

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015043584402**

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

RE: John H. Neely, Respondent
CRD No. 501565

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

Neely has been registered in various capacities with multiple FINRA broker-dealers since entering the securities industry in 1976. He was registered with Berthel, Fisher & Co. Financial Services, Inc. (“Berthel Fisher”), as a General Securities Representative and Municipal Securities Principal from August 2009 to September 19, 2018. Neely is not currently registered or associated with a FINRA member firm, but under Article V, Section 4 of FINRA’s By-laws he remains subject to FINRA’s jurisdiction until September 17, 2020.

RELEVANT DISCIPLINARY HISTORY

In December 2007, Neely agreed to a ten-day suspension and \$3,000 fine imposed by the Oklahoma Department of Securities, which alleged that Neely recommended mutual-fund transactions that were unsuitable in that they failed to utilize breakpoint discounts and reinvestment privileges.

In 1982, Neely received a three-day suspension from the state of Oklahoma, which alleged that Neely employed a broker who was not registered with the state.

OVERVIEW

Neely exercised discretion in two customers' accounts between June 1, 2014 and June 30, 2015, without written authorization from the customers and without his member firm accepting the accounts as discretionary. Through this conduct, Neely violated NASD Conduct Rule 2510(b) and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

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

Between June 1, 2014 and June 30, 2015, while he was a registered representative of Berthel Fisher, Neely exercised discretion in effecting hundreds of transactions in two customers' brokerage accounts without first obtaining written approval from the customers to do so. Further, although the customers verbally authorized Neely to exercise discretion in their accounts, Berthel Fisher prohibited the use of discretion in brokerage accounts. In fact, Neely never sought Berthel Fisher's approval to service either customer's accounts on a discretionary basis.

Through this conduct, Neely violated NASD Rule 2510(b) and FINRA Rule 2010.

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

- A suspension from associating with any FINRA member in any capacity for 15 business days, and
- A fine of \$5,000.

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 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.

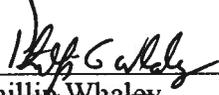
D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute 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 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.

10/19/2010
Date (mm/dd/yyyy)

John A. Nuly
Respondent

Reviewed by:



Phillip Whaley
Counsel for Respondent
Ryan Whaley Coldiron Jantzen Peters & Webber
900 Robinson Renaissance
119 North Robinson Avenue
Oklahoma City, Oklahoma 73102
(405) 239-6040

Accepted by FINRA:

11/15/2018
Date

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



Adam B. Walker, Senior Regional Counsel
FINRA Department of Enforcement
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Kansas City, Missouri 64105
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CORRECTIVE ACTION STATEMENT

I, John H. Neely, submit the following Corrective Action Statement concerning the matters addressed in the Letter of Acceptance, Waiver, and Consent signed by me on October __, 2018.

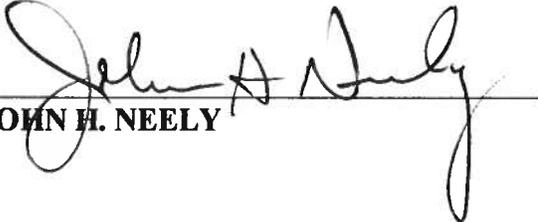
I have taken the following corrective steps:

First, I have reviewed the examples of "Prohibited Conduct" on FINRA's website, <http://www.finra.org/investors/prohibited-conduct>, and have taken particular note of paragraph 2, which prohibits a financial advisor from: "Purchasing or selling securities in a customer's account without first contacting the customer and receiving the customer's authorization to make the sale or purchase, unless the broker has received from the customer written discretionary authority to effect transactions in the account or the broker was given discretion as to price and time."

Second, I have re-reviewed NASD Conduct Rule 2510(b) and FINRA Rule 2010. I am now aware that NASD Conduct Rule 2510(b) prohibits the exercise of discretion in a customer's account without written authority, and that FINRA Rule 2010 mandates that FINRA members "observe high standards of commercial honor and just and equitable principles of trade."

Third, once registered and/or associated with a FINRA member firm at any future date, I will make clear to my clients with non-discretionary brokerage accounts that I cannot and will not execute any trades in their accounts except as allowed under the rules.

Dated: October 19 2018



JOHN H. NEELY