

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2010025122401**

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

RE: Wunderlich Securities, Inc., Respondent
Member Firm
(CRD No. 2543)

and

Stephen J. Bonnema, Respondent
General Securities Principal
(CRD No. 2229865)

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Wunderlich Securities, Inc. (hereinafter, "WSI" or "the Firm") and Stephen J. Bonnema ("Bonnema") (hereinafter collectively, "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. 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

WSI has been a member of FINRA since March 1984. WSI is headquartered in Memphis, Tennessee and currently has 56 branch office locations and employs 310 registered individuals. WSI conducts a general securities business and is approved to conduct a municipal securities business as well.

Bonnema entered the securities industry in December 1997, as a Financial and Operations Principal of a member of FINRA. He became registered with WSI in January 2002. Since January 2008, Bonnema has served as WSI's AML Compliance Officer. He is currently associated with WSI and registered as a Financial and Operations Principal, a General Securities Principal, and a General Securities Representative.

OVERVIEW

Between December 1, 2008 and January 31, 2010, WSI facilitated sales of approximately 271 million unregistered shares of equity securities of two issuers, in contravention of Section 5 of the Securities Act of 1933 ("Securities Act") and in violation of NASD Conduct Rule 2110 and FINRA Rule 2010. Additionally, during the same time period, WSI failed to establish and implement a supervisory system, including written procedures, that was reasonably designed to ensure compliance with Section 5 of the Securities Act, in violation of NASD Conduct Rules 3010, subparts (a) and (b), and 2110 (for conduct on or before December 14, 2008) and FINRA Rule 2010 (for conduct on or after December 15, 2008).. Further, WSI, acting through Bonnema, failed to establish and implement an AML Compliance Program that was reasonably designed to detect, investigate, and report, as applicable, suspicious activity in customer accounts, in violation of NASD Conduct Rule 3011(a) (for the time period before January 1, 2010), FINRA Rule 3310(a) (for the time period on and after January 1, 2010), NASD Conduct Rule 2110 (for conduct on or before December 14, 2008), and FINRA Rule 2010 (for conduct on or after December 15, 2008).

FACTS AND VIOLATIVE CONDUCT

1. Sale of Unregistered Securities in Contravention of Section 5 of the Securities Act of 1933

Section 5 of the Securities Act of 1933 (the "Securities Act") prohibits any person from selling a security in interstate commerce unless a registration statement is in effect as to the security or there is an applicable exemption from the registration requirements of the Securities Act. Exemptions from the registration requirements of the Securities Act are narrowly construed, and the burden of establishing the availability of an exemption from registration rests with the person who would claim it.

Broker-dealers play a critical role in the securities distribution process and are obligated to take all reasonable steps to prevent unlawful distributions of unregistered securities. *See Jacob Wonsover*, 54 S.E.C. 1, 17, 1999 SEC LEXIS 430, at *33 (Mar. 1, 1999), *aff'd sub nom. Wonsover v. SEC*, 205 F.3d 408 (D.C. Cir. 2000). In fulfillment of that obligation, a broker-dealer cannot rely solely on others but, rather, must make an individual effort to determine whether an exemption from registration is available and must be reasonably certain that one is available before participating in the sale. *Dep't of Enforcement v. Padilla*, Complaint No. 2006005786501, 2012 FINRA Discip. LEXIS 46, at *29 (FINRA NAC Aug. 1, 2012). A broker-dealer that sells securities in contravention of Section 5 of the Securities Act violates FINRA Rule 2010 and/or NASD Conduct Rule 2110.

Section 4 of the Securities Act exempts certain securities transactions from registration. Among these is the exemption provided in Section 4(4), which provides for "brokers' transactions executed upon customers' orders on any exchange or in the over-the-counter

market but not the solicitation of such orders.” SEC Rule 144(g) defines “brokers’ transactions” as “transactions by a broker in which such broker [...] after reasonable inquiry is not aware of circumstances indicating that the person for whose account the securities are sold is an underwriter with respect to the securities or that the transaction is a part of a distribution of securities of the issuer.” The Securities and Exchange Commission (“SEC”) has stated that the amount of inquiry called for varies depending upon the circumstances of the particular case and that the duty of inquiry is at its highest when the sale involves a substantial block of a little-known security:

[W]hen a dealer is offered a substantial block of a little-known security, either by persons who appear reluctant to disclose exactly where the securities came from, or where the surrounding circumstances raise a question as to whether or not the ostensible sellers may be merely intermediaries for controlling persons or statutory underwriters, then searching inquiry is called for.

Distribution by Broker-Dealers of Unregistered Securities, Securities Act Rel. No. 4445, 1962 SEC LEXIS 74, at *4 (Feb. 2, 1962).

The SEC also has warned the brokerage community that:

Where it appears that securities to be sold were not acquired by open-market purchases, it must be determined whether their sale is exempted from registration under the Securities Act of 1933. Any determination that such an exemption exists should only be made after the broker-dealer has reviewed the facts surrounding the acquisition of the shares and competent outside counsel having no proprietary interest in the offering has furnished a supporting opinion describing the relevant facts in sufficient detail to provide an explicit basis for the legal conclusions stated.

