial honor and just and equitable principles of trade. A violation of NASD Rule 2510 or FINRA Rule 4511 is also a violation of FINRA Rule 2010.

During the Relevant Period, Kittner effected approximately 700 trades in six separate accounts belonging to two customers, a married couple, without contacting the customers prior to each trade to confirm the details of the trade. Kittner did not have written authorization from the customers to use his discretion in their accounts, and he never requested, and his Firm never gave, permission to exercise discretion in the accounts. The Firm’s written supervisory procedures did not permit registered representatives to use discretion. By virtue of this misconduct, Kittner violated NASD Rule 2510(b) and FINRA Rule 2010.

Further, when Kittner placed the trades, he inaccurately failed to mark the orders as discretionary, thereby causing the Firm to make and preserve inaccurate order tickets in violation of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder. By virtue of this misconduct, Kittner violated FINRA Rules 4511 and 2010.

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

- A 60-calendar day suspension from association with any FINRA member in any capacity, and
- A \$7,500 fine.

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 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**

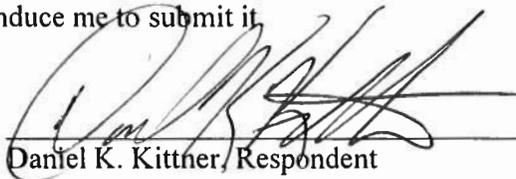
I understand that:

- 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 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.

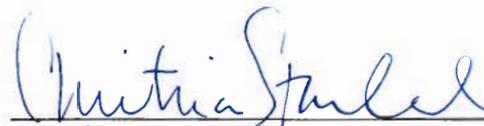
9/8/2018  
Date (mm/dd/yyyy)

  
Daniel K. Kittner, Respondent

Accepted by FINRA:

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

10/4/2018  
Date

  
Christina Stanland  
Director  
FINRA Department of Enforcement  
Brookfield Place  
200 Liberty Street, 11<sup>th</sup> Floor  
New York, NY 10281  
Telephone: 646-315-8617