

Sales Practices: A Case Study Approach



Financial Industry Regulatory Authority

Advertising Regulation Conference

Washington, DC | October 8 – 9, 2015

Sales Practices: A Case Study Approach

Friday, October 9, 2015

10:30 am – 12:00 pm

12:30 pm – 2:00 pm

Designed for compliance professionals who supervise sales staff, this session examines the issues that registered principals confront in today's regulatory environment. Panelists representing FINRA Advertising Regulation, Enforcement and District Office staff address a wide range of topics drawn from recent enforcement cases, including supervisory procedures for interacting with customers, recent exam findings and the disciplinary process. They also highlight potential "red flags" and provide suggestions to help avoid compliance issues.

Moderator: Steven O'Mara
Manager
FINRA Advertising Regulation

Panelists: Scott DeArmeay
District Director
FINRA Kansas City District Office

James E. Day
Vice President and Chief Counsel
FINRA Enforcement

J. Martin Levine
Principal Investigator
FINRA Advertising Regulation

- I. Introduction
- II. Overview of Disciplinary Process
- III. Supervision
 - A. KCD Financial, Inc.
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- B. Robert McKoy
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- C. H. Beck, Inc.
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Sales Practices: A Case Study Approach Learning Objectives

By the end of this session, you should know:

1. The areas of focus from a District perspective.
2. How the investigative and disciplinary process works.
3. Some compliance tips and red flags drawn from advertising and supervision cases.

Sales Practices: A Case Study Approach

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Supervisory Issues

- Written supervisory procedures
- Education and training



Broad-Based Marketing

- Social media
- Radio shows



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Interacting with Customers

- Consolidated statements
- Electronic communications
- Outside business activities



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Questions and Answers



Financial Industry Regulatory Authority

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KCD FINANCIAL, INC.
(CRD No. 127473),

Respondent.

Disciplinary Proceeding
No. 2011025851501

Hearing Officer—LOM

HEARING PANEL DECISION

June 16, 2015

Respondent violated NASD Rule 2210 and FINRA Rule 2010 by permitting registered representatives in two offices to use false and misleading advertising as a marketing tool for their securities business. For this misconduct, Respondent is censured and fined \$40,000.

Respondent also violated NASD Rule 3010 and FINRA Rule 2010 by failing to reasonably supervise registered representatives who offered and sold unregistered securities that were not exempt from registration. For this misconduct, Respondent is censured and fined \$75,000. Respondent also is ordered to pay costs.

Appearances

Seema Chawla, Esq., Kansas City, Missouri, Dean M. Jeske, Esq. and Mark A. Koerner, Esq., Chicago, Illinois, representing the Department of Enforcement.

Jill G. Fieldstein, Esq., Blauvelt, New York, representing Respondent.

I. INTRODUCTION

The Department of Enforcement (“Enforcement”) for the Financial Industry Regulatory Authority (“FINRA”), a self-regulatory organization for the securities industry, brought this

disciplinary proceeding against Respondent, KCD Financial, Inc. ("KCD" or "Respondent" or the "Firm"), a FINRA member firm.¹

In its Complaint, Enforcement alleges two causes of action.²

The First Cause of Action. The First Cause of Action charges that the Firm violated NASD Rule 2210, the Rule regarding firm communications with the public, and FINRA Rule 2010 regarding ethical conduct. According to the Complaint, a registered representative in the Firm's Palm Beach Gardens, Florida branch and two other registered representatives in the Firm's Sun City, Arizona office separately ran what was sometimes referred to as a CD-finder or CD-locator service. The representatives regularly advertised FDIC-insured certificates of deposit ("CDs") at a rate of return that was far above the market rate.

The Hearing Panel finds that the advertisements were false and misleading in at least two important ways. *First*, no FDIC-insured CDs existed at the advertised rate of return, but the advertisements made it seem that such CDs existed. *Second*, the representatives used the advertisements as a marketing tool to entice potential customers into their offices in order to sell securities and other financial products to them. However, the advertisements did not mention securities.

The remaining issue is whether the Rule governing broker-dealers' communications with the public, NASD Rule 2210, applies in this case. The Firm argues that it was not responsible for supervising the advertisements because the CD-finder service was an approved separate outside business activity.

The Hearing Panel rejects the Firm's argument. The CD advertisements are member communications with the public and fall within the scope of NASD Rule 2210.

The CD advertisements were not separate and apart from the representatives' securities business, but, rather, were a marketing tool for their securities business. The purported CD-finder service had no independent purpose and was unsustainable as a separate business because the representatives did not charge a fee for the service. The representatives only made money when they sold securities or other financial products instead of or in addition to a CD.

¹ FINRA is responsible for regulatory oversight of securities firms and associated persons who do business with the public. It was formed in July 2007 by the consolidation of NASD and the regulatory arm of the New York Stock Exchange. FINRA is developing a new "Consolidated Rulebook" of FINRA Rules that includes NASD Rules. The first phase of the new Consolidated Rulebook became effective on December 15, 2008. See FINRA Regulatory Notice 08-57 (Oct. 2008), <http://www.finra.org/industry/notices/08-57>. The applicable Conduct Rules are those that existed when the conduct at issue occurred. FINRA's Rules (including NASD Rules) are available at www.finra.org/industry/finra-rules. References here to FINRA include references to NASD.

² As originally filed, the Complaint also contained a Third Cause of Action relating to the supervision, review, and retention of email. However, the Parties reached a settlement regarding the charges in that Cause of Action, and it is no longer at issue.

Furthermore, because the representatives used the same telephone number, address, and business identity for the CD-finder service as they used for their securities business, no meaningful distinction was drawn between the CD-finder service and the securities business the representatives did through KCD. From the customers' perspective, the CDs and securities were offered and sold by the same person from the same office as part of the same business.

Finally, the Firm was aware of, or at least turned a blind eye to, the nature and function of the advertising. It conducted an initial review of the Florida office advertising, and acknowledged at the time of that review that the CD advertising could result in securities transactions. The Firm also knew that the purpose of the Arizona CD-finder service was to generate "goodwill" and potential customers for the representatives' other businesses, including their securities business through KCD.

The Second Cause of Action. The Second Cause of Action charges that the Firm violated NASD Rule 3010, concerning supervisory responsibilities, and FINRA Rule 2010, by failing to supervise appropriately the activities of KCD's registered representatives at a Dallas, Texas office, and permitting the representatives to offer and sell unregistered securities that were not exempt from registration. The securities were for an investment fund that was to use the proceeds of the offering to invest in distressed real estate.

The securities were purportedly entitled to an exemption from registration under Rule 506 of Regulation D of the Securities and Exchange Commission ("SEC"). That exemption is available only if there is no general solicitation of the public. Whether the securities were entitled to the exemption became an issue because of two news articles published in local Dallas newspapers discussing the offering and the investment fund's prospects. One of the articles was also posted on the website of the Dallas office for at least six months, while the representatives continued to offer and sell the unregistered securities.

The Firm argues that the news articles were not a general solicitation, and that, in any event, the Firm sufficiently corrected any problem by instructing its registered representatives not to sell the securities to anyone who had learned of the offering because of one of the news articles. The Firm asserts that it limited sales to pre-existing customers.

The Hearing Panel rejects both of the Firm's arguments. The news articles, which were widely distributed, constituted a general solicitation. Indeed, at least one person sought to purchase the security as a result of seeing the news article, confirming that the article was viewed by the general public as a solicitation for buyers. In fact, KCD was on notice that the securities attorney who had worked on the offering was concerned that there had been a breach of the rules relating to registration and exemption.

Selling only to pre-existing customers was not a cure for the violation. Once the unregistered securities were the subject of a general solicitation, they were not entitled to an

exemption from registration. Without an exemption, the unregistered securities could not be offered or sold.

Accordingly, the Hearing Panel finds that the Firm committed the violations alleged in the Complaint and imposes sanctions, as discussed below.

II. BACKGROUND

A. The Proceeding

The hearing took place for three days on December 16-18, 2014.³ The Parties filed post-hearing briefs on January 30, 2015.⁴

B. How This Proceeding Arose

This proceeding combines examinations initially conducted by different FINRA offices. FINRA's Florida District Office conducted a "cause" examination of KCD registered representative EW, in Palm Beach Gardens, Florida after receiving a regulatory tip that he was running advertisements for CDs at above-market rates. The tip suggested that the advertisements could be used to prey on seniors. The staff conducted an unannounced on-site visit. EW explained his CD-finder service to the staff. The staff then referred sample advertisements to the Advertising Regulation Department. After studying the samples, the Advertising Regulation Department had concerns that the advertisements were misleading.⁵

FINRA's Chicago District Office was at the same time conducting a "cycle" examination of KCD, and it had identified similar problems with other advertisements. The Florida inquiry into EW's advertising was then referred to the Chicago District Office so that it could be consolidated with the cycle examination.⁶

³ References to the hearing transcript are cited here as "Hearing Tr.", with a parenthetical for the last name of the witness whose testimony is cited and the page number of the transcript. Thus, testimony of a FINRA examiner is cited "Hearing Tr. (Foye) 59."

The following people testified at the hearing: Peter Foye ("Foye"), a FINRA principal examiner; David Wegner ("Wegner"), a FINRA examination manager; Kimberly Flanders ("Flanders"), a FINRA principal investigator in the Advertising Regulation Department; Eugene Teh ("Teh"), a FINRA principal examiner; Jeff Allen Katz ("Katz"), the owner of the Sun Cities Financial Group, who was registered with KCD at the time of the events at issue; Linda Bradle ("Bradle"), a former Chief Compliance Officer with KCD; Isaac D. Gregory ("Gregory"), who was responsible for supervising FINRA registered salespeople at the Dallas office affiliated with KCD; and Lori Lee Rastall ("Rastall"), KCD's current Chief Compliance Officer and FINOP.

⁴ The briefs were entitled as follows: The Department Of Enforcement's Post-Hearing Brief ("Enf. PH Br."); and KCD Financial, Inc.'s Post-Hearing Brief ("KCD PH Br.").

⁵ Hearing Tr. (Foye) 56-68; JX-10.

⁶ Hearing Tr. (Foye) 71-72.

The cycle examination focused on KCD's Sun City, Arizona office in part because of a customer complaint. The customer complained that she had responded to a CD advertisement, but when she went to the Sun City office she felt pressured to buy something different. She ultimately purchased a fixed annuity.⁷

While on-site at the Sun City, Arizona office, a FINRA examiner saw an advertisement in the Firm's branch office files that caught her attention because it had the word "guarantee" on it. It also advertised an interest rate that was in the 3% to 4% range, which seemed high.⁸ FINRA staff then researched the current market rate for CDs and found that the market rate was closer to 1% than to 3%.⁹

FINRA staff considered the advertisements to be member communications covered by NASD Rule 2210 (even though the advertisements do not mention securities or KCD) because the purpose, at least in part, was to offer securities through KCD. The advertisements were the first step in marketing securities through KCD.¹⁰ The First Cause of Action covers both the Florida and the Arizona advertisements.

The cycle examination of KCD uncovered a separate problem that is the subject of the Second Cause of Action. That problem had to do with the Firm's due diligence in connection with the private placement of securities by the Firm's Dallas, Texas office. The private placement offering was for an investment fund sponsored by an affiliate of the KCD Dallas office. The offering relied on an exemption from registration pursuant to Rule 506 of the SEC's Regulation D. The staff discovered, however, that articles had been published in two local Dallas newspapers that discussed the launch of the fund and how the fund intended to invest in distressed real estate. One article also was posted on the website for the Dallas office and its affiliates. The staff considered the articles to constitute a general solicitation for investors in the fund, which meant that the exemption did not apply and therefore the securities could not be offered or sold without registration.¹¹

⁷ Hearing Tr. (Wegner) 103-08.

⁸ Hearing Tr. (Wegner) 106-07; JX-6.

⁹ Hearing Tr. (Wegner) 107-09.

¹⁰ Hearing Tr. (Flanders) 223-34; JX-1, at 13. In 2008, FINRA staff had investigated the CD-locator service offered by the Sun City, Arizona office but had taken no action. The owner of the Sun City office believed that this inaction by FINRA staff constituted recognition that FINRA had no jurisdiction over the service because it was not a securities product. Hearing Tr. (Katz) 318-19, 322-27.

¹¹ Hearing Tr. (Teh) 246-60; JX-1, at 2-4; JX-3, at 4-5; JX-12.

III. FINDINGS

A. Respondent And Jurisdiction

KCD was formed in 2003 as a new broker-dealer.¹² Its home office is in Wisconsin.¹³ FINRA has jurisdiction over KCD for purposes of this FINRA disciplinary proceeding pursuant to Art. IV, Sec. 6 of FINRA's By-Laws.

During the period when the conduct at issue occurred, from January 2009 to April 2012, the Hearing Panel finds that the Firm suffered through a period of stress and management disruption. The Firm was put up for sale in 2008. While waiting to close the sale, two of the Firm's officers left the organization, and, in the fall of 2008, it had a temporary Chief Compliance Officer ("CCO") for a few weeks. However, the Firm's then-Chief Executive Officer ("CEO") and president was in failing health, and the purchase transaction did not close. In mid-January 2009, the temporary CCO, Linda Bradle, returned, and she and her husband, who ran the trading desk, helped the ailing CEO run the company for about two years.¹⁴ Ownership did eventually transfer to new management in April 2011. At some point, Bradle was replaced by a new CCO, Jeff Larson. However, he left abruptly in late August 2011 for a position at a different broker-dealer. There was no transition. He resigned and the next day he was gone. A woman who had been his part-time assistant for approximately six months, Lori Rastall, became the CCO in September 2011. She had never been a CCO before and had just received her Series 24 Principal's license. She stepped into the position shortly before FINRA staff began a cycle examination in October 2011.¹⁵

The Hearing Panel believes that this turmoil and lack of continuity contributed to the Firm's failure to exercise appropriate oversight over its representatives' activities and its failure to acknowledge its responsibilities when FINRA staff expressed concerns in the course of the examinations giving rise to this proceeding.

B. The CD-Finder Service

(1) Palm Beach Gardens, Florida

EW ran a one-man shop in Palm Beach Gardens, Florida under the name Principal First. It was a branch office of KCD. EW used the same business name to advertise CDs.¹⁶ A third of EW's business was a securities business, selling REITs (Real Estate Investment Trusts).

¹² Hearing Tr. (Bradle) 394.

¹³ Hearing Tr. (Teh) 246.

¹⁴ Hearing Tr. (Bradle) 394-96.

¹⁵ Hearing Tr. (Rastall) 542-44, 569-71, 591; Hearing Tr. (Bradle) 394-96.

¹⁶ Hearing Tr. (Foye) 58-59. At one point the name of the business was Principal First Trust. Hearing Tr. (Foye) 59.

Another third of his business involved fixed annuities, and the CDs represented the last third.¹⁷ According to EW, he placed over \$16.5 million in assets into CDs from 2007 through October 2010.¹⁸

KCD treated EW's business in CDs, which EW called a CD-finder service, as an approved outside business activity involving a non-securities product. KCD conducted an initial review of EW's CD advertisement, but after that it never reviewed any of his CD advertising.¹⁹

EW explained in an on-the-record interview ("OTR") how his so-called CD-finder service worked. He would conduct an internet search for high yielding CDs, which were returning 1% to 2%. Then he would add percentage points to that rate and advertise a CD at a higher annual rate of 5.6%. He would place ads for the above-market-rate CDs in the local Palm Beach County newspaper on a regular basis, generally every Tuesday and Thursday. This was his practice from 2007 forward.²⁰

The advertisements made it appear that Principal First was offering to sell FDIC-insured CDs with a rate of return that far outstripped the current bank CD rate. However, no such FDIC-insured CD existed.²¹ Some of the advertisements reflected how extraordinarily high the advertised rate of return was in the excited tone of the language used. For example, one of the advertisements bore a large headline saying "Hottest CD in Town."²² That headline clearly implied that such a CD existed, even though it did not.

The advertisements provided a telephone number for interested persons to call to learn more about acquiring the advertised CD. That was the same telephone number used for EW's securities business. EW would require a person responding to the CD advertisement to come into the office for an in-person meeting. He used the same address for all his businesses, including his business as a KCD branch office.²³

At the in-person meeting, EW would collect the potential customer's name, address, net worth, liquid net worth, investment objective, risk tolerance, and the like. He not only talked about the advertised CD but also about other financial products, including securities offered through KCD. He sold securities through KCD to some customers who responded to the high-yielding CD advertisements.²⁴ When FINRA staff investigated EW's activities in 2012, the staff

¹⁷ Hearing Tr. (Foye) 66.

¹⁸ RX-23, at 8.

¹⁹ Hearing Tr. (Foye) 78; RX-23.

²⁰ Hearing Tr. (Foye) 60-61; CX-4.

²¹ Hearing Tr. (Foye) 68-70.

²² Hearing Tr. (Flanders) 200-01; JX-10.

²³ Hearing Tr. (Foye) 62-64, 96-98; CX-4. The customers purchased REITs which are securities.

²⁴ Hearing Tr. (Foye) 62-64; CX-4.

discovered that a majority of the customers interviewed who had purchased securities from EW had established their relationship with him through his CD advertising.²⁵

If a customer insisted on buying a CD at the advertised rate, EW would find the highest interest rate bank CD, generally in the range of 1% to 2% during the relevant period. Then, to achieve the advertised yield, he would make up the rate difference out of his own pocket by writing a check for the difference to the customer or to the bank for the benefit of the customer.²⁶ At least some customers who purchased a CD told FINRA staff in the course of the investigation that, when they made the purchase, EW explained that he would be paying a portion of the interest rate himself.²⁷ The advertisements did not disclose this information, however.

EW testified in an OTR that the purpose of the CD advertisements was to meet new customers and generate new business for the other financial products he sold, including his securities business through KCD.²⁸ He earned no income from his CD-finder service because he did not charge customers for the service and he had no arrangements with the banks selling the underlying CDs to pay him a commission for any business he directed to them.²⁹

FINRA staff who reviewed the CD advertisements were concerned that the purpose of the advertisements was, at least in part, to generate sales of securities. If so, the advertisements should have disclosed that securities might be offered through KCD.³⁰ The advertisements did not, however, include KCD's name or mention securities.³¹ FINRA staff found no advertising by EW of his securities business as a registered representative of KCD.³²

Some of the CD advertisements included a small print statement saying, "Promotional incentive may be included to obtain yield." However, the staff did not view that statement as sufficient to cure the false and misleading nature of the advertisement. FINRA staff concluded that the advertisement created the overall impression that there was a CD in existence offering a certain rate of interest without explaining what was meant by a "promotional incentive" or who was providing the "promotional incentive."³³

The Hearing Panel finds that the Principal First advertisements were false and misleading. They advertised an instrument that did not exist—an FDIC-insured CD with an

²⁵ Hearing Tr. (Foye) 80.

²⁶ Hearing Tr. (Foye) 64-65, 82-83.

²⁷ Hearing Tr. (Foye) 82-83.

²⁸ Hearing Tr. (Foye) 61-62, 66.

²⁹ Hearing Tr. (Foye) 66.

³⁰ Hearing Tr. (Flanders) 202.

³¹ Hearing Tr. (Foye) 85-86.

³² Hearing Tr. (Foye) 98.

³³ Hearing Tr. (Flanders) 204; JX-10.

investment rate more than twice the market rate. The advertisements failed to explain that the registered representative planned to make up the difference between the market rate and the rate advertised.

The fact that, after a customer insisted on buying a CD as advertised, EW may have revealed that he would be paying some of the interest on the CD out of his own pocket does not alter the false and misleading nature of the advertisement.³⁴ Nor did the small print disclosure concerning a “promotional incentive” cure the problem. The small print was too insignificant within the context of the advertisement as a whole, and the words were too cryptic, to counteract the overall impression conveyed by the advertisement.³⁵

The Hearing Panel further finds that the advertisements were false and misleading because they did not reveal their true purpose. The so-called CD-finder service was no more than a marketing tool for the other businesses operated under the Principal First name, including the securities business EW conducted as a KCD branch office. As EW operated it, the so-called CD-finder service had no value whatsoever as an independent business. It was neither intended nor structured to generate a penny of revenue.

The Hearing Panel rejects the Firm’s assertion that the advertisements had nothing to do with it. Although the Firm claimed to FINRA staff that it was unaware of EW’s CD-finder service,³⁶ that claim is contradicted by the fact that it conducted an initial review of the advertising in substantially the same false and misleading form as the later advertisements that

³⁴ Hearing Tr. (Foye) 89-90. The disclosure that EW was making up the difference between the advertised rate and the true rate of an existing CD actually added to the misleading nature of the advertising. A customer might think that the disclosure showed that EW was honest, because he was attempting to live up to the promise in the advertisement, as opposed to focusing on the fact that the advertisement promised something EW could not deliver. Furthermore, learning that EW would be paying some of the promised return on the CD out of his own pocket could play a role in persuading customers to buy other financial products from him, including securities, out of a misplaced sense of trust or reciprocity.

³⁵ As an examiner testified, “[T]he confusing disclosure can’t cure false and misleading statements and claims ... in the communications.” Hearing Tr. (Flanders) 205.

³⁶ Hearing Tr. (Foye) 65-66.

gave rise to the FINRA staff's concerns.³⁷ Moreover, when KCD initially reviewed EW's CD advertising, KCD knew that EW did not derive any income from the CD-finder service.³⁸ That put the Firm on notice that the advertising was being used to promote EW's other revenue-raising businesses, including his securities business. The fact that the staff located no other advertising by EW for his securities business bolsters the conclusion that the CD advertising was integrated with EW's securities business. To the extent that EW sold securities through KCD to customers who first met EW because of the CD advertising, KCD benefited from the false and misleading advertising. In these circumstances, the advertisements were the Firm's communications, as it had reason to know, and it should have taken steps to comply with FINRA Rule 2210 regarding Firm communications with the public.

At best, the Firm turned a blind eye to the true nature and function of EW's activities in connection with his CD-finder service. It abdicated its responsibilities for its communications with the public.

(2) Sun City, Arizona

During the relevant period, KCD sold securities through a Sun City, Arizona office doing business under the name of Sun Cities Financial Group ("Sun Cities Financial"). The Sun City office offered securities products, including mutual funds and REITs, as well as CDs and fixed insurance products such as fixed annuities. There were two registered representatives in the Sun City office, Jeff Katz and LP. Katz was and is the owner of Sun Cities Financial. Sun Cities Financial has other offices in the Phoenix area but the other offices do not do any securities business and do not have any registered representatives.³⁹

Sun Cities Financial ran advertisements on a regular basis (each Sunday, Tuesday, and Thursday) for high-yield CDs at above-market rates, similar to the advertisements that EW ran in Florida. The Sun Cities Financial advertisements listed the Sun City office as one of the offices

³⁷ RX-23, at 2, 6.

³⁸ RX-23, at 5. In its regulatory responses, the Firm was somewhat hazy on what it knew and when. It tried to draw a distinction between "current management" and "former management," saying that "current management" was unaware of EW's advertising but that "former management" had reviewed a marketing piece in 2007 that was "substantively similar" to advertisements provided to FINRA in 2009. The Firm further explained that not only did it review the advertising but it discussed the nature of the activity with EW at some unspecified point in time. The Firm wrote to FINRA staff that "former management" had concluded that the CD-finder service was an outside business activity that needed no further review, and "current management" had relied on "former management's" conclusion when it decided it did not need to approve or disapprove of the advertising. At some unspecified point, the Firm also knew that EW did not sell existing CDs but, rather, in at least some instances, packaged CDs together with a promotional incentive to achieve the advertised interest rate. RX-23, at 2-3.

Whether under former or current management, the Firm was still the Firm. Its knowledge and responsibility continued even if management changed.

³⁹ Hearing Tr. (Katz) 301-05; Hearing Tr. (Wegner) 104-06, 109-10, 175-76. Currently, Sun Cities Financial does no securities business at any office. It sells only fixed annuities and life insurance. Hearing Tr. (Katz) 301.

to be contacted to learn about the CDs. In his testimony, Katz referred to the advertisements as a CD-locator service.⁴⁰

The Sun Cities Financial CD advertisements contained small print disclosures relating to the hybrid nature of the offered product—part annual rate, part bonus. Witnesses discussed a typical advertisement as an example. It disclosed in small print that the advertised interest rate was composed of a 1.06% annual percentage yield and a 1.96% interest bonus.⁴¹ But, as one witness testified, the print was so small that it was nearly impossible to read.⁴²

The Hearing Panel finds that the physical contrast between the small print disclosing the bonus and the large type advertising the false, above-market rate made the small print insufficient to correct the misimpression created by the advertisement—the misimpression that there was an existing high-yield CD when there was no such CD. Moreover, even if the small print could be read, the Hearing Panel finds that the disclosure was too cryptic to inform the reader that there was, in reality, no CD at the rate advertised. The small print did not inform the reader who was offering the bonus, why it was offered, or how it would work.

The CD-locator service run by Sun Cities Financial worked much the same way as the CD-finder service run in Florida. LP testified in his OTR that he would arrange an in-person meeting at his office when a prospective customer telephoned in response to a CD advertisement. He would ask about his or her financial situation, needs, and objectives. Then he would move into discussing products.⁴³ Katz confirmed in his testimony at the hearing that no one could open a CD over the telephone. Rather, interested persons had to come into the office and fill out paperwork.⁴⁴

At the Sun City office, the other products that might be discussed included securities.⁴⁵ The CD advertisements contained no disclosures relating to securities or KCD, but they did refer the viewer to the Sun Cities Financial Group website. The website had securities broker-dealer disclosures on it.⁴⁶ The Hearing Panel finds the reference to the Sun Cities Financial website an insufficient disclosure of the connection between the advertising and possible securities transactions through KCD. At the same time, this reference to the website establishes the connection between the CD advertisements and the KCD representatives' securities business.

⁴⁰ Hearing Tr. (Katz) 302-03, 385; JX-6. Katz testified that the Sun City office did not itself sell CDs, but rather "located" CDs for clients, which the clients could then purchase or "open," dealing directly with a bank. Hearing Tr. (Katz) 317-18.

⁴¹ Hearing Tr. (Wegner) 158-59; Hearing Tr. (Flanders) 210-14; JX-6.

⁴² Hearing Tr. (Katz) 307, 354-56; JX-6.

⁴³ Hearing Tr. (Wegner) 115-16; CX-1, CX-2.

⁴⁴ Hearing Tr. (Katz) 341.

⁴⁵ Hearing Tr. (Katz) 333, 388-89; JX-8.

⁴⁶ Hearing Tr. (Wegner) 190; JX-6.

The purpose of the Sun Cities Financial CD advertisements was to get customers to come to a Sun Cities Financial office, enabling its representatives to establish and develop a relationship with the customers. Sun Cities Financial did not charge customers for the so-called CD-locator service, and its representatives did not earn any money when a customer decided to purchase a CD identified for the customer by Sun Cities Financial. The only way any Sun Cities Financial representative made money is if the representative could sell products other than CDs, including securities.⁴⁷ In his testimony, Katz described the service as a way of generating leads for other products, not by itself as a means to generate income.⁴⁸

In March 2009, Katz provided to KCD, and KCD provided to FINRA staff in response to prior regulatory inquiries, a description of Sun Cities Financial's CD-locator service. KCD described the CD advertising in its response to FINRA staff as marketing for other financial products.⁴⁹ KCD also expressly linked the CD marketing to potential securities transactions. Its then CCO, Linda Bradle, wrote to FINRA staff that after a client was satisfied with the CD service, "Mr. Katz may subsequently sell securities...."⁵⁰

At the hearing, Katz testified that he provided the CD-finder service to seniors who were unable to locate the CDs on the internet for themselves.⁵¹ He told the former CCO of KCD, Bradle, that the CD-locator service was done for goodwill.⁵² She testified at the hearing that she understood that the CD-locator service was done to cultivate goodwill, and that she knew that Katz was not earning a commission for that service.⁵³

If a customer purchased a CD at the advertised rate, Katz would make up the difference between the high advertised rate and the market rate by writing a check to the customer for the difference or writing a check to the bank.⁵⁴ KCD's former CCO understood that Katz used a "marketing" budget to make the bonus payments on CDs.⁵⁵

When asked whether he advertised other products in addition to CDs, Katz responded that Sun Cities Financial also advertised fixed annuities, a non-securities product.⁵⁶ He did not say that Sun Cities Financial ever advertised its securities business.

