

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2009017447501**

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

**RE: Frank A. Gutta, Respondent
Former Investment Company and Variable Contracts
Products Representative
CRD No. 1705545**

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Frank A. Gutta (hereinafter, "Gutta" or "Respondent"), submit 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.

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ACCEPTANCE AND CONSENT

- A. I hereby accept and consent, 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 Frank A. Gutta entered the securities industry on June 30, 1987, when he became registered with FINRA as an Investment Company and Variable Contracts Products Representative through an association with a FINRA member. At all times relevant herein, Gutta was associated with FINRA member Securities America, Inc. ("SAI") and registered with FINRA as an Investment Company and Variable Contracts Products Representative. Gutta remained registered through SAI until March 13, 2009. He subsequently became registered through another FINRA member and remained registered with FINRA until September 9, 2009.

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Gutta is not currently associated with a FINRA member, but he remains subject to the jurisdiction of FINRA pursuant to Article V, Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

Respondent Gutta has not previously been the subject of any disciplinary action by FINRA or any other regulatory authority or agency.

OVERVIEW

During the period from September 2003 through January 2008, Respondent Gutta owned and operated an outside business without providing notice to his employer member firm, in violation of NASD Conduct Rules 3030 and 2110. In addition, during the stated period and in connection with the outside business, Respondent Gutta participated in numerous private securities transactions without providing notice to, or obtaining approval from, his employer member firm, in violation of NASD Conduct Rules 3040 and 2110. With respect to two of the private securities transactions referenced above, Respondent Gutta also violated NASD Conduct Rules 2310 and 2110, when he recommended the subject investment to an individual for whom Gutta had no reasonable basis to believe that the investment was suitable.

FACTS AND VIOLATIVE CONDUCT

In or about September 2003, while registered with FINRA through an association with Securities America, Inc. ("SAI"), Respondent Gutta formed Business Investors, Inc. ("BII"), a Florida corporation, for the business purpose of pooling funds to be used to finance investments in various small businesses. Gutta operated BII continuously from September 2003 to at least January 2008, without notice to SAI.

By failing to notify SAI of his formation and operation of BII, Respondent Gutta violated NASD Conduct Rules 3030 and 2110.

Between September 2003 and January 2008, Gutta offered and sold BII promissory notes to 19 individuals, nine of which were SAI customers, for proceeds of approximately \$2.9 million. The proceeds were used to finance the creation and/or operation of various small businesses, including gas stations and a dollar store. The BII promissory notes were not sponsored or approved by SAI, and Respondent Gutta did not provide written notice to, or seek or obtain

approval from, SAI prior to engaging in the offer and sale of the notes.

By engaging in the offer and sale of the promissory notes without first obtaining written approval from his employer member firm, Respondent Gutta violated NASD Conduct Rules 3040 and 2110.

With respect to one of the individuals who purchased BII promissory notes from Respondent Gutta – SAI customer IC – Gutta recommended the notes to IC without having a reasonable basis to believe that the investment was suitable for her. On Gutta's recommendation, IC invested a total of \$235,000 in two BII promissory notes (the first she purchased in January 2005 and the second in January 2006). IC's investment in the notes represented approximately 78 percent of her total net worth. That investment was inconsistent with IC's stated investment objective (growth and income) and risk tolerance (moderate).

Respondent's Gutta's recommendation of BII promissory notes to IC was in violation of NASD Conduct Rules 2310 and 2110.

B. I also consent to the imposition of the following sanctions:

A two-year suspension from association with any FINRA member in any capacity.

On June 11, 2010, Frank A. Gutta was granted a discharge in bankruptcy under Section 727 of Title 11, United States Code. Accordingly, no monetary sanction is being assessed in this matter.

I understand that if I am barred or suspended from associating with any FINRA member, I become subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rules 8310 and 8311).

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

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against me;
- 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, I specifically and voluntarily waive 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.

I further specifically and voluntarily waive 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

I understand 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 me; and

C. If accepted:

1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my 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. I 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. I 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 my right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I 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.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have 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 me to submit it.

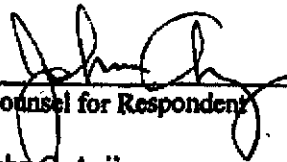
8/25/11

Date (mm/dd/yyyy)



Respondent

Reviewed by:


Counsel for Respondent

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Accepted by FINRA:

September 13, 2011
Date

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


Mark J. Fernandez, Senior Regional Counsel
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