

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2014040691001**

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

RE: Gary Saitowitz, Respondent
CRD No. 4238395

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 Gary Saitowitz first became registered with FINRA in 2000 as an Investment Company Products and Variable Contracts Representative with a member firm. Between November 2000 and August 2012, Saitowitz was registered with three different member firms in several capacities, including as a General Securities Representative and General Securities Principal.

In August 2012, Saitowitz became registered with Transamerica Financial Advisors, Inc. ("Transamerica" or the "Firm"). On April 21, 2014, Transamerica filed a Form U5 disclosing that the Firm had discharged Saitowitz "due to violations of the Firm's policies and procedures."

Between May 2014 and June 2016, Saitowitz was registered with a different member firm. Saitowitz is not currently registered or associated with any member firm but remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

Saitowitz has no disciplinary history.

OVERVIEW

While registered with Transamerica, Saitowitz had customers sign blank and incomplete forms. These forms were used to record customer financial information and authorize customer transactions. By having customers sign blank and incomplete forms, Saitowitz violated FINRA Rule 2010.

Saitowitz also caused Transamerica to maintain inaccurate books and records in connection with sales of non-traded REITs. The Firm imposed limits on the amount of a customer's liquid assets that could be invested in non-traded REITs. To circumvent the Firm's concentration limits, Saitowitz maintained records overstating the liquid net worth of certain customers in connection with sales of non-traded REITs. As a result, Saitowitz violated FINRA Rules 4511 and 2010.

In addition, Saitowitz recommended that four customers, including a senior citizen, allocate unsuitable amounts of their assets to non-traded REITs. Based on Saitowitz's recommendations, these customers overly concentrated their assets in non-traded REITs, and, as a result, their asset allocations were unsuitable to their investment objectives and risk tolerances. By making unsuitable recommendations, Saitowitz violated FINRA Rules 2111 and 2010.

Additionally, in 2014, while registered with Transamerica, Saitowitz participated in a private securities transaction involving the purchase and sale of approximately \$46,600 in a non-traded REIT without notifying the Firm. As a result, Saitowitz violated NASD Rule 3040 and FINRA Rule 2010.

Further, while registered with Transamerica, Saitowitz used personal email addresses to conduct securities business, in contravention of the Firm's policies and procedures. Despite being instructed by Transamerica to cease communicating with customers pending the Firm's internal review of his sales practices, Saitowitz continued to communicate with customers using his personal email addresses, which were not subject to monitoring by the Firm. As a result, Saitowitz violated FINRA Rule 2010.

Finally, from 2010 through 2015, one state tax lien and five federal tax liens were filed against Saitowitz. In October 2012, Saitowitz had a judgment entered against him. Saitowitz was required to disclose each of the tax liens and the judgment by updating his Form U4 within 30 days of becoming aware of the lien or judgment. Despite being aware of each tax lien and the judgment, Saitowitz failed to timely update his Form U4 to report the liens and the judgment. As a result, Saitowitz willfully violated Article V, Section 2 of FINRA's By-Laws and FINRA Rules 1122 and 2010.

FACTS AND VIOLATIVE CONDUCT

Saitowitz Had Customers Sign Blank and Incomplete Forms.

While registered with Transamerica, Saitowitz had customers sign blank and incomplete brokerage forms, which Saitowitz placed in customer files maintained as books and records of the Firm. Some of the pre-signed forms authorized fund movement or loans from customer accounts, while others related to customer financial information, used by the Firm to supervise whether transactions solicited by Saitowitz were suitable for customers. Maintaining these pre-signed forms enhanced the risk that customers would be placed in unsuitable investments or subject to unauthorized account activity.

By having customers sign blank and incomplete forms, Saitowitz violated FINRA Rule 2010.

Saitowitz Caused the Firm to Maintain Inaccurate Books and Records.