⁴⁷ Hearing Tr. (Wegner) 114-15, 126; Hearing Tr. (Katz) 302, 334, 338-41; Hearing Tr. (Bradle) 406-07.

⁴⁸ Hearing Tr. (Katz) 388.

⁴⁹ RX-6, at 2-4.

⁵⁰ *Id.*, at 5.

⁵¹ Hearing Tr. (Katz) 302-03.

⁵² Hearing Tr. (Bradle) 406.

⁵³ Hearing Tr. (Bradle) 411.

⁵⁴ Hearing Tr. (Katz) 310; Hearing Tr. (Wegner) 112-13; Hearing Tr. (Flanders) 207-08, 211.

⁵⁵ Hearing Tr. (Bradle) 407.

⁵⁶ Hearing Tr. (Katz) 311-13; JX-6.

It is significant that Katz did not mention any securities business advertising. That means that LP, the other registered representative at the Sun City office, who was one of the top producers at KCD, developed his substantial securities business from the customer base generated by the non-securities advertising, the CD and fixed annuity advertising. During the relevant period, LP was KCD's fourth highest producer or commission-earning registered representative, and the Sun City branch was a high producing branch of KCD.⁵⁷

It is also significant that Katz told the former CCO, Bradle, that he operated the CD-locator service to generate goodwill. This should have signaled to the CCO the connection between the CD advertising and Katz's other businesses, including the Sun City office's securities business. Furthermore, Katz testified that every twelve months he updated the outside business activity form for KCD, and when he did so, if he was offering bonus CD's at the time he informed KCD that he was doing that. He claimed that he made KCD aware of everything he was doing at the time.⁵⁸ If so, then KCD was informed that Katz was using the advertisements for the so-called CD-locator service to draw in potential customers for his other businesses, including his securities business through KCD.

Indeed, a May 5, 2009 letter from Bradle to Katz, copied to the then-president of KCD, shows that KCD understood the connection between the CD-advertising and potential securities sales. The letter was written in connection with KCD's determination to lift a cease-and-desist instruction that the Firm had imposed in response to regulatory inquiries prior to the examinations that led to this proceeding. The Firm's cease-and-desist order had prohibited Katz from engaging in activities related to his CD-locator service. Bradle's letter lifting the cease-and-desist order refers to the potential that a customer might decide to use the proceeds from a maturing CD in a securities transaction. In the letter, Bradle wrote, "[W]e believe there will [be] clients wishing to use CD proceeds to fund a security transaction...."⁵⁹ She reiterated at the conclusion that the letter was intended to "support your activities as it relates to the use of CD proceeds in the event there is a securities transaction involved."⁶⁰

In his hearing testimony, however, Katz attempted to minimize the connection between the CD advertising and the securities business at the Sun City office. He testified that it was rare that a customer who responded to a CD or annuity advertisement would have any interest in a security. He claimed that he did not initiate a discussion of a securities purchase with such customers because they were interested in safety of their investment.⁶¹

⁵⁷ Hearing Tr. (Wegner) 104-05.

⁵⁸ Hearing Tr. (Katz) 386-87.

⁵⁹ RX-18, at 1.

⁶⁰ *Id.*

⁶¹ Hearing Tr. (Katz) 313-14.

Katz's testimony in this regard was not credible because it was inconsistent with a summary of 2011 securities purchases that was prepared under his supervision to give to FINRA. That summary showed that at least 25 customers who purchased securities from the Sun City Financial representatives in 2011 had also bought CDs at some point (not necessarily in 2011, but before). Some of the securities customers had purchased multiple CDs over the course of years. Four customers who bought securities in 2011 also bought a CD the same day.⁶² Katz's testimony also was inconsistent with the fact that LP was one of KCD's highest producers in terms of commission earnings on securities transactions.

Katz's testimony also was not credible because it became apparent at the hearing that he had previously concealed the truth in response to regulatory inquiries. FINRA had asked KCD, pursuant to Rule 8210, whether Sun Cities Financial had ever advertised a CD with a higher yield than the CD was actually paying. With knowledge that his response would be conveyed to the regulators, Katz told KCD the answer was no. But the answer was actually yes. He had placed advertisements for CDs at a rate that was a combination of the highest rate possible plus a bonus that he would pay.⁶³

Katz attempted to explain away his failure to provide the whole truth in response to FINRA's prior investigative inquiries. He said that he did not understand the question posed by FINRA staff to encompass the advertisements that combined the highest rate CD with an additional bonus.⁶⁴ The Hearing Panel finds his testimony on this point was evasive and not credible.

Katz also attempted to minimize the amount of securities business done in the Sun City office, testifying that its securities business was "very minuscule compared to our insurance business and CD business."⁶⁵ That testimony is not consistent with other evidence. LP was one of KCD's top producers, which meant that the securities business at the Sun City office was more than "minuscule." Furthermore, KCD's own summary exhibit showed that during the period from 2009 through 2012, the Sun City office had 199 securities transactions. During that same period, the Sun City office had 1867 annuity sales and 617 CD transactions. However, the

⁶² Hearing Tr. (Wegner) 118-24; JX-8. See also Hearing Tr. (Katz) 344-47.

⁶³ Hearing Tr. (Katz) 359-64; CX-4; RX-6. Katz described a different kind of "bonus CD" to KCD. He told KCD's CCO that sometimes CD market rates changed between the time of running an advertisement and the time that a customer came into the office to obtain the CD at the advertised rate. In such a situation, he would make up the difference with a "bonus." Hearing Tr. (Bradle) 406-07.

⁶⁴ Hearing Tr. (Katz) 362-64.

⁶⁵ Hearing Tr. (Katz) 330.

CD transactions generated no revenue. The revenue-generating transactions (annuities plus securities) in the office totaled 2066. Thus, securities transactions comprised approximately 9.6% of the total number of revenue generating transactions at the Sun City office.⁶⁶

In sum, the Hearing Panel finds that the CD-locator service operated by Sun Cities Financial had no independent business purpose. It was a marketing tool to lure people into the office, where they might buy other financial products, including, in the case of the Sun City office, securities offered through KCD. The Hearing Panel further finds that the operation of the CD-locator service was integrated with all the businesses operated at the Sun City office, including the securities business, and that KCD understood that the CD-locator service was connected to potential securities transactions, if not at the time a customer responded to a CD advertisement then later, when a CD originally purchased in response to the advertising matured. To the extent that the CD advertisements led to securities transactions, KCD also made money and thereby benefited.⁶⁷

C. The Sale Of Unregistered Securities

(1) KCD's Sales Of Private Placement Offerings In Dallas

KCD was the broker-dealer through which a Dallas, Texas real estate investment enterprise called Realty Capital Partners ("RCP") offered and sold interests in real estate development projects. RCP put together real estate investments and employed a sales team of registered representatives to sell interests in those investments. The investments were done as unregistered offerings pursuant to SEC Rule 506 of Regulation D.

In late 2010, pursuant to a joint venture with another entity, RCP employees went to work for the joint venture, which was called Westmount Realty Finance ("WRF"). The KCD broker-dealer business was done under the same name as the joint venture, WRF. Isaac Gregory, senior vice president of capital markets at WRF, was responsible for overseeing the registered salespeople affiliated with KCD, first at RCP and then at WRF.⁶⁸ He testified that while he was with RCP he was involved in 30 to 40 unregistered offerings representing about \$150 million in private equity.⁶⁹

Gregory testified that the salespeople were a "captive" salesforce who did no business other than for RCP (and then WRF). He said that KCD had no experience with such a "captive"

⁶⁶ RX-52. Respondent compared the 199 securities transactions to all the transactions at *all* the Sun Cities Financial offices, including CD transactions, to minimize the proportion of the business attributable to securities transactions. Hearing Tr. (Katz) 330-32. Katz acknowledged the figures in RX-52 and confirmed that no money was made on CD sales. He further acknowledged that money *was* made on securities sales. Hearing Tr. (Katz) 366-70.

⁶⁷ Hearing Tr. (Katz) 367.

⁶⁸ Hearing Tr. (Gregory) 459-66, 474, 499.

⁶⁹ Hearing Tr. (Gregory) 472.

salesforce prior to 2008 but that the then-owner and Linda Bradle spent three days in Dallas to develop a way of doing business together.⁷⁰

In general, an entity called Westmount Realty Capital, LLC (“Westmount Realty”) would find a real estate deal, conduct due diligence and screen the investment from the issuer side. Then RCP (later WRF) would handle the preparation of the sales documents and put together a package to submit to KCD. KCD would then review the material and sign off on a soliciting dealer agreement. That would be the broker-dealer approval required before launching the offering.⁷¹ As investors subscribed to the offering, Gregory would review the documents and send them to KCD for approval and verification that the investors were accredited investors eligible to participate.⁷²

Gregory testified that he was familiar with SEC Rule 506, Regulation D, and the form required to be filed when using a Rule 506 exemption from registration. He said that a solicitation to the general public could not be made and that only accredited investors (and/or a maximum of 35 unaccredited investors) could be permitted as investors.⁷³

(2) WRF Fund Private Placement

After the joint venture was set up and the salesforce transferred to WRF, Westmount Realty put together a private placement for an investment fund known as the WRF Distressed Residential Fund 2011, LLC (“WRF Fund”). The Private Placement Memorandum (PPM) for the offering disclosed that the WRF Fund would be managed by Westmount Realty Finance LLC (“Westmount Finance”), through an affiliate. Westmount Finance was the sponsor for the WRF Fund.⁷⁴

KCD’s CCO at the time, Jeff Larson, approved the deal by signing the soliciting dealer agreement on March 15, 2011, and within two to three business days the salesforce began contacting their existing customer base about it.⁷⁵ They sold interests quickly thereafter.⁷⁶

The soliciting dealer agreement and the PPM for the WRF Fund private placement specified that up to \$10 million of securities would be sold.⁷⁷ KCD, as the selling broker-dealer

⁷⁰ Hearing Tr. (Gregory) 466-67.

⁷¹ Hearing Tr. (Gregory) 467-69.

⁷² Hearing Tr. (Gregory) 469-70.

⁷³ Hearing Tr. (Gregory) 472-73.

⁷⁴ JX-27, at 1, 7; Hearing Tr. (Teh) 247-49, 252; JX-27. A Form D was filed with the SEC for the WRF Fund offering, indicating its reliance on Rule 506 of Regulation D. JX-15.

⁷⁵ Hearing Tr. (Gregory) 475-80; JX-16.

⁷⁶ Hearing Tr. (Gregory) 487.

⁷⁷ JX-16, at 1; JX-27, at 1.

for the offering, would receive fees that included a 4% commission and a 1% non-accountable due diligence and marketing allowance. KCD was also entitled to a share of the Carried Interest distributions payable to the manager of the offering.⁷⁸

(3) The News Articles Raising General Solicitation Issue

In late April 2011, the securities attorney who had worked on the PPM for the WRF Fund offering called Gregory with concerns about a newspaper article the attorney had seen in the Dallas Business Journal. The attorney was concerned about the effect of the article on the representation in the PPM that the securities were sold pursuant to the Regulation D exemption from registration.⁷⁹

The article was one of two articles that appeared in local Dallas newspapers. Each article discussed the launch of the WRF Fund and quoted Westmount Realty's Chief Investment Officer as saying that "[W]e continue to see a steady stream of buying opportunities."⁸⁰ The articles used information supplied in a press release Westmount Realty had issued.⁸¹

Based on the securities attorney's reaction to the news article, Gregory believed that the article was a breach of the rules against general solicitation for a private placement. Gregory then called Larson, the KCD CCO, and told him there had been a breach of the rules.⁸²

The Hearing Panel finds it highly significant that KCD was informed that the securities attorney who had worked on the PPM for the WRF Fund offering thought there had been a breach of the rules. The attorney was knowledgeable and familiar with the particular offering. His concerns were not idle speculation.

The Hearing Panel also finds it significant that there was no testimony to indicate that Gregory or anyone at KCD called the securities attorney or any other attorney to ask for advice on how to deal with the problem. By avoiding speaking to legal counsel, they avoided being told to stop offering and selling the securities.

Instead, without benefit of legal counsel, Gregory and Larson developed their own plan and implemented it. They informed the salesforce that the WRF Fund could only be sold to investors who had invested with them before, and not to anyone who had learned of the offering through one of the news articles. Salespeople were to ask a caller who had not previously

⁷⁸ JX-27, at 1.

⁷⁹ Hearing Tr. (Gregory) 481-82, 499-503.

⁸⁰ JX-12; JX-13; Hearing Tr. (Teh) 249-52; Hearing Tr. (Gregory) 491-508.

⁸¹ Hearing Tr. (Teh) 257.

⁸² Hearing Tr. (Gregory) 481-82, 491-92.

invested with them how the caller found out about the offering. If the caller said through the news article, then the salesperson was to decline to allow the caller to invest.⁸³

Later, Gregory learned that one of the news articles also had been posted on the website for the WRF affiliates, including the KCD broker-dealer business. He called technology staff and asked them to take it down. He knew that the securities attorney had been especially concerned that the article should not appear on the website.⁸⁴

Still later, Gregory learned that, despite his instruction, the article had remained posted on the WRF website until it was discovered by FINRA staff in October 2011, approximately six months after he instructed that it be taken down.⁸⁵ At least one person called a registered representative at WRF expressing an interest in the offering as a result of seeing one of the news articles.⁸⁶ Gregory notified KCD of this incident.⁸⁷

(4) FINRA Staff Discovery Of Unregistered Securities Sales

In the cycle examination commenced in October 2011, FINRA staff examined the efficacy of KCD's due diligence in connection with its top three selling private placement offerings. The staff investigated the information publicly available that might not be in the PPMs and compared that information to KCD's files.

The WRF Fund offering was one of the three top selling private placements the staff examined. The staff discovered the news articles relating to the WRF Fund offering. The article was still posted on the WRF website. KCD's then-CCO, Lori Rastall, instructed Gregory to take the article down from the website. He believed that she had concluded it was a general solicitation, and she testified at her OTR that she thought it was a general solicitation.⁸⁸ However, she did not instruct that KCD representatives stop offering and selling the securities. Nor did she do any other follow-up.⁸⁹ This was the first time that she had dealt with any private placement offerings or exemptions from registration under Regulation D as a CCO.⁹⁰

The Hearing Panel finds that neither Gregory nor Rastall did anything meaningful to remove the news article from the WRF website, even though both were aware that the posting on the website was a general solicitation that made it improper for KCD's registered representatives

⁸³ Hearing Tr. (Gregory) 482-84, 505, 509-13, 515-17.

⁸⁴ Hearing Tr. (Gregory) 484-85, 505-07.

⁸⁵ Hearing Tr. (Gregory) 506-08; Hearing Tr. (Teh) 256, 272, 274-75.

⁸⁶ Hearing Tr. (Gregory) 513-14.

⁸⁷ Hearing Tr. (Gregory) 485.

⁸⁸ Hearing Tr. (Gregory) 514-15; Hearing Tr. (Rastall) 568, 579.

⁸⁹ Hearing Tr. (Rastall) 567, 574, 577-78.

⁹⁰ Hearing Tr. (Rastall) 569-70.

to continue offering the unregistered securities. The problematic news article remained posted on the WRF website for months.

IV. CONCLUSIONS

A. Advertisements In Violation Of Member Communications Rule

FINRA Rule 2210 concerning member communications with the public sets a general standard applicable to all member communications with the public. It requires that such communications be “based on principles of fair dealing and good faith,” and that they “be fair and balanced.” It further requires that such a communication should not omit any material fact if, “in light of the context of the material presented,” the omission would cause the communication to be misleading. The Rule also specifies that no member “may make any false, exaggerated, unwarranted, promissory or misleading statement in any communication.” It prohibits a member from publishing, circulating or distributing any communication that the member “knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.” These requirements apply to registered representatives in the same manner as members by virtue of what is now FINRA Rule 140.

The SEC has summarized, “[The member communication Rule] prohibits a member from making any false, exaggerated, unwarranted, or misleading statements in its communications with the public. Public communications must be based upon principles of fair dealing and good faith, must provide a sound basis for evaluating the facts discussed, and must not omit material facts or qualifications that would cause a communication to be misleading in light of this context.”⁹¹

As discussed above, the Hearing Panel finds that the CD-finder advertisements were false and misleading. Without a doubt, the advertisements did not comply with the high standards set forth in Rule 2210.

If the representatives who were responsible for creating and running the advertisements were the respondents here, they would be found to have violated the Rule even though the advertisements concerned CDs and not securities. The case relied upon by Enforcement, *Robert L. Wallace*,⁹² establishes that communications do not have to be about securities in order to be subject to the Rule concerning member communications with the public. The respondent in *Wallace* was found to have violated the Rule by running false and misleading advertisements relating to viatical settlements. The SEC sustained NASD’s finding of a violation of the communications Rule without determining whether viatical settlements were securities, declaring

⁹¹ *Phillipe N. Keyes*, Exchange Act Release No. 54723, 2006 SEC LEXIS 2631, at *12 (Nov. 8, 2006).

⁹² *Robert L. Wallace*, Exchange Act Release No. 40654, 1998 SEC LEXIS 2437 (1998).

Fifth, KCD did to some extent involve itself in overseeing the CD advertising. It reviewed EW's advertisements when he joined the Firm. It instructed Katz to cease and desist running the advertisements for a period of time in response to earlier FINRA staff inquiries, prior to the examinations that gave rise to this proceeding.

Accordingly, the Firm violated the member communication Rule, FINRA Rule 2210. In so doing, it also violated the ethics Rule FINRA Rule 2010.⁹⁶

B. Sales Of Non-Exempt Unregistered Securities

Section 5(a) of the Securities Act of 1933 prohibits the sale of an unregistered security unless there is an applicable exemption,⁹⁷ and Section 5(c) prohibits the offer of an unregistered security without an exemption.⁹⁸ Thus, an unregistered security may be neither offered nor sold unless it is covered by an exemption. "The party claiming the exemption must show that it is met not only with respect to each purchaser, but also with respect to each offeree."⁹⁹

Exemptions are affirmative defenses that must be established by the person or entity claiming the exemption.¹⁰⁰ Registration exemptions "are construed strictly to promote full disclosure of information for the protection of the investing public."¹⁰¹ Evidence in support of an

⁹⁶ Violations of law and FINRA Rules have long been held inconsistent with the standards of ethical conduct required by NASD Rule 2110 and FINRA Rule 2010. *Colonial Realty Corp. v. Bache & Co.*, 358 F.2d 178, 182 (2d Cir.), cert. denied, 385 U.S. 817 (1966); *Alvin W. Gebhart*, Exchange Act Release No. 53136, 2006 SEC LEXIS 93, at *54 n.75 (Jan. 18, 2006), rev'd and remanded in part on other grounds sub nom. *Gebhart v. SEC*, 2007 U.S. App. LEXIS 27183 (9th Cir. Nov. 21, 2007); *Richard F. Kresge*, Exchange Act Release No. 55988, 2007 SEC LEXIS 1407, at *42 (June 29, 2007).

⁹⁷ 15 U.S.C. § 77e (a). No one in this case has disputed that the interest in the WRF Fund that was offered and sold was a security or that it was offered and sold in interstate commerce, so that Section 5 applies here.

⁹⁸ 15 U.S.C. § 77e (c).

⁹⁹ *SEC v. Stratocomm Corp.*, 2 F. Supp. 3d 240, 264 (N.D. N.Y. Feb. 19, 2014) (quotation and citation omitted).

¹⁰⁰ See, e.g., *SEC v. Ralston Purina Co.*, 346 U.S. 119, 126 ("Keeping in mind the broadly remedial purposes of federal securities legislation, imposition of the burden of proof on an issuer who would plead the exemption seems to us fair and reasonable."); *Zacharias v. SEC*, 569 F.3d 458, 464 (D.C. Cir. 2009) (citing *Ralston Purina*, 346 U.S. at 126), aff'g in relevant part, *John A. Carley*, Exchange Act Release No. 57246, 2008 SEC Lexis 222 (Jan. 31, 2008); *Swenson v. Engelstad*, 626 F.2d 421, 425 (5th Cir. 1980); *Rodney R. Schoemann*, Securities Act Release No. 9076, 2009 SEC LEXIS 3939 (Oct. 23, 2009), aff'd, 398 F. App'x 603 (D.C. Cir. 2010) (unpublished).

The SEC has made plain that once Enforcement has established a *prima facie* case of selling unregistered securities, the burden shifts to the respondent in a disciplinary proceeding to establish that an exemption applied. *See ACAP Financial, Inc.*, Exchange Act Release No. 70046, 2013 SEC LEXIS 2156 (July 26, 2013).

¹⁰¹ *SEC v. Cavanagh*, 445 F.3d 105, 115 (2d Cir. 2006); see also *SEC v. Murphy*, 626 F.2d 633, 641 (9th Cir. 1980) (same).

that the Rule governs *all* member communications with the public, not just those involving securities.⁹³

However, it is the Firm that is the Respondent in this case, not the representatives. The issue remains whether the advertisements constituted the Firm's communications with the public, as well as the representatives' communications. The Firm argues that the advertisements were not its communications but, rather, were the representatives' communications in connection with an approved outside business activity.⁹⁴

The Hearing Panel rejects the Firm's argument. The Panel concludes that, in the circumstances of this case, the CD advertisements did constitute the Firm's communications with the public.

First, the essential purpose of the CD-finder service and advertisements was not to promote CDs but to promote the registered representatives' other businesses, including the sale of securities through KCD.⁹⁵ The CD-finder service was not actually a sustainable, independent outside business activity. Rather, it was a marketing tool that the representatives in Palm Beach Gardens, Florida and Sun City, Arizona used to promote their actual income-producing businesses—including sales of securities through KCD. Moreover, there was no evidence that the Florida and Arizona offices advertised their securities business, so their securities business depended upon the customer base developed from the CD advertising.

Second, from the perspective of the customers who inquired about the CDs, the CD-finder service was intertwined with the securities business through KCD: the CD advertisements were run under the same business name as the securities business; when customers responded to the CD advertisements, they called the same telephone number used for the securities business; and customers met the registered representatives at the same offices from which the representatives conducted their securities business.

Third, many of the people who purchased CDs also actually purchased securities. To the extent that they did, KCD benefited from the CD advertising. At least with respect to the Arizona office, the benefit must have been substantial, since it was one of the Firm's highest-producing offices.

Fourth, KCD was aware of the connection between the CD advertising and potential securities transactions and discussed it in correspondence with Katz and with FINRA staff.

⁹³ *Id.* at *13.

⁹⁴ Hearing Tr. (Rastall) 548-58; JX-2; KCD PH Br. 3-6, 12-18.

⁹⁵ Similarly, see *Sheen Financial Resources, Inc.*, Exchange Act Release No. 35477, 1995 SEC LEXIS 613, at *9 (Mar. 13, 1995) (rejecting argument that advertisements for radio program were for separate and distinct business from securities business, because essential purpose of radio program was to sell securities through the broker-dealer firm).

exemption must be explicit, exact, and not built on conclusory statements.¹⁰² The SEC has stated that a broker “ha[s] a responsibility to be aware of the requirements necessary to establish an exemption from the registration requirements of the Securities Act and should be reasonably certain such an exemption is available.”¹⁰³

In this case, KCD had no reasonable basis for thinking that the WRF Fund offering was exempt from registration. The news articles constituted a general solicitation, and at least one person understood it as a solicitation and made an inquiry as a result of seeing one of the articles. Furthermore, KCD was informed that the securities attorney who worked on the offering documents thought that the news articles had created a breach of the applicable requirements. That was more than a red flag; it was a red stop sign. But KCD ignored the stop sign, and continued to offer and sell securities in the WRF Fund offering.

KCD’s cure for the violation of the registration requirements also had no reasonable basis. There is no safe harbor in the statute or Regulation D for sales of unregistered non-exempt securities to pre-existing customers after a general solicitation has been made. KCD had no authority for its continued offer and sale of the unregistered securities in the face of the clear requirement that it stop.

The violation of the registration requirements is serious. “The registration requirements are the heart of” the Securities Act.¹⁰⁴ Their purpose is to “protect investors by promoting full disclosure of information thought necessary to informed investment decisions.”¹⁰⁵ Section 5 imposes strict liability on those who offer or sell unregistered securities.¹⁰⁶ Scienter (intent to deceive) is not a requirement.¹⁰⁷

NASD Rule 3010, as it was in effect at the time of the misconduct, required KCD to establish, maintain, and implement a system of supervision that was reasonably designed to achieve compliance with applicable securities laws and regulations. Final responsibility for supervision rests on the Firm. The Firm’s failure to stop the unlawful distribution of

¹⁰² *Ronald G. Sorrell*, 1981 SEC LEXIS 1467, at *5 n.8 (1981) (quoting *Lively v. Hirschfeld*, 440 F.2d 631, 633 (10th Cir. 1971)), aff’d, 679 F.2d 1323 (9th Cir. 1982).

¹⁰³ *Midas Securities, LLC*, Exchange Act Release No. 66200, 2012 SEC LEXIS 199, at *33 and n.43 (Jan. 20, 2012).

¹⁰⁴ *Pinter v. Dahl*, 486 U.S. 622, 638 and n.14 (1988).

¹⁰⁵ *Midas Sec.*, 2012 SEC LEXIS 199, at *26 (citing *Ralston Purina*, 346 U.S. at 124 (1953) and *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 186 (1963)) “Registration is the central mechanism the framers of the securities acts chose for the protection of investors.” *Woolf v. S.D. Cohn & Co.*, 515 F.2d 591, 605 and n.6 (5th Cir. 1975) (Wisdom, J.), vacated and remanded on other grounds, 426 U.S. 944 (1976).

¹⁰⁶ *SEC v. Calvo*, 378 F.3d 1211, 1215 (11th Cir. 2004); *Cavanagh*, 445 F.3d at 115; *Stratocomm Corp.*, 2 F. Supp. 3d at 263-64.

¹⁰⁷ *Midas Sec.*, 2012 SEC LEXIS 199, *27 and n.34.

unregistered securities in the face of a clear duty to do so was an abject failure of the Firm’s supervisory and compliance systems. The Firm’s failure even to follow-up on the instruction to remove the news article from the WRF website further demonstrated its lack of an adequate supervisory system. These supervisory failures constitute a violation of Rule 3010.

The violation of NASD Rule 3010 is also inconsistent with the “high standards of commercial honor and just and equitable principles of trade” required by FINRA Rule 2010.¹⁰⁸

V. SANCTIONS

Adjudicators in FINRA disciplinary proceedings look to FINRA’s Sanction Guidelines (“Guidelines”) in considering the appropriate sanction for a violation.¹⁰⁹ The Guidelines contain recommendations for sanctions for many specific violations, depending on the circumstances and any mitigating or aggravating factors. The Guidelines also contain General Principles and overarching Principal Considerations that are applicable in all cases.¹¹⁰ The Guidelines are intended to be applied with attention to the regulatory mission of FINRA—to protect investors and strengthen market integrity.¹¹¹ They are intended to be remedial and to deter the respondent and others from similar misconduct in the future.¹¹²

Ultimately, however, adjudicators must do what they believe is right in the circumstances of the particular case. The Guidelines “do not prescribe fixed sanctions.”¹¹³ They are “not intended to be absolute.”¹¹⁴

A. CD Advertising In Violation Of Firm Communications Rule

Breaches of NASD Rule 2210 may involve a late filing with FINRA regulation staff, a failure to file, or the use of a false or misleading communication that fails to comply with the standards set forth in the Rule. A late filing may be subject to a fine of \$1,000 to \$15,000. A failure to file may be subject to a fine of \$1,000 to \$22,000. A failure to comply with the substantive standards set forth in the Rule or an inadvertent use of misleading communications may be subject to a fine of \$1,000 to \$29,000. In egregious cases, a firm may be suspended with respect to any and all activities or functions for up to a year and thereafter subject to a “pre-use” filing requirement to gain permission for a proposed communication with the public.¹¹⁵

¹⁰⁸ *Midas Sec.*, 2012 SEC LEXIS 199, at *46 n.63.

