

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2010023220504**

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

RE: Dudley Muth (CRD 1013651), Respondent

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Dudley Muth ("Muth" 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

Muth was first registered with a FINRA member firm in or around 1968. He was registered with approximately fifteen different member firms before becoming registered with BMA Securities, Inc. ("BMA" or "the Firm") on January 7, 2009. He currently holds Series 4, 7, 24, 27, 63, 79 and 99 licenses. Muth has been BMA's Chief Compliance Officer and AMLCO since joining the Firm and remains registered with BMA.

OVERVIEW

Between January 2009 and December 2011 Muth failed to establish, maintain and implement an adequate supervisory system and written supervisory procedures designed to achieve compliance with Section 5 of the Securities Act of 1933 (the "Securities Act"), in violation of NASD Rules 3010(a) and (b), and FINRA Rule 2010.

During the period from January 2009 through December 2011, Muth also failed to establish and implement an adequate AML program. Muth failed to investigate various red flags that suggested suspicious activity that may have required the filing of a suspicious activity report, a

required by NASD Rule 3011(a) (for conduct before January 1, 2010) and FINRA Rule 3310(a) (for conduct beginning January 1, 2010).

FACTS AND VIOLATIVE CONDUCT

Sales of Unregistered Shares

Between May 2009 and May 2010, fourteen BMA customers deposited and then sold over 71 million shares of a thinly traded security of a speculative issuer. Ten of the Firm's account holders who sold the shares were related via family relationships and/or maintained the same business address. The ten accounts as a group sold over 47 million of the shares. Other customers of the Firm, who also acted as a group, sold over 24 million shares.

The Form 10-Q for the Issuer showed that, as of August 17, 2009, the Issuer had slightly less than 73 million common shares outstanding, in addition to voting stock. BMA customers deposited and sold close to that same amount of shares. The two groups of customers collectively deposited 71.6 million shares out of approximately 119 million shares outstanding as of November 2009 or 60% of the outstanding shares.

Section 5 of the Securities Act of 1933 prohibits the offer or sale of any security unless there is a registration statement in effect as to that security or there is an exemption available for the transaction. Exemptions to the registration requirement of Section 5 are construed narrowly. A broker who sells securities in violation of Section 5 violates FINRA Rule 2010. The shares of the Issuer that the customers deposited and sold were not issued pursuant to a registration statement, and were restricted from re-sale, absent an applicable exemption from registration.

The exemption under Section 4(4) of the Securities Act for "brokers' transactions" is inapplicable. In order to claim the brokers' exemption, brokers must undertake reasonable efforts to assure themselves that the transactions do not violate Section 5, particularly when confronted by red flags indicative of an unregistered distribution. Brokers cannot delegate this responsibility by relying on others to make the appropriate determination when the circumstances indicate the need for a thorough investigation.

The customers deposited and sold large blocks of the Issuer repeatedly. The customers completed deposited securities questionnaires, in which they indicated that they acquired the shares in private transactions from other members of the group. While the customers provided explanations, those explanations and the transactions were not adequately investigated to determine the basis for the repeated issuance of large blocks of stock. At one point, these accounts collectively owned approximately 11.2% of the issued and outstanding shares, according to the firm's own calculation. The internal document on which that was noted also noted multiple red flags with the firm's Operations Department indicating that "this group of people keep buying each others stock." (sic) Another internal document for a deposit from another customer in the group received ten days later showed the concentration was at 18%.

Despite the presence of these red flags, BMA approved the sale, concluding the customers were not acting in concert. That conclusion was not reviewed or revisited, even after six of the

customers sold about four million shares six days later, all in one day. A registered representative of the Firm took and executed the sell orders in two groups; the first was completed within a minute and a half and, an hour later, the second was completed within one minute.

Notwithstanding the obvious coordination of efforts and possible control relationship, BMA and the registered representative continued to accept for deposit and then sell out shares of the Issuer for the group's accounts. No additional investigation was done.

