

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Headwaters BD, LLC (CRD No. 117042),

and

Roberta A. Laraway (CRD No. 4845302),

and

Paul E. Janson (CRD No. 4992234)

and

Philip W. Seefried (CRD No. 1747086)

Respondents.

DISCIPLINARY PROCEEDING
No. 2010020941501

HEARING OFFICER: LOM

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

INTRODUCTION

Disciplinary Proceeding No. 2010020941501 was filed on June 8, 2011, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondents Headwaters BD LLC ("Headwaters"), Roberta Laraway ("Laraway"), Paul Janson ("Janson") and Philip Seefried ("Seefried") jointly submitted an Offer of Settlement (Offer) to Complainant on February 14, 2012. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer.

Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondents have consented, without admitting or denying the allegations of the Complaint, 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, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondents' permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Respondent Headwaters is, and at all times relevant to the Complaint was, a registered broker-dealer and a FINRA member firm with its principal place of business in Denver, Colorado. Headwaters has been a FINRA member firm since March 2002.

Respondent Laraway is and was, at all times relevant to the Complaint, registered with Headwaters as a Financial Operations Principal ("FINOP"). This registration became effective in or about October 2004. She also became registered as an Operations Professional in or about November 2011. Her association with Headwaters is Laraway's first employment in the securities industry.

Respondent Janson is and was, at all times relevant to the Complaint, registered with Headwaters as a General Securities Representative (GR), a General Securities Principal (GP) and a Corporate Securities Representative (CSR). In December 2009, he also became registered

through Headwaters as an Investment Banking Representative (IBR). During all times relevant to the Complaint, Janson was Headwaters' Chief Compliance Officer. Janson first became registered with a FINRA member firm in or about September 2006 when he became registered as a GS, GP and CSR through Headwaters.

Respondent Seefried first entered the securities industry in or about October 1987 when he became registered as a GS through a FINRA member firm. He left that firm's employment in or about July 2000. In or about March 2002, he became registered as a GS and GP through Headwaters. He also became registered as an IBR through Headwaters in or about December 2009. Seefried is currently registered as a GS, GP and IBR through Headwaters. During all times relevant to the Complaint, Seefried was also Headwater's Chief Executive Officer.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

SUMMARY

Headwaters, acting through Laraway, Janson and Seefried violated FINRA Rule 2010 by creating and providing false and misleading records to FINRA staff in connection with a routine examination of the firm. Specifically, in February 2010, Headwaters provided FINRA with three Branch Office Inspection Reports and four Rule 3130 CEO Certifications. These documents were purportedly records the firm had prepared at or about the dates appearing thereupon, but in fact were prepared after a FINRA examiner informed the firm of an apparent failure to make and keep these records. The Branch Inspection Reports and CEO Certifications, provided to FINRA by Laraway, were backdated by Janson and Seefried, respectively, in order to make it appear as if the firm had previously prepared and signed such documents and was therefore compliant with

relevant FINRA/NASD Rules. Headwaters did not advise FINRA that the documents had been recently prepared or backdated. Headwaters' failure to timely prepare and maintain Branch Office Inspection Reports for three offices constituted a violation of NASD Conduct Rule 3010(c)(2). These Reports were prepared approximately two years and four months; two years and three months and one year and nine months after the inspections occurred.

Headwaters failed to prepare Rule 3130/3013 and 3012 reports for 2006, 2007, 2008 and 2009. Headwaters also failed to establish written supervisory procedures (WSPs) reasonably designed to ensure the firm complied with Rules 3013 and 3012. Finally, Headwaters failed to conduct any testing of its Anti-Money Laundering ("AML") program from April 2006 through January 2010, in violation of NASD Conduct Rules 3011, IM-3011 and 2110 and FINRA Rules 3310 and 2010.

FIRST CAUSE OF ACTION

PROVIDING FALSE AND MISLEADING DOCUMENTS TO FINRA STAFF (VIOLATION OF FINRA RULE 2010 BY HEADWATERS, SEEFRIED, JANSON AND LARAWAY)

ANNUAL 3013/3130 CEO CERTIFICATIONS

On or about February 1, 2010, FINRA began a routine examination of Headwaters. In connection with the examination, FINRA staff requested from the firm all annual CEO certifications and 3013 reports prepared pursuant to FINRA Rule 3130 or NASD Rule 3013 from approximately April 26, 2006 through January 31, 2010. During the on-site portion of its examination, the firm provided FINRA with two annual CEO certifications, the first dated October 24, 2006, and the second dated February 7, 2008. They were signed by the firm's CEO, Seefried. The FINRA examiner advised the firm during the on-site that the firm had provided

two CEO certifications, instead of the four that would be expected for the four-year review period.