Sales of Unregistered Securities by Broker-Dealers, Securities Act Rel. No. 5168, 1971 SEC LEXIS 19, at *7 (Jul. 7, 1971)

Between December 1, 2008 and January 31, 2010 (hereinafter, the “Relevant Period”), WSI sold, on behalf of customers, approximately 271 million unregistered shares of two thinly-traded low-priced stocks – Stem Cell Innovations (“SCLL”) and Rx for Africa (“RXAF”) – without first confirming, through a sufficient independent inquiry, that the shares could be sold pursuant to an exemption from registration. Specifically, during the Relevant Period, WSI customer MC, together with nine other persons that had been referred by MC, collectively deposited and sold approximately 271 million shares of SCLL and RXAF common stock, for which no registration statements were filed or in effect. The sales generated proceeds for the customers of approximately \$661,000 and net commissions for WSI of approximately \$1,657. The shares were delivered to WSI in certificate form and were accompanied by letters from the customers in which they represented that the shares were “free trading.” In most cases, the shares were initially deposited into the account of customer MC and subsequently transferred to one or more

of the other nine customers, who then sold the shares. In connection with the transfers, and in response to WSI's inquiry into whether the shares could be sold pursuant to an exemption, the receiving customer(s) typically provided a letter to WSI representing that he/she had acquired the shares from MC through a "private transaction" and that the shares were "free trading." The receiving customers sometimes provided with their letters documents relating to the purported "private transaction." However, neither the letters nor the supporting documents reflected how or when MC had acquired the shares in the first instance. In the case of a particular transfer, involving 70 million shares of SCLL from MC's account to the account of customer CG, the receipt customer provided an attorney opinion letter stating that the shares were "free trading." However, in the letter, the opining attorney expressly indicated that his conclusions were based solely on facts as represented to him by CG relating to how and when MC had acquired the shares in the first instance, and WSI took no additional steps to verify the accuracy of the facts upon which the attorney relied. Finally, SEC filings by SCLL and RXAF indicated that MC at one time was a major shareholder of both companies. Specifically, in a Form 10-K filed by SCLL on April 30, 2007, the company disclosed that, as of April 27, 2007, MC owned approximately 17 percent of the company's total issued and outstanding shares and was the largest shareholder. RXAF, in a Form 10-K filed on September 18, 2008, disclosed that, as of June 30, 2007, MC owned approximately 31 percent of the company's total issued and outstanding shares and was the second largest shareholder.

Because the SCLL and RXAF shares were not covered by a registration statement, WSI could not sell those shares without having confirmed, through a reasonable inquiry, the availability of an exemption from registration. The letters and documents provided by the selling customers in response to WSI's inquiry were inadequate to establish that the shares were exempt from registration, and WSI did not obtain sufficient additional information regarding the circumstances of MC's acquisition of the shares to enable the Firm to properly assess the availability of an exemption from registration.

By selling unregistered securities without having established, through reasonable inquiry, the availability of an exemption from registration, WSI acted in contravention of Section 5 of the Securities Act and in violation of NASD Conduct Rule 2110 (for conduct on or before December 14, 2008) and FINRA Rule 2010 (for conduct on or after December 15, 2008).

2. Inadequate Supervisory System and Written Procedures Relating to Resales of Restricted Securities

During the Relevant Period, WSI's written supervisory procedures ("WSPs") did not adequately address resales of restricted securities. The procedures in place provided that the "designated supervisor" (typically a branch office manager) would: (i) determine the seller's status (affiliate or non-affiliate); (ii) determine the availability of an exemption from registration in light of the quantity of shares to be sold and the timing of the sale; and (iii) assist the customer in the preparation of required forms. However, the WSP's did not address what specific information and/or documents should be obtained, either from the customer or another source, in order to assess the availability of an exemption. In

addition, WSI failed to provide adequate training to the designated supervisors on how to assess the availability of an exemption from registration.

By failing to establish, maintain, and enforce a supervisory system, including written procedures, that was reasonably designed to prevent illegal resales of restricted securities, WSI violated NASD Conduct Rules 3010, subparts (a) and (b), and 2110 (for conduct on or before December 14, 2008), and FINRA Rule 2010 (for conduct on or after December 15, 2008).

3. AML Compliance Program Deficiencies

FINRA Rule 3310 (formerly NASD Conduct Rule 3011) requires FINRA member firms to develop and implement an AML Compliance Program reasonably designed to achieve and monitor the member'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. FINRA Rule 3310(a) requires that members "[e]stablish and implement policies and procedures that can reasonably be expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder." In Notice to Members 02-47, FINRA reminded members of their obligation to look for red flags and report suspicious activity by filing a Form SAR.

