

RECEIVED
MAR 12 2012

FINRA District 4

FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2011025499401

To: Department of Enforcement
FINRA

Re: Van Clemens & Co. Incorporated
CRD No. 6914

Pursuant to FINRA Rule 9216 of FINRA Code of Procedure, Van Clemens & Co. Incorporated, 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 Van Clemens based on the same factual findings described herein.

I. ACCEPTANCE AND CONSENT

- A. Van Clemens 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

Van Clemens has been registered with FINRA since October 1975. Van Clemens conducts business from its main office located in Minneapolis, Minnesota. The firm employs approximately 26 registered persons, who operate from the main office.

Relevant Disciplinary History

Van Clemens has not been the subject of relevant formal disciplinary action by FINRA.

Overview

Van Clemens failed to maintain and preserve any outgoing emails from approximately August 2009 through March 2011, and failed to maintain and preserve any email correspondence from approximately August 2009 through February 2010.

Van Clemens also failed to retain evidence that the firm reviewed email correspondence in accordance with the firm's written supervisory procedures and as required by NASD Rule 3010(d).

Facts and Violative Conduct

Van Clemens contracted with a third-party vendor for purposes of email retention from approximately August 2009 through March 2011. The firm, however, failed to adequately monitor the vendor's retention of the firm's emails. The vendor deleted firm emails that were over one year old, but failed to provide Van Clemens with copies of the emails prior to the deletion. Van Clemens believed that it would be provided copies of the emails prior to the deletion. As a result, Van Clemens failed to maintain and preserve any email correspondence from August 1, 2009 to February 2010.

Due to a technical issue, the same third-party vendor also failed to maintain and preserve any of the firm's outgoing emails from August 2009 to March 2011. Van Clemens did not discover this issue until May 2011, following a FINRA examination.

In addition to the firm's failure to retain emails, both the firm and its third-party vendor failed to retain evidence of the firm's supervisory review of emails in accordance with Van Clemens' policy and as required by NASD Rule 3010(d).

The firm thereby violated SEC Rule 17a-4(b)(4), NASD Rule 3010(d), NASD Rule 3110(a), and FINRA Rule 2010.

B. Van Clemens also consents to the imposition of the following sanctions:

1. A censure; and
2. A fine of \$25,000.

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

Van Clemens specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

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

II. WAIVER OF PROCEDURAL RIGHTS

Van Clemens specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against Van Clemens;
- B. To be notified of the Formal 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, Van Clemens 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.

Van Clemens 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

Van Clemens 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;

Letter of Acceptance, Waiver and Consent No. 2011025499401
Van Clemens & Co. Incorporated
Page 4

- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Van Clemens; and
- C. If accepted:
1. this AWC will become part of Van Clemens' permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Van Clemens;
 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Van Clemens 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. Van Clemens 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. Van Clemens 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 Van Clemens right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Van Clemens may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Van Clemens understands that it 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.

Letter of Acceptance, Waiver and Consent No. 2011025499401
Van Clemens & Co. Incorporated
Page 5

The undersigned, on behalf of Van Clemens, 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 the undersigned 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 Van Clemens to submit it.

VAN CLEMENS & CO. INCORPORATED

Date: 3/8/12

By: Basil Joseph
Basil Joseph, Chief Compliance
Officer/Chief Financial Officer

Reviewed by:

Counsel for Van Clemens

Accepted by FINRA:

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

3-21-12
Date

By: Seema Chawla
Seema Chawla
Principal Regional Counsel
120 West 12th Street, Suite 800
Kansas City, MO 64105
Telephone: (816) 802-4712
Facsimile: (816) 421-4519
Email: seema.chawla@finra.org