In the exit meeting held on February 11, 2010, the FINRA examiner assigned to the cycle examination advised the firm that it had determined Headwaters had not made the required annual Rule 3130/3013 certifications to senior management. On February 26, 2010, Respondent Laraway sent an e-mail to that same FINRA examiner. In the e-mail Laraway said,

““I have attached support or included discussion below for some of the items we hope you can review & drop from the final report. Please feel free to call me if you have any questions on any of this!”.....

1. Attached are the other 2 CEO certifications.”

Laraway attached two CEO certifications dated August 18, 2008 and August 24, 2009 that were not previously provided to the staff. In a later communication, the firm explained that the February 7, 2008, certification related to 2007 and the August 18, 2008, certification to 2008. FINRA’s Examination Report dated March 23, 2010, included a finding that Headwaters was not in compliance with FINRA Rule 3130(b) and NASD Conduct Rule 3013 as the firm did not maintain evidence that the annual reports required by the Rules were prepared during the review period. It also indicated that the firm was unable to evidence that its CEO made the required annual certifications to senior management. In the firm’s April 20, 2010 response to the Examination Report, signed by Janson, the firm asserted that “annual certifications by the CEO were provided to the examiner during the audit and during the audit follow up.”

Approximately three months later, in sworn investigative testimony, Respondents Laraway and Seefried stated that none of the CEO Annual 3013 and 3130 Certifications were

prepared until FINRA's February 2010 examination, when they realized the firm had failed to prepare the required Certifications. They testified that they back-dated the certificates to correspond to the dates upon which they asserted that the CEO and CCO had met in 2006-2009 for the discussion contemplated by Rule 3013/3130.

At no time prior to the May 2010 sworn testimony described above did Respondents advise FINRA that the four certifications had been prepared in or around February 2010 and back-dated. Respondents did not disclose that information during the cycle examination when presenting the purported 2006 and 2007 certifications to the FINRA examiner. Respondent Laraway failed to disclose that information in her February 2010 e-mail, quoted above, that attached what she represented to be the 2008 and 2009 certifications. And Janson did not disclose the back-dating in his response to the examination report.

Respondents provided the back-dated certifications to FINRA for the purpose of causing FINRA staff to conclude that the firm was in compliance with the annual certification requirement. Moreover, Respondent Laraway provided the 2008 and 2009 certifications to induce the staff to remove apparent violations of Rules 3013 and 3130 from the final cycle examination report.

In summary, Headwaters supplied FINRA with four CEO certifications which were created at or about the time of the FINRA examination in February 2010, but which were presented to FINRA as if they had been prepared on a real time basis on or around October 24, 2006, February 7, 2008, August 18, 2008, and August 24, 2009.

Branch Office Inspection Reports

In a report prepared for the examination exit conference on February 11, 2010, FINRA staff noted that the firm was unable to evidence that it conducted inspections of its registered

branch offices in Atlanta, Boston and Irvine, California during the review period. At the exit conference, however, Headwaters informed the FINRA examiner that the firm had copies of three Branch Office Inspection Reports and would provide these to FINRA. Subsequent to the exit conference, the firm submitted to FINRA Branch Inspection Reports for its Atlanta branch, dated November 19, 2007, its Irvine, California branch, dated May 8, 2008, and its Boston branch, dated October 13, 2007.

The Branch Office Inspection Reports were submitted as attachments to Respondent Laraway's February 26, 2010 e-mail quoted above. In the e-mail, Laraway wrote,

““I have attached support or included discussion below for some of the items we hope you can review & drop from the final report. Please feel free to call me if you have any questions on any of this!”.....

2. “attached are the branch audits that that Paul did during the period under audit.”

The FINRA examiner who received the e-mail accepted the implicit representation that the Branch Office Inspection Reports were completed at or about the time they purported to evidence that Respondent Janson conducted the branch office inspections.

