

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2009016273001**

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

RE: NFP Securities, Inc., Respondent
CRD No. 42046

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, NFP Securities, Inc. ("NFP" 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 me 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

NFP Securities, Inc. is currently, and was during all times relevant hereto, a member of FINRA and registered as a broker/dealer with the U.S. Securities and Exchange Commission. NFP registered with FINRA in March 1997. The firm currently employs 1,869 registered personnel and operates 674 branch offices.

RELEVANT DISCIPLINARY HISTORY

In April 2011, FINRA issued a Letter of Acceptance, Waiver and Consent (No. 2007011393902), in which NFP was censured and fined \$50,000 for violations of NASD Rules 2110, 2210(b), 2210(d) and 3010. The firm agreed to findings that it had approved advertising materials used by a registered representative in his retail equity indexed annuity ("EIA") business, including at seminars for senior investors, that contained false, exaggerated, unwarranted or misleading statements. The firm failed to document a principal's approval of advertising material used by the representative and failed to maintain a record of its approval

of the representative's other advertising material. The firm did not supervise the representative's seminars, did not require him to produce a copy of the script he used for the seminars, and did not attend any of the seminars to ensure that they complied with NASD Rules.

In July 2009, FINRA issued a Letter of Acceptance, Waiver and Consent (No. 2008014973401), in which NFP was censured and fined \$7,500 for violations of MSRB Rule G-14. The firm agreed to findings that it failed to report information regarding purchase and sale transactions effected in municipal securities to the real-time transaction reporting system ("RTRS") in the manner prescribed by Rule G-14. Specifically, the firm failed to report information about the transactions within 15 minutes of the trade; failed to report the correct time of execution; and improperly reported information to the RTRS that should not have been reported.

In October 2007, FINRA issued a Letter of Acceptance, Waiver and Consent (No. E062005012702), in which NFP was censured and fined \$12,000 for violations of NASD Rules 2110, 3070 and Article V, Section III of the FINRA By-Laws. The firm agreed to findings that it failed to timely file Uniform Termination Notices for Securities Industry Registration (Forms U5) and failed to file accurate and timely reports with FINRA pursuant to Rule 3070.

In July 2006, FINRA issued a Letter of Acceptance, Waiver and Consent (No. E062003010401), in which the firm was censured and fined \$7,500 for violations of SEC Rule 17a-3(1) and NASD Rules 2110, 3010(d) and 3110. NFP agreed to findings that it failed to evidence its approval, by a registered principal, of securities transactions; failed to make and keep current its blotter for checks received and forwarded; failed to make and keep current its blotter for purchases and sales of securities and failed to maintain an accurate checks received and forwarded blotter.

OVERVIEW

During the period from October 2008 through December 2008, NFP charged excessive markups on seven riskless principal corporate bond transactions, in violation of NASD Rules 2440 and 2110. The excessive portion of the firm's markups totaled over \$43,000. NFP also failed to implement a supervisory system and procedures that were reasonably designed to ensure that prices charged in principal transactions with customers were fair, reasonable and not excessive, in violation of NASD Rule 3010 and 2110.

FACTS AND VIOLATIVE CONDUCT

Markup Policy

On April 16, 2007, the Securities and Exchange Commission approved NASD

IM-2440-2, *Additional Mark-Up Policy for Transactions in Debt Securities, Except Municipal Securities*. IM-2440-2 became effective on July 5, 2007. When the SEC approved IM-2440-2, NASD IM-2440 was renumbered IM-2440-1. IM-2440-2(a) specifically stated that it supplemented the guidance provided in IM-2440-1 regarding debt securities transactions. IM-2440-2(b)(1) establishes a presumption that when a dealer sells a debt security to a customer as principal, the dealer's contemporaneous cost constitutes the prevailing market price of the security for purposes of computing a markup. IM-2440-2(b)(2) states, in substance, that when a dealer *sells a security* to a customer, countervailing evidence of the prevailing market price of the security may be considered only where the dealer had no *contemporaneous purchase* in that security, or can show that in the particular circumstances the dealer's *contemporaneous cost* is not indicative of the prevailing market price.

IM-2440-2(b)(4) instructs that when a dealer sells a debt security to a customer as principal and identifies the prevailing market price using a measure other than its own contemporaneous cost, it must be prepared to provide evidence sufficient to overcome the presumption that its contemporaneous cost constituted the best measure of the prevailing market price.

Excessive Markups

On seven occasions during the period from October 1, 2008 to December 3, 2008, NFP charged excessive markups on riskless principal corporate bond transactions in the account of customer KLIC. In each instance, NFP purchased the bonds, added a markup and immediately, on the same day of purchase, sold the bonds to the customer. NFP's markups on the transactions were not fair and reasonable taking into consideration all relevant circumstances, including the fact that the price was not reasonably related to the amount the firm had contemporaneously paid for the bonds and the fact that the firm did not provide any evidence to overcome the presumption that its contemporaneous cost constituted the best measure of the prevailing market price of the bonds sold to KLIC. The firm's markups ranged from 3.047% to 4.00%, and in every instance exceeded the markups charged by other dealers in similar transactions involving the same bonds. The markups charged by NFP in the seven transactions exceeded the amounts charged by other dealers in similar transaction by \$43,121.39.

By charging excessive markups, NFP violated NASD Rules 2440 and 2110.

Supervisory Deficiencies

During the period at issue, NFP's supervisory system and written supervisory procedures were not reasonably designed to ensure that prices at which it sold debt securities to customers in principal transactions were fair and reasonable, nor designed to achieve compliance with all applicable laws, rules and regulations pertaining to effecting principal transactions with customers.

Among other things, NFP's written supervisory procedures in effect during the specified period did not address or discuss, to any material extent, IM-2440-1 or IM-2440-2 and did not contain procedures for weighing or applying (including how to weigh or apply) the various factors set forth in those provisions in reviewing and evaluating the fairness of prices in principal transactions with customers.

NFP's procedures also did not address how supervisory reviews of markups and markdowns in principal transactions with customers would be conducted.

By failing to establish, maintain and/or enforce a supervisory system and written supervisory procedures that were reasonably designed to ensure the fairness of prices in principal transactions with customers, NFP violated Rules 3010 and 2110.

B. Respondent also consents to the imposition of the following sanctions:

A censure and a monetary fine in the amount of \$43,121.39.

NFP is also ordered to pay restitution to the customer listed on *Attachment A* hereto in the total amount of \$43,121.39, 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 December 3, 2008 until the date this AWC is accepted by the NAC.

A registered principal on behalf of NFP shall submit satisfactory proof of payment of restitution or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted to Karen E. Whitaker, Senior Regional Counsel, FINRA, 12801 N. Central Expressway, Suite 1050, Dallas, Texas, 75243 either by letter that identifies NFP Securities, Inc., Case No. 20090162730 and includes a copy of the check, money order or other method of payment, or by e-mail from a work-related account of a registered principal, with pdf copies of the payment documentation, to EnforcementNotice@FINRA.org and Karen.Whitaker@FINRA.org. This proof shall be provided to the FINRA staff member listed above no later than 120 days after the date of acceptance of the AWC.

If for any reason Respondent cannot locate the 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 or have been domiciled. 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.

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.

Respondent agree to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that it is 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

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 it; 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 it 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 the Firm, 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 the Firm 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 the Firm to submit it.

March 23, 2012
Date

NFP Securities, Inc.

By: Susanne Denby

Name: Susanne Denby

Title: SVP, CCO

Reviewed by:

Bruce Collins
Counsel for Respondent

Accepted by FINRA:

06/14/2012
Date

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

Karen E. Whitaker

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