

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20080116926**

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

RE: Clark Dodge & Co., Inc., Respondent
CRD No. 23288

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Clark Dodge & Co., Inc. ("Respondent," "Clarke Dodge," 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

Clark Dodge has been a member of FINRA, and its predecessor, the NASD, since November 1988. The Firm also is registered with the Municipal Securities Rulemaking Board ("MSRB"). The Firm's main office is in White Plains, New York. During the period relevant herein, the Firm had approximately four offices and employed approximately 35 registered representatives. Clark Dodge underwent a change in management in April 2008, after most of the violations discussed herein, and the new management has continued to the present time. Clark Dodge is an introducing broker and does not carry customer accounts. The Firm clears through RBC Correspondent Services on a fully disclosed basis.



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OVERVIEW

Clark Dodge had various financial deficiencies during the period of December 2006 to March 2008.

- On three dates during the period of December 2006 to June 2007, Clark Dodge conducted a securities business while failing to meet its minimum net capital requirements, in violation of SEC Rule 15c3-1 and NASD Rule 2110. The Firm's failure to meet its net capital obligations was the result of improperly characterizing a loan to an affiliate as paid-in capital, rather than as a liability.
- This misclassification of a loan to an affiliate also resulted in the Firm inaccurately calculating its net capital on two Financial and Operational Combined Uniform Single ("FOCUS") Report filings in violation of SEC Rule 17a-5 and NASD Rules 3110(a) and 2110.
- In addition, on four dates during the period of June 2007 to January 2008, Clark Dodge failed to accurately compute its net capital in violation of SEC Rule 17a-3(a)(11) and NASD Rules 3110(a) and 2110. For three of the four dates, the Firm's failure to accurately calculate net capital was the result of its use of the improper statutory minimum net capital requirement in its calculations.
- Furthermore, for July 18, 2007, Clark Dodge failed to give notification to the SEC or FINRA that its total net capital was less than 120 percent of the required minimum net capital, in violation of SEC Rule 17a-11(c)(3) and NASD Rule 2110.

Clark Dodge also had anti-money laundering ("AML") program deficiencies during the period of March 2006 to March 2008.

- The Firm failed to effectively implement its Customer Identification Program ("CIP") as required under Bank Secrecy Act Regulations, in violation of NASD Rule 3011(b) and MSRB Rule G-41. This resulted in the Firm failing to obtain, verify, and maintain the required CIP records and documents for approximately 20 customer accounts that were opened at the Firm from May 2007 to March 2008.
- The Firm failed to conduct an annual independent test of its AML program for 2006 and failed to conduct an adequate annual independent test of its AML program for 2007 in violation of NASD Rule 3011(c) and MSRB Rule G-41. Specifically, the AML test for 2007 was inadequate in that it did not review activity at the Firm's largest revenue-producing branches.

Clark Dodge failed to have written procedures to ensure compliance with respect to the requirements of the national do-not-call registry, in violation of NASD Rules 2212(d)(1) and 2110 and, after December 15, 2008, FINRA Rule 2010. Specifically, the Firm's written supervisory procedures did not contain the prohibition against calling prospective customers who were on the national do-not-call registry, and the Firm's technology for blocking calls to numbers on the national do-not-call registry only blocked the numbers from one area code. This

resulted in employees making calls to at least 129 telephone numbers timely registered with the do-not-call registry, which was a violation of NASD Rules 2212(a)(3) and 2110 and, after December 15, 2008, FINRA Rule 2010.

In addition, Clark Dodge's written supervisory procedures during the period of March 2006 to June 2009 stated that the Firm would maintain a firm-specific do-not-call list of people who previously had expressed to the Firm that they do not wish to receive calls from the Firm. However, in practice, the Firm's branch managers were maintaining lists that were only specific to their branch offices, and the Firm failed to maintain one firm-specific do-not-call list and, thus, failed to implement its procedures properly in violation of NASD Rules 2212(d) and (d)(6) and 2110 and, after December 15, 2008, FINRA Rule 2010.

From June 2006 to September 2007, Clark Dodge also failed to properly carry out its supervisory responsibilities with regard to a website maintained by a registered representative of the Firm. The registered representative maintained the website in connection with an approved outside business activity involving investment banking. The Firm was aware that the website advertised to the public that the business offered securities through the Firm. The Firm, however, took no steps to review or monitor the website's content, in violation of NASD Rules 2210(b)(1), 3010, and 2110.

