

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2016049989801**

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

012/12/17 PM 2:28 FIN

RE: Francis Joseph Gendlek, Respondent
Former Registered Representative
CRD No. 1054226

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

Francis Joseph Gendlek ("Gendlek") entered the securities industry in June 1982 when he became associated with a FINRA member firm. Gendlek first became registered with FINRA as an Investment Company Variable Contracts Products Representative (Series 6 license) in August 1982 through his association with that FINRA member firm. He was subsequently registered with FINRA as a General Securities Representative (Series 7 license) in June 1988, a Uniform Securities Agent State Law Examination (Series 63 license) in February 1990, and as a General Securities Principal (Series 24 license) in August 1990.

Between 1985 and January 2006, Gendlek was registered with FINRA through an association with eight FINRA member firms. In January 2006, Gendlek became associated with TFS Securities, Inc. ("TFS" or the "Firm"), where he remained until December 2014. In January 2015, Gendlek became associated with IFS Securities ("IFS").

On July 20, 2016, IFS filed a Uniform Termination Notice for Securities Industry

Registration (Form U5) with FINRA stating that Gendlek voluntarily terminated his employment. On July 28, 2016, IFS filed an amended Form U5 stating that Gendlek had been permitted to resign from IFS on July 20, 2016 after IFS received a customer complaint placed with FINRA “alleging misrepresentation or misleading information.”

Since leaving IFS, Gendlek has not been registered with FINRA or associated with a FINRA member firm. Pursuant to Article V, Section 4 of the By-Laws, however, FINRA retains jurisdiction over him.

RELEVANT DISCIPLINARY HISTORY

Gendlek does not have any disciplinary history with the Securities and Exchange Commission, FINRA, any other self-regulatory organization or state securities regulator.

OVERVIEW

Between August 2005 and September 2013 (the “Relevant Period”), Gendlek made material misrepresentations and omissions in connection with the sale of securities in willful violation of Securities Exchange Act Section 10(b), Exchange Act Rule 10b-5, and in violation of NASD Rules 2120 and 2110 and FINRA Rules 2020 and 2010. Gendlek also violated NASD Rule 3040 and FINRA Rule 2010 by participating in private securities transactions without obtaining approval from the Firm during the period January 2006 through September 2013. Finally, from January 2006 to September 2013 Gendlek failed to disclose an outside business activity to the Firm, in violation of NASD Rules 3030 and 2110 and FINRA Rules 3270 and 2010.

FACTS AND VIOLATIVE CONDUCT

I. Fraudulent Misrepresentations and Omissions and Private Securities Transactions

Securities Exchange Act Section 10(b), Exchange Act Rule 10b-5, NASD Rule 2120 and FINRA Rule 2020 prohibit intentional or reckless material misrepresentations and omissions in connection with the purchase or sale of a security.

NASD Rule 3040 prohibits a registered representative from participating “in any manner in a private securities transaction” without first providing written notice to the registered representative’s firm. The rule defines a private securities transaction as “any securities transaction outside the regular course or scope of an associated person’s employment with a member [firm].”

During April 2000, Gendlek formed a company to solicit investors for real estate development projects, PMP Enterprises, LLC ("PMP"). Throughout the Relevant Period, Gendlek held a controlling membership interest in PMP and was its managing member. In August 2005, Gendlek solicited six investors, five of whom were customers of the Firm, (collectively, the "New Jersey Investors") to invest in promissory notes in a total amount of \$543,000 to fund the purchase of a rental property in New Jersey (the "New Jersey Project") by his friends (the "Purchasers"). The Purchasers agreed to make monthly interest payments in the amount of 6.25% to PMP, and Gendlek agreed to transmit that amount to the New Jersey Investors, less a ¼% differential that PMP retained as compensation. Gendlek obtained a mortgage interest in the New Jersey Project through PMP.

During March 2006, the Purchasers advised Gendlek that they wanted to refinance their mortgage with PMP and obtain a mortgage from a bank. Gendlek, on behalf of PMP, executed a mortgage discharge that was filed with the New Jersey County Clerk's Office. It stated that the mortgage had been "paid in full or otherwise satisfied or discharged." However, the Purchasers never fully repaid PMP. After obtaining a mortgage from a bank during 2006, the Purchasers informed Gendlek that they had received insufficient funds to pay PMP the full amount due, and consequently only certain of the New Jersey Investors could be repaid their principal payments. In April 2006, the Purchasers paid PMP only \$355,000, leaving a shortfall in the amount of \$188,000 that was never secured by another mortgage.

