

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2016051985602**

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

RE: Michael Thomas Lee, Respondent
General Securities Representative
CRD No. 4502893

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Michael Thomas Lee ("Lee" or "Respondent"), 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

Lee entered the securities industry in February 2002 and in April 2002, he became registered with a FINRA-regulated broker-dealer as a General Securities Representative ("GSR"). Since then, Lee has been associated with seven FINRA-regulated broker-dealers as a GSR.

In June 2014, Lee became associated with Kestra Investment Services, LLC ("Kestra" or the "Firm"), a FINRA-regulated broker-dealer, and its affiliated registered investment advisor ("RIA"), Kestra Private Wealth Services ("PWS"), as a GSR. In a Uniform Termination Notice for Securities Industry Registration ("Form U5") dated February 1, 2017, Kestra reported Lee's voluntary termination.

From February 2017 until October 2018, Lee was associated with another FINRA-regulated broker-dealer as a GSR.

Although Lee is not currently registered or associated with a FINRA-regulated broker-dealer, he remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

Lee has no prior disciplinary history.

OVERVIEW

From December 2015 through December 2016 (the "Relevant Period"), Lee engaged in an outside business activity, the Origin Fund, without providing prior written notice to Kestra, in violation of FINRA Rules 3270 and 2010. Lee also distributed written materials to potential investors that contained inaccurate statements about the Origin Fund, in violation of FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

FINRA Rule 3270 provides, in relevant part: "No 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."

A violation of FINRA Rule 3270 is also a violation of FINRA Rule 2010, which requires associated persons to observe high standards of commercial honor and just and equitable principles of trade. Making false or misleading statements also violates FINRA Rule 2010.

During the Relevant Period, Kestra's written supervisory procedures ("WSPs") required its registered representatives ("RRs") to submit a written request and receive approval from the Firm prior to engaging in any outside business activity. The WSPs defined outside business activities to include any business activity outside the scope of the RR's employment or independent contractor agreement with Kestra, and specifically prohibited its RRs from raising capital in connection with an approved outside activity.

During the Relevant Period, Lee engaged in an outside business activity known as the "Origin Fund," a prospective ETF fund. Lee used his personal e-mail and an e-mail address associated with the Origin Fund for his outside business activities, which included soliciting potential investors and distributing written materials prepared by Lee's business partner. None of the individuals solicited by Lee invested in the Origin Fund. However, the written materials falsely represented that the Origin Fund was a hybrid registered investment advisor with \$20 million in assets under management, and that Kestra's affiliated registered investment advisor was sponsoring and providing certain administrative services to the Origin Fund.

Lee knew that he was required to disclose any outside business activities to the Firm. However, he did not seek approval from Kestra for the Origin Fund-related activities or otherwise disclose his outside business activities to the Firm. Lee also made false statements to the Firm on two annual compliance questionnaires concerning his use of an undisclosed email address to conduct securities business.

By engaging in an outside business activity without providing prior written notice to Kestra, Lee violated FINRA Rules 3270 and 2010. By making inaccurate statements to potential investors, Lee also violated FINRA Rule 2010.

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

1. A one-year suspension from association with any FINRA member in any capacity;
and
2. A fine in the amount of \$12,500.

The fine shall be due and payable either immediately upon reassociation with a member firm, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

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.

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.

7/21/19

Date



Michael Thomas Lee, Respondent

Reviewed by:


John Allen, Esq.
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White Plains, NY 10603
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Accepted by FINRA:

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

7.26.19

Date



Regina M. Alter
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