In addition, from March 2006 to June 2009, Clark Dodge caused certain registered representatives, who were employed at its Offices of Supervisory Jurisdiction ("OSJs"), to be paid commissions through unregistered entities, in violation of NASD Rules 2420(b)(1) and 2110 and, after December 15, 2008, FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Net Capital

Net Capital Deficiency and Inaccurate Calculation of Net Capital on FOCUS Reports:

During the period of December 2006 to June 2007, Clark Dodge conducted a securities business on three dates while the Firm was in net capital deficiency. Because two of the three dates were the last business day of a fiscal quarter when the firm's quarterly FOCUS Report was to be filed, the Firm thus also failed to accurately compute its net capital on the FOCUS Report filings in connection with those two dates.

The net capital deficiencies resulted from the Firm's accounting for certain rent payments. In 2006, Clark Dodge sublet space from a non-securities related affiliate (the "Affiliate"), which was wholly-owned by the Firm's CEO and majority owner (the "CEO"). The Firm's share of the monthly rent was \$6,263, or 50 percent of the rent under the master lease. In April 2006, although the Affiliate remained legally liable for 50 percent of the rent, the Firm began making the entire rent payment on a monthly basis. By December 31, 2006, the amount of the Affiliate's share of the rent paid by the Firm totaled \$58,781.

Also, over the course of 2006, the CEO contributed capital to Clark Dodge in amounts totaling \$502,300. The Firm characterized these capital contributions on its balance sheets as "Additional Paid-in Capital."

SEC Rule 15c3-1(e)(iv) states, in relevant part, that "any transaction between a broker or dealer and a stockholder, partner, sole proprietor, employee or affiliate that results in a diminution of the broker or dealer's net capital shall be deemed to be an advance or loan of net capital." On February 23, 2000, the SEC's Division of Market Regulation provided an interpretation letter regarding "Net Capital Treatment of Temporary Capital Contributions." The SEC letter stated, in pertinent part: "The [Commission] has for some time emphasized that capital contributions to a broker-dealer must not be temporary. The Commission has stated that an affiliate's infusion of funds into a broker-dealer and subsequent withdrawal after a short time can be viewed as a loan and considered a liability of the broker-dealer." The SEC letter also stated: "[f]or net capital purposes, if an individual investor contributes capital to a broker-dealer with an understanding that the contribution can be withdrawn at the option of the individual investor, the contribution may not be included in the firm's net capital computation and must be re-characterized as a liability. Any withdrawal of capital as to that investor within a period of a year... shall be presumed to have been contemplated at the time of the contribution."

When the Firm paid the Affiliate's share of the rent, the Firm's books should have noted that this was deemed to constitute allowing the CEO to borrow money from the Firm, as if part of the capital previously contributed by him were returned. Thus, \$58,781 of the CEO's contribution, which the Firm characterized as paid-in capital, was required to be characterized as a liability.

When the CEO's capital contribution is correctly characterized as a liability, on three dates during the period of December 2006 to June 2007 that FINRA's Department of Member Regulation reviewed, Clark Dodge's actual net capital was reduced by the amount deemed to be owed on the loan.

On its 4th Quarter 2006 FOCUS Report filing, Clark Dodge calculated its net capital to be \$74,613. The Firm calculated its required minimum net capital based on aggregate indebtedness to be \$15,976, which according to the Firm left excess net capital of \$58,637. However, with the \$58,571 characterized correctly as a liability, the Firm actually had net capital of \$15,832 as of Friday, December 29, 2006. This re-characterization also changed the Firm's required minimum net capital based on aggregate indebtedness to \$19,895. Therefore, the Firm had a \$4,063 net capital deficiency.

Clark Dodge is a quarterly FOCUS Report filer and did not file a Focus Report for April 2007. With the above-referenced rent payments characterized correctly as a liability, the Firm had *negative* net capital of \$13,130 as of Monday, April 30, 2007. This re-characterization also changed the Firm's required minimum net capital requirement based on aggregate indebtedness to \$29,012. Therefore, the Firm had a \$42,142 net capital deficiency.

On its 2nd Quarter 2007 FOCUS Report filing, Clark Dodge calculated its net capital to be \$61,401. The Firm calculated its required minimum net capital based on aggregate indebtedness to be \$31,471, which according to the Firm left excess net capital of \$29,930. However, with the

above-referenced rent payments characterized correctly as a liability, the Firm actually had net capital of \$8,862 as of Friday, June 29, 2007.¹ This re-characterization also changed the Firm's required minimum net capital based on aggregate indebtedness to \$34,972. Therefore, the Firm had a \$26,110 net capital deficiency.