¹⁰⁹ FINRA Sanction Guidelines (2015) (“Guidelines”), <http://www.finra.org/industry/sanction-guidelines>.

¹¹⁰ Guidelines at 2-7.

¹¹¹ Guidelines at 1, Overview.

¹¹² Guidelines at 2, General Principle 1.

¹¹³ Guidelines at 1, Overview.

¹¹⁴ *Id.* and at 3.

¹¹⁵ Guidelines at 78-79.

In this case, the CD advertising was false and misleading, and the advertisements were widely circulated in the representatives' local communities.¹¹⁶ The representatives purposefully created the false and misleading advertisements and used them to support their securities business. Although the Firm knew the connection between the advertising and the representatives' securities business through KCD,¹¹⁷ and although the Firm benefited from the advertising to the extent that the representatives conducted securities transactions for customers who initially inquired about CDs,¹¹⁸ the Firm treated the advertising as though it had no responsibility for it. It abdicated its responsibility for oversight, and it did so in connection with two different offices in different parts of the country. As a result, the false and misleading advertisements were permitted to circulate repeatedly, each week, for more than three years, from January 2009 to April 2012.¹¹⁹ The Firm has never accepted its responsibility for this misconduct but has suggested, instead, that FINRA staff previously approved the way it handled the CD-finder service as an outside business activity.¹²⁰ In these circumstances, the violation cannot be characterized as inadvertent or isolated or aberrant.¹²¹ These are all aggravating circumstances.

There are no mitigating circumstances. The Hearing Panel has noted, however, that the lack of continuity in management contributed to its misunderstanding of its obligations. While this is not mitigating, that lack of continuity and accompanying turmoil bear on the likelihood of future misconduct under current management. The Hearing Panel does not presume that going forward under current management the Firm will likely engage in similar misconduct.

The Hearing Panel censures the Firm and imposes a total fine of \$40,000 for the advertising violation. Although, in total, this amount exceeds the range set forth in the Guidelines, the Hearing Panel believes that a fine of \$20,000 for the false and misleading advertisements circulated by each office (one in Florida, the other in Arizona) is appropriately remedial.

¹¹⁶ Guidelines at 79. Whether violative communications with the public were circulated widely is a Principal Consideration in determining sanctions for this particular kind of violation.

¹¹⁷ Principal Consideration 13 focuses on whether a respondent's misconduct was the result of an intentional or reckless act. In this case, KCD acted recklessly, if not intentionally. Guidelines at 7.

¹¹⁸ Principal Consideration 17 focuses on whether the misconduct resulted in potential monetary gain to the respondent. Guidelines at 7.

¹¹⁹ Principal Considerations 8 and 9 focus on whether there was a pattern of misconduct and whether the misconduct occurred over an extended period of time. Guidelines at 6. Principal Consideration 18 focuses on the number, size, and character of the transactions at issue. Here, many false and misleading advertisements were permitted to circulate to the public as a result of KCD's failure to fulfill its responsibilities. Guidelines at 7.

¹²⁰ Principal Consideration 2 concerns whether the respondent has accepted responsibility for the misconduct prior to regulatory detection and intervention. Guidelines at 6.

¹²¹ Principal Consideration 16 concerns whether the record supports the conclusion that the misconduct at issue was aberrant. Guidelines at 7.

B. Distribution Of Non-Exempt Unregistered Securities

The recommended fine for selling non-exempt unregistered securities ranges from \$2,500 to \$73,000. In egregious cases, adjudicators may consider suspending a firm with respect to any or all activities or functions for up to 30 business days or until procedural deficiencies are remedied.¹²²

There are a number of Principal Considerations that apply to this particular type of violation. One of them is of paramount importance here: whether the respondent disregarded “red flags” suggesting the presence of an unregistered distribution.¹²³

In this case, KCD disregarded a red flag that could not be ignored. The call from the securities attorney who worked on the WRF Fund offering expressing concern about the news article notified KCD of the general solicitation and of the loss of the exemption from registration.¹²⁴ KCD’s response—to continue offering and selling the securities—was not an appropriate response. The Firm’s attempt to cure the violation by selling only to pre-existing customers did not cure the violation. KCD’s misconduct was an egregious violation.

Additional Principal Considerations applicable in connection with all cases confirm that stringent sanctions are warranted. The misconduct was the result of an intentional act. Gregory and the then-CCO, Larson developed a plan for continuing to offer and sell the unregistered securities even though they knew that the rules regarding the basis for claimed exemption had been breached.¹²⁵ The Firm failed to develop and implement controls related to the misconduct and did not even make certain that the news article posted on the WRF website was removed.¹²⁶ The misconduct resulted in monetary gain to the Firm.¹²⁷

Even though the violation was egregious, the Hearing Panel does not impose a suspension. The Panel believes that the remedial purposes of disciplinary sanctions can be served by censuring the Firm and imposing a substantial fine of \$75,000. The Hearing Panel chooses a figure that slightly exceeds the top end of the Sanction Guideline range even though KCD’s violation was egregious and could warrant an even greater sanction. Current management then has the opportunity going forward to improve the Firm’s compliance function, cognizant of the importance of doing so.

¹²² Guidelines, at 24.

¹²³ *Id.*

¹²⁴ The Principal Considerations applicable in all cases include a concern whether the respondent demonstrated reasonable reliance on competent legal advice. Guidelines at 6, Principal Consideration 7. Here the Firm not only did not rely on advice of counsel but acted contrary to counsel’s express concerns.

¹²⁵ Guidelines at 7, Principal Consideration 13.

¹²⁶ Guidelines at 6, Principal Consideration 5.

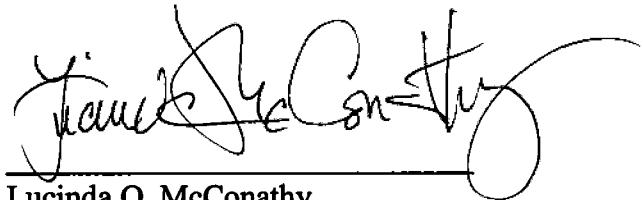
¹²⁷ Guidelines at 7, Principal Consideration 17.

VI. ORDER

For violating NASD Rule 2210 regarding member communications with the public and FINRA Rule 2010 regarding ethical conduct, as alleged in the First Cause of Action, KCD Financial, Inc. is censured and fined \$40,000.

For violating NASD Rule 3010 and FINRA Rule 2010 by unlawfully selling non-exempt unregistered securities, KCD Financial, Inc. is censured and fined \$75,000.

The Firm is also ordered to pay costs, which amount to \$5556.48, including a \$750 administrative fee and the cost of the transcript.¹²⁸ The fines and assessed costs shall be due on a date set by FINRA, but not sooner than thirty days after this decision becomes FINRA's final disciplinary action in this proceeding.



Lucinda O. McConathy
Hearing Officer
For the Hearing Panel

Copies to:

KCD Financial, Inc. (via overnight courier and first-class mail)
Jill G. Fieldstein, Esq. (via electronic and first-class mail)
Seema Chawla, Esq. (via electronic and first-class mail)
Dean M. Jeske, Esq. (via electronic mail)
Mark A. Koerner, Esq. (via electronic mail)
Jeffrey D. Pariser, Esq. (via electronic mail)

¹²⁸ The Hearing Panel has considered and rejects without discussion any other arguments made by the Parties that are inconsistent with this decision.

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013035109701**

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

RE: LPL Financial LLC, Respondent
CRD No. 6413

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, LPL Financial LLC ("LPL" or the "Firm") 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 LPL alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

A. LPL 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

LPL has been a member of FINRA since 1973. The Firm is also registered with the Municipal Securities Rulemaking Board ("MSRB"). The Firm, headquartered in Boston, Massachusetts, conducts a general securities business and has approximately 18,343 registered representatives operating from approximately 10,702 registered branch office locations and 18,396 non-registered office locations.

RELEVANT DISCIPLINARY HISTORY

In File No. 1200385 (June 2014), the Illinois Securities Department found that, from 2009 to 2013, LPL failed to adequately maintain certain books and records documenting its variable annuity exchange business and failed to enforce its supervisory system and procedures in connection with the documentation of certain salespersons' variable annuity exchange activities. The Illinois Securities Department censured the Firm, fined it \$2 million and imposed undertakings.

In Letter of Acceptance, Waiver and Consent No. 201102770901 (March 2014), FINRA found that, from January 2008 to July 2012, LPL failed to implement an adequate supervisory system for the sale of alternative investments that was reasonably designed to ensure compliance with

FINRA suitability requirements under NASD Rule 2310. The Firm did not have reasonably designed procedures to determine whether purchases of alternative investments complied with concentration limits set by LPL, prospectus and State suitability standards. FINRA censured the Firm, fined it \$950,000 and imposed undertakings.

In Letter of Acceptance, Waiver and Consent No. 2012032218001 (May 2013), FINRA found that, from 2007 to 2013, LPL failed to retain and review hundreds of millions of emails, including approximately 28 million "doing business as" emails. LPL's email review and retention systems repeatedly failed and, as a result, LPL was unable to meet its obligations to supervise its registered representatives and to respond fully to regulatory requests. Additionally, LPL made material misstatements to FINRA regarding its email deficiencies. FINRA censured the Firm, fined it \$7.5 million and imposed undertakings.

In Order No. E-2012-0036 (February 2013), the Massachusetts Securities Division found that LPL sold non-traded real estate investment trusts in violation of Massachusetts suitability criteria including annual income and concentration limits, among others. The Massachusetts Securities Division fined LPL \$500,000, required the Firm to offer approximately \$2 million in restitution and imposed undertakings.

In Letter of Acceptance, Waiver and Consent No. 2011029101501 (December 2012), FINRA found that, from January 2009 to June 2011, LPL failed to establish, maintain and enforce supervisory procedures reasonably designed to ensure timely delivery to certain of its customers mutual fund prospectuses, as required by Section 5(b)(2) of the Securities Act of 1933. FINRA censured the Firm and fined it \$400,000.

In Letter of Acceptance, Waiver and Consent No 2010024975401 (June 2012), FINRA found that, from October 1, 2010 to December 31, 2010, LPL failed to comply with TRACE reporting requirements, engaged in a pattern or practice of late reporting, and, from July 1, 2010 to September 30, 2012, LPL failed to comply with MSRB late reporting requirements. FINRA censured the Firm and fined it \$17,500.

In Letter of Acceptance, Waiver and Consent No. 2008012537201 (July 2011), FINRA found that, from October 1, 2008 to December 31, 2008, LPL failed to comply with TRACE reporting requirements, engaged in a pattern or practice of late reporting, and failed to establish and maintain supervisor procedures reasonably designed to ensure compliance with TRACE reporting requirement. FINRA censured the Firm and fined it \$22,500.

In Letter of Acceptance, Waiver and Consent No. 2010021545201 (June 2011), FINRA found that, from March 2005 to March 2010, LPL failed to supervise the radio broadcasts of two former LPL representatives. The representatives aired approximately 520 live call-in radio shows, but LPL failed to request or review copies of the transcripts of those shows in violation of its procedures. FINRA censured the Firm and fined it \$25,000.

In Letter of Acceptance, Waiver and Consent No. 2009016570001 (January 2011), FINRA found that LPL failed to enforce its supervisory procedures for the review of emails. FINRA found that for a year and a half, approximately three million emails involving 150 financial advisors located

in 769 Sovereign Bank branches were not subject to supervisory review. FINRA censured the Firm and fined it \$100,000.

In Letter of Acceptance, Waiver and Consent No. 2009017682701 (December 2010), FINRA found that, from October 2008 to October 2009, LPL failed to enforce its supervisory procedures relating to certain variable annuity exchange transactions, despite attestations to FINRA to the contrary. FINRA censured the Firm and fined it \$175,000.

In Letter of Acceptance, Waiver and Consent No. 2009016922702 (December 2010), FINRA found that, from December 2005 to October 2008, LPL failed to maintain and enforce a supervisory system reasonably designed to monitor all transmittals of funds from customer accounts to third-party accounts. LPL's control procedures for review of third-party transmittals did not address third-party journal transactions, LPL failed to document management approval of third-party journals, and LPL failed to send confirmation letters to customers on seven occasions. FINRA censured the Firm and fined it \$100,000.

OVERVIEW

Beginning in 2007, LPL Financial Holdings, Inc., pursued a strategy of significantly increasing the size of its wholly-owned broker-dealer subsidiary, LPL. This strategy included acquiring numerous financial services firms, consolidating them with LPL and recruiting registered representatives from other broker-dealers. From 2007 to 2013, the number of registered representatives grew from approximately 8,322 to 17,601; and the Firm's revenues grew from approximately \$2.28 billion for the fiscal year ended December 31, 2007 to approximately \$4.05 billion for the fiscal year ended December 31, 2013.

The Firm, however, did not accompany this rapid growth with a concomitant dedication of sufficient resources to permit the Firm to meet its supervisory obligations. As a result, the Firm failed to have adequate systems and procedures in place to supervise certain aspects of its business, including the sales of particular complex products, and the review of trades and delivery of trade confirmations.

For example, LPL failed to reasonably supervise its sales of complex non-traditional exchange traded funds ("ETFs"). The Firm failed to monitor the length of time these securities were held in customer accounts, permitted the breach of the Firm's allocation limits, failed to deliver prospectuses to customers buying these securities, and permitted sales by certain representatives who had not taken the mandatory Firm-developed training on the risks of these products. LPL failed to reasonably supervise its sales of variable annuities, in some instances permitting sales without disclosing surrender fees. The Firm used a faulty automated surveillance system that excluded certain mutual fund "switch" transactions from supervisory review, and it failed to reasonably supervise sales of Class C mutual fund shares. The Firm also failed to supervise sales of non-traded real estate investment trusts ("REITs") by, among other things, failing to identify accounts eligible for volume sales charge discounts ("volume discount").

Multiple deficiencies affected LPL's systems for reviewing trading activity in customer accounts. The Firm used a surveillance system, which, due to technical flaws, failed to generate

alerts for certain high-risk activity including low priced equity transactions, actively traded accounts, asset movements and potential employee front-running. The Firm used a separate, but faulty, automated system to review its trade blotter, but this system failed to display trading activity past due for supervisory review. The Firm failed to deliver trade confirmations to customers investing in LPL advisory programs resulting from deficiencies that affected over 67,000 accounts and 14 million trades, and it failed to report certain trades to FINRA and MSRB.

As a result, LPL violated numerous federal securities laws and FINRA and MSRB rules.

FACTS AND VIOLATIVE CONDUCT

A. LPL Failed to Reasonably Supervise Certain ETF, Variable Annuity, Mutual Fund and Non-Traded REIT Transactions

1. LPL Failed To Reasonably Supervise Sales of Non-Traditional ETFs

LPL failed to enforce its supervisory procedures for the sales of leveraged, inverse and inverse-leveraged ETFs (“non-traditional ETFs”). Non-traditional ETFs are complex products that seek to return a multiple of the performance of the underlying index or benchmark, the inverse of the performance, or both, and use swaps, futures contracts, and other derivative instruments to achieve these objectives. Most non-traditional ETFs “reset” daily, meaning they are designed to achieve their stated objectives only on a daily basis and thus typically are inappropriate as an intermediate or long-term investment in a brokerage account. Additionally, due to the effect of compounding, the performance of non-traditional ETFs can differ significantly from the performance of their underlying index or benchmark, an effect that can be magnified in volatile markets.

LPL failed to reasonably supervise sales of these complex securities in several respects.

For example, from April 2010 through April 2015, the Firm failed to review the length of time its customers held certain of these securities. Certain of LPL’s customers held these securities for more than a year, despite the risks associated with such lengthy holding periods. The Firm’s written supervisory procedures required its representatives to monitor non-traditional ETFs held in customer accounts on a daily basis. Its written procedures further stated that these securities generally should not be recommended as an intermediate or long-term holding. However, during this time period, the Firm did not have a supervisory system in place to monitor holding periods for non-traditional ETFs in customer accounts.

Additionally, LPL failed to enforce allocation limits in connection with its sales of non-traditional ETFs. The Firm’s own procedures established “allocation limits” at the point of sale permitting a “maximum aggregate allocation allowable per client account” ranging from 0 percent (in accounts with an “income” investment objective) to 15 percent (in accounts with “growth” or “trading” investment objectives). The Firm did not follow these procedures.

Finally, LPL failed to ensure that certain registered representatives were adequately trained to sell non-traditional ETFs. LPL's procedures required its representatives to complete an ETF training course before purchasing or holding non-traditional ETFs in customer accounts. Some of the Firm's representatives, however, did not complete Firm-mandated training before they began selling non-traditional ETFs to their customers.

By failing to reasonably supervise the sale of non-traditional ETFs and ensure that its brokers were adequately trained to sell these complex products, including taking required training, LPL violated NASD Rule 3010(b) and FINRA Rule 2010.

2. LPL Failed To Reasonably Supervise Sales of Variable Annuity Contracts

LPL failed to reasonably supervise its sales of variable annuity contracts funded by the sale of other annuity contracts or mutual funds. For example, from June 2012 to July 2013, LPL required its representatives to disclose, through an automated program known as the "Annuity Order Entry" ("AOE") system, whether customers would incur fees or sacrifice pecuniary benefits when they surrendered their annuities and mutual funds to pay for the variable annuity contracts recommended by the Firm's representatives.

The Firm, however, did not take adequate steps to ensure its representatives provided accurate information through the AOE system.

In certain instances, LPL failed to identify that its representatives did not disclose through AOE that customers lost "death benefits" or "living benefits" on the annuities that they surrendered to pay for their variable annuity purchases. In other instances, LPL failed to disclose to customers that they incurred "surrender fees" on the exchange of their existing variable annuity holdings for new contracts.

Additionally, LPL systems and procedures automatically approved some of the variable annuity transactions entered by the Firm's OSJ managers. As a result, the Firm failed to review whether its OSJ managers provided information through AOE about surrender fees that matched the information the Firm provided to customers. In some instances, OSJ managers identified those fees through AOE, but the Firm failed to disclose the fees on the forms it gave to customers. Similarly, in other instances, OSJ managers identified through AOE that their customers incurred fees on the sale of their mutual funds to pay for their variable annuity purchases, but the Firm did not disclose those fees on the forms it gave to customers.

By failing to reasonably supervise its sales of variable annuity contracts funded by the sale of another annuity contract or mutual fund, LPL violated NASD Rule 3010(b) and FINRA Rules 2330(c) and 2010.

3. LPL Failed To Conduct Reasonable Supervision or Surveillance Regarding Mutual Fund "Switch" Transactions

LPL failed to enforce its procedures requiring its representatives to complete timely and accurate forms used to appropriately disclose mutual fund switches to customers and to document the rationale for such switches ("Switch Forms"). For example, from June 2012 through July 2013, LPL representatives at times failed to accurately describe fees incurred by customers through the sale of existing mutual funds. In some instances, LPL representatives did not complete Switch Forms until months after a "switch" transaction occurred and LPL had already reviewed the transaction. In other instances, LPL was not able to provide FINRA with copies of Switch Forms.

Additionally, although LPL generated monthly and semi-annual reports on mutual fund "switching" transactions, the automated surveillance system used by the Firm contained programming flaws that caused it to exclude certain switch transactions from supervisory review. For example, LPL's automated surveillance system failed to identify switch transactions in situations when a customer liquidated a mutual fund holding and purchased another mutual fund within the same week, or if a representative's supervisor changed between the date a customer sold its mutual fund and bought another.

Finally, LPL failed to create and enforce supervisory procedures reasonably designed to ensure that its employees provided accurate information to regulators about the Firm's supervision of its representatives' trading. For example, in response to a FINRA inquiry about mutual fund switching at certain of the Firm's branch offices, LPL "filtered" the data it provided to FINRA, thereby not providing all the information FINRA had requested. In particular, LPL populated a FINRA form known as the "Branch Office Risk Assessment Matrix" with incomplete information about mutual fund switching transactions at some of the Firm's branch offices and provided the form to FINRA. The Firm provided inaccurate information to FINRA due to a breakdown in communication within the Firm, and the Firm failed to inform FINRA that the switch data it provided was subject to certain limitations.

By failing to reasonably supervise purchases and sales of mutual funds in "switching" transactions, LPL violated NASD Rule 3010(b) and FINRA Rule 2010.

4. LPL Failed To Reasonably Supervise Sales of Class C Mutual Fund Shares

During the period of January 2007 through August 2014, the Firm's procedures with respect to Class C Mutual Fund shares were inadequate. Specifically, the thresholds set by the firm for determining whether Class C shares were appropriate were set too high to be effective. Additionally, LPL's supervisory system was inadequate in that the transactions it was designed to detect, singular Class C purchases made on a single date and in the amount of \$500,000 or more, was too limited in scope.

By failing to reasonably supervise sales of Class C Mutual Fund Shares, LPL violated NASD Rules 3010(a) and (b), 2110 and FINRA Rule 2010.¹

¹ FINRA Rule 2010 superseded NASD Rule 2110, effective December 15, 2008.

5. LPL Failed To Supervise Sales of Non-Traded REITs

During the period of January 2007 through August 2014, LPL failed to maintain an adequate supervisory system and adequate supervisory guidelines with respect to the sale of Non-Traded REITS and volume sales charge discounts ("volume discount"). During this time period, the Firm did not have adequate procedures in place to identify accounts that would be eligible for volume price discounts.

By failing to reasonably supervise volume discounts in connection with sales of non-traded REITs, LPL violated NASD Rules 3010(a) and (b), 2110 and FINRA Rule 2010.

B. LPL Failed to Implement Adequate Systems For the Review and Accurate Reporting of Trades and for the Delivery of Trade Confirmations

1. LPL Failed to Review Potentially Problematic Trades

LPL failed to review low priced equity trades, concentrated positions, actively traded accounts and potential employee front-running. In or about September 2005, LPL began using a new surveillance system (the "Surveillance System") to review, among other items, equity transactions for trades that potentially violated the Firm's policies and procedures and applicable FINRA rules with respect to low priced securities, actively traded accounts, and concentrated positions. Beginning in November 2007, LPL also used the Surveillance System to monitor for potential employee front-running.

LPL implemented the Surveillance System to generate alerts identifying transactions that fell within certain parameters. The Surveillance System alerts then would be reviewed for compliance with applicable Firm procedures and FINRA rules. The Surveillance System alerts for concentrated positions, actively traded and low priced securities also fed into the Firm's proprietary supervisory system, *i.e.*, the OSJ Review Tool ("ORT"), which the Firm's designated principals, home office supervisory principals and OSJ managers used to identify irregular transactions requiring further supervisory review.

The Surveillance System and ORT systems and the Firm's implementation of them were beset by multiple deficiencies that hampered the Firm's review for potentially problematic trades in customer accounts.

The Surveillance System failed to generate alerts that would have triggered supervisory review. For example, from January 2007 through at least December 2012, the Surveillance System failed to generate alerts consistent with the Firm's set parameters for low priced equity transactions, actively traded and concentrated positions. Similar failures occurred with respect to potential employee front-running for the period November 2007 through at least December 2012.

The Firm failed timely to complete hundreds of thousands of supervisory tasks as a result of an ORT systems failure. The Firm implemented ORT in 2007 to notify supervisors of activity needing review. The system collects data from various sources within the Firm and displays it in three categories: (i) general ORT tasks (which include outside business activity requests, trade

corrections, changes to customer addresses, front-running, low priced securities, mutual fund exceptions and actively traded accounts); (ii) email review tasks; and (iii) trade blotter review tasks. The Firm, however, failed to detect or correct technical issues that caused ORT to fail to display tasks that were past due for supervisory review. For example, from January 2007 to December 2012, approximately 31,467 general ORT tasks were more than 30 days past due, 315,107 email review tasks were more than 7 days past due and 555,873 trade blotter review tasks were more than 7 days past due.

Additionally, as designed, ORT did not permit for adequate supervisory review of the trade blotter. Designated principals reviewed, on average, 1,154 trades per day, and Home Office principals reviewed approximately 349 trades per day. The ORT trade blotter, however, only displayed ten trades per screen and did not allow for user filtering by price or other parameters. These system limitations potentially adversely affected supervisors' ability to reasonably detect improper trading activity. While both supervisors and managers expressed concerns regarding the functionality of the ORT trade blotter, no enhancements were made until November 2012, when the system was modified to permit the display of 50 trades per screen.

Finally, during the period of November 2007 through 2014, coding defects improperly allowed OSJ managers and OSJ delegates to self-review trades and the above-discussed general ORT tasks. Specifically, during this time period, OSJ managers and OSJ delegates could self-review their own transactions and their own activities in ORT, including, but not limited to, new accounts, concentrated positions, outside business activities, third-party disbursements, changes of address, mutual fund exceptions, trade corrections, low priced securities positions, account changes, and possible front running.

By failing to implement adequate systems to monitor for low priced securities, concentrated positions, actively traded accounts, and potential employee front-running; by allowing OSJ managers and OSJ delegates to self-review trades and related tasks; by failing to complete all supervisory tasks in a timely manner; and, by failing to conduct adequate reviews of its trade blotter, LPL violated NASD Rules 3010(a) and (b), 2110 and FINRA Rule 2010.

2. LPL Failed Accurately to Report Trades

a. LOPR Reporting

LPL failed to accurately report to the Options Clearing Corporation ("OCC") options data using the Large Options Positions Report ("LOPR") as required by FINRA Rule 2360(b)(5).² In particular, from January 19, 2010 through May 31, 2012, the Firm: (a) incorrectly reported customer account information to the OCC LOPR in approximately 840,729 instances where the account name was either truncated (795,231 instances) and/or overran into the address field (45,498 instances) due to character limits employed by the third-party vendor used by the Firm to

² LOPR data is used extensively by FINRA and other self-regulatory organizations to identify and deter the establishment of options positions that may provide an incentive to manipulate the market. The accuracy of LOPR data is essential for the analysis of potential violations related to insider trading, position limits, exercise limits, front-running, capping and pegging, mini-manipulation, and marking-the-close.

report its reportable options positions; and (b) reported approximately 11,045 positions to the OCC LOPR with incorrect effective dates.³

Additionally, from January 19, 2013 through June 30, 2014, the Firm: (a) failed to report records to the OCC LOPR in approximately 40,015 instances because it had failed to aggregate certain accounts as acting-in-concert; and (b) failed to report the in-concert identification number to the OCC LOPR in approximately 55,418 instances. From July 18, 2013 through September 26, 2013, the Firm failed to report approximately 46,169 records to the OCC LOPR, due to a file transmission change that had caused its daily submissions to be routed to an incorrect directory. On November 20, 2013, the Firm over-reported seven positions in 238 instances and failed to report 60 positions in 1,422 instances to the OCC LOPR as a result of its failing to include 40 "ADD" and seven "DELETE" records.

The Firm also failed to maintain an adequate system of supervision, including effective monitoring, reasonably designed to achieve compliance with its options reporting requirements under FINRA Rule 2360(b)(5).