The Firm failed to undertake sufficient efforts to ascertain whether the stock could be properly sold, and accordingly did not satisfy their duty to conduct a reasonable inquiry, which is a crucial part of the brokers' exemption.

Insufficient Supervisory System and Written Procedures for Compliance with Section 5

NASD Rule 3010(a) requires member firms to "establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules." Rule 3010(b) requires that firms document the system in the firm's written supervisory procedures.

Muth did not establish, maintain and implement adequate supervisory systems and procedures reasonably designed to comply with Section 5 between January 2009 and December 2011. Muth was BMA's Chief Compliance Officer from January 7, 2009. Since that time, Muth was responsible for BMA's written supervisory procedures and ensuring that the Firm complied with applicable regulations and statutes, including compliance with Section 5.

The Firm's written procedures for compliance with Section 5 generally addressed the sale of unregistered stock, but did not provide adequate guidance to ensure overall compliance with Section 5, particularly given the nature of the firm's business, which included liquidating large volumes of speculative, thinly traded stock on behalf of its customers. Prior to June 2010, the written procedures addressing review of deposited share certificates were basic, not providing enough detail on the due diligence to be done by the firm. Improvements were made in June 2010, but the written procedures continued to lack sufficient detail with regard to the review of deposited share certificates. During the period between August 2011 and December 2013, the written procedures also failed to address the review necessary when large volumes of speculative, thinly traded stock were sold through delivery versus payment ("DVP") accounts.

Muth failed to implement the Firm's supervisory system and written supervisory procedures sufficiently to detect and prevent violations of Section 5. The Firm used a "Securities Checklist" for shares deposited in certificate form, by DWAC or in some other fashion. Not all of the items on the checklist were mandatory, leading to necessary documents and information not being obtained. There was a lack of adequate investigation as to how the customers obtained the shares or whether any type of control relationship existed. The Firm, through Muth, relied too heavily on the statements of customers or third parties for a determination of marketability or Rule 144 qualification without additional review. In at least one situation, the Firm, through

Muth, relied on a legal opinion, where a review of the basic factors in the opinion letter would have established or suggested that the attorney had a business affiliation with the customer and was not rendering an independent opinion.

As a result of his supervisory deficiencies regarding sales of unregistered securities, Muth violated NASD Rule 3010(a) and (b) and FINRA Rule 2010

Deficiencies Relating to the AML Program

FINRA Rule 3310 (known as NASD Rule 3011 until January 1, 2010) requires all member firms to "develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the firm's compliance with the requirements of the Bank Secrecy Act (31 U.S.C. § 5311, *et seq.*), and the implementing regulations promulgated thereunder by the Department of the Treasury."

Title 31 U.S.C. § 5318(g) authorizes the Department of the Treasury to issue suspicious activity reporting requirements for broker-dealers. The Department of the Treasury issued the implementing regulation, 31 C.F.R., § 103.19(a)(1), on July 1, 2002. It provided that, with respect to any transaction after December 30, 2002, "[e]very broker or dealer in securities within the United States . . . shall file with FinCEN . . . a report of any suspicious transaction relevant to a possible violation of law or regulation." Section (a)(2) of that regulation specifically provides:

A transaction requires reporting . . . if it is conducted or attempted by, at, or through a broker dealer, it involves or aggregates funds or other assets of at least \$5,000, and the broker-dealer knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

- (i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;
- (ii) Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, . . . ;
- (iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or
- (iv) Involves use of the broker-dealer to facilitate criminal activity.

In April 2002, FINRA issued Notice to Members (NTM) 02-21, which reminded broker-dealers that they were required to establish and implement AML programs designed to achieve compliance with the Bank Secrecy Act and the regulations promulgated thereunder. The Notice further advised broker-dealers that their AML procedures must address a number of areas including monitoring of account activities, "including but not limited to, trading and the flow of money into and out of accounts." In August 2002, FINRA issued NTM 02-47, which set forth the suspicious activity reporting rule promulgated by the U.S. Department of the Treasury for the securities industry. This NTM further advised broker-dealers of their duty to file a SAR (Suspicious Activity Report) for any suspicious transactions occurring after December 30, 2002.