As a result of the foregoing:

- On Friday, December 29, 2006, Clark Dodge conducted a securities business when it had net capital of \$15,832 with a minimum net capital requirement of \$19,895 and a net capital deficiency of \$4,063.
- On Monday, April 30, 2007, Clark Dodge conducted a securities business when it had *negative* net capital of \$13,130 with a minimum net capital requirement of \$29,012 and a net capital deficiency of \$42,142.
- On Friday, June 29, 2007, Clark Dodge conducted a securities business when it had net capital of \$8,862 with a minimum net capital requirement of \$34,972 and a net capital deficiency of \$26,110.

Based on the foregoing, Clark Dodge violated SEC Rule 15c3-1 and NASD Rule 2110.

As a consequence of the conduct described above, Clark Dodge filed inaccurate FOCUS Reports for 4th Quarter 2006 and 2nd Quarter 2007. By reason of the foregoing, the Firm violated Section 17 of the Securities Exchange Act of 1934 (the "Exchange Act"), SEC Rule 17a-5 thereunder, and NASD Rule 2110.

Inaccurate Calculation of Net Capital on Financial Statements:

In addition to the matters described above, Clark Dodge failed to accurately compute its net capital on a number of other dates during the period of June 2007 to January 2008.

During the period of June 2007 to November 2007, Clark Dodge participated in three initial public offerings ("IPOs") as a selling group member. As a selling group member, the Firm was responsible for selling an allotment of newly issued securities on behalf of an underwriting group.

On June 26, 2007, Clark Dodge participated as a selling group member in an IPO of China Discovery Acquisition Corp. (the "China Discovery Offering"). The China Discovery Offering was a firm commitment offering, as stated on the preliminary prospectus. A firm commitment offering is an underwriting in which the underwriters and/or broker-dealers participating in the offering commit to buy and sell an entire issue of stock and assume all financial responsibility for any unsold shares. Clark Dodge reserved 25,000 shares to purchase

¹ In April 2007, the Affiliate made a payment in the amount of \$6,263 on the loan to Clark Dodge, thereby reducing the above-referenced liability to \$52,517. The difference of \$52,539 in the net capital calculations of \$61,401 by the Firm and \$8,862 by FINRA is due to the \$52,517 being characterized as a liability and certain other necessary minor adjustments to the Firm's calculations.

for sale to its customers. In connection with the China Discovery Offering, transactions for four customer accounts flowed through the Firm's proprietary account.

SEC Rule 15c3-1(a)(2)(iv) requires broker-dealers that are involved in firm commitment offerings to maintain net capital of not less than \$50,000. Clark Dodge generally has a net capital requirement of \$5,000. However, as a selling group member in the China Discovery Offering, the Firm was required to use the statutory minimum net capital requirement of \$50,000 to calculate net capital.

As of June 26, 2007, the Firm computed its net capital to be \$134,480, with a statutory minimum net capital requirement of \$5,000, leaving excess net capital of \$129,480. On that date, the Firm actually had net capital of \$133,955, with a statutory minimum net capital requirement of \$50,000, leaving excess net capital of \$83,955.²

On July 18, 2007, Clark Dodge participated as a selling group member in an IPO of China Fortune Acquisition Corp. (the "China Fortune Offering"). The China Fortune Offering was a firm commitment offering, as stated on the prospectus. Clark Dodge reserved 15,000 shares to purchase for sale to its customers. In connection with the China Fortune Offering, transactions for six customer accounts flowed through the Firm's proprietary account.

As a selling group member in the China Fortune Offering, the Firm was required to use the statutory minimum net capital requirement of \$50,000 to calculate net capital.

As of July 18, 2007, the Firm computed its net capital to be \$53,432, with a minimum net capital requirement based on aggregate indebtedness of \$8,940, leaving excess net capital of \$44,492. On that date, the Firm actually had net capital of \$52,313, with a statutory minimum net capital requirement of \$50,000, leaving excess net capital of \$2,313.

On November 20, 2007, Clark Dodge participated as a selling group member in an IPO of Ideation Acquisition Corp. (the "Ideation Offering"). The Ideation Offering was a firm commitment offering, as stated on the prospectus. Clark Dodge reserved 50,000 shares to purchase for sale to its customers. In connection with the Ideation Offering, transactions for 35 customer accounts flowed through the Firm's proprietary account.