By failing to accurately report options data in LOPR, LPL violated FINRA Rules 2360(b)(5) and 2010. Additionally, by failing to maintain a supervisory system reasonably designed to achieve compliance with its options reporting requirements under FINRA Rule 2360(b)(5), LPL violated NASD Rule 3010(a) and (b) and FINRA Rule 2010.

b. RTRS and TRACE Reporting

The Firm also failed to report its correct capacity to the Real-time Transaction Reporting System ("RTRS"). For example, from June 2006 to July 2012, the Firm failed to report its correct capacity in 1,434 reports of transactions in municipal securities. The Firm also failed to report to TRACE the correct capacity for 8,718 transactions in TRACE-eligible securities.

During the aforementioned period, the Firm further failed to establish and maintain supervisory procedures reasonably designed to ensure compliance with these requirements. The Firm's procedures did not provide for (1) identification of persons responsible for supervision; (2) supervisory steps to be taken by the persons identified; (3) when such supervisory steps were to be undertaken; and (4) how such supervisory steps were to be documented.

By failing to comply with RTRS and TRACE reporting, disclosure and related supervisory requirements, LPL violated MSRB Rules G-14, G-15 and G-27 (as to RTRS) and NASD Rules 6230, 3010(a) and (b) and 2110 and FINRA Rules 6730 and 2010 (as to TRACE).⁴

³ An "instance" is a single failure to report, or inaccurately report, a given options position. The number of instances is determined by multiplying a given reportable position by the number of trade dates the position had not been reported or had been reported inaccurately.

⁴ FINRA Rule 6730 superseded NASD Rule 6230, effective December 15, 2008.

3. LPL Failed to Deliver Contemporaneous Trade Confirmations

Beginning in July 2005, LPL began offering certain high net worth customers centrally managed advisory investment programs consisting of various exchange-traded portfolios and mutual funds. From July 2005 to November 2010, LPL failed to deliver confirmations to customers participating in four LPL advisory investment programs, but did so under the incorrect belief that it was entitled to an exemption from Rule 10b-10(a) delivery requirements as set forth in a series of SEC no-action letters. The Firm, however, was not entitled to an exemption because it never applied for one under the Exchange Act Rule 10b-10(f) and failed to fully comply with the SEC's industry-wide conditions for such relief. These confirmation delivery failures affected 47,634 accounts and over 13 million transactions.

For one of the Firm's advisory investment programs, the Model Wealth Portfolio ("MWP"), LPL implemented an automated tool, or "macro," which was programmed to automatically suppress delivery of confirmations. In November 2010, the Firm changed this practice to automatically deliver, rather than automatically suppress, confirmations. LPL, however, failed to reprogram the macro which continued to run nightly, overriding those accounts manually coded for delivery. Accordingly, from November 2010 to November 2012 when the macro was finally disabled, the Firm suppressed confirmations for MWP customers even though the customers had indicated to the Firm that they wanted the confirmations delivered. LPL was alerted to the issue when one of its registered representatives notified the Firm that several customers who wanted to receive confirmations were not receiving them. These MWP confirmation delivery failures affected 19,800 accounts and 1,097,000 transactions.

LPL also failed to deliver confirmations due to coding errors in certain fixed-income accounts. The Firm's coding errors for these fixed income accounts went undetected for nearly ten years. LPL's confirmation delivery failures affected 3,686 transactions in these accounts.

Additionally, from June 2006 to July 2012, LPL failed to provide to its customers written notification disclosing its capacity in the transaction on 15,371 occasions. The Firm also failed to provide to its customers written notification disclosing whether the transaction was discretionary or non-discretionary.

Finally, LPL failed to establish and maintain a supervisory system, including written procedures, reasonably designed to ensure delivery of contemporaneous trade confirmations.

By failing to deliver contemporaneous trade confirmations, LPL violated Section 10 of the Exchange Act, Rule 10b-10(a), NASD Rules 2230 and 2110 and FINRA Rule 2232 and 2010.⁵ By failing to establish supervisory procedures, including written procedures, reasonably designed to comply with confirmation delivery requirements, LPL violated NASD Rules 3010(a) and (b) and 2110 and FINRA Rule 2010.

⁵ FINRA Rule 2232 superseded NASD Rule 2230, effective June 30, 2011.

C. LPL Failed to Implement Adequate Systems to Monitor for Certain Suspicious Activity

LPL also relied on the Surveillance System to detect, where appropriate, suspicious activity as part of the Firm's anti-money laundering ("AML") compliance program. The Surveillance System, when operating properly, should have generated AML alerts related to transactional anomalies identified through two pre-existing risk-based scenarios for customer ATM withdrawals. An effective AML system should have processes and procedures in place to address and investigate, where appropriate, alerts generated by an automated system. However, due to coding errors in the Surveillance System, beginning on March 28, 2014 that were undetected for approximately six weeks, the two AML scenarios were not operating properly, such that no alerts were generated based on these scenarios.

Thereafter, the Firm was unable to correct the coding promptly. Specifically, the scenarios monitoring excessive ATM withdrawals and ATM withdrawals in foreign jurisdictions failed to generate AML alerts during the period of March 28, 2014 through February 2, 2015 that could have been utilized to investigate potentially suspicious customer ATM activity. As a result of the failure to surveil the activity designed to be monitored by the two inoperable scenarios during the aforementioned time period, LPL failed to have a system reasonably designed to monitor for suspicious activity relating to customer ATM use.

By failing to implement adequate systems to detect, investigate and report, where appropriate, the suspicious activity described above, LPL violated FINRA Rules 3310(a) and 2010.

D. LPL Failed to Ensure that it Provided Complete and Accurate Information to Regulators about Variable Annuity Transactions

LPL failed to create and enforce supervisory procedures reasonably designed to ensure that its employees provided complete and accurate information to FINRA and federal and state regulators about the Firm's supervision of registered representatives' variable annuity ("VA") transactions. From at least 2008 through August 2014, LPL responded to regulatory inquiries about VA transactions by accessing a proprietary system, known as the "AOE Database," that stores transaction data provided to the Firm by a third-party vendor.

The Firm, however, was deficient in processing the data it received from its vendor, and in accessing that data in response to regulatory inquiries. In 2014, the Firm identified and notified a state securities regulator that it had failed to provide complete information to the regulator about its registered representatives' VA transactions, and consequently may have initially excluded customers from a settlement that the Firm entered with that regulator which provided restitution to investors.

Between 2010 and 2014, LPL provided information to FINRA, federal, and state regulators in at least 74 examinations and inquiries about its registered representatives' VA transactions. During that period, LPL provided VA transaction data to FINRA in 38 matters. LPL's production of that data was not accurate and complete. In June 2013, for example, the Firm stated that it could not produce information regarding the surrender charges its customers incurred in VA exchange

transactions, although that information is included in the data that LPL's vendor provides to the Firm. LPL's failure to provide complete and accurate information about VA transactions may have impeded regulatory examinations of LPL registered representatives and the Firm's supervision of those representatives.

By failing to adequately supervise its production of VA transaction data to FINRA and federal and state regulators, LPL violated NASD Rules 3010(a) and (b) and 2110, and FINRA Rule 2010. By failing to make and preserve accurate records of its registered representatives' VA transactions, LPL also violated Section 17 of the Securities Exchange Act of 1934 and SEC Rule 17a-3 thereunder, and NASD Rules 3110 (a) and 2110, and FINRA Rules 4511 and 2010.

E. LPL Failed to Reasonably Supervise its Advertising and Other Communications

1. LPL Failed to Reasonably Supervise Consolidated Reports

LPL failed to establish, maintain, and enforce a reasonable supervisory system regarding its registered representatives' use of consolidated reports. A consolidated report is a single document that combines information concerning most or all of a customer's financial holdings, regardless of where those assets are held. Consolidated reports supplement, but do not replace customer account statements required pursuant to NASD Rule 2340. In April 2010, FINRA issued Regulatory Notice 10-19, which reminded firms of their obligation to supervise their registered representatives who create consolidated reports.

LPL permitted its registered representatives to use multiple systems to create and review consolidated reports to provide to customers, including two proprietary programs and those offered by at least seven third-party providers. Additionally, some of the Firm's registered representatives created consolidated reports using software such as Microsoft Word or Excel. Each of those systems allowed representatives to manually enter values for assets held away from the Firm. LPL failed reasonably to supervise its registered representatives' use of those systems in several respects.

Between December 2011 and December 2014, for example, the Firm's registered representatives created approximately 16.1 million consolidated reports using an LPL program known as "Portfolio Manager," and manually entered asset values in approximately 80,000 of those consolidated reports. During the same period, the Firm's registered representatives also created at least 202,000 consolidated reports using another LPL-provided system known as "Portfolio Review Tool," which included at least 35,000 consolidated reports with manually-entered asset values. LPL, however, chose not to retain the consolidated reports that its registered representatives generated with those two systems: it purged the consolidated reports created with Portfolio Manager from its computers after 13 months, and purged the reports created with Portfolio Review Tool after 24 months. Moreover, a programming flaw in Portfolio Review Tool permitted registered representatives to delete immediately the consolidated reports they created with that system from LPL's computers, along with the data the representatives used to create the reports. Consequently, LPL is not able to determine which of its registered representatives generated consolidated reports using Firm-provided systems or whether customers received inaccurate or misleading consolidated reports.

LPL also is not able to identify its registered representatives who generated consolidated reports using systems from third-party providers. Since at least 2009, LPL has permitted its registered representatives to purchase licenses directly from vendors for access to systems that create consolidated reports. Because the Firm's registered representatives contract directly with third-party vendors, LPL is not able to identify with certainty all of the systems that its representatives use to create consolidated reports or the number of consolidated reports those representatives generated. Moreover, LPL does not know whether some of those third-party providers allow the Firm's registered representatives to manually enter asset values in consolidated reports, or whether the third-party providers store confidential customer information on their systems. Similarly, the Firm is not able to identify all of its registered representatives whom it believes generated consolidated reports using software such as Excel, Word, and similar products.

Since at least 2010, the Firm has reviewed its policies and procedures governing the use and supervision of consolidated reports and considered revising its supervisory procedures to limit its registered representatives' use of third-party systems for consolidated reports and to prohibit their creation of consolidated reports using software such as Excel and Word. The Firm, however, did not begin to modify its supervisory procedures until November 2014.

By failing to reasonably supervise the use of consolidated reports by its registered representatives, LPL violated NASD Rules 3010(a) and (b) and FINRA Rule 2010. By failing to retain some of the consolidated reports, LPL also violated Section 17 of the Securities Exchange Act of 1934 and SEC Rule 17a-4 thereunder; NASD Rules 3110 and 3010(d)(3); and FINRA Rules 4511 and 2010.

2. LPL Failed to Reasonably Supervise Radio Shows Broadcast By Two Representatives and to Review Other Advertising Materials

In June 2011, LPL executed an AWC consenting to findings that it failed to supervise two representatives in a California branch office. For five years, from March 2005 through March 2010, the two representatives aired approximately 520 live, call-in radio shows on "Radio Iran," an AM radio station in California. The representatives broadcast their program in Farsi. Over that five-year period, LPL failed to request or review any translated copies of the representatives' broadcasts. FINRA censured LPL and fined it \$25,000. At that time, the Firm informed FINRA that it had changed its "internal processes" in response to its "administrative oversight" in failing to supervise the representatives' broadcasts.

Despite the findings in the AWC and its undertaking to remedy its deficient supervision of these brokers' radio broadcasts, the Firm failed to adequately supervise the radio shows for an additional two years. From July 2011 through July 2012, the two representatives continued to host their radio show about four times each month on Radio Iran. During their broadcasts, the two representatives promoted products through unwarranted and misleading claims, and made numerous assertions that violated FINRA's advertising rules. LPL reviewed transcripts of four of the 44 shows that the representatives broadcast, but not until approximately seven to ten months after each of the shows aired. LPL's review of the transcripts was therefore ineffective. For example, LPL's review of transcripts from shows that were broadcast in December 2011 and

February 2012 highlighted “deficiencies … which must be addressed immediately,” but the Firm did not provide those comments to the representatives until many months later, by which time they had broadcast at least 20 more shows.

Additionally, the Firm failed to supervise advertising materials used by other representatives. For example, during the period July 2011 through June 2012, LPL approved at least 17 advertisements for use by its representatives that violated FINRA’s advertising rules. Some of those advertisements, moreover, included misleading claims or omitted material information about the risks of the investments discussed in the advertisements. In one instance, LPL approved an advertisement for a seminar presentation to retired individuals, but the advertisement incorporated outdated market data and misleadingly characterized certain investments as having “no risk.” LPL also filed 16 public communications with FINRA more than 10 days after the Firm’s representatives first used them.

By failing to reasonably supervise the two representatives’ radio programs, LPL violated NASD Rule 3010(a) and FINRA Rule 2010. Additionally, by failing to reasonably supervise advertising materials used by other representatives, LPL violated NASD Rules 2210(d)(1)(A), 2210(d)(1)(B), 2210(c)(2), 3010(a), and FINRA Rule 2010.

3. LPL Failed to Review Written Correspondence in a Timely Manner

LPL failed to reasonably supervise certain of its representatives’ business-related correspondence. During the period April 2010 through July 2011, the Firm’s OSJ located in San Diego, California, failed timely to review correspondence from the branch offices and representatives that it supervised, contrary to LPL’s procedures. The San Diego OSJ was responsible for supervising a significant number of the Firm’s registered representatives. The OSJ did not review most of that correspondence until FINRA announced that it would conduct an on-site examination of the office. Of the 391 pieces of correspondence that the OSJ reviewed during that period, 213 pieces were approved by a registered principal and dated on the business day before FINRA began an on-site examination at the OSJ. Another 67 pieces of correspondence bore a registered principal’s initials, but were not dated.

By failing timely to review business-related written correspondence, LPL violated NASD Rule 3010(a) and (b) and FINRA Rule 2010.

4. LPL Failed To Reasonably Supervise Certain Non-Solicitation Letters

From January 2007 through December 2012, LPL failed to track and monitor non-solicitation letters for low priced securities. The Firm’s procedures required that its registered representatives obtain, and maintain in the branch office, a letter of non-solicitation signed by the client for each unsolicited trade involving a low priced security. LPL, however, failed to implement adequate supervisory controls to ensure that these procedures were followed. Non-solicitation letters were not maintained electronically, thus the Firm’s designated principals and home office supervisory principals could not readily determine if the required letters had been obtained by the registered representatives whom they supervised.

By failing to implement and maintain an adequate system to review non-solicitation letters, LPL violated NASD Rules 3010(b) and 2110 and FINRA Rule 2010.

F. LPL Failed to Comply with Certain Registration Requirements

The Firm failed to verify prior employment of certain of its registered representatives when they registered with the Firm. For example, from July 2011 through June 2012, approximately 3,300 registered representatives became associated with LPL. During that period, LPL failed to verify the prior employment of approximately 1,782 of those representatives when they registered with the Firm, in violation of FINRA and MSRB rules. Additionally, from approximately April 2013 until October 2013, LPL failed to enforce its procedures, which required the Firm to re-verify the registration status and financial information of "candidates" whose registration through LPL was still pending 90 days after they submitted their applications.

Additionally, from July 2011 through at least December 2012, LPL failed to make timely filings of Form U4 amendments and Forms U5. For example, in at least 34 instances during the one-year period between July 2011 and June 2012, LPL failed timely to amend its representatives' Forms U4. In 33 of those instances, LPL filed amendments to its representatives' Forms U4 between 31 and 179 days after the Firm learned of events triggering its obligation to file the amendments. In 10 of those instances, LPL failed to amend its representatives' Forms U4 until FINRA Staff notified the Firm that it had not made the required filings. From October 2012 through December 2012, LPL similarly failed to file 54 amendments to its representatives' Forms U4 in timely fashion.

Additionally, during the one-year period between July 2011 and June 2012, LPL failed timely to file or amend 18 Forms U5 after it terminated those representatives' registrations with the Firm, and therefore failed timely to disclose customer complaints against the representatives or the results of LPL's internal reviews.

By failing to establish and enforce supervisory procedures reasonably designed to verify certain registered representatives' prior employment, LPL violated NASD Rule 3010(a) and (b), FINRA Rule 2010, and MSRB Rules G-7 and G-27. By failing timely to file Form U4 amendments and Forms U5, LPL violated FINRA Rules 1122 and 2010, and Article V, Sections 2 and 3 of the FINRA By-laws.

G. LPL Failed to Comply with Rule 204 of Regulation SHO

Rule 204 of Regulation SHO requires a firm that has a fail-to-deliver position at a registered clearing agency in any equity security for a long or short sale transaction in that equity security to close out its fail-to-deliver position by borrowing or purchasing securities of like kind or quality. LPL did not comply with this requirement. From November 30, 2011 to April 9, 2012, the Firm, on 17 occasions, had a fail to deliver position at a registered clearing agency in an equity security resulting from a long sale trade. LPL, however, did not close-out the position by purchasing or borrowing securities of like kind and quantity within the time frame and manner required by Rule 204(a)(1) of Regulation SHO.

Additionally, the Firm failed to establish and maintain written supervisory procedures reasonably designed to achieve compliance with Rule 204 of Regulation SHO. In particular, the Firm's procedures did not provide for (1) identification of persons responsible for supervision; (2) supervisory steps to be taken by the persons identified; (3) when such supervisory steps were to be undertaken; and (4) how such supervisory steps were to be documented.

Based on the foregoing, LPL violated Rule 204(a)(1) of Regulation SHO, NASD Rules 3010(a) and (b) and FINRA Rule 2010.

OTHER FACTORS

In determining the appropriate sanctions in this matter, FINRA considered the Firm's substantial commitment of additional resources, including the hiring of additional legal and compliance personnel, and its representation that it will continue its increased commitment of resources to improve its supervisory systems and procedures so as to meet its regulatory obligations.

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

1. A censure;
2. A fine in the amount of \$10 million (\$37,500 of which pertains to violations of MSRB Rules G-7, G-14, G-15 and G-27; \$175,000 of which pertains to violations of FINRA Rule 2360(b)(5); and \$50,000 of which pertains to violations of Rule 204 of Regulation SHO); and

The Firm further agrees to the following:

3. **Written Plan to Review and Improve Supervision**
 - a. Within 90 days of the date of Notice of Acceptance of this AWC, the Firm will submit to FINRA a written plan of how it will undertake to conduct a comprehensive review of the adequacy of its policies, systems and procedures (written and otherwise) and training relating to the conduct addressed in this AWC, including the length of time the review of each particular issue is anticipated to take, and will describe its additional commitment of resources and personnel to its legal and compliance functions, including control and risk functions.
 - b. FINRA will review the plan submitted by LPL. If FINRA determines that the plan reasonably complies with the specific requirements set forth in this AWC, and is in keeping with the general purpose of the undertaking, FINRA will not object to the plan. The date that FINRA notifies LPL that it does not object to the plan shall be the Notice Date.

- c. In the event FINRA objects to the plan, LPL may address FINRA's objection(s) and resubmit the plan within 30 days of being notified of FINRA's objection(s). A failure to resubmit to FINRA a plan that is reasonably designed to meet the specific requirements and general purpose of the undertaking shall be deemed a violation of the terms of this agreement.
- d. At the conclusion of LPL's comprehensive review, which shall be no more than 180 days after the Notice Date, LPL shall certify to FINRA in a submission signed by the Firm's Chief Risk Officer that its policies, systems, procedures, and training implemented in connection with this undertaking are adequate and reasonably designed to address the conduct at issue in this AWC. In providing this certification, the Firm shall describe the review performed and the conclusions reached and shall describe the additional resources and personnel it is devoting to its legal and compliance functions.
- e. In conjunction with the Firm's submission of the written plan referenced in paragraph B.3.a above, the Firm will schedule a meeting with FINRA staff to review the proposed plan. Thereafter, and continuing until such time as will be mutually agreed upon by FINRA staff and the Firm, representatives of the Firm will meet with FINRA staff on a quarterly basis to discuss the implementation of policies, systems, procedures and training relating to the conduct addressed in this AWC and the additional resources and personnel dedicated to its legal and compliance functions.

4. Report and Certification Regarding Supervision of Non-Traditional ETFs

LPL shall:

- a. Retain, within 60 days of the date of Notice of Acceptance of this AWC, an Independent Consultant, not unacceptable to the FINRA staff, to conduct a comprehensive review of the adequacy of the Firm's policies, systems and procedures (written and otherwise) and training related to the sale of non-traditional ETFs. The Independent Consultant will recommend systems and procedures that the Firm will adopt to supervise the sale of non-traditional ETFs in brokerage accounts, including but not limited to those regarding the identification of customers for whom non-traditional ETFs may be suitable, limits on the concentration and holding periods of non-traditional ETFs in customer accounts, and the creation and use of "exception reports" to monitor the purchase and sale of non-traditional ETFs in customer accounts;
- b. Exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant;
- c. Cooperate with the Independent Consultant in all respects, including by providing staff support. LPL shall place no restrictions on the Independent Consultant's communications with FINRA staff and, upon request, shall make available to

FINRA staff any and all communications between the Independent Consultant and the Firm and documents reviewed by the Independent Consultant in connection with his or her engagement. Once retained, LPL shall not terminate the relationship with the Independent Consultant without FINRA staff's written approval; LPL shall not be in and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client privilege or other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports or documents to FINRA;

- d. At the conclusion of the review, which shall be no more than 180 days after the date of the Notice of Acceptance of this AWC, require the Independent Consultant to submit to the Firm and FINRA staff a Written Report. The Written Report shall address, at a minimum, (i) the adequacy of the Firm's policies, systems, procedures, and training relating to the supervision of non-traditional ETFs; (ii) a description of the review performed and the conclusions reached, and (iii) the Independent Consultant's recommendations for modifications and additions to the Firm's policies, systems, procedures and training;
- e. Require the Independent Consultant to enter into a written agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any other employment, consultant, attorney-client, auditing or other professional relationship with LPL, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any firm with which the Independent Consultant is affiliated in performing his or her duties pursuant to this AWC shall not, without prior written consent of FINRA staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with LPL or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement;
- f. Within 30 days after delivery of the Written Report, LPL shall adopt and implement the recommendations of the Independent Consultant or, if it determines that a recommendation is unduly burdensome or impractical, propose an alternative system and/or procedure to the Independent Consultant designed to achieve the same objective. The Firm shall submit such proposed alternatives in writing simultaneously to the Independent Consultant and FINRA staff. Within 30 days of receipt of any proposed alternative procedure, the Independent Consultant shall: (i) reasonably evaluate the alternative system and/or procedure and determine whether it will achieve the same objective as the Independent Consultant's original recommendation; and (ii) provide the Firm with a written decision reflecting his or her determination. The Firm will abide by the Independent Consultant's ultimate determination with respect to any proposed alternative system and/or procedure and must adopt and implement all recommendations deemed appropriate by the Independent Consultant;

- g. Within 30 days after the issuance of the later of the Independent Consultant's Written Report or written determination regarding an alternative system and/or procedure (if any), the Independent Consultant shall certify in writing to FINRA staff that the Firm has established systems and procedures reasonably designed to achieve compliance with the supervision requirements regarding the recommendation, purchase, and sale of non-traditional ETFs, including but not limited to the deficiencies identified herein (the "certification"); and
 - h. Upon written request showing good cause, FINRA staff may extend any of the procedural dates set forth above.

5. Restitution in Connection with Non-Traditional ETFs

- a. LPL is ordered to pay restitution to customers affected by the Firm's failure to reasonably supervise its recommended sales of non-traditional ETFs as described in this AWC and subject to parameters agreed upon by FINRA staff, in the amount of \$1,664,592.05, to the customers listed in Attachment A hereto, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from the date of purchase of the ETFs, until the date of payment of restitution.

A registered principal of LPL shall submit satisfactory proof of payment of restitution or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted to Aimee L. Williams, Regional Chief Counsel, FINRA Department of Enforcement, 300 South Grand Avenue, Suite 1600, Los Angeles, CA 90071-3126, either by letter that identifies LPL and the case number or by email from a work-related account of the registered principal of LPL to [EnforcementNotice@FINRA.org](#). This proof shall be provided to the FINRA staff member listed above no later than 120 days after acceptance of this AWC.

If for any reason LPL cannot locate any affected customer identified in Attachment A after reasonable and documented efforts within 120 days from the date of this AWC is accepted, or such additional period agreed to by a FINRA staff member in writing, LPL shall forward any undistributed restitution to the appropriate escheat, unclaimed property or abandoned property fund for the state in which the customer is last known to have resided. LPL shall provide satisfactory proof of such action to the FINRA staff member identified above and in the manner described above, within 14 days of forwarding the undistributed restitution to the appropriate state authority.

- b. LPL additionally is ordered to pay restitution to its customers who purchase or purchased non-traditional ETFs during the period from April 10, 2015 through the date that the Firm establishes systems and procedures reasonably designed to achieve compliance with the supervision of non-traditional ETFs, as certified by the Independent Consultant. Within 10 days after the Independent Consultant has

provided such certification to FINRA staff, LPL shall identify its customers to whom such additional restitution is owed, and the amount of that additional restitution.

A registered principal of LPL shall submit satisfactory proof of payment of restitution or of reasonable and documented efforts undertaken to effect restitution in connection with this subsection (b). Such proof shall be submitted to Aimee L. Williams, Regional Chief Counsel, FINRA Department of Enforcement, 300 South Grand Avenue, Suite 1600, Los Angeles, CA 90071-3126, either by letter that identifies LPL and the case number or by email from a work-related account of the registered principal of LPL to EnforcementNotice@FINRA.org. This proof shall be provided to the FINRA staff member listed above no later than 120 days from the date that the Independent Consultant certifies that the Firm has established systems and procedures reasonably designed to achieve compliance with the supervision of non-traditional ETFs, as identified herein.

If for any reason LPL cannot locate any affected customer owed restitution in connection with this subsection (b) after reasonable and documented efforts within 120 days from the date that the Independent Consultant certifies that the Firm has established systems and procedures reasonably designed to achieve compliance with the supervision of non-traditional ETFs, or such additional period agreed to by a FINRA staff member in writing, LPL shall forward any undistributed restitution to the appropriate escheat, unclaimed property or abandoned property fund for the state in which the customer is last known to have resided. LPL shall provide satisfactory proof of such action to the FINRA staff member identified above and in the manner described above, within 14 days of forwarding the undistributed restitution to the appropriate state authority.

- c. The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

6. Review and Remediate Surveillance System AML Scenarios

- a. LPL shall conduct a review, covering the time period of March 2014 through March 2015, of the Surveillance System AML scenarios identified in this AWC, specifically, the two alert-based scenarios focused on the excessive use of ATM withdrawals and ATM withdrawals in foreign jurisdictions. All transactions should be reviewed and a determination made whether each reviewed transaction constituted possible suspicious activity in accordance with the Bank Secrecy Act and the implementing regulations. These transactional look-back reviews should be evidenced in a manner that explains and supports the rationale for the Firm's determination. In the event that the identified Surveillance System AML scenarios are not fully functional by March 31, 2015, LPL shall continue to conduct monthly look-back reviews until the deficiencies have been corrected and appropriately document the Firm's disposition rationale.

- b. Once the identified Surveillance System AML scenarios are fully functional, LPL shall provide FINRA with written notification of that fact. Written notice shall be provided within ten business-days from the date the identified Surveillance System AML scenarios are fully operational.
- 7. Upon written request showing good cause, the FINRA staff may extend any of the procedural dates set forth above.

The Firm agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. The Firm has submitted an Election of Payment form showing the method by which the firm proposes to pay the fine imposed.

The Firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

The Firm 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;
- 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 NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the Firm specifically and voluntarily waives any right to claim bias or pre-judgment 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.

LPL 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

LPL 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 the Firm; and
- C. If accepted:
 1. this AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my disciplinary record;
 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 4. the Firm 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. The Firm 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 the Firm'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. The Firm 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 understands 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.

