

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2014041374401**

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

RE: Fidelity Brokerage Services LLC, Respondent  
Member Firm  
CRD No. 7784

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Fidelity Brokerage Services LLC ("Fidelity" or the "Firm") 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 Fidelity alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. Fidelity hereby accepts and consents, 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**

Fidelity is headquartered in Smithfield, Rhode Island and has been a FINRA member since 1979. Fidelity has approximately 225 branch offices and 14,000 registered representatives. The firm primarily provides self-directed online brokerage account services.

**OVERVIEW**

Between August 2006 and May 2013, Fidelity failed to prevent or detect the conversion of more than a million dollars from nine of its customers, most of whom were senior citizens, by a since-convicted felon named Lisa A. Lewis.<sup>1</sup> This conversion went undetected in large part because at the time of Lewis's unlawful acts, Fidelity had failed to establish and maintain adequate supervisory

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<sup>1</sup> Lewis was sentenced to 15 years in prison in June 2014 after pleading guilty to a criminal charge of wire fraud. She was also ordered to pay more than \$2 million in restitution to her victims, including victims who were not Fidelity customers. *United States v. Lisa A. Lewis*, No. 13-CR-219 (E.D. Wis.).

systems or written supervisory procedures to achieve compliance with applicable securities laws, regulations, and rules, or to adequately review and monitor the transmittal of funds from customer accounts to outside entities. Fidelity thereby violated NASD Rules 3010 and 3012(a)(2)(B)(i) and FINRA Rule 2010.<sup>2</sup> With this AWC, Fidelity agrees to be censured, pay a \$500,000 fine, and reimburse its customers for losses attributable to the violations described herein.

## **FACTS AND VIOLATIVE CONDUCT**

### **Facts**

#### **Lewis's Conversion Scheme**

From approximately August 2006 until her fraud was discovered in May 2013, Lisa A. Lewis pretended to be a Fidelity broker and systematically converted more than a million dollars from the accounts of nine of the Firm's customers, eight of whom were senior citizens. Many of Lewis's victims were former customers at another brokerage firm, from which she had been terminated following allegations of check-kiting and improperly borrowing money from customers. Lewis falsely told these former customers and other eventual victims that she was working for Fidelity and urged them to establish accounts at that firm. In reality, Lewis was never associated with Fidelity.

By posing as a Fidelity broker, Lewis was able to obtain her victims' personal information and use that information to open and control individual accounts in their names at Fidelity. Lewis then set or changed the account preferences so that communications about these accounts would be diverted to her own email. Without these customers' knowledge or consent, Lewis also created joint accounts with each customer on which she and the customer were listed as co-owners.

Using these means, Lewis eventually established more than 50 individual and joint accounts at Fidelity. She then systematically converted assets from a number of these accounts for her own personal benefit. She did this primarily by transferring funds from each victim's individual account to that victim's joint account with Lewis (on many occasions then transferring the funds to individual accounts owned by Lewis) and then initiating electronic fund transfers from either the joint accounts or Lewis's individual accounts to a common bank account that only Lewis owned. Lewis also converted funds from the joint accounts through personal debit-card charges and other transfers.<sup>3</sup> In total, Lewis illicitly converted

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<sup>2</sup> NASD Rules 3010 and 3012 were superseded by FINRA Rules 3110 and 3120, respectively, on December 1, 2014. Since the conduct addressed in this AWC occurred prior to December 1, 2014, NASD Rules 3010 and 3012 apply.

<sup>3</sup> Most of the fund transfers and debit card transactions Lewis effected were in amounts less than \$10,000.

to her benefit approximately \$1.1 million from the accounts of nine Fidelity customers, some of whom Fidelity has already partially reimbursed.

