

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT**

NO. 2007011878502

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

**RE: Benedict Patrick Tommasino, Respondent
Former Securities Lending Supervisor
(CRD No. 1828742)**

Pursuant to Rule 9216 of the FINRA Code of Procedure, Respondent Benedict Patrick Tommasino ("Respondent" or "Tommasino") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of 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 Tommasino 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

Tommasino was born in [REDACTED]. He entered the securities industry in September 1974 as a securities lending employee at a FINRA member firm. Tommasino became registered as a securities lending supervisor in June 1988. Tommasino left that FINRA member firm and joined RBC Capital Markets Corporation ("RBCCMC" or the "Firm") (formerly known as RBC Dominion Securities Corporation) as a securities lending employee in March 1995. During the period March 2004 through November 2004 (the

"Relevant Period") Tommasino was the head trader of the Firm's stock loan department (the "Stock Loan Department").

RELEVANT PRIOR DISCIPLINARY HISTORY

Respondent does not have any prior disciplinary history.

OVERVIEW

On approximately six occasions during the Relevant Period, Tommasino, while employed as a registered securities lending supervisor with RBCCMC, permitted Shields Institutional, ("Shields"), a non-registered finder, to act in a capacity that required it to be a registered broker-dealer. Furthermore, Tommasino was aware that Dennis T. Palmeri, Sr. ("Palmeri, Sr."), the primary individual associated with Shields, was barred from the securities industry in 1997 pursuant to an order of the Securities and Exchange Commission ("SEC"). In these instances, Tommasino allowed Shields to act in a capacity beyond that of a normal finder and one that required registration in that Palmeri, Sr. negotiated the terms of stock loan transactions and dictated counterparties to those transactions. Tommasino also agreed to pay Shields based on earnings generated by related arbitrage transactions, and arranged for the funds to be transmitted to another broker-dealer to make the transaction-based compensation to Shields. These actions all required that Shields and/or Palmeri, Sr. be a registered broker-dealer under the federal securities laws. The investigative record also revealed that, among other things, in connection with some of the stock loans arranged by Shields, Tommasino failed to disclose to RBCCMC that he had agreed to pay and caused profit-based compensation to be transmitted to a non-registered person who had been barred from the securities industry and/or a finder.

BACKGROUND OF STOCK LOAN

In a typical stock loan transaction, a financial institution that needs to borrow a security communicates that need to other financial institutions known to engage in stock loan transactions. Upon locating the security it needs, the borrowing institution will establish with the lender the three financial terms of the transaction. The first term is the form of the collateral, cash or securities. The second term is the amount of collateral, for domestic securities typically 102% of the market value of the securities being borrowed. The third term is the cost the borrower will pay to borrow the securities, called a lending fee.

The borrower in a stock loan transaction pays the collateral to the lender and the lender delivers the securities to the borrower. The lender invests the cash collateral at short-term (overnight Fed funds) interest rates. The lender retains part of the interest it receives on

the cash collateral as its fee for lending the securities; this is known as the lending fee. The lender returns the remainder of the interest income on the collateral to the borrower; this is known as the rebate.

In a situation where the securities that are the subject of the loan are readily available for loan, the lender keeps only a very small portion of the interest earned on the collateral and returns, or rebates, the vast majority of the interest to the borrower. Conversely, when the security that is the subject of the stock loan transaction is scarce or otherwise "hard-to-borrow," the lender retains most or all of the interest on the collateral and returns little if any to the borrower of the stock. Supply and demand determines the price the borrower pays to borrow the stock. The less stock there is available to borrow and/or the harder it is to locate, the more the borrower pays for the privilege of borrowing it.

In some circumstances involving "hard-to-borrow" stocks, the interest earned on the cash collateral may not be sufficient to cover the entire borrowing fee. In these instances, the borrower must make payment to the lender, above and beyond the interest earned on the cash collateral, for the privilege of borrowing the stock; this is called a negative rebate. In almost all instances, the rebate rate associated with a particular stock loan contract is an indicator of the supply and demand of the subject security.

Finders to stock loan transactions, in exchange for a fee, assist a borrower in locating securities and, less frequently a lender in finding a borrower for securities it has available to lend. Most finders are not registered broker-dealers and generally act only to locate the security. Electronic mail and facsimile transmission have enabled parties that engage in stock loan activities to inform each other almost instantaneously of the securities they have available to lend or need to borrow, thus eliminating, in many cases, the need for finders. As described above, in situations involving "hard-to-borrow" securities, finders frequently perform real and valuable services. Finder's fees are typically negotiated by the finder with the paying counterparty and calculated based on the nominal value of the stock loan, the period the loan is open, and the nature of and demand for the security.

