

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2015043584401**

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

RE: Mason W. Gann, Respondent
CRD No. 4030936

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

Gann entered the securities industry in September 1999 and was registered with two FINRA-registered firms before joining Berthel, Fisher & Co. Financial Services, Inc., in June 2012. He remained with Berthel Fisher until it terminated his registration in February 2018. Although he is not currently registered with a broker-dealer, Gann remains subject to FINRA jurisdiction, under Article V, Section 4 of FINRA's By-laws.

RELEVANT DISCIPLINARY HISTORY

Gann has no relevant disciplinary history.

OVERVIEW

Between January 1, 2014 and June 30, 2015, Gann exercised discretion in six customers' accounts without obtaining prior written authorization from the customers or prior written approval from Berthel Fisher. Through this conduct, Gann violated NASD Conduct Rule 2510(b) and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Between January 1, 2014 and June 30, 2015, Gann exercised discretion in six customers' brokerage accounts. These customers verbally approved of Gann's use of discretion to buy and sell securities in their accounts, but did not provide written authorization to do so. Berthel Fisher, moreover, generally prohibited its representatives from using discretion in brokerage accounts during the relevant period, and did not approve Gann to use discretion on behalf of any customer. Despite not having the necessary written authorizations or firm approval, Gann used his discretion to make approximately 500 trades in the affected customers' accounts.

By virtue of the foregoing, Gann violated NASD Conduct Rule 2510(b) and FINRA Rule 2010.

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

- a suspension from associating with a FINRA broker-dealer in any capacity for a period of 20 business days, and
- a \$5,000 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 upon 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 that I 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.

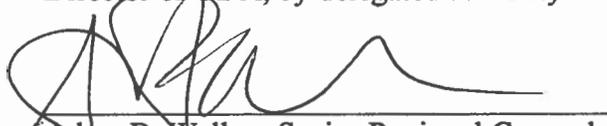
03/30/2018
Date (mm/dd/yyyy)


Respondent

Accepted by FINRA:

4/11/2018
Date

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


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