As a selling group member in the Ideation Offering, the Firm would have been required to use a statutory minimum net capital requirement of \$50,000 to calculate net capital. However, SEC Rule 15c3-1(a)(2)(iii) requires broker-dealers that effect more than ten transactions for their own investment account in any one calendar year to maintain a net capital of at least \$100,000. Because transactions for 35 customer accounts flowed through the Firm's proprietary account in the Ideation Offering, it exceeded the ten transaction threshold of SEC Rule 15c3-1(a)(2)(iii). Accordingly, the Firm's required net capital was \$100,000.

² The difference of \$525 in the net capital calculations of \$134,480 by the Firm and \$133,955 by FINRA is due to certain other necessary minor adjustments to the Firm's calculations. The same applies to the difference of \$1,119 in the net capital calculations of \$53,432 by the Firm and \$52,313 by FINRA with regard to July 18, 2007 and the \$6,614 difference in the net capital calculations of \$327,915 by the Firm and \$321,301 by FINRA with regard to November 20, 2007 (below).

As of November 20, 2007, the Firm computed its net capital to be \$327,915, with a statutory minimum net capital requirement of \$5,000, leaving excess net capital of \$322,915. On that date, the Firm actually had net capital of \$321,301, with a statutory minimum net capital requirement of \$100,000, leaving excess net capital of \$221,301.

In addition, as of January 31, 2008, the Firm computed its net capital to be \$143,253, with a statutory minimum net capital requirement of \$5,000, leaving excess net capital of \$138,253. However, on that date, the Firm was required to compute its net capital using the aggregate indebtedness method. Under SEC Rule 15c3-1(a), a firm is required to use this method when its aggregate indebtedness exceeds 1500 percent of its net capital and the firm's aggregate indebtedness to net capital ratio exceeds its statutory minimum net capital. Since Clark Dodge's net capital should be computed using this method, it actually had net capital of \$116,887, with a minimum net capital requirement based on aggregate indebtedness of \$24,647, leaving excess net capital of \$92,240.

SEC Rule 17a-3(a)(11) requires broker-dealers to make and keep current "a record of the proof of money balances of all ledger accounts in the form of trial balances, and a record of the computation of aggregate indebtedness and net capital, as of the trial balance date, pursuant to [SEC] Rule 15c3-1." Clark Dodge failed to accurately compute its net capital on June 26, 2007, July 18, 2007, November 20, 2007, and January 31, 2008. Accordingly, the Firm violated SEC Rule 17a-3(a)(11) and NASD Rules 3110(a) and 2110.

Failure to Provide Rule 17a-11(c)(3) Notification:

SEC Rule 17a-11(c)(3) requires a broker-dealer to promptly send notice (within 24 hours) to its regulators when the broker-dealer's total net capital is less than 120 percent of its required minimum net capital. Under SEC Rule 17a-11, such notice must be made by the broker-dealer to the SEC and the designated examining authority of which such broker-dealer is a member.

On July 18, 2007, Clark Dodge actually had total net capital (when properly calculated) of \$52,313, with a statutory minimum net capital requirement of \$50,000. Therefore, the Firm's net capital to minimum net capital requirement ratio was approximately 104 percent, which was below the 120 percent threshold identified in SEC Rule 17a-11. Because the Firm was using the incorrect minimum net capital figure as stated above, it inaccurately calculated the net capital to minimum net capital requirement ratio. The Firm did not send notice to the SEC or to FINRA, the Firm's designated examining authority of which it is a member, that its total net capital was less than 120 percent of its required minimum net capital, and thus the Firm violated SEC Rule 17a-11(c)(3) and NASD Rule 2110.

Anti-Money Laundering Program

Customer Identification Program:

NASD Rule 3011(b) requires firms to establish and implement a CIP consistent with the Bank Secrecy Act and the related regulations thereunder. While Clark Dodge had written CIP procedures, for approximately 20 customers that opened accounts during a 12-month period, the Firm failed to adequately follow those procedures and obtain, verify, and maintain required customer identification program records and documents.

Bank Secrecy Act Regulations, specifically 31 CFR 103.122(b), require broker-dealers to establish, document and maintain a written CIP. The CIP must include risk-based procedures for verifying customer identity, using documentary, non-documentary methods or a combination thereof to verify customer identity, and collecting the required information and maintaining the required records.

