

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

Department of Enforcement,  
  
Complainant,

v.

ERIC BRETON SMITH  
Limited Registered Representative  
(CRD No. 2133043),  
  
Respondent.

Disciplinary Proceeding  
No. 2010023696901

Hearing Officer MC

**ORDER ACCEPTING OFFER OF  
SETTLEMENT**

Date: February 28, 2012

**INTRODUCTION**

Disciplinary Proceeding No. 2010023696901 was filed on November 28, 2011, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Erick Breton Smith (Smith or Respondent) submitted an Offer of Settlement (Offer) to Complainant dated January 26, 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, Respondent has 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 Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

### **BACKGROUND**

Smith initially entered the securities industry on May 13, 1991, as an Investment Company and Variable Contracts Products Representative of a FINRA registered firm. He remained registered in such capacity until June 18, 1992. On May 31, 2007, Smith reentered the securities industry in the same capacity with NatCity Investments, Inc. (NatCity), a FINRA registered firm. Smith was registered with NatCity in such capacity until November 13, 2009. On that date, Smith became registered with PNC Investments (PNC), a FINRA registered firm. He was registered in such capacity with PNC until July 26, 2010. Smith is currently not registered with another FINRA registered firm, and has no history of disciplinary action.

### **FINDINGS AND CONCLUSIONS**

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

1. On October 20, 2008, while Smith was registered with NatCity, Smith filed a voluntary petition for bankruptcy protection under Chapter 7 of the Bankruptcy Code. Smith willfully failed to amend his Form U4 to disclose the bankruptcy filing. Such conduct was a violation of Article V, Section 2 (c) of the FINRA By-Laws, NASD Rule 2110, and FINRA Rule 2010.

2. On November 16, 2011, Smith failed to appear for an on-the-record interview regarding this matter that had been requested by FINRA, in violation of FINRA Rules 2010 and 8210.

**First Cause of Action  
Willfully Failing To Disclose Bankruptcy on Form U4**

3. Article V, Section 2 of FINRA By-Laws, requires that each application for registration filed with FINRA be kept current at all times by supplementary amendments. The By-Law further provides that such amendments shall be filed not later than 30 days after learning of the facts or circumstances giving rise to the amendment.

4. During all relevant times, Form U-4 Uniform Application for Securities Industry Registration or Transfer (Form U4) contained the following question: "Within the past 10 years: (1) have you made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition?" When Smith completed his initial Form U4 upon his employment with NatCity on April 13, 2007, he answered the above question by stating "No."

5. On October 20, 2008, while he was registered with NatCity, Smith filed a voluntary petition for bankruptcy protection under Chapter 7 of the Bankruptcy Code.

6. In or about February 2009, Smith amended his Form U4 to list a new home address, but failed to amend his Form U4 to report his filing of a bankruptcy petition.

7. Smith willfully failed to disclose to NatCity and PNC that he had filed a bankruptcy petition, and willfully failed to amend his Form U4 to disclose that he filed a bankruptcy petition from November 19, 2008 until July 12, 2010 when his registration with PNC was terminated.

8. The aforementioned acts, practices and conduct constitute separate and distinct violations of Article V, Sections 2 of FINRA By-Laws, NASD Rule 2110 (for his actions prior to December 15, 2008) and FINRA Rule 2010 (for his actions after December 15, 2008) by Smith.

**Second Cause of Action  
Failure to Appear for an On-The-Record Interview**

9. On or about November 2, 2011, FINRA Staff of the Chicago District Office called a telephone number that had been provided by Smith to arrange a time for an on-the-record testimony session. Smith did not answer his telephone, so a message was left for him to return the telephone call about scheduling the on-the-record testimony session within the next two weeks.

10. By November 4, 2011, Smith had not returned Staff's telephone call, so a letter was sent to Smith by FedEx overnight mail and certified mail, return receipt requested, to Smith's address of record on the Central Registration Depository, in Portage, Michigan. The letter stated that the on-the-record testimony would be held at the Chicago District Office on November 16, 2011 at 1:00 p.m. Central Standard Time (CST). The letter was sent pursuant to and in accordance with FINRA Rule 8210.

11. On or about November 7, 2011, at 5:50 a.m. CST, Smith called Staff and left a voice mail message. Smith stated that he was unavailable to provide on-the-record testimony during the week of November 7, 2011, because he would be in Tennessee during that week, but he said that he was available during the week of November 14, 2011, with Wednesday, November 16, or Thursday November 17, being the best dates for him. Smith requested that the Staff return his telephone call.

12. On or about November 7, 2011, Staff called the telephone number that Smith had provided and left a message on Smith's voice mail. Staff informed Smith that the on-the-record interview would be held on November 16, 2011 at 1:00 p.m. CST.

13. On November 15, 2011, at 5:37 a.m. CST, Smith called Staff and left a message that he wanted to know why the on-the-record session would take so long and expressed concern about the cost of travelling to Chicago for the testimony. He requested that Staff return his telephone call.

14. On the morning of November 15, 2011, Staff called the telephone number that Smith had left them and again received Smith's answering machine. Staff left a message for Smith that he was expected in Chicago on November 16, 2011 at 1:00 p.m. CST for his testimony. He was also asked to return the call to the Staff. Smith did not return Staff's telephone call to him on November 15, 2011.

15. On November 16, 2011, Smith failed to appear for his scheduled OTR and he has not contacted the staff to explain his failure to appear.

16. The aforementioned acts, practices and conduct constitute separate and distinct violations of FINRA Rules 2010 and 8210 by Smith.

Based on the foregoing, Respondent violated NASD Rule 2110 and FINRA Rules 2010 and 8210.

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

## **SANCTIONS**

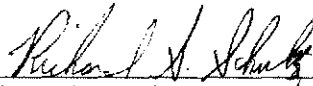
It is ordered that Respondent be barred from association with any FINRA registered firm in any capacity.

The sanctions 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 Order.

SO ORDERED.

FINRA

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



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