April 17, 2015
Date (mm/dd/yyyy)

LPL Financial LLC

By: 

David Bergers
General Counsel
LPL Financial LLC
75 State Street, 24th Floor
Boston, MA 02109

Reviewed by:

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The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands 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.

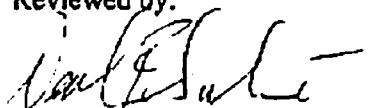
LPL Financial LLC

Date (mm/dd/yyyy)

By: _____

David Bergers
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LPL Financial LLC
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Accepted by FINRA:

05/06/2015

Date (mm/dd/yyyy)

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


Aimee L. Williams-Ramey
Regional Chief Counsel
FINRA Department of Enforcement
300 South Grand Avenue, Suite 1600
Los Angeles, California 90071-3126
Direct: (213) 613-2616
Fax: (213) 617-1570
Aimee.Williams-Ramey@finra.org

ATTACHMENT A
FINANCIAL INDUSTRY REGULATORY AUTHORITY
ACCEPTANCE, WAIVER AND CONSENT
LPL FINANCIAL LLC, NO. 2013035109701

LPL Account	Restitution Amount
1	\$86,034.97
2	\$58,547.67
3	\$56,231.77
4	\$55,890.37
5	\$48,543.93
6	\$39,407.59
7	\$35,355.16
8	\$29,485.12
9	\$27,342.18
10	\$27,249.12
11	\$26,925.91
12	\$26,712.05
13	\$20,258.68
14	\$19,959.67
15	\$19,089.04
16	\$18,046.19
17	\$17,712.61
18	\$17,306.84
19	\$17,156.33
20	\$16,834.15
21	\$16,396.86
22	\$16,096.68
23	\$16,015.95
24	\$15,785.71
25	\$14,953.57
26	\$14,534.91
27	\$14,267.38
28	\$13,422.42
29	\$13,415.54
30	\$13,141.59
31	\$12,851.22
32	\$12,781.24
33	\$12,551.97
34	\$12,256.18
35	\$12,032.58
36	\$11,966.03
37	\$11,703.83
38	\$11,339.27

ATTACHMENT A
FINANCIAL INDUSTRY REGULATORY AUTHORITY
ACCEPTANCE, WAIVER AND CONSENT
LPL FINANCIAL LLC, NO. 2013035109701

LPL Account	Restitution Amount
39	\$11,247.61
40	\$11,071.63
41	\$10,579.05
42	\$10,405.01
43	\$9,975.35
44	\$9,847.12
45	\$9,652.34
46	\$9,225.16
47	\$9,192.16
48	\$9,178.30
49	\$9,086.73
50	\$9,004.26
51	\$8,926.91
52	\$8,893.28
53	\$8,530.97
54	\$8,439.68
55	\$8,248.36
56	\$7,977.96
57	\$7,961.45
58	\$7,959.24
59	\$7,956.81
60	\$7,657.57
61	\$7,397.27
62	\$7,142.45
63	\$7,292.52
64	\$7,259.47
65	\$7,220.01
66	\$7,121.04
67	\$6,985.71
68	\$6,973.72
69	\$6,960.41
70	\$6,750.86
71	\$6,639.84
72	\$6,593.88
73	\$6,346.37
74	\$6,180.66
75	\$6,109.36
76	\$6,023.96

ATTACHMENT A
FINANCIAL INDUSTRY REGULATORY AUTHORITY
ACCEPTANCE, WAIVER AND CONSENT
LPL FINANCIAL LLC, NO. 2013035109701

LPL Account	Restitution Amount
77	\$6,001.88
78	\$5,969.70
79	\$5,769.41
80	\$5,754.86
81	\$5,735.00
82	\$5,607.52
83	\$5,580.36
84	\$5,579.10
85	\$5,433.53
86	\$5,358.46
87	\$5,290.70
88	\$5,219.29
89	\$5,148.00
90	\$5,103.02
91	\$4,989.11
92	\$4,822.20
93	\$4,802.20
94	\$4,656.03
95	\$4,632.16
96	\$4,586.05
97	\$4,571.09
98	\$4,562.69
99	\$4,512.28
100	\$4,330.70
101	\$4,233.30
102	\$4,216.79
103	\$4,145.31
104	\$4,138.51
105	\$4,111.04
106	\$4,001.80
107	\$3,984.48
108	\$3,973.68
109	\$3,942.41
110	\$3,831.86
111	\$3,685.00
112	\$3,614.85
113	\$3,563.39
114	\$3,464.47

ATTACHMENT A
FINANCIAL INDUSTRY REGULATORY AUTHORITY
ACCEPTANCE, WAIVER AND CONSENT
LPL FINANCIAL LLC, NO. 2013035109701

LPL Account	Restitution Amount
115	\$3,413.74
116	\$3,349.75
117	\$3,344.20
118	\$3,317.17
119	\$3,269.93
120	\$3,257.30
121	\$3,164.54
122	\$3,102.44
123	\$3,096.75
124	\$3,018.67
125	\$2,885.73
126	\$2,882.39
127	\$2,865.52
128	\$2,825.29
129	\$2,816.29
130	\$2,803.59
131	\$2,747.88
132	\$2,741.89
133	\$2,730.55
134	\$2,706.61
135	\$2,677.76
136	\$2,622.98
137	\$2,560.06
138	\$2,552.99
139	\$2,544.61
140	\$2,475.60
141	\$2,465.69
142	\$2,448.89
143	\$2,436.72
144	\$2,397.73
145	\$2,370.47
146	\$2,363.52
147	\$2,323.43
148	\$2,321.72
149	\$2,291.26
150	\$2,235.45
151	\$2,226.02
152	\$2,161.58

ATTACHMENT A
FINANCIAL INDUSTRY REGULATORY AUTHORITY
ACCEPTANCE, WAIVER AND CONSENT
LPL FINANCIAL LLC, NO. 2013035109701

LPL Account	Restitution Amount
153	\$2,148.03
154	\$2,144.42
155	\$2,085.91
156	\$2,042.57
157	\$2,040.69
158	\$2,040.48
159	\$2,034.15
160	\$2,017.93
161	\$1,995.06
162	\$1,981.74
163	\$1,971.04
164	\$1,967.00
165	\$1,957.22
166	\$1,952.80
167	\$1,944.99
168	\$1,902.43
169	\$1,901.45
170	\$1,856.10
171	\$1,844.48
172	\$1,833.37
173	\$1,807.85
174	\$1,788.86
175	\$1,786.70
176	\$1,778.61
177	\$1,736.27
178	\$1,721.55
179	\$1,646.40
180	\$1,580.38
181	\$1,562.71
182	\$1,556.28
183	\$1,555.64
184	\$1,548.25
185	\$1,547.04
186	\$1,515.31
187	\$1,514.61
188	\$1,502.18
189	\$1,491.22
190	\$1,484.81

ATTACHMENT A
FINANCIAL INDUSTRY REGULATORY AUTHORITY
ACCEPTANCE, WAIVER AND CONSENT
LPL FINANCIAL LLC, NO. 2013035109701

LPL Account	Restitution Amount
191	\$1,471.63
192	\$1,469.79
193	\$1,450.66
194	\$1,448.19
195	\$1,446.18
196	\$1,441.80
197	\$1,436.77
198	\$1,417.45
199	\$1,414.98
200	\$1,408.97
201	\$1,402.25
202	\$1,397.88
203	\$1,375.34
204	\$1,370.56
205	\$1,329.46
206	\$1,322.86
207	\$1,306.50
208	\$1,305.82
209	\$1,305.19
210	\$1,276.63
211	\$1,275.16
212	\$1,272.10
213	\$1,271.31
214	\$1,265.54
215	\$1,255.65
216	\$1,255.31
217	\$1,236.91
218	\$1,225.59
219	\$1,211.04
220	\$1,193.47
221	\$1,191.13
222	\$1,165.21
223	\$1,157.68
224	\$1,132.34
225	\$1,131.96
226	\$1,127.91
227	\$1,117.82
228	\$1,061.40

ATTACHMENT A
FINANCIAL INDUSTRY REGULATORY AUTHORITY
ACCEPTANCE, WAIVER AND CONSENT
LPL FINANCIAL LLC, NO. 2013035109701

LPL Account	Restitution Amount
229	\$1,059.70
230	\$1,046.26
231	\$1,013.16
232	\$996.86
233	\$994.44
234	\$987.80
235	\$984.59
236	\$980.98
237	\$969.95
238	\$959.51
239	\$926.17
240	\$908.75
241	\$892.94
242	\$890.47
243	\$889.06
244	\$869.06
245	\$803.87
246	\$801.36
247	\$800.13
248	\$797.61
249	\$783.07
250	\$778.54
251	\$752.37
252	\$726.43
253	\$724.66
254	\$724.41
255	\$717.18
256	\$707.96
257	\$700.51
258	\$684.80
259	\$673.25
260	\$664.40
261	\$656.31
262	\$627.09
263	\$612.60
264	\$575.75
265	\$575.09
266	\$557.62

ATTACHMENT A
FINANCIAL INDUSTRY REGULATORY AUTHORITY
ACCEPTANCE, WAIVER AND CONSENT
LPL FINANCIAL LLC, NO. 2013035109701

LPL Account	Restitution Amount
267	\$550.23
268	\$484.86
269	\$483.84
270	\$479.03
271	\$474.35
272	\$470.34
273	\$457.68
274	\$386.82
275	\$384.02
276	\$383.22
277	\$383.20
278	\$379.77
279	\$374.82
280	\$364.99
281	\$361.15
282	\$360.13
283	\$334.38
284	\$330.27
285	\$328.50
286	\$326.03
287	\$318.95
288	\$303.70
289	\$285.36
290	\$283.07
291	\$278.70
292	\$278.43
293	\$248.12
294	\$240.92
295	\$227.31
296	\$207.49
297	\$205.12
298	\$181.06
299	\$179.19
300	\$162.85
301	\$156.14
302	\$147.93
303	\$120.51
304	\$100.79

ATTACHMENT A
FINANCIAL INDUSTRY REGULATORY AUTHORITY
ACCEPTANCE, WAIVER AND CONSENT
LPL FINANCIAL LLC, NO. 2013035109701

LPL Account	Restitution Amount
305	\$93.44
306	\$89.56
307	\$86.52
308	\$81.92
309	\$80.27
310	\$79.11
311	\$77.13
312	\$75.48
313	\$58.05
314	\$52.57
315	\$33.26
316	\$32.77
317	\$32.36
318	\$31.67
319	\$29.81
320	\$29.19
321	\$26.10
322	\$24.08
323	\$20.36
324	\$14.07
325	\$9.43
326	\$7.23
327	\$1.02
TOTAL	\$1,664,592.05

Corrective Action Statement of LPL Financial LLC

In connection with the issuance of the Letter of Acceptance, Waiver and Consent No. 2013035109701, LPL Financial LLC (“LPL” or the “Firm”) submits this statement describing certain of the actions it has taken related to the issues described in the AWC.¹

The Firm has increased personnel, made substantial capital investments, and implemented other enhancements as part of its ongoing commitment to compliance, risk management, and supervision. The Firm increased the number of persons in its Governance, Risk, and Compliance Department from 392 employees at the end of 2012 to 599 LPL employees at the end of 2014, an increase of 207 persons, or 53 percent. Since 2012, LPL also has made significant capital expenditures and commitments to improve its systems and technology infrastructure including, for example, a new trade blotter and a new branch examinations management system. The Firm also has enhanced policies, procedures, processes, testing protocols and training related to the issues described in the AWC. As a result, LPL has substantially enhanced its compliance, risk management, and supervision activities.

In particular, the Firm notes specific steps it is taking to address issues raised in this AWC in the following areas:

- **Sale of variable annuity contracts:** LPL created a dedicated team within the Firm’s new Central Supervision Unit to help achieve consistent, centralized, and enhanced supervision of transactions. The team is responsible for the review of certain transactions by advisors, including all exchanges and replacements. LPL also is enhancing its training and policies surrounding the sale of variable annuity contracts.
- **Mutual fund switch transactions:** The Firm is in the process of revising its policies and procedures to enhance its disclosure to clients by establishing an automated process by which disclosures concerning a mutual fund switch will be sent within ten business days after trade date. As of June 2014, LPL corrected its surveillance report for mutual fund switches so that the report includes certain transactions that had been previously inadvertently omitted from the report as described in the AWC.
- **Sale of Class C mutual fund shares:** LPL is evaluating its policies around the purchase and aggregation limits with respect to Class C share mutual funds. Changes to the policy and aggregation limits for C shares will result in enhanced controls specific to the supervision and oversight of these products.
- **Sale of non-traded REITs eligible for discounts:** LPL works with product sponsors to identify customers eligible for a discount. The Firm is in the process of developing policies and a system that will allow LPL to more efficiently identify accounts that are eligible for volume discounts. LPL has not identified any customers who were eligible for, but did not receive, a volume discount.

¹ This Corrective Action is submitted by the Firm. It does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

- **Use of consolidated reports:** The Firm will require representatives to use Firm systems, such as Portfolio Manager, or Firm-approved third-party systems to prepare consolidated reports in order to facilitate centralized tracking and review of such reports. LPL also is increasing its supervisory review of manually entered positions and enhancing related record retention requirements.
- **Supervision of certain non-solicitation letters:** The Firm is in the process of revising its policies and procedures to enhance its disclosure to clients. Through an automated disclosure process, clients will receive consent letters articulating the Firm's policy and details of the transaction.
- **Sale of leveraged ETFs:** In 2013, LPL restricted leveraged and inverse leveraged ETFs from trading in brokerage accounts. The Firm also has provided detailed disclosures to customers who invest in leveraged ETFs.

LPL believes that the above-described, and other completed and planned, substantial enhancements will appropriately address the issues in the AWC.

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013035136401**

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

RE: Barry M. Ferrari (CRD No. 848024)
Respondent

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, I, Barry M. Ferrari (“Ferrari” 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

In January 1978, Ferrari first became registered with FINRA as a General Securities Representative. Thereafter, from May 1984 through November 2009, he was registered through various FINRA member firms. From May 2010 through June 28, 2013, Ferrari was registered through Stock USA Execution Services (“Stock USA” or the “Firm”) in several capacities including as a General Securities Representative, Registered Options Principal, General Securities Sales Supervisor, and General Securities Principal. Also, from May 2010 through June 28, 2013, Ferrari served as the Firm’s Chief Compliance Officer (“CCO”). On July 25, 2013, Stock USA filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) stating that Ferrari’s employment with the Firm was terminated due to a “reorganization at the company.” Ferrari’s last date of employment with the Firm was June 28, 2013.

Ferrari is not currently registered or associated with any member firm. However, Ferrari remains subject to FINRA’s jurisdiction pursuant to Article V, Section 4 of FINRA’s By-Laws.

RELEVANT DISCIPLINARY HISTORY

On September 7, 2001, FINRA accepted a Letter of Acceptance, Waiver and Consent in which Ferrari consented to the imposition of a censure and a \$5,000 fine, based on alleged findings that he had failed to report customer complaints received by his member firm, failed to report disciplinary action that led to the termination of registered representatives, and failed to report a settlement by the firm with a customer, all in violation of NASD Conduct Rules 3070 and 2110. AWC No. C10010116.

On March 13, 2015, FINRA accepted a Letter of Acceptance, Waiver and Consent in which Ferrari consented to the imposition of a \$20,000 fine and a three-month principal capacity suspension based on alleged findings that he: (i) failed to establish written procedures reasonably designed to cause the detection, investigation, and reporting, as applicable, of potential suspicious activity, in violation of FINRA Rules 3310(a) and 2010; (ii) failed to enforce Stock USA's AML procedures requiring periodic risk assessments of correspondent accounts of foreign financial institutions, in violation of FINRA Rules 3310(b) and 2010; and (iii) failed to establish written procedures reasonably designed to ensure compliance with SEC Rule 15c3-5, in violation of NASD Conduct Rule 3010 and FINRA Rule 2010. AWC No. 2008013749201.

OVERVIEW

From June 2011 through June 2013 (the "Relevant Period"), while serving as the CCO of Stock USA, Ferrari: (i) failed to demonstrate appropriate principal approval of certain advertising materials, including communications on the Firm's websites and social media accounts, in violation of NASD Rule 2210(b) and FINRA Rules 2210(b), 2220(b) and 2010; (ii) failed to enforce the Firm's written supervisory procedures ("WSP") with respect to the supervision of registered representatives' outside securities accounts, in violation of NASD Conduct Rule 3010(b) and FINRA Rule 2010; and (iii) failed to enforce the Firm's WSPs prohibiting representatives from using outside email accounts to communicate with customers, in violation of NASD Conduct Rule 3010(b) and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

1. Failure to Approve Certain Advertising Materials

NASD Conduct Rule 2210(b)(1) required a registered principal of a firm to "approve by signature or initial and date each advertisement, item of sales literature and independently prepared reprint before the earlier of its use or filing with [FINRA's] Advertising Regulation Department."

FINRA Rule 2210(b)(1), which replaced NASD Conduct Rule 2210 as of February 4, 2013, provides that “An appropriately qualified registered principal of the member must approve each retail communication before the earlier of its use or filing with FINRA’s Advertising Regulation Department.”

In addition, FINRA Rule 2220(b)(1) requires “all retail communications . . . issued by a member concerning options shall be approved in advance by a Registered Options Principal designated by the member’s written supervisory procedures.”¹

During the Relevant Period, Stock USA’s WSPs stated that Ferrari was responsible for preapproving advertising materials including sales literature, websites, and social media. Similarly, the Firm’s procedures required Ferrari to preapprove online webinars. However, Ferrari failed to preapprove certain of the Firm’s websites, social media accounts, and webinars, as required.

Specifically, Ferrari failed to review and preapprove Stock USA’s websites mastertrader.com and pristine.com. Similarly, Ferrari did not review and preapprove postings on the Firm’s Facebook, Twitter, and YouTube pages. Further, Ferrari could not demonstrate that certain posts on Stock USA’s social media accounts relating to options trading were approved in advance by him or any other Registered Options Principal at the Firm.

Additionally, during the Relevant Period, a number of registered representatives at the Firm’s branch located in White Plains, New York (the “White Plains Branch”) conducted webinars touting various online trading strategies. Ferrari did not review and preapprove any of these webinars, as required.

By failing to review and approve in advance certain advertising materials, Ferrari violated NASD Rule 2210(b) and FINRA Rules 2210(b), 2220(b) and 2010.

2. Failure to Enforce the Firm’s Procedures Regarding Registered Representatives’ Outside Securities Accounts

NASD Rule 3010 (b) requires member firms to establish, maintain and enforce written supervisory procedures reasonably designed to supervise their associated persons to ensure compliance with applicable securities laws and regulations and NASD rules.

Stock USA’s procedures stated the following regarding the review of representatives’ outside securities accounts:

SECURITIES ACCOUNTS - a registered representative who should open a securities account with another FINRA member will provide information

¹ FINRA Rule 2220 was in effect from December 14, 2009.

regarding this account and confirmations will come to the firm's home office. The CCO will review all trades. All transactions will be initialed and filed in an "Outside Accounts" binder.

During the Relevant Period, Ferrari failed to conduct an adequate review of transactions in outside securities accounts held by registered representatives at the Firm's White Plains Branch. Specifically, the White Plains Branch maintained hard copies of representatives' outside brokerage account statements but failed to forward the statements to Ferrari for review and approval. Also, Ferrari failed to send instructions to the outside brokerage firms advising that duplicate statements should be sent to the Firm's Compliance Department. Finally, Ferrari permitted JE, the branch manager of the White Plains Branch, to review and approve his own outside brokerage account statements.

By failing to enforce the Firm's procedures regarding the supervision of registered representatives' outside securities accounts, Ferrari violated NASD Conduct Rule 3010(b) and FINRA Rule 2010.

3. Failure to Enforce the Firm's Procedures Regarding Registered Representatives' Use of Outside Email Accounts

Stock USA's procedures stated that as CCO, Ferrari was responsible for reviewing incoming and outgoing correspondence, including email. The procedures further stated that "the Firm does not allow the use of any outside e-mail accounts for correspondence to its customers."

During the Review Period, three representatives from the Firm's White Plains Branch used personal email accounts to communicate with Firm customers. None of these email accounts had been registered with the Firm's email review system. Moreover, each of these representatives sent emails from their personal accounts to Ferrari and other Firm principals. Accordingly, the Firm and Ferrari should have taken steps to investigate whether these representatives were using the outside email accounts to communicate with customers in violation of the Firm's WSPs. Nevertheless, Ferrari failed to investigate the representatives' use of outside email accounts and failed to prevent the representatives from using these outside email accounts or to have the accounts registered with the Firm.

By failing to enforce the Firm's procedures regarding the supervision of registered representatives' use of outside email accounts, Ferrari violated NASD Conduct Rule 3010(b) and FINRA Rule 2010.

- B. I also consent to the imposition of the following sanctions:
- a three-month suspension from association with any FINRA member in a principal capacity; and
 - a \$10,000 fine.

The fine shall be due and payable either immediately upon reassociation with a member firm following the suspension noted above, 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 imposed in this matter.

I understand that if I am barred or suspended from associating with any FINRA member in a principal capacity, 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 a principal capacity, during the period of the bar or suspension (see FINRA Rules 8310 and 8311). Furthermore, because I am subject to a statutory disqualification during the suspension, if I remain associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

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 pre-judgment 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;
- 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; and

- 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.

05/07/2015
Date (mm/dd/yyyy)

Barry M. Ferrari
Barry M. Ferrari

Accepted by FINRA:

5/26/2015
Date

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

Noel C. Downey
Noel C. Downey
Senior Regional Counsel
FINRA Department of Enforcement
581 Main Street – Room 710
Woodbridge, NJ 07095
732-596-2042 (telephone)
202-721-6548 (facsimile)

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2014041848801**

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

RE: Michael S. Bell, Respondent
General Securities Representative/General Securities Principal
CRD No. 1240582

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Michael S. Bell ("Bell" 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

Bell first became associated with a FINRA member firm in 1984, and he received his Series 7 registration in April 1988. He thereafter received his Series 24 registration in May 1988. He has also obtained his Series 2, 3, 22, 39 and 63 licenses. During his career in the securities industry, Bell has been associated with numerous different FINRA member firms. From April 2010 through June 2014, Bell was employed by Westpark Capital, Inc ("Westpark" or the "Firm") and registered with FINRA as a General Securities Representative and a General Securities Principal. The Firm terminated Bell's employment after its discovery of Bell's use of a personal email account to solicit securities purchases, and filed a Form U5 terminating his association with Westpark on July 8, 2014. Bell is not currently associated with a FINRA member firm, and he does not have any previous disciplinary history. Although Bell is not currently associated with a FINRA member firm or registered with FINRA, he is subject to the jurisdiction of FINRA pursuant to Article V, Section 4 of FINRA's By-Laws, which provides for a two-year period of retained jurisdiction over formerly registered persons.

OVERVIEW

Between April and June 2014 (the "Relevant Time Period"), Bell violated the Firm's Written Supervisory Policies ("WSPs") by sending approximately 20 emails relating to Firm business on his personal email account. This conduct violated FINRA Rule 2010 and caused his Firm to maintain inaccurate books and records in contravention of Section 17(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 17a-4 thereunder. Moreover, several of these emails recommended the purchase of interests in MD, a private placement investment offered by the Firm, and were unbalanced, promissory, misleading and/or lacked reasonable basis. As a result of such conduct, Bell violated FINRA Rules 2210(d)(1)(A), 2210(d)(1)(B), 2210(d)(1)(F), and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

FINRA Rule 2010 requires that members and associated persons "observe high standards of commercial honor and just and equitable principles of trade." Section 17(a) of the Securities Exchange Act, and Rule 17a-4(b)(4) thereunder, requires that broker-dealer firms keep originals of all communications relating to its business sent to or received by customers for a period of three years.

During the Relevant Time Period, Bell used his personal email address to communicate with current and prospective customers without the Firm's knowledge or consent, sending approximately 20 emails from this personal email account. These communications related to customers' existing investments at the Firm, and also solicited existing and potential customers to make new investments through Bell. Emails from Bell's personal account were not monitored or retained by the Firm. Bell had been previously disciplined by the Firm for e-mail-related misconduct, and he knew that the use of personal email was unauthorized and violated the Firm's WSP's. By engaging in this conduct, Bell violated FINRA Rule 2010 and caused the Firm to be in violation of Section 17(a) of the Exchange Act and Rule 17a-4(b)(4).

FINRA Rule 2210(d)(1) establishes standards for communications with the public and provides that all such communications must be "fair and balanced," and "provide a sound basis for evaluating the facts in regard to any particular security," (FINRA Rule 2210(d)(1)(A)); that they "may not make any false, exaggerated, unwarranted, promissory or misleading statement or claim," (FINRA Rule 2210(d)(1)(B)); and that they "may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast." (FINRA Rule 2210(d)(1)(F)).

During the Relevant Time Period, Bell sent six emails to two prospective customers concerning an investment in a private placement ("MD") that were unbalanced, misleading, promissory, projected performance and/or lacked reasonable basis. Certain examples of Bell's emails that were unbalanced,

misleading, promissory, projected performance and/or lacked reasonable basis include the following:

- "It is not very often that we see an ipo with such a head start prior to the offering. This investment gets you in at 10% of the ipo price plus warrants at the same level."
- "Ipo price must be at least \$3 per share ... assuming stock simply holds the price for 6 months, a \$50 thou investment is worth \$116,664 ... of course nothing is a guarantee, but we expect stock to trade higher since company is expanding so rapidly ... expecting over \$80 million this year revenue."
- "THIS IS NOT A BOND ... it is an equity play where you buy stock pre ipo at 60% of ipo price . . PLUS A WARRENT [sic] AT SAME PRICE ... going public this fall ... company doing extremely well ... IF STOCK PRICE SIMPLY REMAINS AT IPO PRICE INVESTOR MORE THAN DOUBLES INVESTMENT ... I dont [sic] think I will ever get a situation like this again ... if you like making money, you should hear the whole story from me ... comp[any] [sic] to do over \$80 million this year .. once again ... THIS IS A STOCK PLAY."

By engaging in the foregoing misconduct, Bell violated FINRA Rules 2210(d)(1)(A), 2210(d)(1)(B), 2210(d)(1)(F), and FINRA Rule 2010.

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

A three month suspension from association with any FINRA member firm in all capacities. Respondent has submitted a sworn financial statement and demonstrated an inability to pay. In light of the financial status of Respondent, no monetary sanctions have been imposed.

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

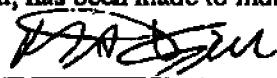
I understand that:

- 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.

4/20/15
Date

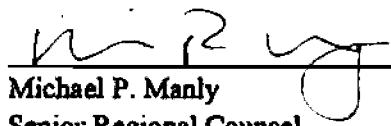


Respondent Michael S. Bell

Accepted by FINRA:

4/30/2015
Date

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



Michael P. Manly
Senior Regional Counsel
FINRA Department of Enforcement
12801 North Central Expy., Ste. 1050
Dallas, Texas 75248
Phone (972) 716-7612
Fax (972) 701-8554

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2012033568901**

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

RE: Wells Fargo Advisors LLC, Respondent
CRD No. 19616

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Wells Fargo Advisors LLC ("Wells Fargo Advisors," the "Firm" or "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 me 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

Wells Fargo Advisors has been a member of FINRA since 1987. The Firm, headquartered in St. Louis, Missouri, is the retail brokerage and wealth management affiliate of Wells Fargo & Company and an affiliate of Wells Fargo Bank N.A.

Wells Fargo Advisors maintains approximately 7,000 branch offices across the United States and employs approximately 25,000 registered representatives located in its headquarters and branch offices.

