

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2009016292001**

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

RE: A&F Financial Securities, Inc.
BD No. 44791

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, A&F Financial Securities, Inc. ("A&F" 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 A&F alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. A&F 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

A&F has been registered as a broker dealer with FINRA since May 1998. At all relevant times, A&F has conducted securities transactions for retail customers. A&F's main office is in Syosset, New York. A&F currently has two branch offices and approximately 37 registered persons.

RELEVANT DISCIPLINARY HISTORY

On September 20, 2010, A&F entered into an AWC in which it was censured and fined \$27,500 for violations of Section 17(a) of the Securities Exchange Act of 1934 ("Exchange Act"), Exchange Act Rule 17a-3, NASD Conduct Rules 3010, 3070, 3110 and 2110, and Article V, Section 2(c) of FINRA's By-Laws based on findings that A&F failed to (i) report multiple complaints to the 3070 system and maintain records concerning those complaints; (ii) update a registered person's Uniform Application for Securities Industry Registration or Transfer (Form U4);

and (iii) implement its own heightened supervisory procedures with respect to three brokers on heightened supervision.

OVERVIEW

On each transaction placed at the firm from at least January 2008 through the present, A&F charged its customers as much as \$65 as a "handling fee" in addition to a commission. The handling fee charged by A&F was not reasonable because it was effectively the same as a commission to the firm and the amount of the fee was not reasonably related to any direct handling-related services performed by the firm, or handling-related expenses incurred by the firm, in processing the transaction. A&F improperly and inaccurately characterized the charge as a "handling fee" on customer trade confirmations.

In addition, A&F failed to evaluate its training needs, and failed to develop and implement a written training plan, concerning the sale of exchange traded funds, and failed to establish and maintain an adequate supervisory system, including written procedures, designed to supervise the sale of exchange-traded funds.

As a result, A&F violated NASD Membership and Registration Rule 1120(b), NASD Conduct Rules 2110, 2430, 3010, Exchange Act Rule 10b-10, and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Charging Unreasonable Handling Fees and Improper and Inaccurate Disclosure of Such Fees

NASD Conduct Rule 2430 (Charges for Services Performed) requires charges, if any, for services performed, including miscellaneous services such as collection of moneys due for principal, dividends, or interest; exchange or transfer of securities; appraisals, safe-keeping or custody of securities, and other services, shall be reasonable and not unfairly discriminatory between customers.

Exchange Act Rule 10b-10 (Confirmation of Transactions) requires broker-dealers to disclose specified information in writing to customers at or before the completion of a transaction. Pursuant to Rule 10b-10, it shall be unlawful for any broker or dealer to effect for or with an account of a customer any transaction in, or to induce the purchase or sale by such customer of, any security (other than U.S. Savings Bonds or municipal securities) unless such broker or dealer, at or before completion of such transaction, gives or sends to such customer written notification disclosing, among other things, if the broker or dealer is acting as agent for such customer, for some other person, or for both such customer and some other person, the source and amount of any other remuneration received or to be received by the broker in connection with the transaction.

FINRA Rule 2010 (formerly NASD Conduct Rule 2110) (Standards of Commercial Honor and Principles of Trade) requires that a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

On each transaction placed at the firm from at least January 2008 through the present, A&F has charged its customers a separate handling fee in addition to a commission. A&F characterized the fee as a "handling fee" on customer trade confirmations. The amount of the handling fee was \$65.00. The fee was designed primarily to serve as a source of additional transaction based remuneration or revenue to the firm, in the same manner as a commission, rather than to cover any direct handling-related services performed by the firm or handling-related expenses incurred by the firm in connection with the transactions. Nevertheless, the firm improperly and inaccurately characterized the fee as attributable to "handling." By designating the charge as a handling fee on customer trade confirmations, A&F understated the amount of the total commissions charged by the firm and misstated the purpose of the handling fee.

By reason of the foregoing, A&F violated NASD Conduct Rule 2430, Exchange Act Rule 10b-10 and NASD Conduct Rule 2110 and FINRA Rule 2010.