Gendlek did not inform the New Jersey Investors that Purchasers had failed to pay the full amount of the debt, that Gendlek had released the mortgage on the New Jersey Project property or that only certain of the New Jersey Investors could receive their principal payments. Rather, during 2006, Gendlek solicited three of the New Jersey Investors (the "Tennessee Investors") who had invested a total of \$355,000 in the New Jersey Project, to "roll over" their investments into a new investment, rather than receiving repayment of their principal investment in the New Jersey Project in cash. Gendlek recommended that they instead agree to accept new promissory notes that Gendlek issued through PMP to develop property that PMP owned in Tennessee (the "Tennessee Project"). According to the terms of the promissory notes, the Tennessee Investors would receive an interest rate of 7% during the first year of their investment. The interest rate would be reviewed every year and adjusted to current rates with a floor of 6%.

Through PMP, Gendlek executed, and arranged for the Tennessee Investors to execute agreements in which Gendlek falsely stated that PMP had a mortgage interest in the Tennessee Project. In addition, Gendlek executed, and arranged for two Tennessee Investors (Customers A and B, a married couple) to execute, agreements which contained several false statements, including that there was a mortgage securing the Purchasers' debt to PMP on the New Jersey Project property, that PMP's loan on the New Jersey Property had been repaid, and that Customers A and B's principal investment in the New Jersey Project was placed

in an interest-bearing account in PMP's name and was being held in escrow pending future agreements and notes, even though no such escrow account existed.

In addition, during 2007, 2008, and 2009, two other New Jersey Investors requested that PMP repay a total of \$133,000 of their principal investments in the New Jersey Project. Gendlek asked the Purchasers to provide funds for the repayment and the Purchasers informed him that they were experiencing financial difficulties and consequently did not have funds to repay those investors.

As a result, to obtain funds for the repayment, Gendlek solicited Customers A and B to make additional investments in three new promissory notes: one he issued through PMP during November 2007 for an investment of \$25,000; one he signed purportedly on behalf of a company controlled by the Purchasers (the "Company") during November 2008 for an investment of \$58,000; and another he signed purportedly on behalf of the Company during May 2009 for an investment of \$50,000. Gendlek represented to Customers A and B that these investments would fund the New Jersey Project. He did not inform Customers A and B that the Purchasers were having financial difficulties or that he needed funds from Customers A and B to repay the two New Jersey Investors because the Purchasers had insufficient funds to do so. In addition, Gendlek executed, and arranged for Customers A and B to execute, agreements that falsely stated that PMP's interest in the New Jersey Project was secured by a mortgage.

In September 2013, after the Tennessee Project failed, Gendlek caused PMP to file for bankruptcy. Gendlek did not make any further payments to the New Jersey Investors or the Tennessee Investors after the September 2013 bankruptcy. Collectively, those investors lost approximately \$620,000.

Gendlek did not inform the Firm of his participation in these private securities transactions or obtain approval for them at any time.

As a result of the foregoing conduct, Gendlek willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. Gendlek also violated NASD Rules 2120, 2110, 3040 and FINRA Rules 2020 and 2010.

II. Failure to Disclose Outside Business Activities

NASD Rule 3030 and FINRA Rule 3270 provide that no registered person may be employed by or compensated from any other person, as a result of any business activity outside the scope of the registered representative's relationship with the member firm, unless prior written notice is provided to the member.

During March 1994, Gendlek incorporated Professional Money Planners, Inc. ("PMPI"). Gendlek solely owned PMPI and was its sole director during the Relevant Period. Through PMPI, Gendlek provided elder care planning and

related consulting services. Gendlek provided document assistance to elder care attorneys and filed Medicaid applications on behalf of individuals, including Customers A and B. Gendlek received compensation for these services.

Gendlek did not notify the Firm of this outside business activity at any time.

By virtue of the foregoing, Gendlek violated NASD Rules 3030 and 2110 and FINRA Rules 3270 and 2010.

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

- A bar in all capacities from any FINRA member.

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 violated Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 and that under Article III, Section 4 of FINRA's By-Laws, this 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. 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 prejudice 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 understand and acknowledge that FINRA does not represent or advise me and I cannot rely on FINRA or FINRA staff members for legal advice; 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.

12/07/2017
Date (mm/dd/yyyy)

Francis J. Gendlek
Respondent Francis Joseph Gendlek

Accepted by FINRA:

2/1/2018
Date

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

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