FACTS AND VIOLATIVE CONDUCT

Transaction-Based Payments to Non-registered Finder

Pursuant to Section 15(a)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"), "It shall be unlawful for any broker or dealer . . . to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce the purchase or sale of, any security . . . unless such broker or dealer is registered . . ."

The SEC has defined the parameters within which a finder's actions may require broker-dealer registration. Factors considered in reaching such a determination include, (1)

whether the finder was involved in negotiations; (2) whether the finder engaged solicitation of investors; (3) whether the finder was compensated on a transaction-related basis; and (4) whether the finder was previously involved in the sale of securities and/or was disciplined for prior securities activities. A finder who participates in the activities described by these factors may be deemed to be acting in the capacity of a broker-dealer requiring registration.

Pursuant to NYSE Rule 345(a), no member organization shall permit any natural person to perform regularly the duties customarily performed by a securities lending representative, unless such person shall have been registered with, qualified by and is acceptable to the NYSE. NYSE Rule 345, as interpreted by NYSE Interpretation Handbook, NYSE Rule 345(a)02, precludes member organizations from paying to non-registered persons compensation based upon the business of customers they direct to member organizations if, among other things: (a) the compensation is formulated as a direct percentage of the commissions or income generated, or (b) payment is other than on an isolated basis, or (c) such person regularly engages in activity which may be reasonably expected to result in the procurement of new customers or orders.

A. Profit-Based Payments to Non-registered Finder

In 2004, Tommasino was the head trader on the RBCCMC stock loan desk. Palmeri, Sr. was the primary individual associated with finder firm, Shields. Pursuant to a plea agreement, in February 1994 Palmeri, Sr. was convicted in federal court of aiding and abetting his employer's violation of certain federal securities laws. Palmeri, Sr. was sentenced to two years probation and ordered to perform 400 hours of community service and pay a \$100,000 fine. In connection with the criminal matter, in 1997 the SEC barred Palmeri, Sr. from association with any broker, dealer, municipal securities dealer, investment adviser or investment company, with the right to reapply for association after two years to the appropriate self-regulatory organization, or if there is none, to the SEC.¹ To date, Palmeri, Sr. remains barred from the securities industry.²

¹ Dennis T. Palmeri, Sr., Exchange Act Release No. 38,497 (April 10, 1997). The conduct for which Palmeri, Sr. was convicted consisted of, among other things, locating a source of securities that his employer borrowed in order to unlawfully elect dividend reinvestment options and filing a false tax return.

² Shields is a non-registered finder firm, not a broker, dealer, municipal securities dealer, investment advisor or investment company. Accordingly, the bar imposed by the SEC did not prohibit Palmeri, Sr. from associating with Shields. Additionally, the term "person associated with a broker or dealer" is defined in Section 3(18) of the Securities Exchange Act of 1934 to mean partner, officer, director or branch manager or a broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer. Thus, the SEC bar did not preclude Palmeri, Sr. from being employed by Shields and in that manner doing business with RBC in the capacity of a non-registered finder.

Cemex Transactions

In early 2004, the market anticipated that CEMEX, S.A. de C.V. ("Cemex") would declare a dividend in May 2004. The anticipated dividend was expected to be payable in cash or shares at the election of the holder. It was anticipated that the stock dividend would pay a premium of approximately twenty percent over the cash dividend.

In April 2004, Tommasino, in addition to being the head of RBCCMC's stock loan desk, was a participant in a business arrangement among RBCCMC, its parent "ABC", and its affiliate "ABCEL" referred to as the "Joint Venture." For his participation in the Joint Venture, Tommasino identified potentially profitable trading opportunities in which ABCEL might engage financed by ABC, and borrowed the stocks for ABCEL.

In April 2004, Palmeri, Sr. informed Tommasino of the potential Cemex dividend arbitrage. Palmeri, Sr. told Tommasino that he had identified sources that would lend their Cemex shares. Palmeri, Sr. repeatedly assured Tommasino that, based on his established relationships with the entities lending the Cemex shares, he was certain that the lenders would elect the cash dividend on a significant portion of the shares allowing for a profitable arbitrage on the shares. Palmeri, Sr. expressed in a variety of ways that it was his goal to be compensated based on the profitability of an arbitrage on the Cemex shares. Tommasino informed Palmeri, Sr. that ABCEL engaged in dividend arbitrage transactions and that he would show the trade to ABCEL.

