

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2015044365601**

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

RE: James D. Maendel, Respondent  
CRD No. 3267760

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**

James Maendel first became registered with FINRA in May of 1999, and he obtained his Series 7 (General Securities Representative), Series 63 (Uniform Securities Agent State Law, and Series 65 (Uniform Investment Advisor Law) securities licenses in August of 1999. From September 2010 to January 2015, and when the conduct described herein occurred, he was registered through LPL Financial LLC. He is currently registered through another FINRA registered firm.

**RELEVANT DISCIPLINARY HISTORY**

Maendel does not have any relevant disciplinary history.

**OVERVIEW**

James Maendel negligently made and caused his firm to maintain two distinct types of inaccurate books and records with respect to forty-eight transactions: [1] “switch forms” and [2] trade blotters. Maendel’s conduct violated FINRA Rules 4511 and 2010.

## FACTS AND VIOLATIVE CONDUCT

FINRA Rule 4511 requires that the books and records of FINRA registered firms be made and preserved as required under FINRA Rules, the Exchange Act, and applicable Exchange Act Rules. Inherent in this requirement is the requirement that the records made are accurate. Section 17(a) of the Exchange Act and Rule 17a-3 promulgated thereunder specifically require firms to make and keep, among other books and records, accurate memoranda reflecting each brokerage order.

Between December 2012 and January 2015, James Maendel negligently caused his firm to maintain inaccurate records with respect to forty-eight transactions in which a customer liquidated a prospectus product (defined to include open-end mutual funds, unit investment trusts (UITs), variable products, traded and non-traded REITs, and structured products) to purchase another prospectus product.

LPL required Maendel to submit an “Investment Switch/Exchange Disclosure Form” for these transactions. These “switch forms” were maintained in the firm’s records. They required Maendel to include a narrative evaluation of the net investment advantage of the transaction to the customer. The narratives Maendel prepared describe the anticipated qualitative advantages for the transaction. They reflect occasions where Maendel’s customers exchanged products in different asset categories and market sectors in response to changes in their preferred allocations, with reference to major market events and longer term forecasts.

The switch forms also required Maendel to identify (1) the total amount of new or additional sales charges, transfer fees, and other costs associated with the purchase of the new investment, and (2) the surrender charges, redemption fees, and other costs associated with the liquidated investment.

Maendel caused forty-eight of the switch forms he submitted to LPL to contain inaccurate information about transaction costs. This occurred for three reasons, and some switch forms were inaccurate for more than one reason.

*First*, rather than relying on the prospectus to obtain the sales charge and calculate any applicable rollover discount, Maendel relied on rules of thumb, informal conversations with wholesalers, and mistaken assumptions to prepare the switch forms. These methods were not reliable. As a result, Maendel incorrectly stated an erroneous sales charge on forty-six switch forms.

*Second*, on two occasions, Maendel used a placeholder sales charge figure on the switch forms that he neglected to correct before submitting the form. As a result, Maendel incorrectly stated the sales charges on those two switch forms.

*Third*, on twelve occasions, Maendel failed to correctly account for deferred sales charges incurred on the products being liquidated. Prior to these transactions, Maendel would query his firm’s account view system to obtain the liquidation value of the product (inclusive of deferred sales charges) and compare it to the

portfolio value (exclusive of deferred sales charges) provided by an outside service. If the two values were identical, Maendel assumed there were no remaining deferred sales charges. This method proved inaccurate because Maendel mistakenly queried portfolio values from his firm's system, comparing them to the same portfolio values provided by the outside service. As a result, Maendel incorrectly calculated that there were no remaining deferred sales charges on twelve forms, which were inaccurate with respect to the effect of deferred sales charges on the transactions.

In addition, Maendel also caused his firm's trade blotter to be inaccurate, in violation of Section 17(a) of the Exchange Act and Rule 17a-3 promulgated thereunder, with respect to eleven transactions he correctly reported as solicited on switch forms.

Maendel placed orders with a product-specific trading desk to effect UIT transactions at LPL. Maendel communicated to the desk whether the order should be marked as solicited or unsolicited on the trade blotter. When Maendel's clients had significant input on a transaction or initially approached Maendel with general investment ideas that subsequently resulted in a recommendation, Maendel relied on an incorrect and inconsistent standard to determine whether the transaction should be considered solicited or unsolicited. As a result, on eleven occasions, the switch forms that Maendel personally prepared reflected that the transaction was "solicited," but Maendel caused the transaction to be incorrectly recorded by the desk on the firm's blotter as "unsolicited."

\* \* \*

By virtue of the foregoing, Maendel violated FINRA Rules 4511 and 2010.

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

- A 45 calendar day suspension; and
- A \$10,000 fine;

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 agree to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are 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(s) 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:

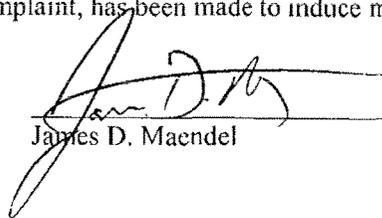
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will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

7/05/17  
Date (mm/dd/yyyy)

  
James D. Maendel

Reviewed by:

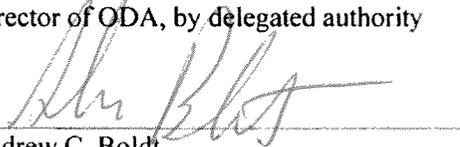


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*Counsel for Respondent*

Accepted by FINRA:

7/18/17  
Date

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



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Principal Regional Counsel  
FINRA Department of Enforcement  
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