

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2009016304801**

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

RE: John Thomas Financial
BD No. 40982

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent John Thomas Financial ("JTF" 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 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

JTF, headquartered at 14 Wall Street in Manhattan, New York, has been a member of FINRA since January 10, 1997. JTF is 100% owned by ATB Holdings, which in turn is controlled by JTF's Chief Executive Officer Anastasios Belesis. The firm also operates an Office of Supervisory Jurisdiction ("OSJ") branch office in Hauppauge, Long Island, New York. JTF is approved to engage in the following activities: broker retailing corporate equity securities over-the-counter; broker selling corporate debt securities; selling group participant on a best efforts basis; mutual fund retailer; U.S. government securities broker; broker selling variable life insurance or annuities; investment advisory services; non-exchange member arranging for transactions in listed securities by exchange member; private placement of securities; put and call broker; trading securities for its own account; and municipal securities broker.

RELEVANT DISCIPLINARY HISTORY

On June 16, 2009, JTF agreed to pay a civil penalty to the State of Idaho in the amount of \$5,000 and the firm's former compliance officer and a broker were cautioned to refrain from future violations of the Idaho Uniform Securities Act in connection with the failure to report a State of Iowa order imposing heightened supervision over the broker on his Uniform Application for Securities Industry Registration or Transfer (Form U-4). Specifically, on January 8, 2008, JTF's former compliance officer, acting on behalf of JTF, filed an amended Form U-4 with FINRA's Central Registration Depository to register a broker in Iowa. Due to the broker's past regulatory history, Iowa's Department of Securities, as a condition of registration, required JTF to establish heightened supervision over the broker for a period of two years. The firm, acting through its former compliance officer, failed to report the Iowa order on the broker's Form U-4. On August 18, 2008, JTF made an application to register the broker with the State of Idaho. JTF, through its former compliance officer, negligently omitted on the Form U-4 the necessary disclosure of the Iowa order requiring heightened supervision over the broker.

JTF has no other disciplinary history.

OVERVIEW

On each transaction placed at the firm from at least January 2008 through the present, JTF has charged its customers as much as \$75 as a "handling fee" in addition to a commission. The handling fee charged by JTF 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. JTF improperly and inaccurately characterized the charge as a "handling fee" on customer trade confirmations and as a "trade confirm (postage and handling)" fee on fee schedules.

In addition, at various junctures in 2009 and 2010, JTF's number of sales personnel materially exceeded the amount it was permitted to have under the firm's various membership agreements in place with FINRA during this period and JTF failed to obtain requisite approval from FINRA to effect such material changes in its business operations. Further, at various times from 2007 through 2010, the firm was deficient in a number of other compliance areas, including complaint reporting, supervisory controls and certifications, branch office supervision and recordkeeping. As a result, JTF violated NASD Membership and Registration Rule 1017, NASD Conduct Rules 2110, 2430, 3070, 3010, 3012,

3013, and 3110, Securities and Exchange Act of 1934 (Exchange Act) Rules 10b-10 and 17a-3, and FINRA Rules 2010 and 3130.

FACTS AND VIOLATIVE CONDUCT

Charging of 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, JTF has charged its customers a separate handling fee in addition to a commission. JTF characterized the fee as a "handling fee" on customer trade confirmations and as a "trade confirm (postage and handling)" fee on the schedule of account fees ("fee schedule") provided to customers. The amount of the handling fee varied during the relevant period, ranging from \$40.50 from January 1, 2008 through April 30, 2009; \$49.50 from May 1, 2009 through February 28, 2010; and \$75.00 from March 1, 2010 through the present.¹ The fee was designed

¹ In or around January 2010, JTF notified its customers that it was increasing the handling fee to \$75 for each transaction generating a trade confirmation in the customers' accounts. Specifically, the notification explained: "The increase is attributable to greater back-office overhead expenses in the servicing of customer accounts, and also takes into account that the Firm does not charge its customers

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. However, the firm improperly and inaccurately characterized the fee as attributable to "handling." By designating the charge as a handling fee on customer trade confirmations and as a trade confirm (postage and handling) fee on the firm's fee schedules, JTF understated the amount of the total commissions charged by the firm and misstated the purpose of the handling fee.

In or around April 2010, JTF amended its fee schedule to note that the "handling fee is an additional source of revenue to the firm, a portion of which includes a charge by the Clearing Firm associated with processing of the transaction." In or around June 2010, JTF amended its trade confirmations to note that the "handling fee is an additional source of revenue to the firm." Notwithstanding those disclosures, JTF continued to charge \$75 as a handling fee and to disclose that amount on customer trade confirmations and the firm's fee schedule when the firm was only charged a small percentage of that amount by its clearing firm for postage or handling related expenses.

In or around November 2010, JTF once again amended its disclosures regarding the handling fee on its fee schedule. Beginning at that time, the fee schedules reflected that "the handling fee is an additional source of revenue to the firm, no portion of which is shared with your registered representative." Notwithstanding that amended disclosure, JTF continued to improperly designate this additional transaction based remuneration or revenue to the firm as a "handling fee" on customer trade confirmations and fee schedules.

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

for all disbursements and out-of-pocket expenses incurred in servicing accounts. The increased handling fee is in addition to all other fees, charges and commissions you incur in the ordinary course of having your accounts with the Firm. If you do not wish to incur the increased handling fee for transactions not required by applicable law, rule or regulation, you have the right not to authorize such transactions in your accounts." (Previously, in or around March 2009, JTF informed its customers that as of May 1, 2009, this fee would increase from \$40.50 to \$49.50.)