Clark Dodge had a CIP that required it to "verify customer identity through documentary evidence, non-documentary evidence, or both." Moreover, the Firm's CIP required verification of customer identity through non-documentary means if a customer were unable to present an unexpired identification card with a photograph or other biometric safeguard or a customer and the Firm do not have face-to-face contact. During the review period, the Firm had a contract with a background-check database to assist the Firm in verifying customer identity through non-documentary means.

Out of a sampling of 134 customer accounts opened during the period of May 2007 to March 2008, the Firm did not have photo or non-documentary verification for 20 of the accounts. Accordingly, Clark Dodge violated NASD Rules 3011(b) and 2110 and MSRB Rule G-41.

Independent AML Testing:

NASD Rule 3011(c) requires firms to "develop and implement a written anti-money laundering program reasonably designed to achieve and monitor... compliance with the requirements of the Bank Secrecy Act" that "provide[s] for annual independent testing (on a calendar-year basis) for compliance to be conducted by member personnel or by a qualified outside party."

Clark Dodge failed to conduct an annual independent AML test for 2006 and failed to conduct an adequate independent AML test for 2007. The Firm's independent AML test for 2007 (the "2007 AML Test") was not adequate in that it only included a review of the main office's compliance with the Firm's AML procedures and did not include visits to the branches, especially those that generated the majority of the Firm's revenue. The independent tester relied on assurances from the Firm's AML Compliance Officer that the AML procedures were followed at the other branches. In addition, the two-page summary of the 2007 AML Test was too general in terms of its scope.

Therefore, although the Firm developed written procedures that provided for annual independent AML testing, the Firm failed to implement those procedures to conduct an AML test for 2006 or to conduct an adequate AML test for 2007. Accordingly, Clark Dodge violated NASD Rules 3011(c) and 2110 and MSRB Rule G-41.

Telemarketing

National Do-Not-Call Registry:

During the period of March 2006 to June 2009, Clark Dodge failed to (i) have a written policy for maintaining a do-not-call list in compliance with provisions of the national do-not-call

registry and (ii) comply with the prohibition against telephone solicitation of persons registered with the national do-not-call registry.

NASD Rule 2212(d)(1) requires members engaging in telemarketing to have a written policy for maintaining a do-not-call list in compliance with subparagraph (a)(3), which prohibits members or persons associated with a member from initiating a telephone solicitation to "any person who has registered his or her telephone number on the Federal Trade Commission's national do-not-call registry."

Clark Dodge's written supervisory procedures in effect between March 2006 and June 2009 did not reference the national do-not-call registry or prohibit calling telephone numbers registered therein. Moreover, while the Firm did subscribe to a service that provided the ability to screen and to block outgoing calls to telephone numbers on the national do-not-call list, the Firm's subscription only blocked numbers from one area code. As a result, out of a randomly-selected sampling of 503 telephone numbers called from the Firm's telephone system during this period, 129 telephone numbers were timely-registered with the national do-not-call registry.

Clark Dodge violated NASD Rules 2212(d)(1) and 2110 and, after December 15, 2008, FINRA Rule 2010 in that it failed to have a written policy for maintaining a do-not-call list in compliance with the prohibition against calling phone numbers registered with the national do-not-call registry.

In addition, Clark Dodge violated NASD Rules 2212(a)(3) and 2110 and, after December 15, 2008, FINRA Rule 2010 in that the Firm's employees called telephone numbers registered with the national do-not-call registry.

Firm-Wide Do-Not-Call List:

During the period of March 2006 to June 2009, Clark Dodge failed to maintain its own firm-specific do-not-call list.

NASD Rule 2212(d) requires firms engaging in telemarketing to institute procedures to ensure compliance with subparagraph (a)(2), which prohibits members or persons associated with a member from initiating a telephone solicitation to "any person that previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the member."

Moreover, NASD Rule 2212(d)(6) requires firms engaging in telemarketing to institute procedures to "maintain a record of a caller's request not to receive further telemarketing calls" for a period of five years from the time the request is made.

Clark Dodge's written supervisory procedures stated in general terms that the Firm will maintain a firm-wide do-not-call list and that the Chief Compliance Officer was the designated individual responsible for keeping it updated.

