

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2009016300801**

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

RE: Euro Pacific Capital, Inc., Respondent
CRD No. 8361

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, 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 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

Respondent is a general securities firm specializing in executions of foreign securities on foreign exchanges. The firm is based in Westport, Connecticut and has been a member of FINRA (and its predecessor, the NASD) since October 7, 1980. Respondent operates from 6 offices of supervisory jurisdiction and employs approximately 87 registered persons.

RELEVANT DISCIPLINARY HISTORY

In December 2008, Respondent entered into an AWC with FINRA to resolve violations found during Examination No. 2005003365101. Items encompassed by that AWC included the firm's failure to: i) develop and implement an anti-money laundering (AML) program, in violation of NASD Conduct Rules 3011 and 2110; ii) provide AML training, in violation of NASD Conduct Rules 3011 and 2110; and iii) maintain a Web site that comported with the advertising

requirements set forth at NASD Conduct Rule 2210, in violation of NASD Conduct Rules 2210 and 2110. Respondent was censured and fined a total of \$37,500. However, these sanctions also covered several other unrelated violations not germane to the issues covered by this AWC.

OVERVIEW

FINRA staff conducted a routine examination of Respondent covering the time period of July 5, 2007 through July 20, 2009. As discussed in greater detail herein, FINRA identified several deficiencies during the course of the examination. The primary violations found by FINRA staff included: i) the firm's failure to report timely to FINRA's Customer Complaint Reporting System numerous customer complaints, to timely amend representatives' Uniform Applications for Securities Industry Registration or Transfer (Form U4), and to enforce its written supervisory procedures with respect to the same in violation of NASD Conduct Rules 3010 and 3070, NASD Conduct Rule 2110, FINRA Rule 2010¹ and Article V, Section 2(c) of the FINRA By-Laws; ii) the firm's customer complaint files failed to comport with SEC Rule 17a-3(a)(18)(i), a violation of that Rule and NASD Conduct Rules 3110(d) and 2110 and FINRA Rule 2010; iii) the firm did not enforce its supervisory control procedures and prepared a deficient annual certification in violation of NASD Conduct Rules 3012, 3013 and 2110 and FINRA Rule 2010; iv) the firm was one business day late in filing one of its FOCUS Reports and late twice in filing its Schedules I in violation of SEC Rules 17a-5 and 17a-10, NASD Conduct Rule 2110 and FINRA Rule 2010; v) the firm did not preserve certain of the emails of a former registered representative in an easily accessible place as required by SEC Rule 17a-4(b) and NASD Conduct Rules 3110 and 2110; vi) multiple AML violations; and vii) the failure to correct three past advertising violations.²

¹ The rules cited herein are the NASD and/or FINRA rules that were in effect at the time the underlying conduct occurred. NASD Conduct Rule 2110 was in effect through December 14, 2008 and FINRA Rule 2010 has been in effect since December 15, 2008; where both Rules are cited with respect to a particular violation, each refers to that portion of the relevant period for which it was effective.

² The three past violations were contained in the firm's web site. The first item consisted of the following statement projecting the certainty of the collapse of the U.S. economy and the safety of foreign assets is exaggerated.

In fact, we feel that it is our patriotic duty to help as many Americans as possible to safely protect their wealth through the acquisition of foreign assets. We believe that only through such actions that at least some Americans will retain ownership of the financial wealth, which may be repatriated in the aftermath of the collapse. We remain hopeful that dire economic conditions will, at least, create a climate in which America can finally return to her constitutional traditions of sound money and limited government, providing a foundation upon which a stronger economy can one day be rebuilt. If out of the ashes of this collapse, the spirits of our founding fathers can rise again, it may one day be possible for America to reclaim her former glory, and once again be that shining city of which Ronald Reagan so eloquently spoke.

Similarly, comparisons regarding Respondent and other brokerage firms were incomplete and contained exaggerated and oversimplified statements. Likewise, the Web site contained an article which contained references to past recommendations and performance that failed to comply with JM-2210-1. By including such statements on its Web site, Respondent violated NASD Conduct Rules 2210(d)(1)(A) and (B), 2210(d)(2)(B) and 2110.

