

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2009017601901**

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

RE: ACAP Financial, Inc.
CRD No. 7731

Gary Hume
CRD No. 1216949

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondents 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 Respondents alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. We 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

ACAP Financial, Inc. ("ACAP" or "the Firm"), with principal offices in Salt Lake City, Utah, has been registered with FINRA since 1978. ACAP has 14 registered individuals and 2 branch offices. It provides retail brokerage services and engages in making markets in over-the-counter equities, proprietary trading and private placements.

Gary Hume ("Hume") was first employed in the securities industry in 1983 and was first registered as a Financial and Operations Principal in June 1984. He joined ACAP as Financial and Operations Principal in September 1991. He has also been registered as a General Securities Representative and General Securities Principal at ACAP since April 1997.

RELEVANT DISCIPLINARY HISTORY

In April 2007, the Firm agreed to an AWC for supervisory and trade reporting violations for which it was fined \$20,000 and pursuant to which it undertook to revise its procedures.

FACTS AND VIOLATIVE CONDUCT

During the period from January 2009 through June 2011 ("the review period"), Hume was ACAP's designated Anti-Money Laundering ("AML") Compliance Officer ("AMLCO"). Hume was also the designated supervisor for the creation and maintenance of the Firm's policies and procedures. ACAP's Written Supervisory Procedures ("WSPs") contained the Firm's AML Program and were last updated in April 2009. The AML Program contained a list of red flags that may suggest suspicious activity and the WSPs stated that the AMLCO was responsible for monitoring activity at the Firm for suspicious activity.

During the review period, the majority of the Firm's business was the deposit of large blocks of shares, primarily thinly traded penny stocks, and subsequent sale of those shares ("liquidations"). Customers often opened a new account with a deposit of physical certificates and sold the shares soon thereafter. Some customers had multiple accounts through which they deposited and liquidated their shares.

ACAP's AML Program specified "risk indicators" that may have identified this type of activity as suspicious activity. For example, the WSPs included such indicators as: *"The customer maintains multiple accounts, or maintains account in the names of family members or corporate entities, for no apparent business purpose or other purpose"* and *"The customer, for no apparent reason or in conjunction with other 'red flags,' engages in transactions involving certain types of securities, such as penny stocks, Regulation 'S' (Reg S) stocks, and bearer bonds, which although legitimate, have been used in connection with fraudulent schemes and money laundering activity. (Such transactions may warrant further due diligence to ensure the legitimacy of the customer's activity.)"* The WSPs included among other "red flags" that may indicate a customer selling unregistered securities, *"A customer opens a new account and delivers physical certificates representing a large block of thinly-traded or low-priced securities."*

In mid-2009, FINRA staff had conversations with Hume regarding the necessity of monitoring for, detecting, and investigating suspicious activity to determine whether to file a Suspicious Activity Report ("SAR"). Prior to this time, Hume did not establish adequate systems or procedures to monitor accounts for suspicious activity. Hume himself did not sufficiently monitor accounts for which he was the registered representative or any of the other accounts of the Firm for suspicious activity. Nor did Hume delegate this responsibility to any other employee of the Firm.

The Firm failed to establish and maintain an adequate system to monitor for, detect and investigate suspicious activity to determine whether it was necessary to file a SAR. Nor did the Firm have an adequate system or procedures to report suspicious activity. As a result, despite

the presence of those and other indicators of suspicious activity, ACAP and Hume had never filed a SAR prior to September 2009.

After reviewing FINRA Regulatory Notice 09-05, which reminded firms of their obligations to determine whether shares are eligible for public sale, and having conversations with FINRA staff in mid-2009, Hume mistakenly concluded that FINRA deemed all securities liquidations to be suspicious activity. Based on his mistaken belief, beginning in September 2009, Hume decided to take an extreme approach and treated every liquidation as suspicious activity worthy of filing a SAR. When he first began filing SARs in September and October 2009, however, Hume utilized the incorrect form for the first 25 filings, using the Form SAR-DI (used only by Depository Institutions) instead of the SAR-SF form which applies to the securities industry.

In addition, the descriptions of the suspicious activity provided on the SAR forms that Hume filed on behalf of ACAP did not include substantive information regarding the activity and were so broad as to be virtually useless. Examples of the narratives included statements, such as: "Customer deposited large blocks of securities;" and "Customer deposited several blocks of low priced securities, sold the stock and wired out the proceeds."

In contrast, when one of the Firm's registered representatives brought specific suspicious activity to Hume's attention and provided him with a completed SAR form, Hume did not investigate the suspicious activity in order to determine whether a SAR filing was warranted. .

By engaging in the course of conduct described above, ACAP and Hume violated NASD Conduct Rule 3011(a) and (b) for the period prior to January 1, 2010 and FINRA Rule 3310 (a) and (b) for the period after January 1, 2010, as well as FINRA Rule 2010.

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

ACAP:

1. A fine in the amount of \$10,000; and
2. ACAP shall further undertake to:
 - a. Retain, within 30 days of the date the National Adjudicatory Council ("NAC") issues its decision in Disciplinary Proceeding No. 2007008239001, an Independent Consultant, not unacceptable to FINRA staff, to conduct a comprehensive review of the adequacy of the Firm's AML program, policies, systems and procedures (written and otherwise). In the event the NAC affirms the Hearing Panel's requirement that ACAP retain a consultant to review and approve ACAP's procedures related to compliance with the requirements of Section 5, the consultant retained by the Firm to comply with the NAC and Hearing Panel decision may, but need not be, the same as the consultant required by this AWC.