Failure to Obtain FINRA Approval to Effect Material Change in Business Operations

NASD Membership and Registration Rule 1017 requires FINRA member firms who wish to effect a material change in their business operations to follow the application process set forth in subsection (b) of the rule. Under certain circumstances, Rule 1017 applies to business operations changes that involve the hiring of "associated persons involved in sales," as defined in NASD Interpretive Material ("IM")-1011-1 (hereinafter, "sales personnel"). That provision sets forth "safe harbors" that allow firms to add a limited number of sales personnel without having to file an application with FINRA under Rule 1017. The IM-1011-1 safe harbors allow firms with 11 or more sales personnel to add 10 more such persons or to increase the number of such persons by 30%, whichever number is greater, over a year's time. IM-1011-1 provides that such personnel expansions are measured on a "12 month rolling basis," meaning that the number of sales personnel that a firm is allowed to add is based on the number it had 12 months earlier.

At various times between February 2009 and January 2010, JTF added numbers of sales personnel which materially exceeded the safe harbors set forth in IM-1011-1, without filing an application with, and receiving necessary approval from, FINRA under Rule 1017, and without having in place a management structure to adequately meet the demands of supervising such increased levels of sales personnel. By reason of the foregoing, JTF violated NASD Membership and Registration Rule 1017 and FINRA Rule 2010.

Failure to Report Customer Complaints

Between November 2008 and August 2010, JTF failed to report approximately 25 customer complaints pursuant to the reporting requirements of NASD Conduct Rule 3070(c). In addition, JTF failed to report four customer complaints received in the first quarter of 2009 in a timely manner pursuant to the reporting requirements of NASD Conduct Rule 3070(c) in that these complaints were required to be reported by April 15, 2009 and the firm did not report them until May 8, 2009. By failing to report certain customer complaints and failing to report others in a timely manner, JTF violated NASD Conduct Rules 3070 and 2110 and FINRA Rule 2010.

Failure to Implement Supervisory Controls

For the reporting years 2007 and 2008, JTF failed to ensure that its chief executive officer: 1) certified that the firm had in place a process to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable NASD and FINRA rules and federal securities laws; and 2) conducted

one or more meetings with the chief compliance officer in the preceding 12 months to discuss such processes. In addition, again for reporting years 2007 and 2008, JTF failed to ensure that its designated principal submitted to the firm's senior management a report detailing the firm's system of supervisory controls, the summary of test results and significant identified exceptions, and any additional or amended supervisory procedures created in response to the test results. Further, from February 2009 through August 2010, JTF failed to ensure that it had in place procedures that were reasonably designed to provide heightened supervision over the activities of DP, a producing manager in its Hauppauge, New York branch office, who was responsible for generating 20% or more of the revenue of the business units supervised by the producing manager's supervisor. By failing to implement adequate supervisory controls, JTF violated NASD Conduct Rules 3012 and 3013 and 2110 and FINRA Rules 3130 and 2010.

Failure to Maintain an Adequate Supervisory System and Written Supervisory Procedures

For the period October 2008 through February 2009, JTF's branch office manager of the firm's Hauppauge, New York branch office failed to conduct the supervisory reviews required by the firm's written supervisory procedures. In addition, for March 6, March 10, March 11, March 26, and April 9, 2009, JTF's branch office manager of the firm's Hauppauge branch office failed to review the branch's daily trade blotters as required by the firm's written supervisory procedures. Further, for the period February 2009 through August 2010, JTF's written supervisory procedures (WSPs) were deficient as follows:

- The WSPs failed to designate a supervisor for the Hauppauge, New York branch office; and
- The WSPs failed to designate branch office personnel responsible for specific roles and responsibilities at the branch, including handling, logging and forwarding customer funds and securities.

As a result, JTF failed to maintain an adequate supervisory system and written supervisory procedures to supervise the activities of each registered representative, registered principal and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations. By failing to maintain an adequate supervisory system and written procedures, JTF violated NASD Conduct Rules 3010(a) and 2110 and FINRA Rule 2010.

Failure to Maintain Books and Records

For the period October 2008 through March 2009, JTF failed to maintain a Checks Received and Forwarded Blotter for its Hauppauge, New York branch office. Additionally, JTF failed to properly designate on order tickets whether the

transactions were long or short. By failing to maintain required books and records, JTF violated Exchange Act Rule 17a-3, NASD Conduct Rules 3110 and 2110, and FINRA Rule 2010.

OTHER FACTORS

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

- A censure;
- A fine of \$275,000;
- An undertaking by Respondent to refrain from utilizing the safe harbors for business expansions set forth in IM-1011-1 for increasing its number of "associated persons involved in sales" for a period of 30 months from the date of approval of this AWC. This undertaking does not prohibit Respondent, during the 30-month time period referenced above, from filing an application with FINRA under NASD Membership and Registration Rule 1017 to seek prior approval from FINRA to increase its number of "associated persons involved in sales;" and
- An additional 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 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 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 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 Respondent;
- 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 Respondent;
 - 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; and
- 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 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.

August 16, 2011
Date

Respondent John Thomas Financial

By: Anastasios Belesis
Anastasios Belesis, President

Reviewed by:

Robert M. Bursky
Robert M. Bursky, Esq.
Independent General Counsel
John Thomas Financial
14 Wall Street, 23rd Floor
New York, New York 10005
(212) 299-7843

Accepted by FINRA:

9/6/11
Date

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

Jon S. Batterman
Jon S. Batterman
Deputy Regional Chief Counsel
FINRA Department of Enforcement
Two Jericho Plaza
Jericho, New York 11753
(516) 949-4216
Fax No. (516) 949-4201