

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2016048936601**

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

**RE:** Michael E. Heath, Respondent  
CRD No. 2708198

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**

Respondent entered the securities industry in January 1996 when he became associated with a FINRA-regulated broker-dealer. In February 2002, Respondent became associated as a general securities representative ("GSR") with First Allied Securities, Inc. ("First Allied" or the "Firm"), a FINRA-regulated broker-dealer.

On February 5, 2016, First Allied filed a Form U5 stating that Respondent had voluntarily resigned on January 26, 2016 after he "admitted to not following the firm's email policy."

In April 2016, Heath became associated with another FINRA-regulated broker-dealer until August 2018. In August 2018, Heath became associated as a GSR with another FINRA-regulated broker-dealer, where he is currently employed. Given his continuing association with a FINRA-registered broker-dealer, Heath remains subject to FINRA's jurisdiction.

## **RELEVANT DISCIPLINARY HISTORY**

Respondent has no relevant disciplinary history.

## **OVERVIEW**

From June 2011 through January 2016 (“the Relevant Period”), Respondent violated FINRA Rule 2010 by using an unapproved, personal email account to correspond with customers about firm-related business and circumvented the firm’s supervision of those communications. Respondent’s use of an unapproved, personal email account to conduct firm business also violated NASD Rule 3110, successor FINRA Rule 4511,<sup>1</sup> and FINRA Rule 2010 because he caused his employer firm to fail to comply with its recordkeeping obligations.

Also during the relevant period, Respondent created 1-2 page account performance summaries for his firm clients which he regularly used in face-to-face meetings. These summaries, however, failed to comply with FINRA rules on communications with the public, in violation of NASD Rule 2210(d)(1)(A), successor FINRA Rule 2210(d)(1)(A),<sup>2</sup> and FINRA Rule 2010.

## **FACTS AND VIOLATIVE CONDUCT**

### **Respondent Communicated with Firm Customers Using an Unapproved, Personal Email Account in Violation of FINRA Rule 2010, NASD Rule 3110, and FINRA Rule 4511**

During the Relevant Period, Respondent regularly communicated with his customers through an unapproved, personal email account about Firm business. Respondent sent to and received from Firm customers at least 1,600 emails through the unapproved, personal email account during these four-and-a-half years. In these emails, Respondent, among other things, sent account documents, discussed account performances, and discussed specific investments with his firm customers.

Throughout the Relevant Period, the Firm’s WSPs “prohibited [Firm employees] from using securities business-related electronic correspondence with the public through email addresses not authorized by [the Firm].” The Firm’s WSPs required electronic business-related correspondence to be sent through Firm-issued or Firm-approved email accounts so that the Firm could monitor such communications for recordkeeping and compliance purposes.

FINRA Rule 2010 requires associated persons to “observe high standards of commercial honor and just and equitable principles of trade” in the conduct of

---

<sup>1</sup> FINRA Rule 4511 replaced NASD Rule 3110 on December 5, 2011.

<sup>2</sup> FINRA Rule 2210 replaced NASD Rule 2210 on February 4, 2013.

their business. By knowingly using his personal, unapproved email account to communicate with Firm customers through emails that circumvented his Firm's supervisory review process, Respondent violated FINRA Rule 2010.

In addition, NASD Rule 3110 and its successor rule, FINRA Rule 4511, require member firms to make and preserve books and records in conformity with FINRA rules, the Securities Exchange Act of 1934 ("Exchange Act"), and applicable Exchange Act rules. SEC Rule 17a-4(b)(4) requires that member firms preserve records of "all communications" concerning the firm's business. By using his unapproved, personal email account to conduct Firm business, Respondent caused the Firm to fail to maintain all business-related communications in violation of NASD Rule 3110 (during the period June 2011 through December 4, 2011), its successor rule, FINRA Rule 4511 (during the period December 5, 2011 through January 26, 2016), and FINRA Rule 2010.

