

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT**

NO. 2010024993502

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

RE: BPU Investment Management, Inc., Respondent
Member Firm
CRD No. 17058

Rick E. Pierchalski, Respondent
General Securities Representative and
General Securities Principal
CRD No. 818958

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 us alleging violations based on the same factual findings described herein.

ACCEPTANCE AND CONSENT

- A. Respondents 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

BPU Investment Management, Inc. ("BPU" or "Firm") has been a member of FINRA since February 1986. The firm conducts a general securities business, has thirty-five registered persons and four registered branch offices. It is also registered with the Municipal Securities Rulemaking Board ("MSRB"). The Firm has no FINRA disciplinary history.

On February 10, 1986, Rick E. Pierchalski ("Pierchalski") first became registered with FINRA as a General Securities Representative and General Securities Principal. Since February 1986, Pierchalski has been registered in those same two capacities through BPU. In addition, from January 2007 to April 2012, he served

as the Firm's CCO and AMLCO. Pierchalski has no FINRA disciplinary history.

OVERVIEW

BPU, acting through Pierchalski, (i) allowed an associated person to perform certain functions requiring principal registration without being registered in that capacity; (ii) created an inaccurate record; and (iii) failed to implement policies and procedures reasonably designed to detect and cause the reporting of suspicious transactions. In addition, BPU sold unregistered securities to customers. The securities and the transactions, however, were not exempt from registration. BPU's and Pierchalski's conduct violated NASD Membership and Registration Rule 1021, NASD Conduct Rules 3011(a) and 2110 and FINRA Rules 3310(a) and 2010, and BPU's conduct violated MSRB Rule G-41.

FACTS AND VIOLATIVE CONDUCT

Allowing Associated Person to Function as Unregistered Principal

From at least January 2009 to March 2011, BPU, acting through Pierchalski, allowed an associated person to serve as the Firm's Director of Finance and be actively involved in its securities business as a principal without proper registration. Specifically, among other activities, the associated person had responsibility for the approval and accuracy of the Firm's financial reporting, and he supervised persons involved in the preparation and maintenance of the Firm's books and records. In addition, he served as a member of BPU's Executive Management Committee through which he participated in management decisions. Those roles required registration as a General Securities Principal. The associated person, however, was not registered in that capacity. By allowing an associated person to perform duties that required registration as a principal before he was so registered, BPU and Pierchalski violated NASD Membership and Registration Rule 1021 and FINRA Rule 2010.

Creating an Inaccurate Document

In about August 2010, BPU, acting through Pierchalski and other associated persons, prepared a certification page as part of its 2009 AML Test that contained an inaccurate date. The certification page was provided to FINRA exam staff during a routine exam in September 2010. By creating an inaccurate document, BPU and Pierchalski violated FINRA Rule 2010.

**Failure to Implement Policies/Procedures Reasonably Designed to Detect
and Cause the Reporting of Suspicious Transactions**

FINRA Rule 3310(a), previously NASD Conduct Rule 3011(a), mandates that member firms establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions. In addition, FINRA emphasized in Notice to Members 02-47 each firm's duty to detect relevant red flags and, if it detects any, to perform additional due diligence to determine whether a Suspicious Activity Report ("SAR") should be filed.

From about June 2004 to June 2010, BPU, acting through Pierchalski, failed to develop and implement a written anti-money laundering (AML) program reasonably designed to ensure the Firm's compliance with the Bank Secrecy Act (31 U.S.C. 5311, *et seq.*). Among other things, BPU failed to monitor, detect, and investigate suspicious transactions and determine whether to file a SAR in the face of multiple "red flags" in connection with certain penny stock transactions effected by a customer in his account and similar transactions effected by relatives and business associates of that customer in their accounts, including the following:

- the customer and the customer's relatives made substantial sales of the penny stock of three issuers within a short period of receiving (by transfer or in certificate form) the shares in their BPU accounts. For example, in July 2009, the customer received 55 million shares of an issuer and, by August 2009, had sold all these shares and received \$63,870;
- the customers engaged in a repeated pattern of requesting multiple free deliveries to third parties. For example, during the relevant time period, there were free deliveries of 39,397,650 shares to accounts at other firms and free deliveries of 11,036,175 shares to third parties;
- several of the accounts and all the issuers shared the same address and phone number; and
- the customers engaged in a pattern of depositing penny stock certificates, selling the stock and then requesting payment before the trades settled.

BPU failed to conduct adequate due diligence or monitoring of the activity in the accounts despite those "red flags" and the Firm's procedures, which required the AMLCO, Pierchalski, to investigate suspicious transactions. Throughout most of the relevant period, BPU did not have access to any mechanism (e.g., exception reports or the like) to monitor for or detect patterns in low-priced securities, including deposits or liquidations over time or among multiple accounts.

By failing to monitor, detect and investigate suspicious transactions and determine whether to file a SAR with respect to certain red flags about the penny stock transactions, BPU and Pierchalski violated NASD Conduct Rules 3011(a) (for conduct before January 1, 2010) and 2110 (for conduct before December 15,

2008), and FINRA Rules 3310(a) (for conduct after December 31, 2009) and 2010 (for conduct after December 14, 2008), and BPU violated MSRB Rule G-41.

Selling Unregistered Securities Without an Exemption

Broker-dealers violate Section 5 of the Securities Act of 1933 ("Securities Act") if: (1) they offer or sell securities for which no registration statement was filed or in effect; (2) they make the offering or sale through interstate commerce or the mails; and (3) no exemption from registration is available. The SEC has imposed responsibilities on broker-dealers because of their responsibilities under certain circumstances to act as gatekeepers to the public markets, to conduct a "searching inquiry" to ensure that they do not violate Section 5.