ACAP may also retain an Independent Consultant to comply with the terms of this undertaking prior to the date the NAC issues its decision in Disciplinary Proceeding No. 2007008239001, subject to the provisions noted below.

- b. Exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant.
- c. Cooperate with the Independent Consultant in all respects, including by providing staff support. ACAP shall place no restrictions on the Independent Consultant's communications with FINRA staff and, upon request, shall make available to FINRA staff any and all communications between the Independent Consultant and the Firm and documents reviewed by the Independent Consultant in connection with his or her engagement. Once retained, ACAP shall not terminate the relationship with the Independent Consultant without FINRA staff's written approval; ACAP shall not be in and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney client privilege or other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports or documents to the FINRA.
- d. At the conclusion of the review, which shall be no more than 160 days after the date the NAC issues its decision in Disciplinary Proceeding No. 2007008239001 or the date the Firm retains the Independent Consultant, whichever is earlier, require the Independent Consultant to submit to the Firm and FINRA staff a Written Report. The Written Report shall address, at a minimum, (i) the adequacy of the Firm's AML program, policies, systems and procedures (written and otherwise); (ii) a description of the review performed and the conclusions reached, and (iii) the Independent Consultant's recommendations for modifications and additions to the Firm's policies, systems, procedures and training; and
- e. Require the Independent Consultant to enter into a written agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter in to any other employment, consultant, attorney-client, auditing or other professional relationship with ACAP, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any firm with which the Independent Consultant is

affiliated in performing his or her duties pursuant to this AWC shall not, without prior written consent of the FINRA staff, enter in to any employment, consultant, attorney-client, auditing or other professional relationship with ACAP or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

- f. Within 60 days after delivery of the Written Report, ACAP shall adopt and implement the recommendations of the Independent Consultant or, if it determines that a recommendation is unduly burdensome or impractical, propose an alternative procedure to the Independent Consultant designed to achieve the same objective. The Firm shall submit such proposed alternatives in writing simultaneously to the Independent Consultant and FINRA staff. Within 30 days of receipt of any proposed alternative procedure, the Independent Consultant shall: (i) reasonably evaluate the alternative procedure and determine whether it will achieve the same objective as the Independent Consultant's original recommendation; and (ii) provide the Firm with a written decision reflecting his or her determination. The Firm will abide by the Independent Consultant's ultimate determination with respect to any proposed alternative procedure and must adopt and implement all recommendations deemed appropriate by the Independent Consultant.
- g. Within 30 days after the issuance of the later of the Independent Consultant's Written Report or written determination regarding alternative procedures (if any), ACAP shall provide FINRA staff with a written implementation report, certified by an officer of ACAP, attesting to, containing documentation of, and setting forth the details of the Firm's implementation of the Independent Consultant's recommendations.
- h. Upon written request showing good cause, the FINRA staff may extend any of the procedural dates set forth above.

Pursuant to the General Principles Applicable to all Sanction Determinations contained in the Sanction Guidelines, FINRA imposed a lower fine in this case after it considered, among other things, the firm's revenues and financial resources. See Notice to Members 06-55.

HUME:

1. A 45 day suspension from association with any FINRA member firm in all principal capacities; and
2. Hume shall complete 40 hours of AML training. Hume will register for, within 120 days of the date of issuance of this AWC, AML training in a program or programs that are not unacceptable to FINRA. Hume shall provide FINRA with evidence of the registration for each such program within 10 days of registration. Hume shall attend such training within 180 days of the issuance of this AWC, and Hume shall provide FINRA with evidence that he has completed such training within 10 days of completion of each such training program.

Hume has asserted an inability to pay and has submitted supporting documentation. In light of his financial status, the sanctions do not include a monetary fine.

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

Hume understands that if he is barred or suspended from associating with any FINRA member in a principal capacity, he becomes 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, Hume may not be associated with any FINRA member in a principal capacity during the period of the bar or suspension (see FINRA Rules 8310 and 8311). Furthermore, because he is subject to a statutory disqualification during the suspension, if Hume remains associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against them;
- 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 NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondents specifically and voluntarily waive 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.

Respondents 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

Respondents 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 Respondents; and
- C. If accepted:
 - 1. this AWC will become part of Respondents' permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against them;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondents' disciplinary records;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and

4. Respondents 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. Respondents 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 Respondents' right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

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

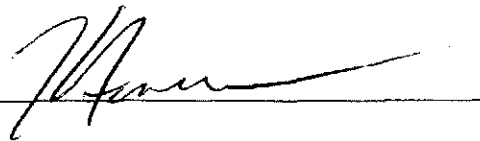
Hume certifies that he has read and understand all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that he has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce him to submit it.

Date

3/5/12

ACAP Financial, Inc.

By:



Date

3-5-12

Gary Hume

Reviewed by:



Clell I. Cunningham III, Esquire
Dunn, Swan & Cunningham, P.C.
210 Park Avenue #2800
Oklahoma City, OK 73102-5604
Counsel for Respondent

Accepted by FINRA:

3/26/12
Date

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



Jeffrey P. Bloom
Senior Special Counsel
FINRA Department of Enforcement
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