FINRA Rule 4511 requires each member firm to make and preserve books and records as required under FINRA Rules, the Exchange Act and applicable Exchange Act Rules. Rule 17a-3 under the Exchange Act requires firms to make and keep records of, among other things, each customer's annual income, net worth and investment objectives. If information is recorded in a firm's records, such information must be accurate.

Transamerica imposed limits on the proportion of a customer's liquid assets that could be invested in non-traded REITs, which are generally less liquid and entail greater risk than traditional investments.

To circumvent the Firm's concentration limits, Saitowitz maintained forms overstating the liquid net worth of four customers – WC, GP, AM and PD – in connection with sales of non-traded REITs to these customers. Because their net worth was overstated, the customers appeared to fit within the Firm's concentration limits for investments in non-traded REITs when their investments actually exceeded the Firm's concentration limits. Saitowitz thereby impeded the Firm's ability to supervise his non-traded REIT activities.

By causing the Firm to maintain inaccurate books and records, Saitowitz violated FINRA Rules 4511 and 2010.

Saitowitz Made Unsuitable Recommendations.

FINRA Rule 2111 requires a registered representative to have a reasonable basis to believe that a recommended transaction or investment strategy is suitable for the customer to whom it is recommended, based on information obtained through reasonable diligence to ascertain the customer's investment profile. A recommendation is unsuitable if it results in an undue concentration of a customer's assets in a particular security or type of security in light of the customer's financial situation, risk tolerance or investment objectives.

Saitowitz recommended that four customers – WC, GP, AM and PD – allocate unsuitable amounts of their assets to non-traded REITs.

For example, in October 2012, Saitowitz recommended that WC surrender a fixed annuity to invest approximately \$133,000 in a non-traded REIT. WC was an 82-year old retired clergyman with a moderate risk tolerance, and he had pre-existing investments in non-traded REITs, which had also been recommended by Saitowitz. He had invested in the fixed annuity approximately a year-and-a-half earlier because he wanted the assets to be invested conservatively. Based on Saitowitz's recommendation, WC surrendered the fixed annuity, incurring a surrender charge of \$11,455, and invested the proceeds in the non-traded REIT. After the purchase, approximately 35% of WC's liquid net worth was invested in non-traded REITs. Saitowitz's recommendation that WC invest in the non-traded REIT was unsuitable because it was inconsistent with WC's investment objectives and risk tolerance, overly concentrated WC's assets in non-traded REITs, and caused WC to incur an unwarranted surrender charge.

Similarly, for customers GP, AM and PD, non-traded REIT investments recommended by Saitowitz constituted approximately 32%, 43% and 74% of each customer's liquid net worth, respectively. These allocations were unsuitable to the customers' investment objectives and risk tolerances.

By making unsuitable recommendations, Saitowitz violated FINRA Rules 2111 and 2010.

Saitowitz Participated in a Private Securities Transaction.

NASD Rule 3040 prohibits a registered representative from participating in any manner in a private securities transaction without providing written notice to his member firm.

In late 2013, customer DJ notified Saitowitz of his desire to sell interests in a non-traded REIT that he had acquired based on Saitowitz's recommendation earlier that year. Saitowitz solicited customer SS to purchase DJ's non-traded REIT interests. SS purchased DJ's non-traded REIT interests for approximately \$46,600 in February 2014. In connection with the transaction between SS and DJ, Saitowitz filled out required forms, submitted the forms to the distributor of the non-traded REIT and coordinated payment from SS to DJ. Saitowitz did not process the transaction through Transamerica or notify the Firm of his participation in the transaction.

By participating in a private securities transaction without notifying the Firm, Saitowitz violated NASD Rule 3040 and FINRA Rule 2010.

Saitowitz Used Personal Email Addresses for Business Purposes.

Transamerica's supervisory procedures required the Firm's registered representatives to use only Firm-approved email addresses to conduct securities business. This procedure allowed the Firm to capture electronic communications related to Firm business for review and retention in accordance with the Firm's regulatory requirements.