FACTS AND VIOLATIVE CONDUCT

Customer Complaints

During the review period, Respondent failed to report timely quarterly statistical information concerning approximately 88% of the customer complaints it received during the review period to FINRA's then 3070 System as required by NASD Conduct Rule 3070(c). Three of these complaints fell within the ambit of NASD Conduct Rule 3070(a), yet were not reported within the time period prescribed by NASD Conduct Rule 3070(b). Respondent further failed to maintain complete complaint files and did not enforce its written supervisory procedures pertaining to customer complaint reporting. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 3070, 3110(d), 3010(a) and 2110, FINRA Rule 2010 and SEC Rule 17a-3(a)(18)(i).

Form U4 Reporting

In addition, the Forms U4s for those representatives who were the subject of the above-noted Rule 3070(a) complaints were not timely updated. The firm's failure to timely update the Forms U4 was in violation of Article V, Section 2(c) of FINRA's By-Laws, NASD Conduct Rule 2110 and FINRA Rule 2010.

Supervisory Control Systems and Annual Certification

In 2008, Respondent failed to enforce its written supervisory control policies and procedures that would test and verify that the member's supervisory procedures were reasonably designed with respect to the activities of the member to achieve compliance with applicable securities laws, regulations, and SRO Rules. In relevant part, the firm's supervisory control procedures required the preparation of a Rule 3012 report that described: i) the system of supervisory controls in place; ii) the summary of all test results; iii) any significant identified exceptions; and, iv) any additional or amended supervisory procedures created in response to test results. Respondent's 2008 annual Rule 3012 report did not comport with these procedures. Similarly, during this same time period, Respondent failed to implement its supervisory control procedures to review the customer account activity of its producing managers. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 3012(a) and 2110 and FINRA Rule 2010 by Respondent.

In December 2008, Respondent prepared a deficient Rule 3013 certification as it did not document the firm's processes for establishing, maintaining, reviewing, testing and modifying compliance policies that are reasonably designed to achieve compliance with applicable securities laws, regulations and SRO Rules. The

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aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 3013 and FINRA Rule 2010 by Respondent.

Late Focus and Schedule I Filings

Respondent failed to timely file one FOCUS Report and two Schedule I Reports. Specifically, Respondent's monthly FOCUS Report for the period ended February 27, 2008 was required to be filed by March 26, 2008. The firm filed the report on March 27, 2008, one business day late. Similarly, Respondent's Schedule I Report for the calendar quarters ending December 31, 2007 and December 31, 2008, were required to be filed by January 25, 2008 and January 27, 2009, respectively, but the firm instead filed those Schedules on February 25, 2008 and February 13, 2009. By filing the FOCUS Report late, Respondent violated SEC Rule 17a-5 and NASD Conduct Rule 2110. By filing late the Schedule I Reports,

Respondent violated SEC Rule 17a-10, NASD Conduct Rule 2110 and FINRA Rule 2010.

Failure to Preserve Electronic Communications in an Easily Accessible Place

Respondent failed to preserve, in an easily accessible place, electronic emails for one of its representatives for the time period of November 1, 2007 through July 29, 2008. Such acts, practices and conduct constitute separate and distinct violations of SEC Rule 17a-4(b) and NASD Conduct Rules 3110 and 2110.

AML Violations

During the review period, Respondent offered and sold precious metal related products through Perth Mint, an Australian entity. Respondent, however, failed to develop, implement and enforce adequate AML procedures related to its Perth Mint business. Specifically, the firm did not establish and implement policies and procedures reasonably designed to identify, monitor for, and, where appropriate, file suspicious activity report(s) for its Perth Mint business processed through the firm's k(2)(i) account. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 3011(a) and 2110 and FINRA Rule 2010.

Respondent further failed to implement and enforce its AML procedures and policies related to its fully disclosed business through its then-clearing firm. Aspects of its AML program that Respondent failed to implement and enforce included: monitoring accounts for suspicious activity; monitoring employee conduct and accounts; red flags; and control/restricted securities.