In May 2010, during his sworn testimony, Janson advised FINRA for the first time that the Branch Office Inspection Reports had been backdated. Specifically, Janson testified

“when [the FINRA examiner] conducted our audit, she explained we had not filled these out for the various branch locations that we had. So I had Roberta [Laraway] go in to my expense reports and determine when I was at these locations and go ahead and complete these and then forward them on to [the FINRA examiner], with the indicated dates on when I was at the three offices to do the inspections.”

Janson later testified that he (not Laraway) chose the dates that were placed on the Branch Office Inspection Reports. At no time prior to May 2010 did Respondents inform FINRA that the

branch office inspection reports were prepared after the fact and backdated. The back-dated certifications and reports were not authentic records of Headwaters. The certifications and reports provided to FINRA were misleading and created a false appearance of compliance with applicable rules. By failing to disclose that they were prepared after the fact and back-dated, Respondents withheld information necessary for FINRA staff to evaluate the firm's compliance with Rules 3013, 3130 and 3010. By providing the certifications and reports to FINRA without disclosing the circumstances of their creation, dating and execution, Headwaters, Laraway, Seefried and Janson engaged in conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, and violated FINRA Rule 2010.

SECOND CAUSE OF ACTION

(Failure to Prepare and/or Maintain Written Branch Office Inspection Reports in Violation of NASD Conduct Rule 3010(c)(2))

Rule 3010(c) requires each member to conduct a review of its branches that is "reasonably designed to assist in detecting and preventing violations of, and achieving compliance with, applicable securities laws and regulations, and with applicable NASD rules." The review must be done at least every three years for every branch office that does not supervise one or more non-branch locations. The Rule also requires members to retain a written record of the dates of the reviews and to prepare a written report pertaining to such inspections. The written report must be kept on file by the member for a minimum of three years.

As set forth above, during the FINRA examination which commenced in February 2010, Janson asked Laraway to create three branch office inspection reports for inspections which he had allegedly completed in Boston in October 2007, in Atlanta in November 2007 and in Irvine,

California in May 2008. Thus, Headwaters failed to prepare a branch Office Inspection Report for its Atlanta Branch until approximately two years and three months after the inspection, for its California Branch until approximately one year and nine months after the inspection, and for its Boston Office, until two years and four months after its inspection.

By failing to create Branch Office Inspection Reports at or about the time of the inspections, Headwaters failed to retain the reports for approximately 58% to approximately 77% of the three-year period for which the Rule specifies retention. Headwaters thereby violated NASD Conduct Rules 3010(c)(2) and 2110 and FINRA Rule 2010.

THIRD CAUSE OF ACTION

Failure to Prepare Annual Reports Required by NASD Conduct Rules 3012, 3013 and 2110 and IM-3013 and FINRA Rules 3130 and 2010

Rule 3012 requires the principal responsible for compliance with FINRA rules pertaining to the firm's supervisory controls to submit to the member's senior management no less than annually a report detailing the firm's system of supervisory controls, providing a summary of the results of the firm's test of its compliance and supervisory procedures and any significant exceptions identified by the testing process, and describing any additional or amended supervisory procedures created in response to the test results. No one at Headwaters submitted an annual report to firm management for 2006, 2007, 2008 or 2009, in violation of NASD Rule 3012.

Former NASD Conduct Rule 3013, the accompanying IM-3013 and current FINRA Rule 3130 require members to create a report detailing the process the firm has in place to establish, maintain, review, test and modify its written compliance policies and written supervisory procedures. The firm's Chief Executive Officer (or equivalent officer(s)), or any other officers

the member firm deems necessary to make the certification, must review the Rule 3013/3130 report and certify in the Rule 3013/3031 certification that the review has occurred. Headwaters did not prepare or provide a 3013/3130 report to the Chief Executive Officer or anyone else in a senior position at the firm in 2006, 2007, 2008 or 2009.

The failures to prepare the reports contemplated by Rules 3012 and 3013 during the period from January 1, 2006, through December 14, 2008, constituted violations of NASD Conduct Rules 3012, 3013 and 2110 and IM-3013 by Headwaters. The failures to prepare the reports contemplated by Rules 3012 and 3130 during the period from after December 15, 2008, constituted violations of FINRA Rules 3012, 3130 and 2010 by Headwaters.