Respondent Violated the Content Standards of NASD Rule 2210(d)(1)(A) and FINRA Rule 2210(d)(1)(A) regarding Communications with the Public

NASD Rule 2210(d)(1)(A) and its successor rule, FINRA Rule 2210(d)(1)(A), state, in relevant part, that all member communications "must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service."

During the relevant period, Respondent created 1-2 page account performance summaries on Microsoft Excel which he regularly used in face-to-face meetings with clients. The summaries failed to provide a sound basis for customers to evaluate the facts regarding the securities described therein because: (1) The summaries failed to clearly distinguish between assets held at the firm and assets held away. (2) The summaries included investment valuations that failed to clearly and prominently indicate that the valuations for assets held away had not been verified. (3) Many of the summaries contained two total return figures. The summaries, however, did not provide a basis for how the total return figures were calculated. (4) The summaries failed to explain that they were provided for informational purposes only and as a courtesy to the customer.

By presenting customers with account performance summaries that failed to comply with FINRA's content standards for communications with the public, Heath violated NASD Rule 2210(d)(1)(A) and FINRA Rules 2210(d)(1)(A) and 2010.

- B. I also consent to the imposition of the following sanctions:
1. A suspension from association with any FINRA member in any capacity for 45 calendar days; and
  2. A \$12,500 fine.

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

The fine shall be due and payable either immediately upon reassociation with a member firm following the 45-day suspension noted above, 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).

## 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 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.

12/26/2015  
Date (mm/dd/yyyy)

  
Michael E. Heath, Respondent

Reviewed by:



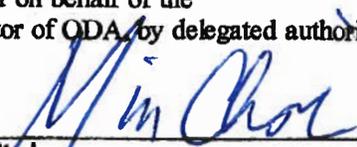
---

Eoin L. Kreditor  
Fitzgerald Yap Kreditor LLP  
16148 Sand Canyon Avenue  
Irvine, CA 92618

Accepted by FINRA:

10/30/18  
Date

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

  
\_\_\_\_\_  
Min Choi  
Senior Counsel  
FINRA Department of Enforcement  
15200 Omega Drive, Suite 300  
Rockville, MD 20850  
Telephone: (301) 258-8591  
Facsimile: (202) 721-6590

**STATEMENT OF CORRECTIVE ACTION**  
**IN SUPPORT OF**  
**FINANCIAL INDUSTRY REGULATORY AUTHORITY**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. 2016048936601**

**TO: Department of Enforcement**  
**Financial Industry Regulatory Authority**

**RE: Michael E. Heath, Respondent**  
**CRD No. 2708198**

**This Statement of Corrective Action 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.**

**Introduction**

Michael Heath has been licensed since 1995. Mr. Heath wanted to stay in communication with his clients at all times. Therefore, Mr. Heath communicated with his clients using his personal email account from his cellular phone. This is a violation of FINRA and NASD Rules which require all client communications to be archived on the associated person's member firm's computer database/server for FINRA access and review.

Mr. Heath created account performance summaries which he used in meetings with clients. However, the summaries failed to include required language as set forth in the Acceptance, Waiver and Consent ("AWC") which violated FINRA and NASD Rules.

**Corrective Action and Supervision Plan**

Mr. Heath and his current firm, Infinity Financial Services, have put the following written Supervision Plan in place as corrective action:

1. All emails from Mr. Heath's personal email account will automatically forward to and be archived within the firm's third-party vendor for review by both the firm and FINRA.
2. Mr. Heath's designated supervisor will monitor all incoming and outgoing correspondence from Mr. Heath's personal email account.
3. Mr. Heath will send receipt to the firm's compliance department acknowledging that he has read the firm's written supervisory policies and procedures.
4. Mr. Heath will read and sign the firm's cell phone policy.
5. Mr. Heath will ensure that every client communication he produces in the future will follow the specific guidelines set forth in the AWC as well as be approved by his supervisor.