### **Fidelity Failed to Respond to Red Flags of Lewis's Activity**

Fidelity failed to detect or adequately follow up on multiple red flags related to Lewis's scheme. For example, though Lewis's victims were unrelated to one another, all of the individual and joint accounts established in their names at Fidelity shared one or more elements of common customer information associated with Lewis, such as a common email address, common physical address, or common phone number. Furthermore, all of the joint accounts listed Lewis as a beneficial owner. Except for an alert designed to identify multiple accounts sharing a common email address (discussed below), Fidelity lacked supervisory systems or procedures reasonably designed to detect these commonalities across these unrelated accounts.

There were also red flags related to the types of activity in the accounts. For example, the money movements in the accounts entailed a consistent pattern of transfers from the customers' individual accounts to the joint accounts, followed in many instances by transfers to Lewis's individual Fidelity accounts and then to Lewis's third-party bank account or via debit-card transactions from either the joint accounts or Lewis's individual accounts. However, the Firm failed to detect or follow up on these red flags.

The Firm also overlooked red flags in telephone calls handled by its customer-service call center during which Lewis impersonated customers to facilitate illicit fund transfers. For example, in some calls, call-center personnel did not become suspicious even after Lewis was unable to answer account-verification questions on file for the impersonated customer. On most occasions, the relevant calls were not appropriately elevated within the Firm for further investigation or review.

On one occasion in March 2012, Lewis used a "blind fax" – that is, a facsimile transmission with no advance notice to the recipient that it would be forthcoming – to request the transfer of \$10,000 from a senior-citizen victim's individual Fidelity account directly into Lewis's individual Fidelity account (thus bypassing Lewis's more typical pass-through use of her joint account with the customer). Subsequent telephone calls with the customer and Lewis should have raised the suspicions of Fidelity's call-center representatives. Among other things, the elderly customer struggled to independently explain the rationale for the transfer request, she appeared unaware of certain features of her account (such as that she had a username), and she seemingly misperceived that Lewis was helping her manage her investments. Moreover, during one of the calls, Lewis stated that its purpose was to purchase a stock for a purported investment club that was not yet formed and thus did not yet have its own account. Finally, call-center personnel looked up Lewis's BrokerCheck record while processing this transfer request, but apparently did not notice or follow up on the disclosure therein of her above-referenced dismissal from an unrelated brokerage firm.

Although this particular fund-transfer request was elevated to supervisors within Fidelity's call center, it was not appropriately elevated for further investigation by the Firm's risk or compliance departments despite the various red flags associated with it. Likewise, despite the red flags, no Fidelity personnel followed up after the fund transfer to verify that any stock was actually purchased or that any investment club or related account was ever established, as Lewis had claimed. As it happens, starting the day immediately after the fund transfer and continuing over the next 26 days, Lewis converted the transferred funds through further transfers to her other Fidelity accounts and her third-party bank account.

### **Fidelity's Inadequate Supervisory Systems and Procedures Contributed to its Failure to Detect and Prevent Lewis's Fraudulent Activities**

In 2010, Fidelity implemented a common-email alert to identify, among other things, scenarios where an individual or entity potentially controlled or was associated with multiple unrelated accounts. Originally developed as an Excel-based report, this alert transitioned to the firm's automated account monitoring system in November 2011. The parameters for the alert were originally set to identify any email address associated with a relatively large number of separate Fidelity customer accounts. That threshold was lowered significantly in March 2012 – coincidentally around the same time that the number of Lewis-related accounts first reached the threshold that would have triggered an alert even under the original parameters. This change in parameters resulted in an immediate and dramatic increase in the number of common-email alerts generated. Thus, whereas fewer than 10 alerts had been generated in the months before the threshold was lowered, more than 6,000 alerts were generated immediately after. Yet despite the high number of alerts generated after the threshold was lowered, Fidelity assigned only one person to review them – in addition to her other job duties– thus causing a significant backlog of unreviewed alerts for a period of many months.

In March 2012, within days of the above-described “blind fax” and related telephone calls, the common-email alert identified 51 accounts associated with Lewis's email address. The alert listed 35 different surnames associated with these accounts (including Lewis's), with a combined portfolio value of approximately \$7.7 million. However, due to the limited resources dedicated to reviewing these alerts at the time – and the resulting backlog – the alert specifically identifying numerous Lewis-related accounts was not reviewed by anyone at Fidelity until April 2013, more than a year after it was generated. It was not followed-up on for at least another month, after another financial institution had already detected Lewis's scheme.

