

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2014042949704**

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

RE: Wilson-Davis & Co., Inc., Respondent  
CRD No. 3777

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent 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 herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. Respondent hereby accepts and consents, 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**

Wilson-Davis has been a FINRA member since 1968. It trades mostly low-priced securities for its customers and in its own account. The firm has its main office in Salt Lake City, Utah, and has two branch offices in other states. As of January 2019, the firm has 36 registered representatives.

**RELEVANT DISCIPLINARY HISTORY**

The firm does not have any relevant disciplinary history.

**OVERVIEW**

From January 2013 through August 2013, Wilson-Davis failed to establish, maintain, and enforce a supervisory system, including written supervisory procedures, reasonably designed to review email correspondence for indications of potential violations of federal securities laws or FINRA rules. In particular, Wilson-Davis lacked any pertinent written supervisory procedures, and its methods for reviewing email messages were ineffective and unreasonable given its business, size, structure, and customers. Through this conduct, Wilson-Davis violated NASD Conduct Rule 3010(a), (b), and (d), and FINRA Rule 2010.

## FACTS AND VIOLATIVE CONDUCT

As part of an investigation of a former representative of Wilson-Davis that began in October 2014, FINRA obtained email messages that the former representative sent and received while he was still registered with the firm. FINRA's review of these messages led it to conduct a follow-up review of Wilson-Davis' supervisory system for email review.

NASD Rule 3010(a), which was in effect during the review period, required member firms to establish, maintain, and enforce a supervisory system, including written procedures, reasonably designed to achieve compliance with applicable federal securities laws and FINRA rules. NASD Rule 3010(b) provided general requirements for written supervisory procedures, or WSPs, and subsection (d)(2) required firms to develop WSPs specific to "the review of incoming and outgoing written (i.e., non-electronic) and electronic correspondence with the public relating to its investment banking or securities business." These procedures must be "appropriate to [the firm's] business, size, structure, and customers" and designed "to properly identify and handle customer complaints and to ensure that customer funds and securities are handled in accordance with firm procedures." Subsection (d)(2) also required "surveillance and follow-up to ensure that [the firm's] procedures are implemented and adhered to."

A violation of NASD Rule 3010 also constitutes a violation of FINRA Rule 2010, which requires members and their associated persons to observe high standards of commercial honor and just and equitable principles of trade.

From January 2013 through August 2013 (the "Relevant Period"), Wilson-Davis' WSPs did not include procedures describing how the firm would conduct its supervisory review of electronic communications sent or received by the firm's registered individuals. Although the WSPs stated that "electronic communications are subject to review and retention," the WSPs failed to describe the type or scope of review, how often the reviews would occur, and who at the firm was responsible for conducting the review.

While the firm lacked reasonably designed WSPs, Wilson-Davis conducted email reviews during the Relevant Period. The firm's President and Chief Compliance Officer, JS, performed these reviews. In alternate weeks, JS reviewed either:

- (a) 100 emails selected randomly by the firm's email vendor, or
- (b) messages flagged by the email system as containing a suspicious word or phrase from a lexicon of 24 search terms created by the firm.

The firm's email reviews were not reasonable, however. The randomly selected messages did not constitute a reasonable amount of the firm's overall electronic

communications, and did not take into account the individuals, branch offices, departments, or business units generating the correspondence.<sup>1</sup>

The firm's lexicon-based review was also not reasonable. The firm contacted its email provider to discuss appropriate lexicon search terms and selected 24 search terms that would 'flag' an email for a principal review. Collectively, these search terms were not comprehensive enough to yield a meaningful sample of flagged communications. Moreover, the lexicon was not based on an assessment of risk areas at the firm, nor was it reasonably tailored to the firm's size, structure and business model.<sup>2</sup> As a result, most the search terms resulted in an unreasonably small number of emails flagged for review. Further, two search terms generated the vast majority of the flagged emails, and at least one of those terms was ineffective because it resulted in an unreasonably high percentage of "false positives." Despite the obvious indications that the firm's lexicon system was not reasonably designed, the firm did not evaluate the efficacy or make any changes to its lexicon system during the entire Relevant Period.

By virtue of the foregoing, Wilson-Davis violated NASD Rule 3010(a), (b), and (d), and FINRA Rule 2010.

B. Wilson-Davis also consents to the imposition of the following sanctions:

- Censure, and
- A \$32,500 fine.

Wilson-Davis agrees to pay the monetary sanction upon notice that this AWC is accepted and that such payment is due and payable. Wilson-Davis has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed. Wilson-Davis specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

## II.

### WAIVER OF PROCEDURAL RIGHTS

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

A. To have a Complaint issued specifying the allegations against it;

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<sup>1</sup> See FINRA Reg. Notice 07-59 (Dec. 2007).

<sup>2</sup> *Id.*

- 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, Wilson-Davis 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 acceptance or rejection of this AWC.

Wilson-Davis 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

Wilson-Davis 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 Wilson-Davis; and
- C. If accepted:
  - 1. This AWC will become part of Wilson-Davis’s permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Wilson-Davis;
  - 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. Wilson-Davis 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. Wilson-Davis 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 Wilson-Davis's: (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.

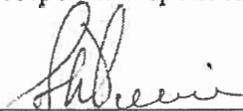
D. Wilson-Davis may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understood all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that the firm has 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 the firm to submit it.

03/19/2019  
Date (mm/dd/yyyy)

Wilson-Davis & Co., Inc  
Respondent

[For corporate respondent, name of firm]

By: 

Reviewed by:

RF. L. - 3/19/19

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Accepted by FINRA:

\_\_\_\_\_  
Date

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



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