

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2009017566501

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

RE: Maxwell Baldwin Smith, Respondent
General Securities Representative
CRD No. 600012

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

I.

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

In 1974, Maxwell Baldwin Smith ("Smith") first became registered with FINRA as a General Securities Representative. He also became registered as a Municipal Securities Representative in 1979 and as a Municipal Securities Principal in 1981. From May 4, 1988 through April 3, 2009, Smith was registered in some or all of those capacities through the following FINRA member firms:

<u>Firm</u>	<u>Dates Registered</u>
Advest, Inc.	5/4/88-8/4/90
Rickel & Associates, Inc.	8/6/90-8/29/97
Atlantic Group Securities, Inc.	9/9/97-12/8/99
J.J.B. Hilliard, W.L. Lyons, Inc.	12/10/99-1/1/04
PNC Investments	1/1/04-12/31/04
Cantone Research Inc.	1/7/05-4/3/09

000043035 2010

Smith is not presently associated with a member firm.

RELEVANT DISCIPLINARY HISTORY

On November 17, 2009, Smith pleaded guilty in the United States District Court for the District of New Jersey to mail fraud in violation of 18 U.S.C. §§ 1341 and 2. He is presently awaiting sentencing.

On November 18, 2009, Smith entered into a consent order with the New Jersey Bureau of Securities in which he was, *inter alia*, barred and ordered to pay restitution for fraud and the sale of unregistered securities.

OVERVIEW

Smith misappropriated approximately \$8 million from investors. This conduct violated NASD Conduct Rules 2330 and 2110, NASD IM-2310-2 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

From 1992 through 2009, customer LF, who is now 93 years old, gave Smith over \$9.8 million to invest in a private placement of an investment called a Health Care Financial Partnership Direct loan. At various times during that same time period, six other customers, at least three of whom were elderly, gave Smith a total of \$970,000 for the same investment. Most, if not all, of the seven individuals were Smith's customers at one or more of the broker-dealer firms that employed him.

In documentation provided by Smith to the customers, Health Care Financial was described as a company "formed for the purpose of obtaining a high level of interest income through investment in a diversified portfolio of High Yielding income projects which have been sold to finance or refinance health care facilities, such as nursing homes and continuing care retirement centers for the elderly." Smith recommended the purchase of the loans as "an attractive investment for purchasers of nursing home bonds." Depending on the loan purchased, Smith promised the customers annual interest ranging from 7.5% to 9%. The term of the loans ranged from 2 to 30 years.

Smith induced LF and the others to invest in the loans. LF and the others subsequently withdrew funds from their brokerage and other accounts, and, in accordance with Smith's instructions, made their investment purchase checks payable to, or otherwise transferred their funds to, a brokerage account at another

member firm controlled by Smith.

Smith, however, did not invest the above-referenced funds on the customers' behalf. Health Care Financial was a sham entity and Smith misappropriated approximately \$8 million of those funds for his own use and benefit. By misappropriating customer funds, Smith violated NASD Conduct Rules 2330 and 2110, NASD IM-2310-2 and FINRA Rule 2010.¹

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

- a bar from association with any FINRA member in any capacity.

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 Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. 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 sanction imposed herein shall be effective on a date set by FINRA staff. Pursuant to FINRA Rule 8313(e), a bar or expulsion shall become effective upon approval or acceptance of this AWC.

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

¹ FINRA Rule 2010, the successor to NASD Conduct Rule 2110, is charged for Smith's misconduct on or after December 15, 2008.

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 8319; 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

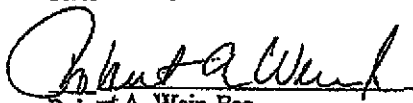
is without factual basis. I may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects my right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

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.

December 29, 2009
Date


Maxwell Baldwin Smith
Respondent

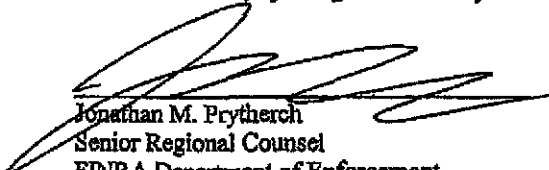
Reviewed by:


Robert A. Weir, Esq.
Counsel for Respondent
Weir & Plaza, L.L.C.
321 Broad Street
Red Bank, New Jersey 07701
(732) 741-8181

Accepted by FINRA:

2/1/2010
Date

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


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