

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2021069218401**

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

RE: Michael E. Witt (Respondent)  
General Securities Representative  
CRD No. 4206075

Pursuant to FINRA Rule 9216, Respondent Michael E. Witt submits 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 Respondent alleging violations based on the same factual findings described in this AWC.

**I.**

**ACCEPTANCE AND CONSENT**

- A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

**BACKGROUND**

Witt first registered with FINRA in August 2000. From June 2009 through January 2021, Witt was registered with FINRA as a General Securities Representative and General Securities Sales Supervisor through an association with Morgan Stanley (CRD No. 149777). On January 11, 2021, Morgan Stanley filed a Uniform Termination Notice for Securities Industry Registration (Form U5), disclosing that it had discharged Witt due to concerns that he had "submitted transactions under production numbers that were inconsistent with agreement[s] with other representatives resulting in a shortfall of revenue credited to [the] other representatives."

Since January 15, 2021, Witt has been registered with FINRA as a General Securities Representative and General Securities Sales Supervisor through another FINRA member.

In June 2021, Witt consented to the entry of a Disciplinary Order by the Texas State Securities Board through which he consented to findings that between May 2016 and November 2020, Witt "entered incorrect production numbers for multiple trades," resulting in Witt "receiving 100% of the trade revenue rather than the percentage amount" to which he was entitled. The Order imposed a 30-day suspension of his Texas

securities license, a six-month probation, and a contribution of \$30,000 to the Investor Education Fund of the Investor Protection Trust of Texas.<sup>1</sup>

## **OVERVIEW**

From May 2016 through November 2020, Witt changed the representative code for 268 trades, causing the trade confirmations to show an inaccurate representative code. As a result, Witt caused Morgan Stanley to maintain inaccurate books and records in violation of FINRA Rules 4511 and 2010.

## **FACTS AND VIOLATIVE CONDUCT**

This matter originated from FINRA's review of the Form U5 filed by Morgan Stanley.

FINRA Rule 4511 requires member firms and associated persons to "make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules." Exchange Act Rule 17a-3(a)(8) requires member firms to make and keep "copies of confirmations of all purchases and sales of securities." Implicit in the requirement to make and preserve books and records is the requirement that information in those books and records be accurate. An associated person who enters inaccurate information in a firm's books and records violates FINRA Rule 4511 and FINRA Rule 2010, which requires members and their associated persons, in the conduct of their business, to "observe high standards of commercial honor and just and equitable principles of trade."

In March 2016 and April 2017, Witt entered into two separate agreements through which he agreed to service certain customer accounts, including executing trades for those accounts, under joint representative codes (also known as a joint production numbers) that he shared with two retired representatives. The agreements set forth what percentages of the commissions Witt and the retired representatives would earn on trades placed using the joint representative codes. Many of the customers whose accounts were subject to the joint production agreements also had accounts that were not subject to the agreements.

From May 2016 through November 2020, Witt placed a total of 268 trades in accounts that were covered by the joint production agreements using his own personal representative code. Specifically, although the firm's system correctly prepopulated the trades with the applicable joint representative codes, Witt entered the 268 transactions at issue under his personal representative code. Witt negligently failed to verify whether the trade was made in an account that was subject to the joint production agreement. As a result, Morgan Stanley's trade confirmations for the 268 trades inaccurately reflected Witt's personal representative code instead of the joint representative codes that Witt shared with the retired representatives.

---

<sup>1</sup> For more information about the respondent, including prior regulatory events, visit BrokerCheck® at [www.finra.org/brokercheck](http://www.finra.org/brokercheck).

Witt's actions resulted in his receiving higher commissions from the 268 trades than what he was entitled to receive pursuant to the agreements. In February 2021, Morgan Stanley reimbursed the retired representatives.

By causing Morgan Stanley to maintain inaccurate trade confirmations, Witt violated FINRA Rules 4511 and 2010.

B. Respondent also consents to the imposition of the following sanctions:

- a one-month suspension from associating with any FINRA member in all capacities; and
- a \$5,000 fine.

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

Respondent specifically and voluntarily waives any right to claim an inability to pay, now or at any time after the execution of this AWC, the monetary sanction imposed in this matter.

Respondent understands that if he is barred or suspended from associating with any FINRA member, he becomes 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, he 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 in this AWC shall be effective on a date set by FINRA.

## II.

### **WAIVER OF PROCEDURAL RIGHTS**

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a complaint issued specifying the allegations against him;
- 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, Respondent specifically and voluntarily waives 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 its acceptance or rejection.

Respondent further specifically and voluntarily waives 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

Respondent understands 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 Respondent; and
- C. If accepted:
1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
  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 its subject matter in accordance with FINRA Rule 8313; and
  4. Respondent 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. Respondent 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 Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.

- D. Respondent may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that he 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.

Respondent certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; Respondent has agreed to the AWC's provisions voluntarily; and no offer, threat, inducement, or promise of any kind, other than the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce him to submit this AWC.

8-11-22  
Date

by Witt  
Michael E. Witt  
Respondent

Reviewed by:

Melissa Tarentino  
Melissa Tarentino, Esq.  
Counsel for Respondent  
290 Congress St.  
Boston, MA 02210

Accepted by FINRA:

8.19.2022

Date

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

*Noel Downey*

Noel C. Downey  
Senior Counsel  
FINRA  
Department of Enforcement  
581 Main St., Suite 710  
Woodbridge, NJ 07095