With respect to monitoring accounts for suspicious activity, the firm's procedures provided that monitoring would be conducted by means of exception reports for

unusual size, volume, pattern or type of transactions. Documentation concerning exception reports utilized, dates of such utilization, initials of the individual undertaking the exception report review, as well as any findings and appropriate follow up actions were to be maintained as part of the firm's AML books and records. For the review period, the firm did not consistently utilize exception reports made available by its then-clearing firm. Moreover, the firm did not evidence its review of the reports and did not note findings and appropriate follow up actions, if any, that were taken. Additionally, when notified by its clearing firm of possible suspect activity, on at least 13 occasions, the firm did not promptly and/or fully respond to the clearing firm's inquiries. The same type of review was required by the procedures for employee accounts. However, the firm did not maintain any evidence that such inquiries for employee accounts were conducted.

EuroPacific's procedures contained a non-exclusive list of 25 possible red flags that could signal possible money laundering. The firm, however, did not take consistent steps to ensure that red flags in accounts were looked at. The firm's AML procedures further reference that SAR-SF filings are required (under the Bank Secrecy Act) for any account activity (including deposits and transfers) conducted or attempted through the firm involving \$5,000 or more where the firm knows, suspects, or has reason to suspect: "the transaction involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity as part of a plan to violate or evade federal law or regulation; the transaction is designed to evade any requirements of the Bank Secrecy Act (BSA) regulations; the transaction has no business or apparent lawful purpose or is not the sort in which the customer would normally be expected to engage, and [the firm knows], after examining the background, possible purpose of the transaction and other facts, of no reasonable explanation for the transaction; or, the transaction involves the use of the firm to facilitate criminal activity." However, because the firm was not consistently reviewing exception reports or for red flags, it could not consistently identify and evaluate circumstances that might warrant a SAR-SF filing.

Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 3011(a), (b) and 2110 and, FINRA Rule 2010.

For the review period, Respondent failed to establish and implement risk based customer identification program (CIP) procedures that were appropriate to the firm's size and type of business. Specifically, the firm's procedures did not include risk criteria based upon the following factors: occupation and nature of business; the type of customer account opened (nominee accounts, private banking accounts), the method of opening accounts, types of identifying information available, location of customer. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 3011(b) and 2110, FINRA Rule 2010 and MSRB Rule G-41.

Respondent failed to provide ongoing training to appropriate personnel regarding the use of the firm's internal monitoring tools (i.e., clearing firm exception reports), as required by its AML program. The firm's AML Program states, "Our AML Principal is responsible for ensuring that all supervising principals are sufficiently trained to utilize our internal monitoring tools and will undertake a monthly review to assure that they are being appropriately utilized and that the tools are sufficient for our specific monitoring needs, maintaining records indicating findings and appropriate corrective measures taken where required." Notwithstanding this procedure, supervising principals were not trained with respect to utilizing the exception reports and other aspects of AML compliance reviews. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 3011(e) and 2110, FINRA Rule 2010 and MSRB Rule G-41.

Advertising Violations

For the review period, certain pages of Respondent's web site contained statements that did not comport with the standards set forth in NASD Conduct Rule 2210. As noted in the above "Overview" section, these web pages were previously identified by FINRA staff as being violative of NASD Conduct Rule 2210, but the firm failed to remove such pages from its web site. By continuing to make these communications available to the public, Respondent continued to violate Conduct Rule 2210 and 2110, and FINRA Rule 2010.

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

- A censure; and
- A fine of \$150,000 (\$3,000 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 the firm 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 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 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.

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;

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- 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 the firm'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 its 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 its 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 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; 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.

EURO PACIFIC CAPITAL, INC.

Date

8/31/11

By:



Name:

Gordon M. McLean

(Print Name)

Title:

President

Reviewed by:



Bob E. Lehman, Esq.
Lehman & Eileen LLP
Counsel for Respondent
50 Charles Lindberg Blvd., Suite 505
Uniondale, New York 11553

Accepted by FINRA:

9/16/11

Date

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



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