RELEVANT DISCIPLINARY HISTORY

Wells Fargo Advisors has the following relevant disciplinary history:

In Letter of Acceptance, Waiver and Consent No. 2008014350501 (May 2013), FINRA found that, between January 2007 and December 2008, Wells Fargo Advisors made unsuitable recommendations to customers to purchase certain floating rate loan funds resulting in significant losses to hundreds of customers, in violation of NASD Rules 2310 and 2110 and

FINRA Rule 2010. The Firm also failed to establish and maintain a system for supervising sales of floating rate funds that was reasonably designed to achieve compliance with FINRA suitability requirements, in violation of NASD Rules 3010 and 2110 and FINRA Rule 2010. FINRA censured and fined the Firm \$1.25 million and ordered restitution of \$1,981,561.70 to be paid to affected customers.

In Letter of Acceptance, Waiver and Consent No. 2009019113901 (April 2012), FINRA found that, between January 2008 through June 2009, Wells Fargo Advisors made unsuitable recommendations to customers to purchase certain leveraged, inverse and leveraged-inverse exchange-traded funds (“non-traditional ETFs”) resulting in significant losses to customers, in violation of NASD Rules 2310 and 2110 and FINRA Rule 2010. The Firm also failed to establish and maintain a supervisory system, including written procedures, for the sale of non-traditional ETFs that was reasonably designed to achieve compliance with FINRA suitability requirements, in violation of NASD Rules 3010 and 2110 and FINRA Rule 2010. FINRA censured and fined the Firm \$2.1 million and ordered restitution of \$641,489 to be paid to affected customers.

In Letter of Acceptance, Waiver and Consent No. 2008015651901 (November 2011), FINRA found that, between January 2006 and July 2008, Wells Fargo Advisors made unsuitable recommendations to customers to purchase reverse convertibles resulting in significant losses to customers, in violation of NASD Rules 2310 and 2110. The Firm also failed to establish and maintain a system for supervising the Firm’s sales of floating rate funds that was reasonably designed to achieve compliance with FINRA suitability requirements, in violation of NASD Rules 3010 and 2110. FINRA censured and fined the Firm \$2 million and ordered undertakings concerning its sales of reverse convertibles resulting in restitution of approximately \$2 million to be paid to affected customers.

OVERVIEW

From August 2005 to July 2012 (the “relevant period”), Wells Fargo Advisors made unsuitable recommendations to retail customers to purchase Structured Repackaged Asset-Backed Trust Securities (“STRATS”), a complex structured product that paid a floating rate of periodic income up to a minimum or maximum rate, based on the STRATS Trust’s interest in a capital security issued by JP Morgan Chase (“JP Morgan”) and the STRATS Trust’s interest in an interest rate swap contract.¹ The STRATS could be terminated by the issuing Trust under certain limited circumstances, one of which was the call or redemption of the underlying JP Morgan capital security.

In addition, upon termination, holders of the STRATS would receive the call or redemption proceeds of the underlying capital security and accrued interest minus the amount of the swap termination fee determined under the swap agreement. As a result of the swap termination fee,

¹ The STRATS were initially sold by Wachovia Securities LLC. On December 31, 2008, Wells Fargo & Company acquired Wachovia Corporation and its affiliated brokerage businesses, including Wachovia Securities LLC. Wachovia Securities LLC changed its name to Wells Fargo Advisors LLC in 2009 and Wells Fargo Investments LLC was integrated into Wells Fargo Advisors LLC in 2011. Wells Fargo Advisors is the legal successor to Wachovia Securities.

customers who purchased the STRATS could lose a significant percentage of their principal investment if certain events occurred, including the redemption of the underlying JP Morgan capital security.

Wells Fargo Advisors, however, failed to educate its registered representatives regarding these risks and its sales force therefore could not inform retail customers who purchased the STRATS that they could suffer significant losses. The Firm also failed to provide product specific training to its sales force and its internal-use only communications regarding the STRATS failed to adequately describe the risks of investing in these complex products.

Given its registered representatives' limited comprehension of the product termination provisions and its risks, the Firm lacked a reasonable basis for recommending the STRATS to its retail customers, in violation of NASD Rules 2310 and 2110 and FINRA Rule 2010.²

Moreover, the Firm's internal-use only brochures for the STRATS were not fair and balanced and failed to provide a sound basis for evaluating the risks of investing in the STRATS, in violation of NASD Rules 2211(d) and 2110 and FINRA Rule 2010. Finally, the Firm failed to establish and maintain a supervisory system reasonably designed to ensure compliance with FINRA rules relating to suitability, in violation of NASD Rules 3010(a) and 2110 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

During the relevant period, Wells Fargo Advisors sold approximately \$12 million worth of the STRATS to its retail customers, in both primary and secondary markets. The STRATS cost \$25 per share at the initial offering and traded thereafter in the secondary market. The STRATS were structured to swap the yield of the underlying JP Morgan capital security at 5.85% for a variable interest rate paid to investors that was tied to a 90 day U.S. Treasury bill rate plus 1%, with a ceiling of 8% and a floor of 3%.

Although Wells Fargo Advisors provided its sales force training on structured products, none of this training related specifically to the unique features of the STRATS. Additionally, although the Firm's intranet page dedicated to fixed income products provided basic information concerning the STRATS, it did not provide any information concerning the risks of investing in these products, and specifically did not address the risks to customer principal in the event of a redemption of the underlying JP Morgan capital security.

Under the terms of the prospectus for the STRATS, the amount paid to a customer in the event of a termination was the proceeds of the redemption of underlying JP Morgan capital security plus accrued interest and less the swap termination fee. In certain circumstances, the customer would face a substantial risk of loss of principal upon termination of the STRATS due to the amount of the swap termination fee. The Firm's registered representatives generally were not familiar with such risks of investing in the STRATS and were consequently unable to explain such risks when recommending the product to the Firm's retail customers.

² FINRA Rule 2010 superseded NASD Rule 2110, effective December 15, 2008.

In July 2012, JP Morgan redeemed the underlying capital security, causing the STRATS to be terminated. JP Morgan redeemed the underlying capital security at par value plus accrued interest. Based on the terms of the underlying swap agreement, customers received the proceeds of the redemption after the swap termination fee was paid. As a result, at the time of the STRATS' termination, many customers holding the STRATS received less, and in some cases significantly less, than the amount they paid for the STRATS.

1. Wells Fargo Advisors Lacked a Reasonable Basis for Recommending the STRATS to Retail Customers

NASD Rule 2310(a) requires members, in "recommending to a customer the purchase, sale or exchange of any security" to have "reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs."

In Notices to Members 12-03 and 05-59, FINRA reminded members that sold complex products to perform a reasonable basis suitability determination, in accordance with NASD Rule 2310, before recommending such products to retail customers and to train associated persons on the unique features and risks of the structured products.³ For a member to discharge its reasonable basis suitability obligation, it must perform appropriate due diligence to ensure an understanding of the product's potential risks and rewards and must educate its registered representatives, and their supervisors, about the characteristics and risks of each structured product before it allows registered persons to sell the product to investors.

During the relevant period, Wells Fargo Advisors failed to educate its registered representatives regarding the unique features and risks of the STRATS. The Firm did not adequately inform its sales force, either through product-specific documents or training, that the STRATS were based on an underlying derivatives transaction involving a swap, a feature which had the effect of placing a customer's principal investment at risk if the STRATS' underlying bonds were redeemed. The Firm's sales force did not know under what circumstances a customer's principal would be at risk, including what would happen if the underlying capital security was redeemed, nor did the sales force know that customers could suffer significant losses in that eventuality. As a result, Wells Fargo Advisors' registered representatives did not comprehend the risks to customers of investing in the STRATS and thus lacked a reasonable basis for recommending these products to the Firm's retail customers.

Based on the foregoing, Wells Fargo Advisors violated NASD Rules 2310(a) and 2110 and FINRA Rule 2010

2. Wells Fargo Advisors' Institutional Sales Literature Concerning the STRATS Did Not Disclose the Risks of Investing in these Products

NASD Rule 2211(d) requires that "institutional sales material," which includes internal-use only material, meets the content standards applicable to communications with the public under NASD Rule 2210(d). NASD Rule 2210(d)(1), in turn, provides that subject communications "shall be

³ Notice to Members 12-03 (January 2012); Notice to Members 05-59 (September 2005).

based on principles of fair dealing and good faith, must be fair and balanced and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry or service.”

Wells Fargo Advisors made available to its sales force certain internal-use only documents regarding the STRATS. These documents did not contain adequate descriptions of the product, nor did they disclose the degree to which STRATS customers could lose principal if the underlying capital security was redeemed. For example, although an internal-use only brochure for the STRATS listed several risk factors, none of these explained that a customer investing in the STRATS could lose a significant percentage of their principal investment. Accordingly, the Firm’s internal-use only communications were not fair and balanced and did not provide a sound basis for evaluating the facts surrounding the STRATS or its risks.

Based on the foregoing, Wells Fargo Advisors violated NASD Rules 2211(d) and 2110 and FINRA Rule 2010.

3. Wells Fargo Advisors Failed to Educate its Sales Force on the Risks to Customers of Investing in the STRATS

NASD Rule 3010(a) requires members to “establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules.”

Wells Fargo Advisors failed to establish and maintain supervisory procedures, including training of its registered representatives, reasonably designed to achieve compliance with FINRA suitability standards. Wells Fargo Advisors’ supervisory system for the sale of STRATS was not reasonably designed because it failed to include adequate training for the Firm’s sales force regarding the risks of investing in the product. Wells Fargo Advisors did not provide product specific training to its registered representatives, and the internal-use only materials made available to its registered representatives did not adequately inform its representatives about the risks of investing in the STRATS.

Based on the foregoing, Wells Fargo Advisors violated NASD Rules 3010(a) and 2110 and FINRA Rule 2010.

B. Wells Fargo Advisors also consents to the imposition of the following sanctions:

1. A censure; and
2. A Fine in the amount of \$500,000.

Wells Fargo Advisors further agrees to pay restitution to customers listed on Attachment A hereto, who purchased STRATS in a Wachovia Securities or Wells Fargo Advisors account and were still holding STRATS at the time of termination, in the total amount of \$241,974.34, plus pre-judgment interest at the

rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from July 16, 2012 until the date this AWC is accepted by the NAC.

A registered principal on behalf of Respondent shall submit satisfactory proof of payment of restitution or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted to C. Anthony Trambley, Senior Counsel, FINRA Enforcement, 15200 Omega Drive, Third Floor, Rockville, MD 20850 either by letter that identifies the Respondent and the case number or by e-mail from a work-related account of the registered principal of Respondent to EnforcementNotice@FINRA.org. This proof shall be provided to the FINRA staff member listed above no later than 120 days after acceptance of the AWC.

If for any reason Respondent cannot locate any customer identified in Attachment A after reasonable and documented efforts within 120 days from the date the AWC is accepted, or such additional period agreed to by a FINRA staff member in writing, Respondent shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property or abandoned property fund for the state in which the customer is last known to have resided. Respondent shall provide satisfactory proof of such action to the FINRA staff member identified above and in the manner described above, within 14 days of forwarding the undistributed restitution and interest to the appropriate state authority.

The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

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

Respondent agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. Respondent has submitted an Election of Payment form showing the method by which it propose to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

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 Respondent;
- 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 pre-judgment 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.

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:

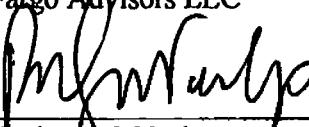
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will 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 actions 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 the subject matter thereof 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: (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. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understand 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 understands 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.

10/12/05
Date (mm/dd/yyyy)

Respondent
Wells Fargo Advisors LLC

By: 
Robert W. Vorlop
Managing Director

Reviewed by:

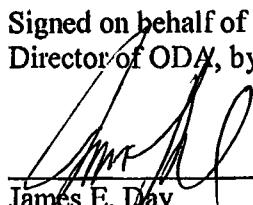

Nicholas T. Chapekis
Senior Company Counsel
Wells Fargo & Company Law Department
MAC H0004-123
One North Jefferson Avenue
St. Louis, MO 63103
Phone: 314-875-3566
Fax: 336-796-8674

Accepted by FINRA:

8/31/15

Date

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


James E. Day
Vice President & Chief Counsel
FINRA Department of Enforcement
15200 Omega Drive, Third Floor
Rockville, MD 20850
Phone: 301-258-8520
Fax: 202-720-8303

Attachment A
AWC No. 2012033568901

Account No. Ending	Restitution Amount	Account No. Ending	Restitution Amount
9056	\$4,875.88	8516	\$2,906.54
7237	\$1,803.64	7712	\$1,082.17
5311	\$1,803.64	4588	\$7,214.68
4623	\$1,442.95	8264	\$17,628.53
0892	\$1,082.17	7347	\$17,003.53
3133	\$1,778.18	6809	\$2,557.51
6822	\$4,689.51	1319	\$1,442.95
8815	\$2,210.87	9629	\$721.64
3496	\$4,290.06	0916	\$5,056.06
1482	\$4,455.51	0918	\$4,002.70
0103	\$3,214.42	4137	\$3,369.08
5962	\$1,675.36	0700	\$1,934.59
3014	\$3,363.81	7146	\$3,607.32
2086	\$2,469.81	1360	\$7,651.41
5527	\$3,967.18	6642	\$21,644.00
2241	\$1,442.95	1174	\$3,569.11
2449	\$7,015.19	3324	\$2,910.24
6384	\$721.46	0219	\$1,803.64
6293	\$1,442.95	3328	\$3,736.40
5885	\$1,442.95	9681	\$1,442.95
2889	\$721.46	2453	\$3,018.32
7262	\$2,437.26	2453	\$3,018.32
5775	\$3,800.70	8957	\$1,284.19
0202	\$8,101.41	0498	\$1,005.18
4250	\$1,519.20	4464	\$1,803.64
0041	\$15,307.85	5232	\$985.18
1671	\$1,249.43	5232	\$985.18
8652	\$7,051.41	9092	\$2,234.49
8710	\$3,607.32	7092	\$3,968.04
9015	\$721.46	3418	\$721.46
8003	\$2,885.87	2630	\$1,437.86
5939	\$360.73	4772	\$6,493.20
7264	\$3,342.39	3319	\$1,442.95
		Total	\$241,974.34

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013035242501

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

RE: Blue Capital Securities, Inc., Respondent
Member Firm
BD No. 38901

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Blue Capital Securities, Inc. ("BCS" or "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 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

BCS was approved as a FINRA member firm on September 27, 1995.

The firm employs 13 registered persons and operates from three branch offices, including its primary office located in New York, New York. The firm engages in a general securities business including retailing corporate equity securities over the counter, selling corporate debt securities and selling interests in mortgages or other receivables.

RELEVANT DISCIPLINARY HISTORY

BCS has no prior disciplinary history with the SEC, FINRA, any other self-regulatory organization or any state securities regulator.

OVERVIEW

This case involves several violations arising from BCS's involvement in the business of selling mortgage backed securities ("MBS") and collateralized mortgage obligations ("CMOs") during 2012. BCS entered this business line for the first time in August 2012 when several new registered representatives joined the firm. During 2012, in connection with selling CMOs, BCS provided marketing materials for a proposed CMO transaction to at least six customers. Those marketing materials failed to adequately disclose certain risks in violation of FINRA Rules 2210 and 2010. BCS also failed to provide required CMO educational materials prior to the firm's sales of CMOs to at least seven retail customers in violation of IM-2210-8 and FINRA Rule 2010.

Additionally during 2012, in connection with BCS's MBS and CMO business, violated books and records rules and FINRA's Trade Reporting and Compliance Engine ("TRACE") rules.

BCS also violated NASD Conduct Rule 3010 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Background on CMOs

A CMO is a security that is collateralized by mortgage backed securities ("MBS"). A MBS, in turn, is an undivided interest in a pool of mortgages. The principal and interest from the mortgages underlying the MBS are used to pay CMO investors principal and/or interest, depending on the type, or "tranche" of CMOs owned. CMOs are classified, in part, based on the entity that guarantees them. CMOs guaranteed by the Government National Mortgage Association ("Ginnie Mae" or "GNMA"), a government agency, have reduced credit risk because they are said to carry the "full faith and credit" U.S. government guarantee. CMOs issued by Ginnie Mae, along with those guaranteed by Fannie Mae and Freddie Mac, both government-sponsored entities, are referred to as "agency" CMOs. CMOs come in myriad varieties, each with its own yield, price volatility and risk characteristics. CMOs are risky and sensitive to changes in market interest rates.

1. Advertising Rule Violations – Content Standards

BCS entered the MBS and CMO business in or about August 2012 after several new registered representatives who specialized in this business joined BCS from two other FINRA member firms. Certain customers serviced by these registered representatives, and whose accounts held MBS and CMOs, transferred their accounts to BCS from the registered representatives' prior firm. A number of these customers held a CMO known as GNR 2004-22 SH, a Ginnie Mae backed agency CMO. The customers had owned this CMO since in or about 2004.

In late 2012, BCS recommended to customers who owned the GNR-2004-22-SH CMO the possibility of engaging in a restructuring transaction, whereby the customers who held the CMO would sell the security. The GNR 2004-22-SH CMO would then be split into two separate securities and the customers would then purchase one piece of the newly created securities, an Inverse Interest Only ("Inverse IO") CMO.¹

In or about October and November 2012, BCS provided at least six customers a seven page document explaining the proposed restructuring transaction. This marketing material, however, failed to present a balanced discussion of risks. The document did not provide any details about the risks of investing in CMOs generally, or Inverse IO CMOs specifically. The document did not state that Inverse IO's are highly sensitive to changes in interest rates and changes in the prepayment rates of the mortgage loans underlying the CMOs and that the structure of Inverse IOs exaggerates the effect of prepayments on cash flows and market value. Similarly, the document also did not state that Inverse IO CMOs presented risks that investors could lose their entire principal. The document also did not discuss liquidity risks and did not state that the market for the Inverse IOs might be highly illiquid and that it could be difficult for customers to sell the Inverse IO.

By reason of the foregoing, BCS violated NASD Conduct Rule 2210(d)(1)(A) and FINRA Rule 2010.

2. Advertising Rule Violation – CMO Educational Material

IM-2210-8 (Communications with the Public About CMOs), now FINRA Rule 2216, provides that "[b]efore the sale of a CMO to any person other than an institutional investor, a member must offer to the customer educational material that includes," a discussion of various characteristics and risks of CMOs, the structure of a CMO, the relationship between mortgage loans and mortgage securities, questions an investor should ask before investing, and a glossary of terms.

In November 2012, BCS failed to timely provide these education materials to at least seven customers prior to the firm's sale of a CMO to those customers. Specifically, BCS failed to provide the materials prior to the customer's participation in the restructuring transaction referenced above where the

¹ Inverse IOs are structured so that interest payments made to investors move in the opposite direction of an interest rate index, such as LIBOR. Inverse IOs sell at a discount to their notional principal amount. As the notional principal amortizes and prepays, the cash flow and market value of an Inverse IO declines. As with IOs, Inverse IO tranches can expire worthless if the related principal balance is paid off prior to the maturity date of the security. Inverse IOs, along with other high risk tranches of CMOs are only suitable for "sophisticated investors" with a "high-risk profile." *Members' Obligation to Customers When Selling Collateralized Mortgage Obligations (CMOs)*, NASD NTM 93-73.

customers sold the GNR 2004-22-SH CMO and purchased the newly created GNR 12-130 GS Inverse IO CMO.

By reason of the foregoing, BCS violated IM-2210-8 and FINRA Rule 2010.

3. Books and Records Violations

During 2012, FINRA staff conducted two separate reviews of order memoranda with respect to the firm's transactions in Securitized Products:

- a. During a review period of July 2012 through December 2012, order memoranda in 59 out of 59 sampled transactions (100 percent) were incomplete or contained inaccuracies. In 59 instances, order tickets failed to identify the registered representative who entered the order; in 53 out of 59 instances (90 percent) the order tickets contained inaccurate order execution times; and in 45 out of 59 instances (76 percent), order tickets were marked "unsolicited" when this was not the case.
- b. A separate review of 36 order memoranda for transactions effected by the firm during a period of October through December 2012 identified 30 out of 36 instances (83 percent) in which BCS order tickets contained inaccurate execution times. Twenty-five out of the 30 identified instances represented order memoranda not previously identified in the July 2012 through December 2012 review period set forth above.

The conduct described in sections 3.a. and b. above constitutes separate and distinct violations of Exchange Act Rule 17a-3, and FINRA Rules 4511 and 2010.

4. Inaccurate Reporting to TRACE

FINRA staff conducted two separate reviews of BCS's TRACE reporting compliance:

- a. During a review period of July 2012 through December 2012, BCS failed to accurately report 51 out of 51 sampled TRACE-eligible transactions (100 percent) in Securitized Products that the firm reported to TRACE. BCS reported inaccurate times of order receipt, order entry and order execution for these transactions.
- b. During a separate review period of October 2012 through December 2012, BCS reported inaccurate execution times to TRACE for 31 out of 82 TRACE-eligible transactions (38 percent) in Securitized Products.

The conduct described in sections 4.a. and b. above constitutes separate and distinction violations of FINRA Rule 6730(c).

5. Failure to Report and Late Reported Transactions to TRACE

FINRA staff's two separate reviews of BCS's TRACE reporting compliance identified the following:

- a. During a review period of July 2012 through December 2012, BCS failed to report eight out of 59 sampled TRACE-eligible transactions (13.6 percent) in Securitized Products to TRACE.
- b. During a review period of October 2012 through December 2012, BCS failed to report to TRACE 36 transactions in TRACE-eligible Securitized Products within 15 minutes of the time of execution. These 36 transactions constituted 44 percent of the total number of transactions in TRACE-eligible Securitized Products that the firm reported to TRACE during the review period.

The conduct described in section 5.a. and b. above constitutes separate and distinct violations of FINRA Rule 6730(a) and a pattern or practice of late reporting without exceptional circumstances in violation of FINRA Rule 2010.

6. Inadequate Supervisory System

From at least August 2012 through December 2012, BCS failed to establish, maintain and enforce a reasonable supervisory system, including establishing reasonable written supervisory procedures, with respect to the firm's sales of MBS and CMOs, and with respect to the firm's TRACE reporting for Securitized Products.

Specifically, BCS failed to have systems and procedures in place to ensure that disclosure documents for CMOs were timely provided to customers. As a result, BCS failed to ensure that customers who purchased the GNR 2004-22-SH CMO discussed above received an Offering Circular for the transaction from BCS's clearing firm. BCS also failed to have adequate written procedures with respect to delivery of CMO educational materials and, supervisory review of CMO transactions.

BCS's systems and procedures for TRACE reporting were also inadequate. The firm's WSPs in effect from August 2012 to December 2012 did not reflect current TRACE reporting requirements with respect to both the types of securities that needed to be reported to TRACE and the time period following trade execution in which transactions must be reported to TRACE. Additionally, the firm's procedures failed to provide for a procedure or method for BCS supervisors to document or evidence supervisory reviews of TRACE reporting.

By reason of the foregoing, BCS violated NASD Conduct Rule 3010 and FINRA Rule 2010.

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

- a Censure; and
- a fine in the amount of \$50,000.

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

Respondent specifically and voluntarily waives any right to claim that Respondent is unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

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

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 Respondent;
- 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 pre-judgment 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.

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:

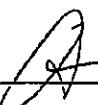
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will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

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

5/8/15

Date (mm/dd/yyyy)

Blue Capital Securities, Inc.

By: 

Name: David Margone
Title: CEO

Reviewed by:

~~Howard R. Elisofon, Esq.
Counsel for Respondent
Herrick Feinstein, LLP
2 Park Avenue
New York, NY 10016
(212) 592-1437~~

Accepted by FINRA:

June 3, 2015

Date

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

Frank M. Weber

Frank M. Weber
Senior Regional Counsel
FINRA Department of Enforcement
Brookfield Place
200 Liberty Street
New York, New York 10281
Phone: (212) 858-4324
Facsimile: (212) 858-4770

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2011030501201**

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

RE: Jon Robert Hickman, Respondent
General Securities Representative, General Securities Principal, Research Analyst, and
Research Principal
(CRD No. 4644088)

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, I, Jon Robert Hickman (“Respondent” or “Hickman”) 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

Hickman first became registered with FINRA as a General Securities Representative (“GSR”) in April 2003 through an association with a former member firm. Hickman was registered through an association with MDB Capital Group LLC (BD No. 42677) (“MDB Capital”) as a GSR and Research Analyst (“RA”) from August 31, 2005 through June 16, 2011 and as a General Securities Principal from February 23, 2009 through June 16, 2011. Since June 18, 2011, Hickman has been registered as a GSR, GP, RA and Research Principal through another member firm.

RELEVANT DISCIPLINARY HISTORY

Hickman has no disciplinary history with the Securities and Exchange Commission, any state securities agency, FINRA or any other self-regulatory organization.

OVERVIEW

From April 29, 2009 through June 14, 2011, Hickman, while registered with FINRA as a research analyst through MDB Capital, made posts on Twitter concerning equity securities that failed to disclose that he owned shares of the subject security and/or were not fair and balanced or failed to provide a sound basis for evaluating the facts in regard to a particular security. As a result, Hickman violated NASD Conduct Rule 2711(h)(1)(A) and NASD Conduct Rule 2210(d)(1)(A), NASD Interpretive Memorandum ("IM") 2210-1 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

From at least April 2009 through June 2011, Hickman maintained a Twitter account and, by June 2011, had approximately 50 followers. During the period April 29, 2009 through June 14, 2011, while registered with FINRA as a research analyst through MDB Capital, Hickman posted messages on Twitter concerning equities he covered as a research analyst without MDB Capital's knowledge. Hickman's Twitter posts constituted public appearances under NASD Conduct Rules 2711(a)(5) and 2210(a)(5) and, consequently, communications with the public under NASD Conduct Rule 2210(a).

Hickman personally owned seven securities that he discussed in eleven of his Twitter posts. However, those eleven Twitter posts failed to disclose that he owned shares of the subject securities. Moreover, fourteen of Hickman's Twitter posts either failed to be fair and balanced by disclosing risk or contingent factors or failed to provide a sound basis for evaluating certain facts discussed therein.

As a result of the foregoing conduct, Hickman violated NASD Conduct Rules 2711(h)(1)(A) and 2210(d)(1)(A), FINRA Rule 2010 and IM-2210-1.

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

- A ten business day suspension from association with any FINRA member in all capacities; and
- A \$15,000 fine.

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.

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 pre-judgment 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.

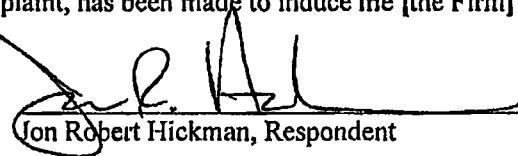
OTHER MATTERS

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 response to public inquiries about my disciplinary record;
 - 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 [the Firm] to submit it.

9/24/2014
Date (mm/dd/yyyy)



Jon Robert Hickman, Respondent

Reviewed by:



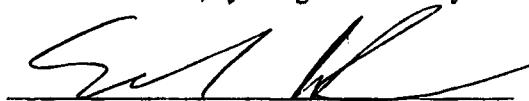
Joseph Giovaniello, Jr.
Senior Vice President and General Counsel
Ladenburg Thalmann & Co. Inc.
570 Lexington Avenue, 11th floor
New York, New York 10022
212-409-2544
Counsel for Respondent

Accepted by FINRA:

October 14, 2014

Date

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



Samuel L. Barkin
Senior Regional Counsel
FINRA, District 10
200 Liberty Street
New York, NY 10281-1003
(212) 858-4074;
direct fax: (202) 721-6573

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2012035338601

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

RE: Christopher L. Miller, Respondent
General Securities Sales Supervisor
CRD No. 1311128

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, I, Christopher L. Miller (“Miller” 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

Miller first became associated with a FINRA member firm in 1984, and he received his Series 7 registration in October 1984. During his career in the securities industry, Miller has been associated with four different FINRA member firms (excluding various firm name changes that occurred during his associations with member firms). From September 16, 2009 through December 21, 2012, Miller was associated with UBS Financial Services, Inc. (“UBS” or the “Firm”) and registered with FINRA as a General Securities Representative and a General Securities Sales Supervisor. On December 21, 2012, the Firm terminated Miller’s employment after its discovery of Miller’s posting of comments regarding particular securities on an internet message board. During the course of his career in the securities industry, Miller also obtained his Series 3, 5, 63, and 65 licenses. Miller is not currently associated with a FINRA member firm, and he does not have any previous disciplinary history.

