

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2016051259501**

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

RE: Kenneth S. Tyrrell, Respondent
General Securities Representative
CRD No. 2457452

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

Kenneth S. Tyrrell entered the securities industry in 1994. As relevant here, he was registered with UBS Financial Services, Inc. (“UBS”) from November 2008 until August 2016 after which the firm filed a Form U5 reporting the termination of his registrations for the conduct described below.

After leaving UBS, Tyrrell was associated with another FINRA member firm from August 2016 to September 2017. Although Tyrrell is not currently associated with a FINRA member firm, he remains subject to FINRA’s jurisdiction pursuant to Article V, Section 4(a) of FINRA’s By-Laws of the Corporation.

OVERVIEW

Between approximately May 2011 and August 2016, Tyrrell participated in eleven undisclosed private securities transactions with a customer in violation of NASD Rule 3040 and FINRA Rules 3280 and 2010. Tyrrell also engaged in five

undisclosed outside business activities, all of which involved the same customer, in violation of FINRA Rules 3270 and 2010. Further, the periodic certifications Tyrrell provided to UBS failed to disclose his private securities transactions and outside business activities in violation of FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Private Securities Transactions

In March 2009, Tyrrell became the financial advisor to a high net worth individual. Beginning in May 2011 Tyrrell participated in eleven private securities transactions totaling more than \$13 million with this customer without providing prior written notice to UBS. The transactions involved the customer's investment in private equity and debt securities in companies in a variety of industries as part of the customer's overall financial plan. Although Tyrrell was not compensated for these transactions, he participated in them by, among other things, referring investments to the customer; conducting due diligence and relaying his views on the transactions at the customer's request; helping the customer establish certain holding companies to make the investments; and facilitating transfers of funds from the customer's UBS accounts to the companies.

FINRA Rule 3280, like its predecessor NASD Rule 3040, prohibits associated persons from participating in any manner in private securities transactions without providing prior written notice to his or her member firm.¹ By participating in eleven undisclosed private securities transactions without providing prior written notice to UBS, Tyrrell violated NASD Rule 3040 and FINRA Rule 3280. By virtue of those violations, Tyrrell also violated FINRA Rule 2010.

Outside Business Activities

Tyrrell also engaged in five outside business activities without providing prior written notice to UBS. All of the outside business activities involved the same customer mentioned above. Three of the outside business activities involved Tyrrell, at the customer's request, serving as an officer of the holding companies the customer used to make his outside investments. A fourth was a company Tyrrell co-founded in which the customer invested.

The fifth was a concierge services company owned by Tyrrell's spouse with which Tyrrell was also involved. The concierge services company was formed in June 2013 in part to provide personal services to Tyrrell's customer. Tyrrell's involvement included finding staff to provide services to the customer; determining the salaries of the company's staff, including his spouse; and wiring funds to the company from his customer's UBS accounts. Between June 2013 and June 2016, Tyrrell caused approximately \$498,000 to be transferred from the

¹ NASD Rule 3040 was superseded by FINRA Rule 3280 on September 15, 2015. Accordingly, NASD Rule 3040 applies to conduct before that date and FINRA Rule 3280 applies to conduct from that date forward.

customer's UBS accounts to the concierge services company to pay for goods and services on the customer's behalf. In June 2016, the customer raised questions about the concierge services company. Thereafter, Tyrrell performed an audit of the concierge company's expenditures and returned approximately \$130,000 to the customer's UBS accounts, consisting of the balance of the customer's unspent funds held in the concierge service company's bank account, and repayment of certain operating expenses which the concierge services company had charged to the customer.

FINRA Rule 3270 provides that "[n]o registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member." By engaging in five outside business activities without providing prior written notice to UBS, Tyrrell violated FINRA Rule 3270. By virtue of that violation, Tyrrell also violated FINRA Rule 2010.

Inaccurate Compliance Certifications

UBS maintained policies and procedures that prohibited registered persons from engaging in private securities transactions and that required prior written notice of outside business activities. Between at least May 2011 and July 2015, Tyrrell periodically affirmed his understanding of, and compliance with, these policies. During the same period, Tyrrell also provided multiple compliance questionnaire responses to UBS in which he certified that he had disclosed all of his private securities transactions and outside business activities when, in fact, he had not disclosed his participation in the eleven private securities transactions and five outside business activities described above.

FINRA Rule 2010 requires that "[a] member, in the conduct of [his] business, shall observe high standards of commercial honor and just and equitable principles of trade." By providing UBS with compliance questionnaires that failed to disclose his participation in the private securities transactions and outside business activities described above, Tyrrell violated FINRA Rule 2010.

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

A bar from association with any FINRA member firm in all capacities.

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. A bar or expulsion shall become effective upon approval or acceptance of this AWC.

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.

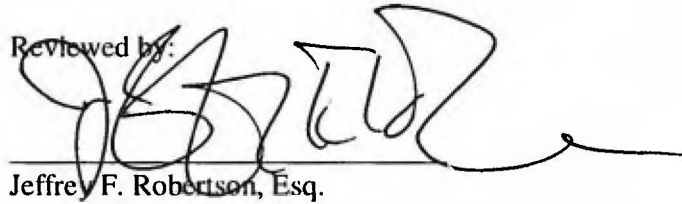
I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

10/31/17
Date (mm/dd/yyyy)



Kenneth S. Tyrrell
Respondent

Reviewed by:


A handwritten signature in black ink, appearing to read 'Jeffrey F. Robertson', written over a horizontal line.

Jeffrey F. Robertson, Esq.
Counsel for Respondent Kenneth Tyrrell
Schulte Roth & Zabel LLP
1152 Fifteenth Street NW, Suite 850
Washington, D.C. 20005

Accepted by FINRA:

12/8/17
Date

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



Michael J. Rogal
Senior Counsel
FINRA Department of Enforcement
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Rockville, MD 20850-3241