During the relevant period, Fidelity did not maintain written policies or procedures regarding the use of its common-email alert. Moreover, as noted above, apart from the common-email alert the Firm lacked any means to identify common identifiers across multiple unrelated accounts, such as common physical

address, common phone number, or common beneficial owner on the Lewis-related accounts. Likewise, although Fidelity was in the process of developing a common multi-wire destination surveillance, during the relevant period the firm did not implement or employ such surveillance or a similar system designed to detect wire transfers or other fund transfers to a common destination from multiple unrelated accounts.

### **Violations**

During the relevant period, NASD Rule 3010(a) required member firms to establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA and NASD Rules. Moreover, NASD Rule 3010(b) in relevant part required each member firm to establish, maintain, and enforce written procedures to supervise its business activities, registered representatives, registered principals, and other associated persons reasonably designed to achieve compliance with the same laws, regulations, and rules.

As described above, Fidelity failed to establish and maintain a supervisory system reasonably designed to detect and prevent fraudulent activity in accounts at the Firm such as that perpetrated by Lewis. Fidelity also failed to adequately follow-up on red-flags related to Lewis's misconduct. Accordingly, Fidelity violated NASD Rule 3010. By virtue of that violation, Fidelity also violated FINRA Rule 2010.

During the relevant period, NASD Rule 3012(a)(2)(B)(i) in relevant part required firms to establish, maintain, and enforce written supervisory control policies and procedures reasonably designed to review and monitor transmittals of funds from customer accounts to outside entities, including banks. As described above, Fidelity's supervisory control policies and procedures were not reasonably designed to review and monitor transmittals of funds because they failed to provide for the detection or review numerous transfers of funds from unrelated accounts to a common outside destination. Therefore, Fidelity violated NASD Rule 3012(a)(2)(B)(i). By virtue of that violation, Fidelity also violated FINRA Rule 2010.

- B. Fidelity also consents to the imposition of the following sanctions:
1. A censure;
  2. A fine in the amount of \$500,000;
  3. Restitution is ordered to be paid to the customers listed on Attachment A hereto in the total amount of \$529,270 plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2),

from May 16, 2013, until the date this AWC is accepted by the NAC.<sup>4</sup>

Fidelity agrees to pay the foregoing monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. Fidelity has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Fidelity specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

A registered principal on behalf of Fidelity shall submit satisfactory proof of payment of restitution or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted to Michael J. Rogal, Senior Counsel, FINRA Department of Enforcement, 15200 Omega Dr., 3<sup>rd</sup> Floor, Rockville, MD 20850-3241 either by letter that identifies Fidelity Brokerage Services LLC and Matter No. 2014041374401 or by e-mail from a work-related account of the registered principal of Fidelity to [EnforcementNotice@FINRA.org](mailto:EnforcementNotice@FINRA.org). This proof shall be provided to the FINRA staff member listed above no later than 120 days after acceptance of the AWC.

If for any reason Fidelity cannot locate any customer identified in Attachment A after reasonable and documented efforts within 120 days from the date the AWC is accepted, or such additional period agreed to by a FINRA staff member in writing, Fidelity shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property or abandoned property fund for the state in which the customer is last known to have resided. Fidelity shall provide satisfactory proof of such action to the FINRA staff member identified above and in the manner described above, within 14 days of forwarding the undistributed restitution and interest to the appropriate state authority.

Fidelity acknowledges that the imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

## II.

### WAIVER OF PROCEDURAL RIGHTS

Fidelity specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

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<sup>4</sup> The restitution ordered takes into account prior payments that Fidelity made to certain of Lewis's victims.

- A. To have a Complaint issued specifying the allegations against it;
- 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, Fidelity specifically and voluntarily waives 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.