From at least January 1, 2008 to June 30, 2010, BPU sold approximately 69 million shares of the low-priced stock of three issuers. The transactions generated proceeds of approximately \$271,000. The securities sold were not subject to a registration statement, and the securities and transactions were not otherwise exempt from registration. Moreover, BPU used the means and instrumentalities of interstate commerce and/or the mails to sell the securities. In addition, despite certain questionable circumstances surrounding the sales (e.g., substantial deposits of the same low-priced securities in related accounts at the Firm followed shortly by liquidation of the shares), the Firm failed to conduct a "searching inquiry" to ensure that the sales did not violate Section 5 of the Securities Act. By selling unregistered securities in contravention of Section 5 of the Securities Act, BPU violated NASD Conduct Rule 2110 (for conduct before December 15, 2008) and FINRA Rule 2010 (for conduct after December 14, 2008).

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

1. a three-month suspension from association with any FINRA member in any principal capacity and a fine of \$5,000 against Pierchalski;
2. a censure and fine of \$25,000 against BPU (\$7,500 of which pertains to the violation of MSRB Rule G-41); and
3. a joint-and-several fine of \$10,000 against BPU and Pierchalski.

In addition, Respondent BPU agrees to comply with the following undertakings:

1. BPU shall:
 - a. Retain, within 60 days of the date of the Notice of Acceptance of this AWC, an Independent Consultant, not unacceptable to FINRA

staff, to conduct a comprehensive review of the adequacy of the Firm's policies, systems and procedures (written and otherwise) and training relating to registration of Firm personnel, recordkeeping, AML policies and procedures, and compliance with Section 5 of the Securities Act of 1933, including the Firm's practices regarding the sale of unregistered securities;

- 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. BPU 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, BPU shall not terminate the relationship with the Independent Consultant without FINRA staff's written approval; BPU 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 FINRA;
- d. At the conclusion of the review, which shall be no more than 120 days after the date of the Notice of Acceptance of this AWC, 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 policies, systems, procedures, and training relating to registration of Firm personnel, recordkeeping, AML policies and procedures, and compliance with Section 5 of the Securities Act of 1933, including the Firm's practices regarding the sale of unregistered securities; (ii) a description of the review performed and the conclusions reached, and (iii) the Independent Consultant's commendations 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 into any other employment, consultant, attorney-client, auditing or other professional relationship with BPU, 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 FINRA staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with BPU 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.

2. Within 90 days after delivery of the Written Report, BPU 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;
3. Within 30 days after the issuance of the later of the Independent Consultant's Written Report or written determination regarding alternative procedures (if any), BPU shall provide FINRA staff with a written implementation report, certified by an officer of BPU, attesting to, containing documentation of, and setting forth the details of BPU's implementation of the Independent Consultant's recommendations; and
4. Upon written request showing good cause, FINRA staff may extend any of the procedural dates set forth above.

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

Respondents specifically and voluntarily waive any right to claim that they are unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

Respondent Pierchalski understands that if he is 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, he may not be associated with any FINRA member in a principal capacity during the period of the suspension (see FINRA Rules 8310 and 8311). Furthermore, because he 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.

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

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 us;
- 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 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 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.

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;
- C. If accepted:
 - 1. this AWC will become part of the Respondents' permanent disciplinary records 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 record;
 - 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; and
- 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 BPU, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it 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.

Respondent Pierchalski certifies that he has read and understands 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.

BPU Investment Management, Inc.

Date (mm/dd/yyyy)

9/19/12

Date (mm/dd/yyyy)

By: _____
Paul J. Brahim
Chief Executive Officer



Rick E. Pierchalski
Respondent

The undersigned, on behalf of BPU, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it 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.

Respondent Pierchalski certifies that he has read and understands 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.

BPU Investment Management, Inc.

09-25-2012
Date (mm/dd/yyyy)

By:

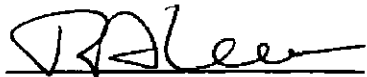
Paul J. Brahm
Chief Executive Officer

Date (mm/dd/yyyy)

Rick E. Pierchalski
Respondent

Reviewed by:

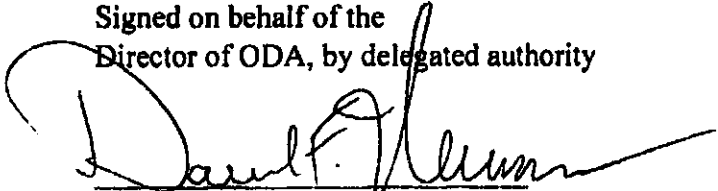
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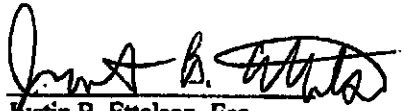
Accepted by FINRA:

October 24, 2012
Date

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


David F. Newman
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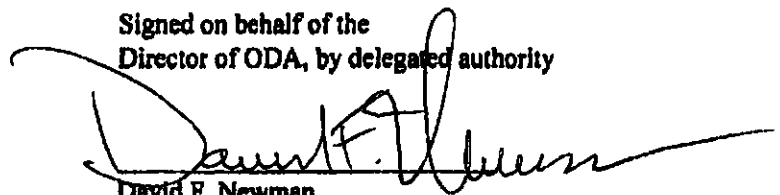
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