During the Relevant Period, WSI's AML Compliance Program procedures (hereinafter, "AML Procedures") provided, among other things, that WSI's AML Compliance Officer ("AMLCO") was responsible for monitoring customer account activity to ensure for the detection, investigation, and reporting, as applicable, of patterns of activity that might be indicative of money laundering. WSI's AML Procedures listed several examples of patterns of activity that may be indicative of money laundering activity. These included: (i) trading that constitutes a substantial portion of all trading for the day in a particular security; (ii) trading or journaling between/among accounts, particularly between related owners; (iii) heavy trading in low-priced securities; and (iv) unusually large deposits of funds or securities. WSI's AML Procedures required that the AMLCO, upon detecting any such activity, conduct an investigation and make a determination as to whether the activity warranted the filing of a Form SAR.

During the Relevant Period, Stephen Bonnema served as WSI's AMLCO. In regards to monitoring for potentially suspicious activity, Bonnema delegated much of that responsibility to branch office managers, while giving them little training beyond what was contained in the Firm's WSPs. Bonnema also failed to adequately supervise the branch managers in their performance of that responsibility. His supervision primarily consisted of requiring branch managers to review daily AML reports detailing certain transactions in customer accounts (including securities received, incoming and outgoing wire transfers, checks issued, and checks received) and to complete periodic attestations certifying that they had reviewed for and reported to the AMLCO all potentially suspicious activity.

The penny-stock activity in the accounts of customers MC and the nine others that MC referred, met some of the characteristics identified in WSI's AML Procedures as potentially suspicious activity requiring investigation. For example, between March 6, 2009 and July 20, 2009, MC made a series of deposits of SCLL stock totaling 86 million shares, representing approximately three percent of SCLL's total issued and outstanding shares. Between March 9, 2009 and October 23, 2009, MC sold approximately 100 million shares of SCLL (representing a mix of the shares she deposited and shares that she had previously purchased in the open market) and transferred roughly 17 million shares (also a mix of shares deposited and purchased) to the accounts of customers MCI and FM. Between September 2009 and January 2010, WSI customers HS, TRG, and CGP deposited a total of 315 million unregistered shares of SCLL, roughly 11 percent of the company's total shares issued and outstanding and, through a series of sales between October 5, 2009 and January 12, 2010, sold approximately 185 million shares, or roughly seven percent of the company's total shares issued and outstanding. The proceeds of the sales were subsequently transferred to outside accounts. Additionally, between September 2, 2008 and November 3, 2009, MC purchased roughly three million shares of RXAF in the open market. On December 18, 2008, MC sold 20,000 shares, and on June 18, 2009, MC transferred 500,000 shares to the account of customer FM. Between December 29, 2008 and May 7, 2010, MC transferred approximately two million RXAF shares to an account that she held at another firm. On December 22, 2008, WSI customer SW deposited 500,000 unregistered shares of RXAF stock, or approximately one percent of the company's total shares issued and outstanding, in his account. SW subsequently sold 451,000 RXAF shares through a series of sales between December 23, 2008 and January 8, 2009. The proceeds of the sales were subsequently transferred to an outside account. As a result of WSI's inadequate procedures, training, and supervision relating to monitoring of accounts for potentially suspicious activity, WSI and Bonnema failed to detect and investigate the above-described activity in a timelier manner.

By virtue of the forgoing, WSI, acting through Bonnema, violated NASD Conduct Rule 3011(a) (for the time period before January 1, 2010), FINRA Rule 3310(a) (for the time period on and after January 1, 2010), NASD Conduct Rule 2110 (for conduct on or before December 14, 2008), and FINRA Rule 2010 (for conduct on or after December 15, 2008).

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

- WSI: a censure; a fine in the amount of \$108,343; and payment of \$1,657 in disgorgement of commissions, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from February 1, 2010 until the date this AWC is accepted by the National Adjudicatory Council.
- Bonnema: a suspension of ten business days from association with any FINRA member in a principal capacity and a fine in the amount of \$5,000.

Respondents agree to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. Respondents have each submitted an Election of Payment form showing the method by which each proposes to pay the monetary sanctions 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 Bonnema 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, Respondent Bonnema 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 Respondent Bonnema is subject to a statutory disqualification during the ten-business day 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 Respondents;
- 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 Chief Legal Officer, 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 records and may be considered in any future actions brought by FINRA or any other regulator against Respondents;
 - 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': (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. 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 Respondent WSI, certifies that a person duly authorized to act on WSI's 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 WSI 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 WSI to submit it.

5/28/2014
Date (mm/dd/yyyy)

[Signature]
Respondent Wunderlich Securities, Inc.

By: Gary Wunderlich

Respondent Bonnema 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.

5/28/14
Date (mm/dd/yyyy)

[Signature]
Respondent Stephen J. Bonnema

Reviewed by:

[Signature] 0528-14
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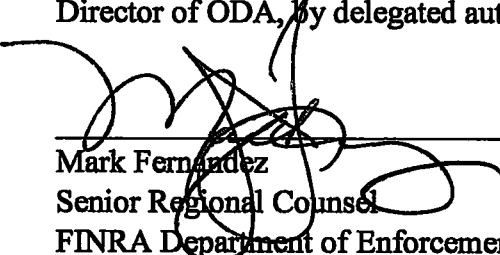
Counsel for Wunderlich Securities, Inc. and
Stephen J. Bonnema

Accepted by FINRA:

June 24, 2014

Date

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



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