Fidelity further specifically and voluntarily waives 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**

Fidelity understands 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 it; and
- C. If accepted:
  - 1. this AWC will become part of Fidelity’s permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;



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. Fidelity 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. Fidelity 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 Fidelity's: (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. Fidelity may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Fidelity understands that it 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.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Fidelity has 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 Fidelity to submit it.

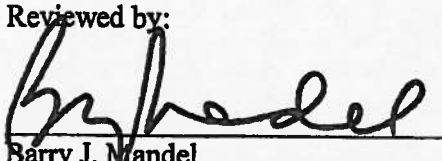
12/10/15  
Date (mm/dd/yyyy)

  
Fidelity Brokerage Services LLC  
Respondent

By: Norman L. Ashbery  
Chief Compliance Officer



Reviewed by:

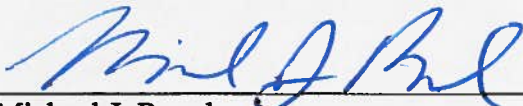
A handwritten signature in black ink, appearing to read "B. Mandel", written over a horizontal line.

Barry J. Mandel  
Counsel for Respondent  
Foley & Larder LLP  
90 Park Avenue  
New York, NY 10016-1314  
212.338.3564

Accepted by FINRA:

12/18/15  
Date

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

  
Michael J. Rogal  
Senior Counsel  
FINRA Department of Enforcement  
15200 Omega Drive  
3<sup>rd</sup> Floor  
Rockville, MD 20850-3141


### ELECTION OF PAYMENT FORM

I intend to pay the fine set forth in the attached Letter of Acceptance, Waiver and Consent by the following method (check one):

- A personal, business or bank check for the full amount;
- Wire transfer;
- Credit card authorization for the full amount;<sup>5</sup> or
- The installment payment plan (only if approved by FINRA staff and the Office of Disciplinary Affairs).<sup>6</sup>

Respectfully submitted,

12/10/15  
Date

  
Respondent

<sup>5</sup> You may pay a fine of \$50,000.00 or less using a credit card. Only Mastercard, Visa and American Express are accepted for payment by credit card. If this option is chosen, the appropriate forms will be mailed to you, with an invoice, by FINRA's Finance Department. Do not include your credit card number on this form.

<sup>6</sup> The installment payment plan is only available for fines of \$5,000 or more. Certain interest payments, minimum initial and monthly payments, and other requirements apply. You must discuss these terms with FINRA staff prior to requesting this method of payment.

Fidelity Brokerage Services LLC

By: Norman L. Ashkenas  
Chief Compliance Officer

Attachment A to Case No. 2014041374401

<b>Customer</b>	<b>Restitution</b>
MJK	\$60,113
GS	\$232,501
RR and SR	\$101,383
CP	\$107,000
RG	\$12,873
KS	\$3,900
NL	\$2,500
CS	\$9,000
<b>Total</b>	<b>\$529,270</b>

## **CORRECTIVE ACTION STATEMENT**

Since the unlawful acts of Lisa Lewis have come to light, Fidelity has taken a number of corrective actions to enhance its supervision, monitoring and surveillance.

As a complement to its existing extensive surveillance, Fidelity has implemented two new systems. The first is multi-wire destination surveillance. This surveillance, which was already in development during the time of Lewis' misconduct, is aimed at identifying and preventing precisely the type of scheme perpetrated by Lewis.

Second, Fidelity has implemented elder financial exploitation surveillance. This system monitors for a variety of different types of money movement in accounts owned by elder customers, and is aimed at identifying and preventing the kind of activity in which Lewis engaged.

In addition, since Lewis' unlawful acts, Fidelity has enhanced its existing associate and employee training and awareness relating to senior investors generally, and elder financial exploitation specifically. Fidelity implements various techniques, training and programs to help its representatives identify and appropriately respond to instances of potential elder financial exploitation.

This Corrective Action Statement is submitted by the Respondent. It does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA, or its staff.