Nevertheless, separate lists were maintained at each branch office for recipients of cold calls who requested not to receive telephone solicitation from the Firm. When the recipient of a cold call requested to be placed on the Firm's do-not-call list, the registered representative who

placed the call was required to provide the person's name and contact information to the branch manager, who then added the number to a do-not-call list at that branch office. Therefore, the Firm did not effectively implement its written procedures to ensure compliance with its do-not-call list obligations under FINRA Rules. Accordingly, Clark Dodge violated NASD Rules 2212(d) and (d)(6) and 2110 and, after December 15, 2008, FINRA Rule 2010.

Advertising

From June 2006 to September 2007, Clark Dodge failed to carry out its supervisory responsibilities with respect to approving and reviewing a website that it knew was operated and controlled by a registered representative from the Firm.

NASD Rule 2210(b)(1) states, in relevant part, that "a registered principal of the member must 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 Department of Advertising Regulation]." The Rule defines "advertisement" to include websites.

During this period, a registered representative of Clark Dodge owned an outside business that provided investment banking services to publicly-held companies (the "Outside Business"). The Outside Business also was intended to provide investment banking consulting services to the Firm. The Outside Business existed prior to the registered representative joining the Firm in June 2006 and had its own website. The website had a legend that stated "Securities offered through Clark Dodge & Co Inc., Member of NASD SIPC."

Clark Dodge was aware of and approved the registered representative's outside business activities when he became employed at the Firm in June 2006. While the Firm was aware of the website, it did not review or monitor the contents of the website, as it was required to do since the website advertised to the public a securities-related business relationship between the website and the Firm.

Clark Dodge violated NASD Rules 2210(b)(1), 3010 (Supervision), and 2110 in that it failed to approve, review, and monitor the content of the website described above.

Payment of Commissions through Unregistered Entities

From March 2006 to June 2009, Clark Dodge caused certain of its registered representatives to be paid their commissions through unregistered entities.

Section 15(a) of the Exchange Act states, in relevant part, that it is "unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person... to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security... unless such broker or dealer is registered in accordance with subsection (b) of this section."

NASD Rule 2420(b)(1) states that "no member shall in any transaction with any non-member broker or dealer, allow or grant to such non-member broker or dealer any selling

concession, discount or other allowance allowed by such member to a member of a registered securities association and not allowed to a member of the general public." Accordingly, NASD Rule 2420(b)(1) holds that member firms are not permitted to pay fees and commissions to non-member broker-dealers or to any broker or dealer that is not a member of a securities association registered with the SEC.

The payment of commissions to registered representatives generally is one of those functions reserved to registered broker-dealers. Thus, the SEC's Division of Market Regulation repeatedly has declined to give no-action assurance under Section 15(a) of the Exchange Act with respect to routing commissions or other transaction-related compensation from a registered broker-dealer to its registered representatives through an unregistered entity owned and controlled by a registered representative of the broker-dealer. Member firms with supervisory responsibility for registered representatives should control how and when they are paid.

At the time in question, the Firm had two Offices of Supervisory Jurisdiction that were owned and operated by particular registered representatives at the respective OSJs. The OSJs functioned as "franchise offices" of the Firm and were treated as "independent contractors." Each OSJ was paid through one monthly check that constituted the gross commissions for all registered representatives at that OSJ. Thus, instead of paying registered representatives their commissions directly, the Firm paid them to the owners of each OSJ. The owners then deposited the checks into the bank accounts of unregistered entities that were owned and established by the OSJ owners for the purpose of paying the registered representatives. As a result, the Firm allowed unregistered entities to directly pay its registered representatives, in violation of NASD Rules 2420(b)(1) and 2110 and, after December 15, 2008, FINRA Rule 2010.

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

A censure and a fine in the amount of \$100,000 (\$15,000 of which pertains to the violations of MSRB Rule G-41).

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 sanction 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 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 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 it;
 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 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 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; 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

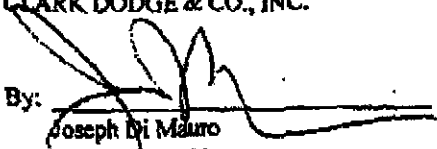
and the prospect of avoiding the issuance of a Complaint, has been made to induce Respondent to submit it.

Date

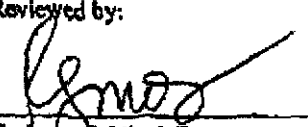
August 11, 2011

CLARK DODGE & CO., INC.

By:


Joseph Di Mauro
CEO and President

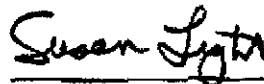
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Accepted by FINRA:

August 11, 2011
Date

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



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