

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20070115446**

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

RE: Bruce Guarino, Respondent
CRD 1096719

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

Respondent entered the securities industry in 1993. He was associated with Advanced Planning Securities from May 2005 to June 2007, and was registered as a General Securities Principal, General Securities Representative, and Registered Options Principal.¹ From January 2006 through July 2007, Guarino and a group of brokers operated out of a branch office of APS located in Melville, NY. In 2007, Guarino formed Rockwell Global Capital, LLC, ("Rockwell"), which became a FINRA member on February 28, 2007 and is principally owned by Guarino. He is currently registered as a Securities Principal, General Securities Representative, Limited Representative - Investment Banking, General Securities Sales Supervisor and Registered Options Principal with Rockwell.

¹ APS filed a BDW that became effective in February 2009.

OVERVIEW

Guarino supervised brokers who worked in two branch offices of APS, in Melville, New York and Fort Lauderdale, Florida, and sold CMOs to retail customers. Customers of APS, including the customers at issue in this matter, were given a disclosure document that stated that they would be charged no more than 3.25 percent in transaction costs when they purchased CMOs through APS.

In his position as a supervisor, Guarino reviewed every CMO sale by brokers in the Melville and Fort Lauderdale branch offices of APS. However, Guarino failed to detect that in 187 transactions, or 28% of all CMO transactions, customers were being charged more than the 3.25 percent they had been told would be the maximum charge. In all, \$41,873.47 in excessive transaction costs were charged to the customers.

Because his supervisory review of the sales was deficient, and because he failed to take adequate steps to implement the firm's policy of charging a maximum of 3.25 percent in transaction costs to customers on their CMO purchases, Guarino violated NASD Rule 3010 and, by virtue of that violation, Rule 2110.

FACTS AND VIOLATIVE CONDUCT

Between January 2006 and July 2007, there were 668 CMO transactions executed through APS by brokers in the Melville and Fort Lauderdale branch offices of APS. Those customers were provided a CMO disclosure document by APS. The disclosure document stated that transaction costs for the purchase of CMO products would not exceed 3.25%. Despite this representation, of 668 customer transactions executed during the period at issue, 187 of the transactions substantially exceeded the maximum limit for transaction costs set forth in the disclosure document. Some mark-ups were as much 1.35% above the maximum charge outlined in the disclosure document.

Guarino received two sets of blotters, one encompassing all trades, and one just covering CMO transactions, and he reviewed both.

Guarino approved the inclusion of the 3.25% maximum charge in the disclosure document and reviewed all of the CMO transactions entered by brokers in the Melville and Fort Lauderdale branch offices to assure compliance with the Firm's guidelines. However, he failed to take adequate steps to detect that amounts in excess of the 3.25% stated in the disclosure document were being charged in numerous transactions, and as a result \$41,873.47 in excessive transaction costs were charged to Firm customers.

By failing to adequately review CMO purchases by the brokers under his supervision, or otherwise taking reasonable steps to ensure that they were abiding

by the terms identified in the disclosure document sent to customers, Guarino violated NASD Conduct Rules 3010 and 2110.

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

1. A 30-day supervisory suspension from association with any FINRA member firm in any supervisory capacity;
2. A fine of \$5,000. The fine shall be due and payable either immediately upon reassociation with a member firm following the 30-day supervisory 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.
3. Restitution in the amount of \$41,873.47 to be paid to the customers listed on Attachment A hereto. Those payments will be made no later than 120 days after acceptance of this AWC, as stated in more detail below.

I agree to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is 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.

Restitution is ordered to be paid to the customers listed on Attachment A hereto in the total amount of \$41,873.47, 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 the misconduct, until the date this AWC is accepted by the NAC.

Respondent Guarino shall submit satisfactory proof of payment of restitution, plus interest, or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted to David L. Friedman, 14 Wall Street, 14th Floor, New York, NY, 10005, either by letter that identifies the Respondent and the case number and includes a copy of the check, money order or other method of payment, or by e-mail with PDF copies of the payment documentation, 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.

Respondent has specifically and voluntarily waived any right to claim an inability to pay at any time hereafter the monetary sanction imposed in this matter.

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.

I understand that if I am barred or suspended from associating with any FINRA member in a supervisory 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 supervisory 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 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; 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 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.

11/1/10
Date

B. Guarino
Bruce Guarino, Respondent

Reviewed by:

M. Kaplan
Martin H. Kaplan
Counsel for Respondent
Gusrae, Kaplan, Bruno & Nusbaum PLLC
120 Wall Street, 11th Floor
New York, New York 10005
Phone: (212) 269-1400

Accepted by FINRA:

11/4/10
Date

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

Thomas B. Lawson
Thomas B. Lawson
Chief Counsel
FINRA Department of Enforcement
1735 K St., NW
Washington, DC 20006