

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2015044341201**

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

**RE:** Darrach Michael Bourke, Respondent  
General Securities Representative  
CRD No. 5255413

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 Darrach Michael Bourke entered the securities industry in November 2006 when he first became associated with a FINRA member firm. He registered with FINRA as a General Securities Representative through that firm in June 2007, where he remained registered through April 2009. In May 2009, Bourke registered with another FINRA member firm, which later merged with Stifel Nicolaus & Co., LLC ("Stifel") in November 2011, at which time Bourke's registrations were transferred to Stifel. Stifel terminated Bourke's registrations in October 2014, after which he has been associated with two other FINRA members, and he is currently registered as a General Securities Representative.

**OVERVIEW**

Between January 2012 and October 2014, Bourke exercised discretion without written authorization in the accounts of two customers, in violation of NASD Rule 2510(b) and FINRA Rule 2010.

## **FACTS AND VIOLATIVE CONDUCT**

NASD Rule 2510(b) prohibits registered representatives from exercising discretion in a customer's account unless the customer has provided prior written authorization to the registered representative and the account has been accepted by the firm in writing as a discretionary account. A violation of NASD Rule 2510(b) is also a violation of FINRA Rule 2010, which requires registered representatives to adhere to just and equitable principles of trade in the conduct of their business.

Between January 2012 and October 2014, Bourke exercised discretion in the accounts of two customers. Although Bourke discussed investment strategies with these customers, Bourke exercised discretion and executed transactions in the accounts without first speaking with the customers about the specific transactions. Bourke had not obtained prior written authorization from the customers to exercise discretion in their accounts, and Stifel had not approved either account for discretionary trading.

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

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

- A fine of \$5,000; and
- A twenty business day suspension from association with any member firm in any capacity.

I agree to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. I have submitted an Election of Payment form showing the method by which I propose to pay the fine imposed.

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:**

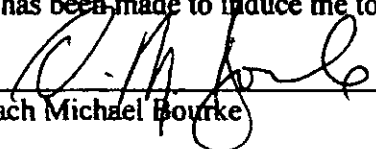
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;**
- B. If this AWC is not accepted, its submission will 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.

2/1/17  
Date (mm/dd/yyyy)

  
Darrach Michael Bourke

Reviewed by:

\_\_\_\_\_  
David Commins  
Counsel for Respondent  
Commins & Knudsen, P.C.  
492 9th Street, Suite 200  
Oakland, CA 94607  
510-823-2208

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
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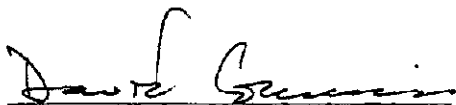
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\_\_\_\_\_  
Date (mm/dd/yyyy)

\_\_\_\_\_  
Darrach Michael Bourke

Reviewed by:




David Commins  
Counsel for Respondent  
Commins & Knudsen, P.C.  
492 9th Street, Suite 200  
Oakland, CA 94607  
510-823-2208

Accepted by FINRA:

3/6/2017  
Date

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



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Meghan S. Bailey  
Principal Regional Counsel  
FINRA Department of Enforcement  
100 Pine Street Suite 1800  
San Francisco, CA 94111  
415-217-1123; 415-217-1201