BMA's AML procedures identified red flags that signaled possible suspicious activity. One red flag was, "The customer or a person publicly associated with a customer has a questionable background or is the subject of news reports indicating possible criminal, civil, or regulatory violations." Several customers of the Firm had criminal or disciplinary histories that should have led to closer scrutiny, but did not, including one who was barred from association with any broker-dealer resulting from his criminal conviction for conspiracy to commit securities fraud.

Another red flag in the procedures was, "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 stocks, bearer bonds, which although legitimate have been used in conjunction with fraudulent schemes and money laundering activity. Such transactions may warrant further due diligence to insure the legitimacy of the customer's activity." In light of the Firm's main business, this red flag was present in many transactions. Certain transactions of this nature, however, presented facts that should have led to "further due diligence," but did not.

The activity in the Issuer was such a situation. The repeated deposits of numbers of shares of a penny stock that constituted a large percentage of the shares issued and outstanding relative to the float alone should have raised red flags. That was then compounded with the evidence that indicated a control relationship. Muth did not sufficiently investigate the activity from an AML standpoint. Rather than investigate, Muth wrote a memo stating that the customers were not acting in concert without any evidence to support that conclusion, followed shortly thereafter by a coordinated sale.

Another red flag in the procedures was, "The customer maintains multiple accounts, or maintains accounts in the names of family members or corporate entities, for no apparent purpose." A group of customers who deposited and sold the Issuer's securities, among other securities, worked through multiple accounts, all operating out of the same address, for no apparent reason. Muth did not adequately investigate the circumstances involving the multiple accounts, and did not adequately question it after executing the sales described above.

Muth was the designated AMLCO after January 2009. During his tenure, he had the responsibility to ensure compliance with the AML rules and regulations.

BMA's written AML procedures, for which Muth was responsible, did not address the issues presented by DVP accounts and Muth's implementation of its procedures was inadequate to deal with the activity in its DVP accounts. Muth did not adequately address the sharp increase in

sales volume and the sudden appearance of millions of shares to be sold through a DVP account in 2011, during the same time that the company's stock was being promoted heavily through questionable press releases and Internet touting.

Muth's inadequate implementation of the Firm's AML procedures violated NASD Conduct Rule 3011(a) for the period prior to January 1, 2010 and FINRA Rule 3310(a) for the period on and after January 1, 2010 and FINRA Rule 2010.

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

1. A fine of \$20,000; and
2. A 30-day suspension from associating with any FINRA member in all principal capacities with the exception of any activities requiring a Series 27 license; however the suspension shall take effect after the completion of the suspension assessed against Burt Arnold in Letter of Acceptance, Waiver and Consent No. 2010023220503.

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

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Muth has submitted an Election of Payment form showing the method by which he proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that he is unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

Muth 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, Muth may not be associated with any FINRA member in a principal capacity with the exception of any activities requiring a Series 27 license during the period of the bar or suspension (see FINRA Rules 8310 and 8311). Furthermore, because Muth is subject to a statutory disqualification during the suspension, if he 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

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 him;
- 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, 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; and

C. If accepted:

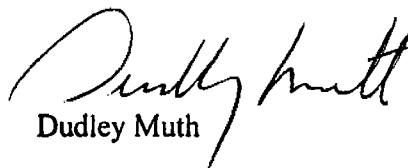
1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against him;
2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondent's disciplinary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

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 he 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.

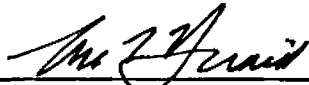
Respondent Muth has read and understands all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that Respondent has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and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

Date:

10/30/2014


Dudley Muth

Reviewed by:

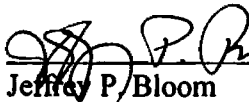


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Counsel for Respondent Muth

Accepted by FINRA:

11/11/04
Date

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



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