Tommasino contacted a trader with ABCEL ("Trader") who was also a participant in the Joint Venture to inform him of the potential Cemex arbitrage. In presenting the Cemex arbitrage to Trader, Tommasino explained that Palmeri, Sr., a finder, was the immediate source of the stock. Tommasino proposed to Trader that Palmeri, Sr. be paid 50% of the profits generated by any Cemex arbitrage the Joint Venture engaged in with shares borrowed through Shields. Trader countered by asking if Shields would similarly share in 50% of any losses the arbitrage should incur. In response Tommasino stated that Shields would take half the losses but stressed that because Palmeri, Sr. was locating the Cemex shares, and had relationships with the lenders, there would be no such losses.

At the time Tommasino began to borrow the Cemex shares, there was an understanding between Tommasino and Palmeri, Sr. that Palmeri, Sr., doing business as Shields, would be paid based on the profits of the arbitrage. Tommasino and Palmeri, Sr. agreed that the payment to Shields would not be made directly by RBCCMC. Palmeri, Sr. and Tommasino agreed that RBCCMC would send Palmeri, Sr.'s share of the profits to Raymond James for payment on to Shields.

Palmeri, Sr. identified 13 million shares of Cemex to be borrowed by RBCCMC and arranged for RBCCMC to borrow the shares through intermediaries. The intermediaries through which RBCCMC borrowed the shares and the number of shares RBCCMC borrowed from each were determined by Palmeri, Sr. and were subject to change only as

necessary to determine that lending agreements and a sufficient credit line exist for each proposed counterparty and number of shares. In addition, Palmeri, Sr. established the rebate rate that RBCCMC would receive from or pay to each counterparty when borrowing the shares.

In April 2004, Tommasino, on behalf of RBCCMC, borrowed 13,000,000 shares of Cemex at Palmeri, Sr.'s direction. Tommasino did not determine the counterparty from whom the shares were to be borrowed, the number of shares to be borrowed from each lender, or the rebate rate it would receive in connection with the borrows. Tommasino permitted Palmeri, Sr. to establish all of the terms of each Cemex borrow transaction.

Tommasino, on behalf of RBCCMC, loaned these shares to its affiliate ABCEL which held the position over record date and elected the stock dividend on all thirteen million shares. Based on the elections of the underlying lenders, ABCEL returned either cash or stock to the underlying lender. If the stock dividend was elected by the underlying lenders, no arbitrage profit was generated. Conversely, if the underlying lenders elected to receive cash, ABCEL sent an "in lieu of" payment equal to the value of the cash dividend. These transactions generated an arbitrage profit from the difference between the sale of the stock elected and the cash paid to the underlying lenders.

The violations occurred because Tommasino allowed a non-registered finder to act in capacities and to an extent requiring registration. Further, he agreed that RBCCMC would pay and arranged for RBCCMC to pay transaction-based compensation to a non-registered finder. RBCCMC realized a profit of approximately \$1.25 million on the Cemex arbitrage transaction. Pursuant to Tommasino's arrangement to pay a portion of the profit to Shields, Tommasino caused RBCCMC³ to forward a transaction-based payment of \$300,000 to Raymond James on Shields' behalf. The payment was based on RBCCMC's and its affiliate's profits on the arbitrage transaction.

Trader, Tommasino and Tommasino's supervisor on the stock loan desk were supposed to determine together the amount of compensation to be paid to the finder on the Cemex transaction. Instead, Tommasino unilaterally determined the amount of the compensation.

Pursuant to a separate agreement between Raymond James⁴ and Palmeri, Sr., Raymond James deducted costs of the transactions, primarily the premium payments to lenders which Palmeri, Sr. had negotiated, and retained \$40,000, representing approximately 15% of the net profit on the transaction. Raymond James paid Shields \$222,269 representing 85% of the net profit on the transaction.

³ RBCCMC entered into an AWC at FINRA in February 2009 based on these facts, in which RBCCMC was censured and fined \$400,000 relating to this matter.

⁴ Raymond James entered into an AWC at FINRA in September 2008 largely based on these facts, in which Raymond James was censured and fined \$1 million relating to this matter.

Other Improper Transaction-Based Payments to Shields

Tommasino, on behalf of RBCCMC, effected approximately five other profit-sharing events with Shields related to arbitrage transactions between January and October 2004 (the "other arbitrage transactions"). In connection with the other arbitrage transactions, Tommasino caused RBCCMC to pay Shields a total of approximately \$163,943. All of the other arbitrage transactions were run through Raymond James with which Palmeri, Sr. had a standing agreement to receive transaction-based payments. Pursuant to this agreement, Raymond James received each of the transaction-based payments which Tommasino directed from RBCCMC, then deducted the costs associated with the transaction, retained 20% of the balance and paid the remaining 80% to Shields.