FOURTH CAUSE OF ACTION

Deficient Written Supervisory Procedures by Headwaters in violation of NASD Conduct Rules 3010 and 2110 and FINRA Rule 2010

Headwaters' Written Supervisory Procedures were not reasonably designed to ensure the firm complied with NASD Conduct Rule 3012 and FINRA Rule 3130/Conduct Rule 3013 for the following reasons:

- a. The firm did not have distinct and clearly identifiable written supervisory control procedures;
- b. There were no procedures setting forth how the firm would review and supervise for the identification of producing managers and the supervision of accounts of producing managers or detailing the manner in which the firm would ensure that none of its managers were producing managers as that term is contemplated by the Rule;

- c. There was no procedure addressing heightened supervision over the activities of *producing managers or detailing the firm's process for verifying that its managers did not conduct their businesses in a manner that would require heightened supervision*;
- d. There were no procedures concerning how the firm would supervise the transmittal of customer funds and securities; customer changes of address; customer changes in investment objective, including means or method of customer confirmation, notification or follow-up that can be documented, or for ensuring that the firm did not engage in businesses to which this provision of Rule 3012 applies; and
- e. The procedures addressing the requirements of NASD Conduct Rule 3013 or FINRA Rule 3130 were deficient. Specifically, the procedures did not address in sufficient detail the CEO's annual certification to senior management; the preparation of the report evidencing the firm's processes prior to certification; and the provision of the report to the firm's board of directors and audit committee.

As a result of the foregoing, Headwaters violated NASD Conduct Rule 3010 and 2110 and FINRA Rule 2010.

FIFTH CAUSE OF ACTION

Failure to Conduct AML Tests in violation of NASD Conduct Rules 3011, IM-3011 and 2110 and FINRA Rules 3310 and 2010

NASD Conduct Rule 3011(c) and IM-3011-1 (now FINRA Rule 3310) requires Headwaters to conduct an independent AML test every two years (on a calendar-year basis).

Headwaters had not conducted an AML test since the firm became a member in March 2002 until the Complaint in this matter was filed. Headwaters' failure to conduct any AML tests between April 2006 and January 1, 2010, violated NASD Conduct Rules 3011 and IM-3011-1. Its failure to conduct any tests after January 1, 2010 violated FINRA Rule 3310. In addition, the failure to conduct tests during the period from April 2006 through December 14, 2008, constituted violations of NASD Conduct Rule 2110. Such conduct on or after December 15, 2008, constituted violations of FINRA Rule 2010 by Headwaters.

Based on the foregoing, Respondents Headwaters, Laraway, Jason and Seefried violated FINRA Rule 2010 as a result of the conduct alleged in Cause One. In addition, based on conduct alleged in Causes Two through Five, Headwaters violated NASD Conduct Rules 3010, 3010(c)(2), 3012, 3013, IM-3013, 3011, IM-3011-1 and 2110 and FINRA Rules 3012, 3130, 3310 and 2010.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondents from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondents be sanctioned as follows:

Respondent Headwaters is censured and fined \$60,000.00, of which \$40,000.00 is assessed jointly and severally with Respondents Laraway, Janson and Seefried.

Respondent Laraway is suspended for one year from associating with a FINRA member as an Operations Professional (Series 99) and is fined \$40,000.00, jointly and severally with Respondents Headwaters, Janson and Seefried.

Respondent Janson is suspended for one year from associating with a FINRA member as a General Securities Principal (Series 24) and is fined \$40,000.00, jointly and severally with Respondents Headwaters, Laraway and Seefried.

Respondent Seefried is suspended for one month from associating with a FINRA member as a General Securities Principal (Series 24) and is fined \$40,000.00, assessed jointly and severally with Respondents Headwaters, Laraway and Janson. Respondent Seefried's principal suspension will commence within one week after Janson has completed his one year principal suspension, as described above.

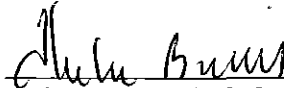
Respondents agree to pay the monetary sanctions upon notice that this Offer has been accepted and that such payments are due and payable. Respondents have submitted Election of Payment forms showing the method by which they propose to pay the fines imposed.

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

SO ORDERED.

FINRA

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



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