Failure to Comply With Continuing Education Requirement (Firm Element)

NASD Membership and Registration Rule 1120(b)(2) provides that each member must maintain a continuing and current education program for its covered registered persons to enhance their securities knowledge, skill, and professionalism. The rule further provides that, at a minimum, each member shall at least annually evaluate and prioritize its training needs and develop a written training plan. The plan must take into consideration, *inter alia*, the member's size, organizational structure, and scope of business activities, as well as regulatory developments. Furthermore, programs used to implement a member's training plan must be appropriate for the business of the member and, must cover, *inter alia*, with respect to all securities products, services, and strategies offered by the member, (i) general investment features and associated risk factors; (ii) suitability and sales practice considerations; and (iii) applicable regulatory requirements.

During 2008, the sale of exchange-traded funds to customers became a substantial portion of A&F's business activities. For calendar year 2008, A&F failed to conduct an adequate training needs analysis which took into consideration the firm's sale of exchange-traded funds, and failed to develop an adequate written plan, as required by NASD Membership and Registration Rule 1120(b)(2).

By reason of the foregoing, A&F violated NASD Membership and Registration Rule 1120(b)(2), NASD Conduct Rule 2110 and FINRA Rule 2010.

Failure to Maintain an Adequate Supervisory System and Written Supervisory Procedures

NASD Conduct Rule 3010(a) requires that each member establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA Rules. NASD Conduct Rule 3010(b) further requires each member to establish, maintain, and enforce written procedures to supervise the types of business in which it engages that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable FINRA rules. During the period from May 2008 through July 2009, A&F failed to establish, maintain, and enforce a supervisory system and written procedures to supervise the sale of exchange-traded funds to customers that were reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable FINRA rules

By reason of the foregoing, A&F violated NASD Conduct Rules 3010 and 2110 and FINRA Rule 2010.

B. A&F also consents to the imposition of the following sanctions:

- A censure;
- A \$125,000 fine; and
- An undertaking by Respondent to certify, within 90 days of FINRA's acceptance of this AWC, that it has implemented corrective action to remedy the handling fee-related violations set forth above. Such corrective action shall include, but not be limited to: (1) identifying as commissions or mark-ups (mark-downs), as the case may be, and not as postage, handling or any other miscellaneous fee, all transaction-based remuneration, and any other fees which do not constitute reasonable fees under NASD Rule 2430 and do not comply with subsection (2) of this undertaking; (2) for any charges or fees for services (such as postage costs and clearing firm charges), other than commissions or mark-ups (mark-downs), fully and accurately disclosing on confirmations, as well as any communication with a customer or the public where fees are discussed (including fee schedules, if any, or new account documentation that contains fee information), the specific service performed or to be performed or the specific use, and the amount of the fee paid or to be paid in connection with each service or use, and retaining detailed records to substantiate such services and uses and the fee amounts; and (3) revising the firm's written supervisory procedures and providing training to the firm's registered representatives and associated persons to address this undertaking related to transaction-based remuneration, reasonable fees, their

appropriate disclosure to customers, and retention of related records.

Respondent agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) 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 sanction(s) imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

A&F 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, A&F 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.

A&F 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

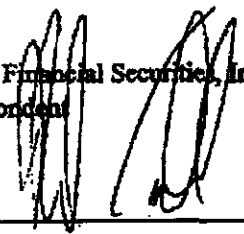
A&F understands that:

- 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 A&F's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against A&F;**
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about A&F'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. A&F 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. AI 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 A&F's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.**
- D. A&F may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. A&F understands that A&F 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 have been given a full opportunity to ask questions about it; that A&F 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.

8/16/2011
Date (mm/dd/yyyy)

A&F Financial Securities, Inc
Respondent

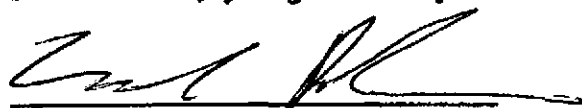
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Accepted by FINRA:

09/06/2011
Date

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


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