B. Failing to Disclose Finder Payments

In connection with the other arbitrage transactions, Tommasino did not disclose to anyone at RBCCMC or any of its affiliates the amount he had agreed to have paid to Palmeri, Sr. Instead, he roughly calculated the Firm's anticipated profit on the transaction, and the portion to be paid to Palmeri, Sr. based on the anticipated profits. Tommasino then built the payment for Palmeri, Sr. into the amount to be paid by the Firm when it borrowed the shares. In each of these instances, Tommasino, on behalf of the Firm borrowed the shares located by Palmeri, Sr. through Raymond James or other counterparties at Palmeri, Sr.'s direction and agreed to and caused RBCCMC to pay a portion of the profits to Raymond James for payment on to Palmeri, Sr.

Palmeri, Sr.'s activities required registration as a broker-dealer in that he solicited parties to engage in the securities lending transactions, negotiated all the terms of the borrows and loans, was paid transaction-based compensation, and had previously been disciplined in connection with his activities in the securities industry. Tommasino knew of Palmeri, Sr.'s criminal and disciplinary history, yet improperly permitted him to act as a non-registered stock lending representative for the Firm, and arranged for Palmeri, Sr. to receive profit-based payments on stock loan transactions he brought to the Firm.

C. Books and Records

By agreeing to pay the finder through another entity, Tommasino caused the Firm's books and records to be inaccurate in that they did not reflect the participation of finders in certain transactions. Additionally, Tommasino caused the Firm's books and records to fail to reflect that the Firm indirectly made payments to a finder by forwarding money to Raymond James for payment to Shields and, that the payments to Shields were transaction-based compensation.

VIOLATIVE CONDUCT BY THE RESPONDENT

1. Caused his member firm employer to aid and abet a violation of Section 15(a)(1) of the Securities Exchange Act of 1934 and violated NASD Rule 2110 in that, on one or more occasions, he permitted a person or entity not registered as a broker-dealer in accordance with federal securities laws and who had been barred from the securities industry to perform duties that require registration.
 2. Caused his member firm employer to violate New York Stock Exchange, LLC Rule 345(a) in that he permitted a person who was not registered with, qualified by or acceptable to the Exchange to perform regularly the duties customarily performed by a securities lending representative.
 3. Violated NASD Rules 2420 and 2110 by failing to observe, in the conduct of his business, high standards of commercial honor and just and equitable principles of trade in that, on one or more occasions, he:
 - a. agreed to pay and caused transaction-based compensation to be transmitted to a non-registered person who had been barred from the securities industry;
 - b. failed to disclose to his member firm employer that he had agreed to pay and caused transaction-based compensation to be transmitted to a non-registered person who had been barred from the securities industry; and
 - c. failed to disclose to his member firm employer that he had agreed to pay and caused transaction-based compensation to be transmitted to a finder.
 4. Violated NASD Conduct Rules 3110 and 2110 in that he caused the Firm to maintain and preserve inaccurate books and records in violation of Section 17(a) of the Securities Exchange Act of 1934 and SEC Rules 17a-3 and 17a-4, promulgated thereunder, and NASD Conduct Rules 3110 and 2110.
- B. I also consent to the imposition of the following sanctions:
1. A twenty month suspension in all capacities with any FINRA member firm;
 2. A consecutive two-month suspension from acting in a principal capacity with any FINRA member firm; and
 3. a \$30,000 fine.

The fine shall be due and payable either immediately upon reassociation with a member firm following the twenty 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(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 Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. 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. Pursuant to FINRA Rule 8313(e), a bar or expulsion shall become effective upon approval or acceptance of this AWC.

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under the FINRA 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 prejudice 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 under the FINRA Code of Procedure or the separation of functions prohibitions of FINRA Rule 9144 under the FINRA Code of Procedure, 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 the 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 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.

I certify that I have read and understand all of the provisions of this AWC and has 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.

4/20/09
Date

Benedict Tommasino
Benedict Patrick Tommasino

Reviewed by:

Mark S. Cohen
Mark S. Cohen, Esq.
Counsel for the Respondent
Cohen & Gresser LLP
100 Park Avenue
New York, NY 10017
212-957-7601

Accepted by FINRA:

4/24/09
Date

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

Linda S. Riefberg
Linda S. Riefberg
Vice President
FINRA Department of Enforcement
14 Wall Street
New York, NY 10005