While registered with Transamerica, Saitowitz used unapproved, personal email addresses to conduct securities business. For example, during March and April 2014, Saitowitz evaded a Firm restriction on communicating with customers during the pendency of an internal review of his sales practices by using personal email addresses, not subject to review by the Firm, to communicate with customers.

By using personal email addresses to conduct business, in contravention of the Firm's policies and procedures, Saitowitz violated FINRA Rule 2010.

Saitowitz Failed to Report Liens and a Judgment.

Article V, Section 2 of FINRA's By-Laws requires a person applying for registration with FINRA to disclose certain information, including whether that person has any unsatisfied liens or judgments, by filing a Form U4. Each registered person must keep information on the Form U4 current by amending it within 30 days of becoming aware of facts or circumstances rendering it incomplete or inaccurate. FINRA Rule 1122 prohibits registered persons from filing information with FINRA that is incomplete or inaccurate so as to be misleading or that could in any way tend to mislead, or failing to correct such filing after notice thereof.

Between October 10, 2010 and December 5, 2011, the IRS filed three tax liens against Saitowitz, one for approximately \$54,962, one for approximately \$56,173 and one for approximately \$9228. These liens were unsatisfied until April 2015. Despite being aware of each lien when it was filed, Saitowitz failed to amend his Form U4 to report the liens until August 15, 2012.

On November 7, 2012, the State of Georgia filed a tax lien against Saitowitz for approximately \$3256. Then, on December 18, 2012, the IRS filed a tax lien against Saitowitz for approximately \$26,848. These liens were unsatisfied until April 2015. Despite being aware of each lien when it was filed, Saitowitz failed to amend his Form U4 to report the liens until March 19, 2014.

On November 4, 2015 the IRS filed a tax lien against Saitowitz for approximately \$7958. This lien was unsatisfied until January 4, 2016. Despite being aware of the lien when it was filed, Saitowitz never amended his Form U4 to report the lien.

On October 16, 2012, Saitowitz had a consent judgment entered against him for approximately \$254,000. The judgment was unsatisfied until April 2015. Despite being aware of the judgment when it was entered, Saitowitz never amended his Form U4 to report the judgment.

Thus, Saitowitz willfully failed to report a judgment and a tax lien, and willfully failed to timely report five tax liens. As a result, Saitowitz willfully violated Article V, Section 2 of FINRA's By-Laws and FINRA Rules 1122 and 2010.

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

- a suspension from association with any FINRA member in any capacity for a period of 18 months;
- a fine in the amount of \$10,000; and
- restitution in the amount of \$11,455, plus interest at the rate set forth below.

Restitution is ordered to be paid to the customer identified herein as WC in the total amount of \$11,455, 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 October 3, 2012, until the date this AWC is accepted by the National Adjudicatory Council ("NAC").

Respondent shall submit satisfactory proof of payment of restitution or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted to William L. Thompson III, Senior Counsel, FINRA Department of Enforcement, 15200 Omega Drive, Third Floor, Rockville, Maryland 20850 either by letter that identifies the Respondent and the case number (2014040691001) and includes a copy of the check, money order or other method of payment or by e-mail, with pdf copies of the payment documentation, to 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 Respondent cannot locate WC 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, Respondent 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. Respondent 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.

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 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 sanctions 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).

I understand that this settlement includes a finding that I willfully omitted to state material facts on a Form U4, and that under Section 3(a)(39)(F) of the Securities

Exchange Act of 1934 and Article III, Section 4 of FINRA's By-Laws, these omissions makes me subject to a statutory disqualification with respect to association with a member.

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 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.

12/9/2016
Date (mm/dd/yyyy)



Gary Saitowitz

Reviewed by:

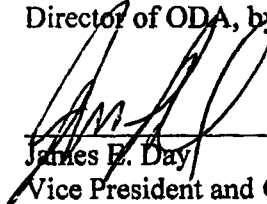


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Accepted by FINRA:

1/3/17
Date

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



James E. Day
Vice President and Chief Counsel
FINRA Department of Enforcement
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