OVERVIEW

In October and November 2012, Miller posted messages on an internet message board concerning three publicly-traded securities that were unbalanced, promissory, misleading and/or lacked reasonable basis. As a result of such conduct, Miller violated NASD Conduct Rules 2210(b)(1)(A), 2210(d)(1)(A), 2210(d)(1)(B), 2210(d)(1)(D), and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

From June 2011 until November 2012, Miller used two handles on Yahoo! Finance message boards to post approximately 120 messages, the majority of which contained opinions about various stocks and/or banter with other message board participants. All of the posts were made by Miller at home, from his personal computer during non-working hours. During October and November 2012 (the “Relevant Time Period”), Miller purported to promote three stocks: Prospect Global Resources, Inc. (“PGRX”), Vale SA (“VALE”), and GMX Resources, Inc. (“GMXR”). Miller owned varying positions in each of these three stocks during the Relevant Time Period, and at times misstated the extent of his holdings in his posts. Miller also posted under two separate aliases, occasionally with the two aliases expressing agreement with each other. Miller failed to have any of his posts approved by a registered principal responsible for advertising at UBS.

During the Relevant Time Period, Miller posted numerous statements pertaining to PGRX, VALE and GMXR that were unbalanced, promissory, misleading and/or lacked reasonable basis. For example:

PGRX

- “Fertilizer, and in particular, POTASH, will become the ‘gold’ of 2013.”
- “Prospect Global is sitting on the Mother Lode of Potash mines. Its mining costs are low, due to its shallow excavation elevation. And, Prospect just signed the largest export deal, \$2 Billion with China”
- “PGRX is a great story. I do believe this a buyout candidate at 4x, and at worst, a double from here in short order.”
- “I sold it my good man. Two of my chums from the Yard enlightened me on their crazy plan on Apollo. Grogan, you’ll learn that you can’t sit on losses and make \$\$\$. I admit I was wrong there. Off to a cricket match and a wine tasting, cigar event this afternoon on the bay with my partner, Carlton. Toodles all!”

VALE

- “This is the BUY of a lifetime for those looking for true value with growth.”
- “You deserve value. You deserve vale!!! Stock is dirt cheap at these levels...”

GMXR

- “The infamous Checkerboard, trader extraordinaire, is now BULLISH on GMXR. Critical patterns have changed. Bollinger bands looking positive, candlesticks turning. All Aboard!!! This one is going to double very, very quickly.”
- “I’m back in guys, after selling BEFORE the big drop off. I now have initiated positions OVERNIGHT in Jan March and June 13 CALLS, and have purchased 200,000 shares. See you all in the mid \$1.30 range in short order, perhaps by Wednesday.”
- “Me? I’m sitting on my balcony on the Chesapeake, smoking a well earned cigar, drinking 40 year old scotch, and staring at a beautiful star filled crisp fall eve...I traded it [GMXR] all back yesterday, BUT bought another 30,000 shares today at the open. I have said in the past that this stock was not worth holding overnight. That changed TODAY. As a trader, I bob and weave. I also cut losses ... quickly ... Oh and if you’re ever up here in the Chesapeake area, look me up ... you’ll see I bought yesterday.”

By engaging in the foregoing misconduct, Miller violated NASD Conduct Rules 2210(b)(1)(A), 2210(d)(1)(A), 2210(d)(1)(B), 2210(d)(1)(D), and FINRA Rule 2010.

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

A fine of \$15,000, an eleven-month suspension from association with any FINRA member firm in all capacities, and a requirement to requalify as a General Securities Representative by passing the Series 7 examination prior to associating with any FINRA member firm in that capacity following the eleven-month suspension.

The fine shall be due and payable either immediately upon reassociation with a member firm following the eleven-month suspension noted above, 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 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 pre-judgment 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

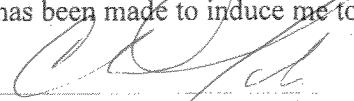
I understand that:

- 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 response to public inquiries about my disciplinary record;
 - 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.

8-13-14

Date



Respondent Christopher L. Miller

Reviewed by:



Cynthia R. Levin Moulton
Counsel for Respondent
Moulton, Wilson & Arney, LLP
800 Taft Street
Houston, Texas 77019
Telephone: (713) 353-6699
Facsimile: (713) 353-6698

Accepted by FINRA:

10-1-2014

Date

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



Michael P. Manly
Senior Regional Counsel
FINRA Department of Enforcement
12801 North Central Expy., Ste. 1050
Dallas, Texas 75248
Phone (972) 716-7612
Fax (972) 701-8554

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013035123201**

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

RE: Global Brokerage Services, Inc. (BD No. 37505),
Respondent

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Global Brokerage Services, Inc. (the "Firm," "Global," or "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 the Firm 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

Global has been a member of FINRA since January 23, 1995. The Firm employs fourteen registered representatives in its main office in Hunt Valley, Maryland or one of Global's eight branch offices. Global is a retail brokerage.

RELEVANT DISCIPLINARY HISTORY

Global has no formal disciplinary history with the Securities and Exchange Commission, any state securities agency, or any self-regulatory agency.

OVERVIEW

From February 2011 to August 2013 (the "Relevant Period"), Global failed to establish, maintain and enforce a reasonable supervisory system regarding the use of consolidated reports by its registered representatives. During the Relevant Period, Global's registered representatives provided consolidated reports to their customers that lacked required disclosures and/or contained misleading

disclosures. In addition, one of those registered representatives disseminated consolidated reports that included his own inaccurate and potentially misleading valuations for non-traded REITs and other illiquid investments. The Firm's failure to supervise its representatives in their preparation of consolidated reports violated NASD Rule 3010. Based on the foregoing, the Firm also violated FINRA Rule 2210(d)(1), NASD Rule 2210(d)(1) (for conduct before February 4, 2013),¹ and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

During the Relevant Period, certain of Global's registered representatives created consolidated reports using Morningstar or Excel for distribution to their customers. Global had no written supervisory procedures ("WSPs") specific to consolidated reports during the Relevant Period. Instead, consolidated reports were treated as correspondence, which required only that a sample (10%) be reviewed on a quarterly basis.

Global's WSPs during the Relevant Period also did not address necessary disclosures to customers. FINRA Advertising Regulation reviewed a sample of the reports and concluded that they failed to provide complete and appropriate disclosures and did not provide the Firm's customers with all of the information needed in order for them to have a sound basis for evaluating the information set forth in the consolidated reports.

During the Relevant Period, co-respondent Robert McKoy provided consolidated reports on a quarterly basis for 50-60 customers that included his own potentially misleading valuations as to the "estimated value" for certain non-traded REITs and other illiquid investments. These consolidated reports initially lacked any disclosure statement. Later, at Global's direction, he added a disclosure that inaccurately stated the asset valuations came from third-party providers. Global's supervisory personnel were aware that the registered representative was using his own valuations for certain assets and that his valuations differed from the issuers' valuations.

Based on the foregoing, Global violated NASD Rule 3010, FINRA Rule 2210(d)(1), NASD Rule 2210(d)(1) (for conduct prior to February 4, 2013), and FINRA Rule 2010.

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

- a censure; and

¹ FINRA Rule 2210 became effective on February 4, 2013. Its predecessor, NASD Rule 2210, governs the Firm's conduct prior to that date.

- a fine in the amount of \$25,000 (reduced pursuant to NtM 06-55).²

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

Global specifically and voluntarily waives any right to claim that it is 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

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

- A. To have a Complaint issued specifying the allegations against the Firm;
- 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, Global specifically and voluntarily waives any right to claim bias or pre-judgment 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.

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.

² Pursuant to the General Principles Applicable to all Sanction Determinations contained in the Sanction Guidelines, FINRA imposed a lower fine in this case after it considered, among other things, the firm's revenues and financial resources. See Notice to Members 06-55.

III.

OTHER MATTERS

Global 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 the Firm; and
- C.** If accepted:
 - 1.** this AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the Firm;
 - 2.** this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Global's disciplinary record;
 - 3.** FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4.** Global 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. Global 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 the Firm'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.** The Firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Global 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 understands all of the provisions of this AWC and has been given a full opportunity

to ask questions about it; that Global has agreed to the AWC's 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.

7/8/14
Date (mm/dd/yyyy)

Global Brokerage Services, Inc.

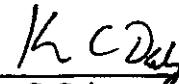
By:



Accepted by FINRA:

September 10, 2014
Date

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



Karen C. Daly

Principal Regional Counsel
FINRA Department of Enforcement
1835 Market Street
Philadelphia, PA 19103
215-963-1990 (telephone)
215-496-0434 (facsimile)

August 18, 2014

Global Brokerage Services, Inc.

Finra
Attn: Ms. Karen Daly
1835 Market St
Suite 1900
Philadelphia, PA 19103

re: Global Brokerage Services, Inc.
Statement of Corrective Action
Investigation No. 2013035123202

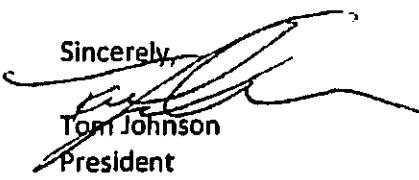
Ms. Daly,

In response to the Transmittal of Letter of Acceptance, Waiver and Consent, we wish to submit a Statement of Corrective Action:

- (1) Global Brokerage Services, inc. has incorporated into its WSP procedures for supplying client's with Consolidated Reports.
- (2) Global Brokerage Services, Inc. has expanded on the disclosure statement required on all Consolidated Reports.
- (3) Global Brokerage Services, Inc. now requires all Consolidated Reports be produced through their financial reporting service, Morningstar Office. In addition, all pricing will be obtained by third party pricing services.
- (4) Global Brokerage Services, Inc. now prohibits the use of an Excel Spreadsheet for preparing Consolidated Reports.

This Corrective Action Statement is submitted by Global Brokerage Services, Inc.. It does not constitute factual or legal findings by FINRA, nor does it reflect the view of FINRA, or its staff.

Sincerely,


Tom Johnson
President

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013035123202**

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

RE: Robert McKoy (CRD No. 720261),
Respondent

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, I, Robert McKoy, 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

McKoy has been registered with FINRA as an investment adviser since 1980, through an association with his own firm, CCR Financial Planning (BD No. 118136). In May 1986, he became licensed as a General Securities Representative (Series 7) through his association with H. Beck, Inc. (BD No. 1763) (“H. Beck”). During the course of his career, he has been employed by H. Beck (1986-1991), Mason Securities, Inc. (BD No. 12967) (1991-1997), Financial Network Investment Corporation (BD No. 13572) (1998-1999), and co-respondent Global Brokerage Services, Inc. (BD No. 37505) (1997-1998 and 1999-present) (“Global” or “the Firm”).

RELEVANT DISCIPLINARY HISTORY

McKoy has no formal disciplinary history with the Securities and Exchange Commission, any state securities agency, or any self-regulatory agency.

OVERVIEW

From February 2011 to August 2013 (the “Relevant Period”), McKoy disseminated consolidated reports that included inaccurate valuations for non-traded REITs and other illiquid investments. As a result, McKoy violated FINRA Rule 2210(d)(1), NASD Rule 2210(d)(1),¹ and FINRA Rule 2010.

McKoy also willfully failed to timely disclose federal tax liens in the amount of \$239,000 on his Uniform Application for Securities Industry Registration or Transfer (“Form U4”), in violation of Section V, Article 2 of FINRA’s By-Laws and FINRA Rules 1122 and 2010, and NASD IM-1000-1.²

FACTS AND VIOLATIVE CONDUCT

- 1) During the Relevant Period, McKoy provided consolidated reports on a quarterly basis for 50-60 customers that included his own inaccurate and potentially misleading valuations as the “estimated value” for certain non-traded REITs and other illiquid investments. McKoy’s consolidated reports also lacked required disclosures for part of the Relevant Period and later added a disclosure that inaccurately stated the asset valuations came from third-party providers. Based on the foregoing, McKoy violated FINRA Rule 2210(d)(1), NASD Rule 2210(d)(1) (for conduct prior to February 4, 2013) and FINRA Rule 2010.
- 2) McKoy independently violated Section V, Article 2 of FINRA’s By-Laws and FINRA Rules 1122 and 2010, and NASD IM-1000-1 (for conduct prior to August 17, 2009) due to his willful failure to timely disclose \$239,000 in federal tax liens, the earliest of which dated from the 2007 tax year, on his Form U4.

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

- Suspension in all capacities for four (4) months; and
- A fine in the amount of \$10,000.

I agree to pay the monetary sanction 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 imposed in this matter.

¹ FINRA Rule 2210 became effective on February 4, 2013. Its predecessor, NASD Rule 2210, governs McKoy’s conduct prior to that date.

² Prior to August 17, 2009 (the effective date of FINRA Rule 1122), predecessor rule NASD IM-1000-1 prohibited filings with FINRA that were incomplete, inaccurate, or otherwise misleading.

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 omitted to state a material fact on a Form U4, and that under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 and Article III, Section 4 of FINRA's By-Laws, this omission 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.

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 pre-judgment 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 response to public inquiries about my disciplinary record;
 - 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.

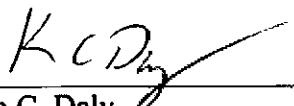
01/17/2014
Date (mm/dd/yyyy)

Robert A. Wright
Respondent

Accepted by FINRA:

September 19, 2014
Date

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


Karen C. Daly
Principal Regional Counsel
FINRA Department of Enforcement
1835 Market Street
Philadelphia, PA 19103
215-963-1990 (telephone)
215-496-0434 (facsimile)

CORRECTIVE ACTION STATEMENT:

September 17, 2014

To Whom It May Concern:

Relative to the two issues for which I have been cited I have taken the following steps to move into compliance with FINRA rules and regulations:

1) Client Reports -

Upon notification that my old style reports were inappropriate I ceased producing them immediately. We have been taking action to replace them with reports offered by Morningstar Office, which are considered compliant. We continue to be in the process of transferring information into the Morningstar program and have not as yet completed that work.

2) U-4 issues -

I have made a commitment to review my U-4 at least annually to make sure that nothing material has changed. Being unaware that the lien needed to be disclosed is not a proper excuse for failing to do so. I believe this step will prevent anything similar to this happening in the future.

I have tried hard to do two things during my career of almost 35 years. Take good care of my clients and obey the rules diligently. Clearly I made errors for which I take responsibility and look forward to the time when I can fully be of service to my clients again.

Thank you for consideration of this Corrective Action Statement.

Sincerely,


Robert A. McKoy

1210 East 1550 North
North Logan, UT. 84341

THIS CORRECTIVE ACTION STATEMENT IS SUBMITTED BY THE RESPONDENT. IT DOES NOT CONSTITUTE FACTUAL OR LEGAL FINDINGS BY FINRA, NOR DOES IT REFLECT THE VIEWS OF FINRA, OR ITS STAFF.

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2012031552601**

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

RE: H. Beck, Inc. (BD No. 1763),
Respondent

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, H. Beck, Inc. ("H. Beck" or the "Firm") 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 the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. H. Beck 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

H. Beck is a full-service brokerage firm that has been a FINRA member since 1954. The Firm maintains its principal place of business in Bethesda, Maryland, and has approximately 465 registered branch offices and approximately 800 registered persons.

RELEVANT DISCIPLINARY HISTORY

On July 14, 2011, H. Beck entered into an AWC with FINRA in which it agreed, without admitting or denying the findings, to a censure and a fine of \$150,000. The AWC, in relevant part, charged the Firm with failure to retain email.

OVERVIEW

In the course of two routine examinations of H. Beck, FINRA staff found certain deficiencies. First, H. Beck failed to apply sales charge discounts to eligible purchases of unit investment trusts ("UITs") and failed to establish a supervisory system and written supervisory procedures ("WSPs") reasonably designed to

ensure that customers received sales charge discounts on all eligible UIT purchases. Second, H. Beck failed to establish a reasonable supervisory system and WSPs regarding the use of consolidated reports. In addition, certain registered representatives sent inaccurate consolidated reports to customers. Finally, H. Beck failed to enforce its WSPs requiring non-registered employees to register with the Firm any outside email accounts used for business-related communications. As a result of the above, H. Beck violated NASD Conduct Rules 2110, 2210 and 3010 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

1. H. Beck Failed to Establish a Reasonable Supervisory System and Written Supervisory Procedures to Identify and Apply Applicable UIT Sales Charge Discounts

A UIT is a type of Investment Company that issues securities, typically called "units," representing undivided interests in a relatively fixed portfolio of securities. UITs are generally issued by a sponsor that assembles the UIT's portfolio of securities, deposits the securities in a trust, and sells units of the UIT in a public offering. UIT units are redeemable securities that are issued for a specific term, and entitle an investor to receive his or her proportionate share of the UIT's net assets on redemption or at termination.

UIT sponsors offer investors a variety of ways to reduce the sales charge fees charged on a purchase. For example, UIT sponsors often offer sales charge discounts on UIT purchases that are funded using redemption or termination proceeds from another UIT during the initial offering period.

On March 31, 2004, FINRA issued Notice to Members 04-26, *Unit Investment Trust Sales*, reminding broker-dealers that they should develop and implement procedures to ensure customers receive appropriate sales charge discounts for UITs. The Notice further stated that UIT transactions must take place "on the most advantageous terms available to the customer" and that it is the firm's responsibility to "ensure that they and their employees understand, inform customers about, and apply correctly any applicable price breaks available to customers in connection with UITs."

From October 2008 through September 2013, H. Beck failed to identify and apply sales charge discounts to customers with eligible purchases of UITs. Specifically, H. Beck failed to apply sales charge discounts to 1,017 eligible UIT purchases totaling approximately \$23 million. As a result, customers paid excessive sales charges of approximately \$198,000.¹ Based on the foregoing, H. Beck violated NASD Conduct Rule 2110 and FINRA Rule 2010.²

¹ H. Beck has paid restitution to all affected customers.

² NASD Rule 2110 was superseded by FINRA Rule 2010 effective December 15, 2008.

During the same period, H. Beck failed to establish, maintain and enforce a supervisory system and WSPs reasonably designed to ensure customers received sales charge discounts on all eligible UIT purchases. The Firm relied primarily on its registered representatives to ensure that customers received available UIT sales charge discounts, but failed to appropriately inform and train representatives and their supervisors to identify and apply such sales charge discounts. Based on the foregoing, H. Beck violated NASD Conduct Rules 3010(a) and (b) and 2110 and FINRA Rule 2010.

2. H. Beck Failed to Reasonably Supervise Registered Representatives' Use of Consolidated Reports

A consolidated report is a document provided to customers that combines information regarding most or all of a customer's financial holdings, regardless of where those assets are held. Consolidated reports supplement, but do not replace, customer account statements required pursuant to NASD Conduct Rule 2340.

In April 2010, FINRA issued Regulatory Notice 10-19, which reminded member firms that consolidated reports represent communications with the public and must therefore be clear, accurate and not misleading. The Notice directed that firms that allow representatives to create consolidated reports must supervise the activity. For instance, where the consolidated reports include assets held away from the firm, the firm must ensure that registered representatives take reasonable steps to ensure that such assets are valued accurately.

From July 26, 2011 through May 13, 2012, approximately 47 H. Beck registered representatives disseminated consolidated reports to customers. During that same period, H. Beck had no supervisory procedures specifically addressing the use and supervision of consolidated reports; therefore, H. Beck did not adequately address matters of concern specific to consolidated reports, such as the verification of valuation information provided or ensuring that registered representatives retain supporting documentation for such valuations. Based on the foregoing, H. Beck violated NASD Conduct Rules 3010(a) and (b) and 2110 and FINRA Rule 2010.

Also, a review of consolidated reports issued by H. Beck representatives from July 26, 2011 through May 13, 2012 disclosed instances in which representatives sent consolidated reports to customers that were inaccurate, primarily because the representatives manually inputted valuations of certain illiquid investments. Based on the foregoing, H. Beck violated NASD Conduct Rule 2210(d)(1) and FINRA Rule 2010.

3. H. Beck Failed to Enforce Written Supervisory Procedures Concerning Non-registered Employee's Use of Outside Email Accounts

H. Beck's WSPs required that non-registered employees utilize an email address for business-related communications that is registered with the Firm's outside vendor so that the emails could be archived. From July 26, 2011 through May 13, 2012, H. Beck failed to enforce these procedures. Specifically, the Firm allowed some non-registered employees to use outside email addresses for business-related communications, but failed to ensure that those email addresses were registered with its outside vendor for archiving. Based on the foregoing, H. Beck violated NASD Conduct Rule 3010(b) and FINRA Rule 2010.

- B. H. Beck also consents to the imposition of the following sanctions:
- a censure and a fine in the amount of \$425,000.

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

Respondent specifically and voluntarily waives any right to claim that it is 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

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 it;
- 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 pre-judgment 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.

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 it;
- C. If accepted:
 1. this AWC will become part of its permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
 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. 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 its: (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; and

- 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 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 understand 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.

H. Beck, Inc.

3-16-2015

Date (mm/dd/yyyy)

Reviewed by:

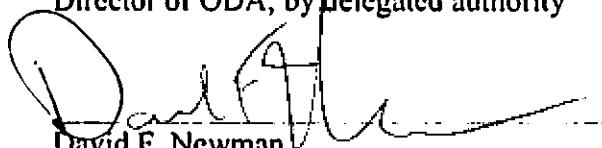
By: Scott Thorson
Scott Thorson
Executive Vice President and
Chief Operating Officer


Olga Greenberg, Esq.
Counsel for Respondent
Sutherland Asbill & Brennan, LLP
999 Peachtree Street, NE, Suite 2300
Atlanta, GA 30309-3996
(404) 853-8274; fax (404) 853-8806
Olga.greenberg@sutherland.com

Accepted by FINRA:

March 30, 2015
Date

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



David F. Newman
Senior Regional Counsel
FINRA Department of Enforcement
1835 Market Street, Suite 19103
Philadelphia, PA 19103
Tel: (215) 665-1180
Fax: (215) 496-0434
E-Mail: david.newman@finra.org

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20120347477**

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

RE: Sanjay Goswami, Respondent
General Securities Representative
CRD No. 3024009

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

Sanjay Goswami (“Goswami”) entered the securities industry in July 1999 and became registered with a FINRA-regulated firm in December 1999. From December 2000 through November 2007, he was separately employed by two other FINRA member firms in registered and non-registered capacities. Goswami became registered with BNP Paribas Securities Corp. (“BNP” or the “Firm”) in May 2008 and worked in the Firm’s Fund Solutions Group, which provided a range of services to hedge funds and other alternative investment managers. He remained at BNP until October 16, 2012, when he was terminated for engaging in an undisclosed outside business activity. Goswami held Series 7 and 63 licenses.

Although Goswami is not currently employed in the securities industry, he remains subject to FINRA’s jurisdiction pursuant to FINRA By-Law Article V, Section 4 until at least November 12, 2014.

RELEVANT DISCIPLINARY HISTORY

Goswami does not have any relevant disciplinary history.

OVERVIEW

During the period May 2011 through October 2012, while registered with the Firm, Goswami engaged in a business activity outside the scope of his relationship with the Firm. Goswami failed to provide prior written notice to the Firm before engaging in this business activity, in violation of FINRA Rules 3270 and 2010.

Goswami also violated NASD Rules 2210 and 2211 and FINRA Rule 2010 by sending emails and sales material to potential institutional investors, which contained false, misleading and unwarranted statements concerning the outside business activity and his and the Firm's involvement in that business.

FACTS AND VIOLATIVE CONDUCT

1. Violation of FINRA Rules 3270 and 2010- Engaging in an Undisclosed Business Activity

FINRA Rule 3270 provides that “[n]o 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.”

In or around May 2011, Goswami became involved in the launching of a venture capital fund referred to as DIG Capital, DIG Capital Fund I and/or Venture Capital Royalty Fund (“DIG”). Specifically, Goswami acted as an advisor to DIG, arranged introductions for DIG with service providers (*e.g.* law and accounting firms) and institutional investors, reviewed and provided comments on DIG’s marketing materials and distributed those marketing materials to the potential institutional investors. Goswami held himself out to some third parties as one of the founders of DIG and represented that he was heavily involved in its launch. Goswami did not receive any compensation from DIG and there is no evidence that any of the potential institutional investors invested in DIG. DIG offered to pay Goswami for the introductions to investors and service providers. Goswami’s involvement with and assistance to DIG was outside the scope of his responsibilities at the Firm. Goswami did not provide the Firm with prior written notice before engaging in an undisclosed outside business activity with DIG. Further, Goswami did not disclose his involvement with DIG on his 2011 annual compliance certification.

By engaging in an undisclosed outside business activity with DIG without providing prior written notice to the Firm, Goswami violated FINRA Rules 3270 and 2010.

2. Violation of NASD Rules 2210 and 2211 and FINRA Rule 2010 - Distributing Sales Materials that Contained False, Misleading and Unwarranted Statements

NASD Rule 2210(d)(1)(A) provides that “all member communications with the public shall be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member may omit any material fact or qualification if the omission, in the light of the context of the material presented, would cause the communication to be misleading.” NASD Rule 2211(d)(1) provides that “[a]ll institutional sales material...[is] subject to the content standards of Rule 2210(d)(1).”

Goswami sent emails regarding DIG from his Firm email account to at least six institutional investors. Some of these emails contained a signature block that referenced the Firm. Goswami did not disclose in the emails the relationship or lack of relationship of the Firm with DIG, which created the misleading impression that DIG was associated with the Firm. In these emails, Goswami also exaggerated his role in DIG and referred to DIG’s Private Placement Memorandum, when, in fact, that document did not exist.

Goswami also distributed DIG sales material to potential institutional investors that contained statements concerning the investment strategy and returns of a prior fund managed by one of DIG’s founders, which created the impression that DIG would be successful and achieve similar returns. These statements were exaggerated and unwarranted as there could be no assurance that a DIG investment would be successful or deliver similar investment returns.

By sending emails and sales materials that contained false, misleading and unwarranted statements, Goswami violated NASD Rules 2210(d)(1)(A) and NASD Rule 2211(d)(1) and FINRA Rule 2010.

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

- └ A 60-day suspension from association with any FINRA member in any capacity and a \$7,500 fine.

The fine shall be due and payable either immediately upon reassociation with a member firm following the 60-day suspension noted above, 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 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 pre-judgment 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:

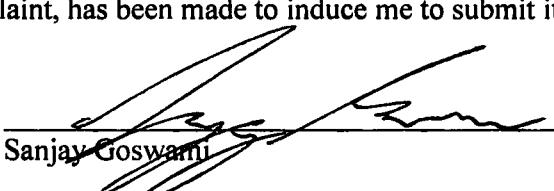
1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my disciplinary record;
3. 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.

