

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2015047550801**

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

**RE:** Thomas E. Omark (CRD No. 2121589), Respondent

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Thomas E. Omark, 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**

Omark first became registered with FINRA in 1991. From January 2004 through October 2015, he was registered as a General Securities Representative and a Municipal Securities Representative through PNC Investments (CRD No. 129052) ("PNCI" or the "Firm"). On October 1, 2015, PNCI filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") stating that "Omark was terminated for violating Firm policy."

Omark is not currently associated with a member firm. However, pursuant to Article V, Section 4 of FINRA's By-Laws, FINRA retains jurisdiction over him.

**RELEVANT DISCIPLINARY HISTORY**

Omark has no relevant formal disciplinary history with the Securities and Exchange Commission, any state securities regulator, or any self-regulatory organization.

## OVERVIEW

Between January 2015 and August 2015, Omark exercised discretion without written authorization in four client accounts in violation of NASD Rule 2510(b) and FINRA Rule 2010. In addition, from December 2013 to August 2015, Omark mismarked approximately 240 order tickets for purchases of PNC Financial Services Group, Inc. preferred stock as unsolicited in violation of FINRA Rules 4511 and 2010.

## FACTS AND VIOLATIVE CONDUCT

### *Use of Discretion without Prior Written Authorization*

NASD Rule 2510(b) states that a registered representative may not exercise discretion in a customer's account "unless such customer has given prior written authorization" and such discretionary authority has been approved, in writing, by the member firm.

Between January 2015 and August 2015, Omark exercised discretion in executing at least 18 transactions in four customers' accounts. None of the customers provided written authorization for this discretionary trading.

As a result of the foregoing conduct, Omark violated NASD Rule 2510(b) and FINRA Rule 2010.

### *Mismarking of Customer Orders*

FINRA Rule 4511 requires accuracy in a member's books and records, including in the marking of order tickets to indicate whether a trade is solicited or unsolicited.

Between December 2013 and August 2015, Omark mismarked 242 order tickets in 124 customer accounts for the purchase of preferred stock for PNC Financial Services Group, Inc., inaccurately indicating that the purchases were unsolicited. PNCI policy prohibited its representatives from soliciting the purchase of any PNC company stock.

As a result of the foregoing conduct, Omark violated FINRA Rules 4511(a) and 2010.

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

- A suspension from associating with any FINRA member firm in any and all capacities for six months; and
- A fine in the amount of \$15,000.

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 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.

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

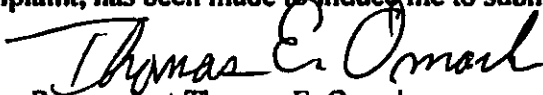
I understand that:

- 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.

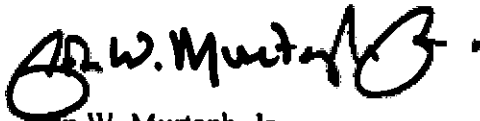
10/28/16

Date (mm dd yyyy)



Respondent Thomas E. Omark

Reviewed by:

A handwritten signature in black ink, appearing to read "John W. Murtagh, Jr.", with a stylized flourish at the end.

John W. Murtagh, Jr.  
Counsel for Respondent  
Murtagh, Hobaugh & Cech  
110 Swinderman Rd.  
Wexford, PA 15090-8613  
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Accepted by FINRA:

Date: November 15, 2016

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

A handwritten signature in black ink, appearing to read "K.C. Daly", with a long, sweeping horizontal stroke extending to the right.

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