

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2006003916902**

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

RE: James Russell McCarthy, Jr., Respondent
General Securities Principal
CRD No. 1123445

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

In May 1983, James Russell McCarthy, Jr. ("McCarthy") first became registered with a FINRA member firm as an Investment Company and Variable Contracts Products Representative. From May 14, 1987 through September 9, 2005, McCarthy was registered in various capacities, including as a General Securities Principal and a General Securities Representative, through former FINRA member firm First Dunbar Securities Corporation ("First Dunbar"). Throughout the relevant period herein (June 2004 – September 9, 2005), McCarthy was First Dunbar's Chief Compliance Officer and AML Compliance Officer. McCarthy was last associated with a FINRA member firm on June 20, 2008.

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RELEVANT DISCIPLINARY HISTORY

On March 10, 2004, NASD issued an AWC finding that First Dunbar, acting through McCarthy, filed inaccurate FOCUS reports and conducted a securities business while failing to maintain minimum net capital. McCarthy was fined \$5,000, jointly and severally with First Dunbar, and ordered to requalify as a Financial and Operations Principal.

OVERVIEW

From at least December 2004 to September 2005, McCarthy permitted GL, an unregistered individual, to perform functions at his employer member firm requiring principal registration without being registered with FINRA in that capacity. During the same period, McCarthy also failed to enforce his employer member firm's written supervisory procedures ("WSPs"). From July 2004 through March 2005, McCarthy also failed to file any Suspicious Activity Report ("SAR") in connection with numerous sub-penny stock transactions in one customer's account. This conduct violated NASD Membership and Registration Rule 1021 and NASD Conduct Rules 3010, 3011 and 2110.

FACTS AND VIOLATIVE CONDUCT

1. PERMITTING GL TO ACT AS AN UNREGISTERED PRINCIPAL

In December 2004, FINRA staff issued a Letter of Caution against McCarthy's employer member firm, for permitting GL, an unregistered individual, to act as a principal of the firm throughout 2004. In response to the Letter of Caution, McCarthy's employer member firm sent a letter to FINRA, dated March 1, 2005, in which it stated that GL was not taking an active role in the management of the company. McCarthy was aware of the Letter of Caution and the firm's response.

Contrary to the firm's representation to FINRA, however, GL continued to act as an unregistered principal of the firm. Specifically, from at least December 2004 through McCarthy's departure from the firm in September 2005, McCarthy, while Chief Compliance Officer of the firm, allowed GL to perform functions requiring principal registration. GL should have been registered with FINRA as a principal based on his engagement in, *inter alia*, the following activities: directing the firm's registered principals in the conduct of investment banking due diligence activities, directing the firm's registered principals on when to sign investment banking contracts, directing firm personnel in the payment of commissions

and other expenses and participating in the hiring and termination of personnel.

By permitting GL to act as a principal of a member firm without being registered as such, McCarthy violated NASD Membership and Registration Rule 1021 and NASD Conduct Rule 2110.

2. SUPERVISORY DEFICIENCIES

From December 2004 to September 2005, McCarthy failed to enforce his employer member firm's WSPs requiring that a Watch/Restricted list be maintained while the firm participated in underwriting activities. The firm participated in one initial public offering and two private placements during that period, but McCarthy failed to ensure that a Watch/Restricted list was maintained.

By failing to enforce his employer member firm's WSPs, McCarthy violated NASD Conduct Rules 3010 and 2110.

3. FAILURE TO FILE A SUSPICIOUS ACTIVITY REPORT

NASD Conduct Rule 3011(a) requires FINRA members to establish and implement policies and procedures "that can be reasonably expected to detect and cause the reporting of" suspicious activity and transactions. On July 2, 2002, the Department of the Treasury issued the regulation requiring suspicious transaction reporting for broker-dealers. 31 CFR §103.19(a)(1). It required all broker-dealers to file with Treasury's Financial Crimes Enforcement Network "a report of any suspicious transaction relevant to a possible violation of law or regulation." Treasury's release stated that broker-dealers should determine whether activities and transactions raise suspicions by looking for red flags.

From July 2004 through March 2005, McCarthy failed to implement his employer member firm's policies and procedures designed to detect and cause the reporting of suspicious transactions. Specifically, McCarthy failed to file any SAR in connection with suspicious stock transactions and wire activity involving the sale of over one billion shares of CMKX from the account of one customer resulting in total proceeds of over \$786,000. CMKX was a sub-penny stock. During the relevant period, CMKX had an average daily trading volume of 670 million shares. McCarthy was aware of several "red flags" indicating that the CMKX activity warranted a SAR filing. For example, the Securities and Exchange Commission halted the trading in the stock between March 3 and March 16, 2005, after finding that certain CMKX shareholders may be distributing the stock in violation of the Securities Act of 1933. McCarthy was aware of that trading halt at the time. Within days of the trading halt being lifted, however, the

customer continued to enter frequent and substantial sales orders of CMKX stock.

By failing to file a SAR in connection with the CMKX activity, McCarthy violated *NASD Conduct Rules 3011(a) and 2110*.

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

- A two-month suspension from association with any member of FINRA in any principal capacity and a fine in the amount of \$20,000.

The fine shall be due and payable, pursuant to the an installment payment plan as designated on the attached Election of Payment Form, beginning either immediately upon reassociation with a member firm following the two-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.¹

I specifically and voluntarily waive any right to claim that I am 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

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

¹ The terms of the installment payment plan shall be as follows: an initial payment of \$5,000 followed by 30 monthly installments of \$500, plus interest, as established by the FINRA Finance Department.

- 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 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.

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 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 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.

3/4/09
Date


James Russell McCarthy, Jr.
Respondent

Reviewed by:

Charles M. O'Rourke, Esq.
Counsel for Respondent
2 Swanson Drive
Woodbury, NY 11797
Tel. 516-677-9785
Fax 516-677-9786



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 right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party; and

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Date

James Russell McCarthy, Jr.
Respondent

Reviewed by:



Charles M. O'Rourke, Esq.
Counsel for Respondent
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Woodbury, NY 11797
Tel. 516-6779785
Fax 516-677-9786

Accepted by FINRA:

3/27/2009
Date

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



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