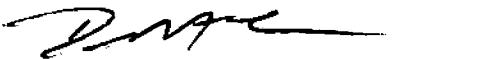
I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

Date

10/8/14


Sanjay Goswami

Reviewed by:

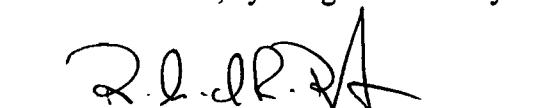


Daren A. Luma
Partner
BEUGELMANS, PLLC
80 Broad Street, Suite 1302
New York, NY 10004
Phone: 646 350-0051
Fax: 646 304-6897

Accepted by FINRA:

10.13.14
Date

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



Richard Best
Chief Counsel
FINRA Department of Enforcement
One World Financial Center
200 Liberty Street, 11th Floor
New York, NY 10281-1003
Phone: 646-315-7308
Fax: 202-689-3424

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NOS. 2012030563901/20130355952**

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

RE: Key West Investments, LLC
Member Firm
CRD No. 149418

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Key West Investments, LLC ("Key West" or "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 it 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

Key West has been a FINRA member since January 2010. It operates out of a single location in San Gabriel, California, has approximately 10 registered representatives, and is authorized to conduct a general securities business. Key West has no relevant disciplinary history.

OVERVIEW

From August 2011 through October 2012, Key West participated in the contingent offering of units in a fund whose intended purpose was to redevelop commercial property (the "GEM 0101 Offering"). The GEM 0101 Offering was contingent upon raising a minimum of \$3 million and was scheduled to terminate no later than November 30, 2011 ("Termination Date"). In October 2012, Key West participated in a second offering of units in a fund whose intended purpose was to redevelop an adjacent parcel of commercial property (the "GEM 0102 Offering").

From approximately November 30, 2011 through October 11, 2012, Key West willfully violated Exchange Act Section 10(b), Rule 10b-9, and FINRA Rule 2010 in connection with the GEM 0101 Offering because it released proceeds to the issuer when the minimum had not been raised and it continued to offer and sell units in the fund even though the Termination Date had passed.

From approximately September 2, 2011 through October 11, 2012, Key West also violated Exchange Act Section 15(c), Rule 15c2-4 thereunder, and FINRA Rule 2010 in connection with the GEM 0101 Offering because it failed to ensure that investor funds were deposited into a properly designated escrow account.

Key West also violated NASD Rule 2210 and FINRA Rule 2010 by using private placement memoranda for the GEM 0101 and GEM 0102 Offerings that violated FINRA advertising regulations.

FACTS AND VIOLATIVE CONDUCT

1. The Rule 10b-9 Violation

Pursuant to a Private Placement Memorandum dated August 1, 2011, Key West offered and sold membership interests in GEM 0101 Investments, LLC ("GEM 0101"), a fund that intended to purchase and redevelop undervalued and/or distressed commercial real estate. The GEM 0101 Offering was conditioned on raising at least \$3 million (the "Minimum") and was scheduled to terminate no later November 30, 2011 (the "Capitalization Period"). If the Minimum was not raised during the Capitalization Period, all funds were required to be refunded to the investors.

On November 30, 2011, at the end of the Capitalization Period, Key West had obtained Subscription Agreements from four investors who intended to invest more than \$3 million, but the four investors had deposited only \$30,000 into the designated "escrow" account. Moreover, the investors were given the unilateral right, through May 2012, to have their deposits returned and to withdraw from GEM 0101.

In June 2012, investor deposits were released to the issuer of GEM 0101 after only about \$500,000 had been deposited. Key West continued to offer and sell GEM 0101 units after the Capitalization Period through October 2012, ultimately raising cash investments of about \$2.7 million, several hundred thousand dollars less than the specified \$3 million Minimum.

By failing to return investor funds and, instead, releasing the funds to the issuer of GEM 0101 and by continuing to offer and sell units in GEM 0101 when the Minimum had not been raised and the termination date had passed, Key West rendered the PPM's representations to be false and misleading and thereby willfully violated Exchange Act Section 10(b), Rule 10b-9 thereunder, and FINRA Rule 2010.

2. The Escrow Violation

Exchange Act Rule 15c2-4 provides that funds raised in a contingency offering be promptly transmitted to a bank, independent of the issuer, that has agreed to hold those funds in escrow and to either forward them to the issuer or return them to investors upon the satisfaction or failure of the contingency.

Rather than depositing investor funds in a properly designated account, Key West caused investor funds to be deposited into a real estate trust account held by a company owned by one of the Fund's managing members.

By failing to deposit GEM 0101 investor funds into a proper bank escrow account, Key West violated Exchange Act Section 15, Rule 15c2-4 and FINRA Rule 2010.

3. The Advertising Violations

NASD Rule 2210(d)(1)(A) requires member communications with the public to be based on principles of fair dealing and good faith and to provide a sound basis for evaluating the facts in regard to the securities products or services being offered. NASD Rule 2210(d)(1)(B) prohibits false, exaggerated, unwarranted or misleading communications with the public. NASD Rule 2210(d)(1)(D) provides that communications with the public may not predict or project performance or imply that past performance will recur.

Pursuant to private placement memoranda dated August 1, 2011 and October 1, 2012, respectively, Key West offered and sold membership interests in GEM 0101 Investments, LLC and GEM 0102 Investments, LLC. The private placement memoranda for the GEM 0101 and the GEM 0102 Offerings contained statements that violated NASD Rule 2210(d)(1).

The memoranda for both offerings made promissory claims regarding the expected rate of return for the offerings – 15% annualized returns for the GEM 0101 Offering and 25% annualized returns for the GEM 0102 Offering – without a sound basis to support the figures in violation of NASD Rule 2210(d)(1)(A) and (B).

The private placement memoranda for both offerings also included a financial performance track record for the developer of the projects that was misleading in violation of NASD Rule 2210(d)(1)(A) because it included performance of the development of projects that were unrelated to either offering. The financial performance track record was also misleading in violation of NASD Rule 2210(d)(1)(B) because the unrelated past performance cited was limited to only three transactions that had high historical performance ranging between 100% to almost 300%, when the developer had approximately 30 years of experience in commercial real estate and likely developed many projects with much lower returns.

The private placement memorandum for the GEM 0102 Offering contained internally inconsistent information concerning the minimum investment amount and the total offering amount in violation of NASD Rule 2210(d)(1)(B).

Finally, the private placement memorandum for the GEM 0102 Offering failed to clearly and concisely identify the total amount of fees and expenses related to purchasing the Fund in violation of NASD Rule 2210(d)(1)(D).

OTHER FACTORS

This sanction takes into account the fact that, in October 2012, after FINRA staff identified issues with the GEM 0101 Offering, Key West: (i) acknowledged the discrepancy between the GEM 0101 Offering's terms and the manner in which the GEM 0101 Offering was conducted; and (ii) offered each investor the opportunity to withdraw from GEM 0101 and receive a full refund.

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

A censure and a \$22,500 fine.

Respondent agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payment(s) are due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

The firm understands that this settlement includes a finding that it willfully violated Rule 10b-9 of the Securities Exchange Act of 1934 and that under Article III, Section 4 of FINRA's By-Laws, this makes the firm subject to a statutory disqualification with respect to membership.

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

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 it;
- 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 pre-judgment of the General Counsel, 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.

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 it; and
- C. If accepted:
 - 1. this AWC will become part of the Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof 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. It 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: (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. 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 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.

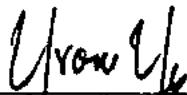
The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that it has agreed to its provisions voluntarily; and that no offer, threat, 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.

11/17/2014

Date (mm/dd/yyyy)

Reviewed by: **Michael Hill**

By:



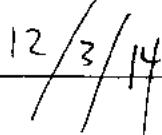
**Yvonne Yiu, President
Key West Investments, LLC**

Digitally signed by Michael Hill
DN:cn=Michael Hill
gn=Michael Hill c=United
States iUS o=Menzer & Hill
PA e=mhill@menzerhill.com
Reason: I am the author of this
document
Location: Boca Raton, FL
Date: 2014-11-18 13:40:06.00

**Michael Hill, Esq.
Counsel For Respondent
Menzer & Hill, P.A.
7280 W Palmetto Park Rd., Suite 301-N
Boca Raton, FL 33433
Phone: 561-327-7205**

Accepted by FINRA:

Date



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



**Joel T. Kornfeld
Senior Regional Counsel
FINRA Department of Enforcement
300 S. Grand Avenue, Suite 1600
Los Angeles, CA 90071
(213) 613-2643; Fax: (213) 617-1570**

Corrective Action Statement by Key West Investments, LLC

On behalf of Key West Investments, LLC ("KWI"), as its president, I hereby state that as a result of the findings by the Staff and execution of the Acceptance, Waiver, and Consent by KWI, for any future securities offerings handled by KWI, KWI will institute new written procedures to comply with, but not limited to, SEC Rule 10b-9, SEC Rule 15c2-4, FINRA Rule 2010, and NASD Rule 2210(d)(1). KWI will take extra care to reasonably ensure that any PPMs distributed by KWI will not contain unwarranted or exaggerated claims of projected performance or returns to include factually accurate historical information of the offered entity and its principals. KWI will also ensure that a proper escrow account is used and controlled by an appropriate escrow agent charged with following the terms of the offering as it relates to breaking escrow, funding, and refunding subscriptions, as warranted.

Signed by:

KEY WEST INVESTMENTS, LLC

L. J. Smith, as its Ceo

Date 11/18/2014

THIS CORRECTIVE ACTION STATEMENT IS SUBMITTED BY THE RESPONDENT. IT DOES NOT CONSTITUTE FACTUAL OR LEGAL FINDINGS BY FINRA, NOR DOES IT REFLECT THE VIEWS OF FINRA, OR ITS STAFF.

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013035928001**

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

RE: Gilford Securities, Inc., Respondent
CRD No. 8076

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, Gilford Securities, Inc. (“Respondent” or “Gilford Securities” or “the Firm”) 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

Gilford Securities has been a FINRA member since January 3, 1980. The Firm has eight branch offices and approximately 80 registered representatives. Its principal place of business is New York, New York, and provides a variety of financial services to its clients, including sales and trading, investment banking, research, and wealth management.

On April 3, 2014, pursuant to Letter of Acceptance, Waiver and Consent No. 2012030416501, FINRA made findings (which Gilford Securities neither admitted or denied) that, among other things, from April 2010 through March 2012, the Firm failed to make required disclosures in research reports, evidence approval of research reports, and implement written supervisory procedures reasonably designed to ensure compliance with NASD Rule 2711, and as a result, violated NASD Rules 2210 and 2711 and FINRA Rule 2010. Gilford Securities consented to a censure and \$125,000 fine covering all of the charges in the AWC.

OVERVIEW

Between August 1, 2012 and January 10, 2013, Gilford Securities issued eight research reports on a pharmaceutical company containing unwarranted and misleading statements regarding the participation of a prominent medical research university in a human study of one of the company's dietary supplements. Each research report inaccurately referred to the university as having conducted the study. The nature of this inaccurate representation was that a doctor, who worked for the university, participated as an independent consultant to the pharmaceutical company and did not collaborate with the university on the human study. By issuing research reports that contained false and misleading information, Gilford Securities violated NASD Rule 2210(d)(1)(B) and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Gilford Securities issued eight research reports on the pharmaceutical company between August 1, 2012 and January 10, 2013. These reports were widely distributed through commercial distribution outlets.

The pharmaceutical company is a publicly traded company, which engages through its subsidiary in research and development of supplements to treat inflammatory and neurological disorders. The pharmaceutical company sells an over-the-counter nutritional supplement.

In 2012 and early 2013, the pharmaceutical company announced the results of separate animal and human studies regarding one of its supplements. The animal study was conducted and completed by an independently funded research team at a prominent medical research university, led by a doctor employed by the university. The human study was conducted by the pharmaceutical company's subsidiary, with the participation of the same doctor as a senior consultant. The university did not conduct or participate in the human study, although the doctor was employed by the university at the time of the study.

The eight research reports issued by Gilford Securities on the pharmaceutical company contained inaccurate statements which mistakenly suggest that the university conducted the human study. Four of those reports also contained inaccurate statements suggesting that the doctor was acting on behalf of the university in assisting with the human study. For example, a research report issued on January 10, 2013 stated that the research:

has been done by the [university], certainly one of the most preeminent medical institutions in the world, under the lead of [the doctor,] one of the most preeminent leaders in the world in his profession.

The same report also stated:

[W]e expect the release of the [university's] Third Party CRO results testing humans This will be the most important event in [the

company's] history.

Research reports are communications with the public subject to the content standards set forth in NASD Rule 2210(d)(1). NASD Rule 2210(d)(1)(B) prohibits FINRA members from making "any false, exaggerated, unwarranted or misleading statement or claim in any communication with the public." NASD Rule 2210(d)(1)(B) further states that "[n]o member may publish, circulate or distribute any public communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading."

As a result of the foregoing conduct, Respondent violated NASD Rule 2210(d)(1)(B) and FINRA Rule 2010.

B. The Firm consents to the imposition of the following sanctions:

- A censure; and
- A fine in the amount of \$25,000.

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 it proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that Respondent 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

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 Respondent;
- 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 pre-judgment 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.

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:
 - I. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Respondent;
 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondent's disciplinary record;
 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof 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: (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. 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 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.

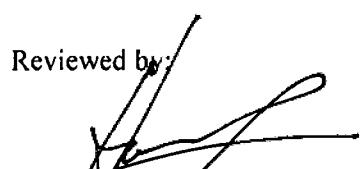
The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and have been given a full opportunity to ask questions about it; has agreed to its provisions voluntarily; and that no offer, threat, inducement, 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 Respondent to submit it.

Sept. 3, 2014
Date (mm/dd/yyyy)


Gilford Securities, Inc.

By: Daniel Callaway, CEO & General Counsel

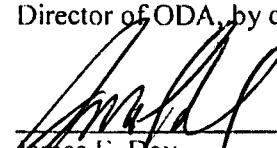
Reviewed by:


Howard R. Elisofon
Counsel for Respondent
Henick, Feinstein LLP
2 Park Avenue
New York, NY 10016
212-592-1400

Accepted by FINRA:

10/1/09
Date

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


James E. Day
Vice President & Chief Counsel
FINRA Department of Enforcement
15200 Omega Drive, Third Floor
Rockville, MD 20850
301-258-8520

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2012033994701**

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

RE: Arque Capital, Ltd. [CRD No. 121192]
Respondent

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

Arque Capital, Ltd. ("Arque") has been a registered broker-dealer since July 2002, and is also currently registered as an investment adviser. Arque has its home office in Scottsdale, Arizona, and 23 branch offices located in various states. As of this date, approximately 60 registered representatives are associated with Arque.

OVERVIEW

Since 2011, Arque has acted as the managing broker-dealer for an alternative investment known as Renewable Secured Debentures (the "Debentures") offered by GWG Holdings, Inc. As the managing broker-dealer, Arque was responsible for, among other things, conducting due diligence into GWG and the Debentures, and reviewing all advertising pieces related to the Debentures. Between March 2012 and November 2012, Arque distributed a GWG Debenture sales brochure that contained misleading statements, in violation of NASD Rule 2210(d)(1)(A) and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

GWG Renewable Secured Debentures

GWG Holdings, Inc. purchases life insurance policies on the secondary market at a discount to the face value of the policies. Once GWG purchases a policy, it pays the policy premiums until the insured dies. GWG then collects the face value of the insurance benefit. GWG hopes to earn returns by collecting more upon the maturity of the policies than it has paid to purchase, finance and service the policies. The company has a limited operating history and has not yet obtained profits through its strategy. GWG has purchased almost all of the policies it owns with funds borrowed from financial institutions or investors.

In 2012, GWG began selling what it called Renewable Secured Debentures. The minimum investment in the Debentures is \$25,000. Additional investments can be made in \$1,000 increments. The Debentures have varying maturity terms and interest rates, from six-month Debentures offering an annual interest rate 4.75% to seven-year Debentures offering 9.50%.

The prospectus for the Debentures states that the life insurance policies held by GWG are not collateral for obligations under the Debentures. Instead, those policies have been separately pledged as collateral for a line of credit used by GWG to purchase life insurance policies. As stated in the prospectus, the Debentures may be considered speculative investments and involve a high degree of risk, including the risk of loss of the entire investment. The prospectus states that the company's success is dependent upon, among other things, its continued ability to raise funds to pay its obligations, including interest payments under the Debentures.

An investment in the Debentures is also illiquid. Investors do not have to access their principal prior to maturity unless the request is due to death, bankruptcy or total disability. If GWG decides to prepay the Debentures other than under those circumstances, a prepayment fee of 6% may be charged. There is also no trading market for the Debentures. For these reasons, as the prospectus states, an investment in the Debentures is not suitable for investors who need liquidity prior to the Debenture's maturity date.

Arque Distributed Misleading GWG Sales Material

Between March 2012 and November 2012, Arque distributed a GWG Debenture sales brochure to certain investors ("GWG Brochure"). The GWG Brochure, which was created by GWG and included in its sales kit, along with the prospectus, stated that "Renewable Secured Debentures are secured by the corporate assets of GWG, which consist primarily of investments in life insurance policies purchased in the secondary market." The GWG Brochure further stated that the Debentures "are secured by all the corporate assets of GWG. GWG's assets consist primarily of the life insurance policies purchased in the secondary market and are summarized in the table below." The table stated that GWG held over \$489 million of life insurance policies.

However, the \$489 million value was the face value of the policies and not their current value, a significantly lower number. Moreover, as stated in the prospectus for the Debentures, the life insurance policies were not collateral for the Debentures and instead had been pledged as collateral for a separate line of credit used by GWG to purchase life insurance policies and finance its operations. Any "secured" interest the Debentures have in the assets of GWG is thus subordinate to other significant interests of creditors.

Although the correct information was contained in the prospectus that was also delivered to the investors, it had not been accurately reflected in the GWG Brochure in March 2012. In November 2012, the inconsistencies between the GWG Brochure and the prospectus were discovered and the GWG Brochure was promptly changed.

Between March 2012 and November 2012, Arque sold a total of approximately \$3.53 million of Debentures to approximately 40 investors while providing investors the GWG sales kit containing the misleading brochure. Moreover, as the managing broker-dealer for the offering of the Debentures, Arque had an obligation to, but did not, review the brochure and take reasonable steps to ensure that there was a reasonable basis for the statements made in the brochure.

By distributing sales literature which contained misleading statements, omitted material facts, and failed to provide a sound basis for evaluating the securities that were being offered, as described above, Arque violated NASD Rule 2210(d)(1)(A). By virtue of violating NASD Rule 2210(d)(1)(A), Arque also violated FINRA Rule 2010.

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

- (a) to be censured; and
- (b) to pay a fine of \$50,000.

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 Respondent proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that Respondent 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

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 Respondent;
- 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 pre-judgment 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.

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 actions brought by FINRA or any other regulator against Respondent;
2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondent's disciplinary record;
3. FINRA may make a public announcement concerning this agreement and the subject matter thereof 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: (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. 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 Respondent 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 understands all of the provisions of this AWC and have 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.

October 30, 2014

Date



Respondent
Arque Capital, Ltd.

By: Michael C. Ning, President & CEO

Reviewed by:


Counsel for Respondent Arque Capital
Edward Gartenberg, Esq.
Gartenberg Gelfand Hayton & Selden LLP
801 South Figueroa Street, Suite 2170
Los Angeles, California 90017
Direct Dial: (213) 542-2111
Main Line (213) 542-2100
Fax: (213) 542-2101
Email: egartenberg@gghslaw.com

Accepted by FINRA:

11/14/14
Date

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

~~Jamie Day, Vice President and Chief Counsel~~
~~Lane Thurgood, Director~~
~~Frank Mazzarelli, Senior Counsel~~

FINRA Department of Enforcement
15200 Omega Drive, Third Floor
Rockville, MD 20850
Telephone: 301-258-8557 (Mazzarelli)
Facsimile: 202-721-1354 (Mazzarelli)
E-mail: Frank.Mazzarelli@finra.org

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013038183301**

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

RE: Lucian D. Hodgman, Respondent
CRD No. 1546902

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, I, Lucian D. Hodgman (“Hodgman”), 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

Hodgman first became registered with FINRA as a General Securities Representative (“GSR”) in October 1991. From 1991 through February 2001, Hodgman was registered as a GSR through a FINRA member firm. From February 2001 through September 2013, Hodgman was registered as a GSR through Moors & Cabot, Inc. (CRD No. 594) (“the Firm”). From September 2013 through February 6, 2015, Hodgman was registered as a GSR through three other FINRA member firms.

Hodgman is not currently associated with a FINRA member firm, but FINRA retains jurisdiction over him pursuant to Article V, Section 4 of the FINRA By-Laws.

RELEVANT DISCIPLINARY HISTORY

On April 22, 2002, Hodgman agreed to a settlement with NASD through an AWC in which he was fined \$5,000 and suspended in

all capacities for ten days for effecting transactions in a customer account without the customer's prior knowledge, authorization, or consent.

On February 2, 2015, Hodgman entered into a Consent Order with the Maine Office of Securities in which Hodgman admitted that he had omitted material facts and made false statements in connection with his application to the Maine Office of Securities. Hodgman's conduct was related to the facts and violative conduct addressed in this AWC. In connection with that Consent Order, Hodgman was fined \$1,750 and his application for a securities license in Maine was denied.

OVERVIEW

Between May and July 2013, Hodgman caused approximately 40,000 copies of an advertisement (the "Postcards") to be sent out by mail through a third-party marketing company without approval of a registered principal at Moors & Cabot, in violation of FINRA Rules 2210(b)(1) and 2010. The postcards contained information about investing in fixed annuities that failed to provide a sound basis for evaluating an investment in fixed annuities, in violation of FINRA Rules 2210(d)(1)(A) and 2010.

In or about July and August 2013, Hodgman falsely represented to the Firm that the marketing company had mailed the Postcards prematurely, without his knowledge or authorization. To bolster this story, in or about August 2013, Hodgman made a telephone call to a Moors & Cabot compliance officer in which he impersonated a representative of the marketing company and made additional false statements regarding the mailing of the Postcards. Based on this conduct, Hodgman violated FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

1. The Advertising Violations

FINRA Rule 2210(b)(1) provides that "[a]n appropriately qualified registered principal of the member must approve each retail communication before the earlier of its use or filing with FINRA's Advertising Regulation Department."

FINRA Rule 2210(d)(1)(A) provides that "all member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member may omit any material fact or qualification if the omission, in the light of the context of the material presented, would cause the

communication to be misleading.”

In or about May 2013, Hodgman submitted a proposal for an advertisement to the Firm’s compliance office. On or about May 22, 2013, the compliance office emailed Hodgman describing changes that it required before the advertisement could be approved. Hodgman did not respond to that email and did not make the required changes. Instead, without the approval of a registered principal at the Firm, in May and in July 2013, Hodgman caused the marketing company to send the Postcards to prospective customers.

The Postcards contained Hodgman’s name and photograph and promoted investments in fixed annuities with “yields over 3%” for “7 years.” The Postcards failed, however, to disclose any information regarding the limitations, restrictions, and conditions associated with the fixed annuities, including liquidity, surrender charges, and time frames, and failed to disclose the conditions associated with the availability of the proposed terms. As a result, the Postcards failed to provide a sound basis for evaluating an investment in the fixed annuities.

Based on the foregoing conduct, Hodgman violated FINRA Rules 2210(b)(1), 2210(d)(1)(A) and 2010.

2. False Statements and Impersonation

In or about July 2013, the Firm confronted Hodgman after learning that he had caused the Postcards to be mailed without the Firm’s approval. In response, Hodgman falsely claimed that he was unaware that the marketing company had sent the Postcards, and that the marketing company must have sent the Postcards prematurely without his approval. In addition, in or about August 2013, Hodgman falsely told the Firm that only 25 Postcards had been mailed.

In or about August 2013, the Firm asked Hodgman to provide the name and contact information for someone at the marketing company and also informed Hodgman that the Firm would need something in writing from the marketing company attesting to its purported mistake.

The following week, Hodgman called the Vice President and Compliance Officer of the Firm and impersonated the general manager of the marketing company. During that telephone call, Hodgman made several false statements regarding the Postcards, including: (1) that the mailing of the Postcards was the marketing company’s mistake; (2) that the Postcards were sent only to approximately 50 individuals; and (3) that the marketing company was unable to provide a list of the addresses to which it sent the Postcards.

Later in August 2013, a representative of the Firm spoke with the general manager of the marketing company, who denied that he had previously spoken with the Firm and contradicted Hodgman's statements to the Firm. The Firm confronted Hodgman, at which point he admitted that he had made false statements regarding the Postcards, that he had impersonated the general manager of the marketing company, and that, in fact, approximately 40,000 Postcards had been mailed at his direction.

Based on the foregoing conduct, Hodgman failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

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

- a suspension from association with any FINRA member in any and all capacities for a period of 18 months; and
- a \$5,000 fine.

The fine shall be due and payable either immediately upon reassociation with a member firm following the eighteen-month suspension noted above, 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 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 pre-judgment 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;
- 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; and
- 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.

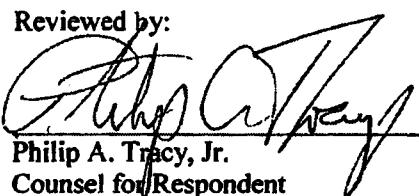
I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

Date

5/20/15


Lucian D. Hodgrain, Respondent

Reviewed by:



Philip A. Tracy, Jr.
Counsel for Respondent
DiMento & Sullivan
Seven Faneuil Marketplace
Boston, MA 02109
617.523.2345

Accepted by FINRA:

Date

6/18/15

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


Robert C. Kennedy
Regional Counsel
FINRA Department of Enforcement
99 High Street, Suite 900
Boston, MA 02110
(617) 532-3423
Fax: (202) 721-8393

Advertising Regulation Conference

Washington, DC | October 8 – 9, 2015

Sales Practices: A Case Study Approach Resource Materials

Most publications listed below can be found at www.finra.org/Industry unless otherwise noted.

Consolidated Account Statements

- *Regulatory [Notice 10-19](#), Consolidated Reports* (April 2010)
- *Regulatory [Notice 08-77](#), Customer Account Statements* (December 2008)

Fixed Income Products

- *Investor Alert, [Duration – What an Interest Rate Hike Could Do to Your Bond Portfolio](#)* (February 2013)
- *Investor Alert, [The Grass Isn't Always Greener-Chasing Return in a Challenging Investment Environment](#)* (July 2011)
- *Regulatory [Notice 08-81](#), FINRA Reminds Firms of Their Sales Practice Obligations with Regard to the Sale of Securities in a High Yield Environment* (December 2008)
- *Regulatory [Notice 08-82](#), Cash Alternatives. FINRA Reminds Firms of Their Sales Practice Obligations with Regard to Cash Alternatives* (December 2008)

Research Reports

- *Regulatory [Notice 15-30](#), Equity Research*
- *Regulatory [Notice 15-31](#), Debt Research*

Seminars

- *Regulatory [Notice 08-27](#), The Obligation of Firms When Supervising their Registered Representatives' Use of Marketing Materials to Establish Expertise* (May 2008)
- *Regulatory [Notice 07-43](#), FINRA Reminds Firms of Their Obligations Relating to Senior Investors and Highlights Industry Practices to Serve these Customers* (September 2007)

Structured Products

- Regulatory [Notice 12-29](#), *Communications with the Public. SEC Approves New Rules Governing Communications with the Public* (June 2012)
- Regulatory [Notice 12-03](#), *Complex Products. Heightened Supervision of Complex Products* (January 2012)
- Investor Alert, [Structured Notes With Principal Protection: Note the Terms of Your Investment](#) (June 2011)
- Regulatory [Notice 10-52](#) *Application of Rules on Communications With the Public and Institutional Sales Material and Correspondence to Certain Free Writing Prospectuses* (October 2010)
- Regulatory [Notice 10-09](#), *Reverse Convertibles. FINRA Reminds Firms of Their Sales Practice Obligations With Reverse Exchangeable Securities (Reverse Convertibles)* (February 2010)
- Investor Alert, [Reverse Convertibles – Complex Investment Vehicles](#) (February 2010)
- Notice to Members [05-59 Structured Products](#). *NASD Provides Guidance Concerning the Sale of Structured Products* (September 2005)

NOTES