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**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20070094272**

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

RE: Allan Bruce Rosenthal, Respondent
Registered Representative
CRD No. 2252495

Pursuant to NASD Rule 9216 of FINRA's Code of Procedure, Allan Bruce Rosenthal ("Rosenthal" 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 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

Rosenthal entered the securities industry as a General Securities Representative in 1992. From 1992 to January 2005, he was associated with five FINRA firms as a registered representative. From January 21, 2005 through April 3, 2006, he was associated with Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch" or the "Firm") as a General Securities Representative. Rosenthal is not currently associated with a FINRA member. Rosenthal has no prior disciplinary history.

OVERVIEW

During the period that Rosenthal was associated with Merrill Lynch, he effected approximately 74 unauthorized transactions and/or failed to

execute customer sell orders in nine accounts involving 12 customers; sent approximately 13 misleading and unapproved emails to customers from his personal email address; failed to disclose his official status and duties and potential conflicts of interest with his outside business affiliation; and mismarked order tickets as unsolicited when the trades were in fact solicited.

FACTS AND VIOLATIVE CONDUCT

Unauthorized Transactions and Failure to Execute Customer Orders IM-2310-2 and NASD Conduct Rule 2110

From approximately September 2005 to March 2006, Rosenthal effected approximately 74 unauthorized transactions and/or failed to execute customer sell orders in nine accounts involving 12 customers. Rosenthal's unauthorized transactions involved purchases of large quantities of penny stocks without the customers' authorization or consent, and were funded either by margin or by a corresponding unauthorized sale of blue chip stocks or mutual funds from the customer account. Upon discovering the violations, the Firm reversed the unauthorized transactions and reimbursed the customers for losses in their accounts.

Rosenthal effected the following unauthorized transactions:

- In early 2005, Rosenthal recommended that GW purchase EpiPharma, Inc. ("EpiPharma"). In September and October 2005, Rosenthal purchased an additional 60,000 shares of EpiPharma in GW's account without his authorization or consent. In March 2006, Rosenthal failed to follow GW's instructions to sell holdings of Colusa Biomass Energy Corporation ("Colusa Biomass") from his account.
- In December 2005, Rosenthal made multiple unauthorized purchases, on margin, of Colusa Biomass, Newport International Group ("Newport"), and Iphone2, in SC and AC's joint account and in SC's IRA account. By January 2006, SC and AC's joint account had a margin balance representing nearly 35% of the value of the account, and was over 36% invested in Newport.
- In December 2005 and January 2006, Rosenthal purchased numerous penny stocks, including Newport and Colusa Biomass in LW and DW's joint account without their authorization or consent.

- In early 2006, Rosenthal recommended that PS and FS invest a small portion of their joint account in higher risk securities. Instead, Rosenthal invested the majority of their account in penny stocks, without their authorization or consent. By February 2006, PS and FS's account was over 32% invested in Securities First, over 25% invested in Newport, and carrying a margin balance representing nearly a third of the value of their account.
- In early 2006, JH agreed to purchase a limited amount of Newport in his IRA account upon Rosenthal's recommendation. In February 2006, Rosenthal purchased Newport in JH and IH's joint account without their authorization or consent, and purchased Colusa Biomass in JH's IRA account without his authorization or consent.
- In early 2006, AD and KD agreed to purchase a small amount of Newport in their joint account, on Rosenthal's recommendation. However, Rosenthal purchased additional shares of Newport in AD and KD's account without their authorization or consent.
- In March 2006, LF agreed to purchase a limited amount of Carley Enterprises ("Carley") in his account. However, Rosenthal purchased additional shares of Carley without LF's authorization or consent.

Such acts, practices, and conduct constitute separate and distinct violations of IM-2310-2, which specifies that unauthorized transactions warrant disciplinary action, and NASD Conduct Rule 2110, which requires FINRA members to observe high standards of commercial honor and just and equitable principles of trade.

Correspondence With Customers

NASD Conduct Rules 2210(d)(1)(A) and (B), 2211(d)(2)(A), and 2110

Between March 2005 and February 2006, Rosenthal sent approximately 13 emails to five customers from his personal email address. The emails were not reviewed or approved by the Firm and did not disclose the Firm's name. The emails concerned penny stocks, including EpiPharma and Colusa Biomass, and discussed upcoming deals, news, and events about the companies. Rosenthal claims that the emails were "speculation" and that he had no reason to believe that the developments discussed in the emails would occur. Rosenthal was also aware that Firm policy required all written correspondence to customers to be sent from Merrill Lynch

systems and generally prohibited the recommendations of securities not followed by Firm research, including the penny stocks discussed in the emails.

Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 2210(d)(1)(A), which requires member communications with the public to be fair and balanced, and to provide the investor with a sound basis for evaluating the facts regarding the securities being discussed; and NASD Conduct Rule 2210(d)(a)(B), which prohibits false, exaggerated, unwarranted, or misleading statements or claims in any communication with the public.

Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 2211(d)(2)(A), which requires all correspondence to prominently disclose the name of the member.

Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 2110, which requires FINRA members to observe high standards of commercial honor and just and equitable principles of trade.

Outside Business

NASD Conduct Rules 3030 and 2110

In January 2005, Rosenthal disclosed on a Merrill Lynch outside business questionnaire, that he held a position as a director on the board of his wife's marketing, financial consulting, and investor relations firm, known as Competitive Edge Consultants ("CEC"). Rosenthal listed his duties as "review[ing his] wife's work, and add[ing] help when it is in the area of [his] educational background (Engineering)," and disclosed that his connection with the company was "strictly on a technical basis." The Firm approved Rosenthal's outside business affiliation and instructed him to "avoid conflicts of interest and advise Merrill Lynch of any real or perceived conflict between [his] involvement with the entity and employment with Merrill Lynch."

Rosenthal failed to disclose to the Firm that his official status and duties with CEC went beyond review of his wife's work and technical advice. In September 2005, Rosenthal, as a representative of CEC, began discussions with Colusa Biomass regarding technical aspects of their patent process; and in January 2006, Rosenthal visited the CEO of Newport and discussed with him a possible relationship between the company and CEC. Such duties exceeded the technical review of his wife's work and should have

been disclosed to the Firm.

Rosenthal also failed to advise the Firm of potential conflicts of interest between his involvement with CEC and his employment with Merrill Lynch. In late 2005 and early 2006, Rosenthal was soliciting the purchase of Colusa Biomass, Newport, and Security First to certain of his customers. During that same time period, CEC was listed as the investor relation's contact for Colusa Biomass, Spare Backup (a subsidiary of Newport), and Security First. Although Rosenthal was aware of this potential conflict of interest and the Firm's policy to disclose any perceived conflicts, he failed to notify the Firm.

Such acts, practices, and conduct constitute a violation of NASD Conduct Rule 3030, which prohibits any person associated with a member firm in any registered capacity to be employed by, or accept compensation from, any other person as a result of any business activity, other than a passive investment, outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member. Such acts, practices, and conduct also constitute a violation of NASD Conduct Rule 2110, which requires FINRA members to observe high standards of commercial honor and just and equitable principles of trade.

Books and Records

Section 17(a) of the Securities Exchange Act of 1934 and Rules 17a-3 and 17a-4 thereunder and NASD Conduct Rules 3110 and 2110

As noted above, from approximately September 2005 to March 2006, Rosenthal effected approximately 74 unauthorized transactions in numerous customer accounts. Rosenthal marked all of the order tickets for those trades as unsolicited. However, the unauthorized transactions were unapproved by the customers, who did not know of the trades ahead of time, and therefore could not have been unsolicited. Moreover, although some of the customers initially agreed to purchase a limited amount of penny stocks prior to the unauthorized purchases, Rosenthal also solicited those initial purchases, which were mismarked as unsolicited.

Such acts, practices, and conduct by Rosenthal caused the Firm to violate Section 17(a) of the Securities Exchange Act of 1934 and Rules 17a-3 and 17a-4 thereunder and NASD Conduct Rule 3110, which require members to maintain accurate books and records. Such acts, practices, and conduct also constitute a violation of NASD Conduct Rule 2110, which requires FINRA members to observe high standards of commercial honor and just

and equitable principles of trade.

- B. Respondent also consents to the imposition of the following sanction:

A bar from association with any FINRA member in any capacity.

Respondent understands that if he is barred or suspended from associating with any FINRA member, he becomes subject to a statutory disqualification, as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, Respondent 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 NASD Rule 8310 and IM-8310-1).

The sanction imposed herein shall be effective on a date set by FINRA staff. Pursuant to NASD IM-8310-3(e), a bar or expulsion shall become effective upon approval or acceptance of this AWC.

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Formal Complaint issued specifying the allegations against him;
- B. To be notified of the Formal 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 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.

Respondent further specifically and voluntarily waives any right to claim that a person violated the *ex parte* prohibitions of NASD Rule 9143 or the separation of functions prohibitions of NASD 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 NASD 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 NASD Rule 8310 and IM-8310-3; 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 right to take legal or factual positions in litigation or

other legal proceedings in which FINRA is not a party.

Respondent certifies that he has read and understood all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Respondent 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.

May 30, 2008

Date

Allan B. Rosenthal

Allan Bruce Rosenthal
Respondent

Accepted by FINRA:

6/27/08
Date

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

Linda Riefberg

Linda Riefberg
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