

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2011025604001

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

RE: Fortune Financial Services, Inc., Respondent
Member
CRD No. 42150

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, 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

Fortune Financial Services, Inc. ("FFS") has been a FINRA member since February 1997. Its main office is located in New Brighton, Pennsylvania, and it has branch offices located throughout the United States. The firm's business is limited principally to sales of mutual funds and variable annuities, which it sells only by application.

RELEVANT DISCIPLINARY HISTORY

In September 2009, FINRA issued an AWC against FFS in which the firm agreed, without admitting or denying the findings, to a censure and \$125,000 fine for, among other things, failing to retain electronic communications and failing to obtain FINRA's approval of a material change in its business operations.

OVERVIEW

FFS effected transactions in municipal securities even though it was not properly qualified under the rules of the Municipal Securities Rulemaking Board

("MSRB"), and it failed to establish a supervisory system and written supervisory procedures ("WSPs") to supervise municipal securities transactions. The firm also failed to conduct required branch office inspections, provide for reasonable review of correspondence, and retain all written correspondence. In addition, FFS failed to establish written procedures reasonably designed to supervise, and to record, representatives' approved participation in private securities transactions. The firm also failed to establish, maintain and enforce a reasonably designed system of supervisory control policies and procedures, and it failed to prepare a proper annual CEO certification. Finally, FFS failed to approve, prior to use, seven web sites established by representatives associated with the firm. This conduct violated MSRB Rules G-2, G-3 and G-27, Rule 17a-4 of the Securities Exchange Act of 1934 (Exchange Act), NASD Conduct Rules 3010, 3012, 3040, 3110 and 2210 and FINRA Rules 3130 and 2010.

FACTS AND VIOLATIVE CONDUCT

1. From about mid-October 2009 to about January 22, 2010, FFS effected transactions involving "Section 529 College Savings Plans" ("529 Plans"), including about 17 transactions involving a direct purchase in a 529 Plan established by or for a firm customer, without being properly qualified with the MSRB and without having a properly qualified Municipal Securities Principal associated with it. Moreover, the firm failed to establish and maintain a supervisory system and failed to adopt, maintain and enforce WSPs that were reasonably designed to supervise the municipal securities activities of each registered representative, registered principal, and other persons associated with the firm. By virtue of such conduct, FFS violated MSRB Rules G-2, G-3 and G-27.
2. In calendar years 2009 and 2010, FFS failed to retain or preserve all incoming and outgoing written correspondence relating to its business. By virtue of such conduct, FFS violated Exchange Act Rule 17a-4, NASD Conduct Rule 3110 and FINRA Rule 2010.
3. In calendar years 2009 and 2010, FFS failed to conduct various inspections of branch offices and of non-branch locations that should have been conducted in accordance with the NASD Conduct Rule 3010(c) and/or the inspection cycle set forth in the firm's WSPs. Moreover, two office inspections were performed by the designated supervisor in contravention of NASD Conduct Rule 3010(c)(3). In addition, the firm prepared about 16 inspection reports that failed to address certain required areas and activities, including supervising accounts serviced by a branch manager and validating changes in customer account information. By virtue of such conduct, FFS violated NASD Conduct Rule 3010 and FINRA Rule 2010.
4. In calendar years 2009 and 2010, FFS failed to discharge reasonably its obligation to review incoming and outgoing written correspondence. Among other things,

FFS failed to ensure that all outgoing written correspondence was pre-approved in some manner, and it failed to implement an effective process for timely review by a firm principal of all incoming written correspondence received by representatives at the various office locations where they conducted their securities business. By virtue of such conduct, FFS violated NASD Conduct Rule 3010(d) and FINRA Rule 2010.

5. During calendar years 2009 and 2010, ten FFS representatives participated in private securities transactions that had been approved by the firm. FFS, however, failed to establish a supervisory system and WSPs that were reasonably designed to supervise the representatives' participation in the transactions that they effected (or caused to be effected) in non-brokerage accounts held outside of FFS and to ensure compliance with the recordkeeping requirements pertaining to such transactions. Moreover, FFS failed to supervise reasonably the representatives' participation in the transactions, and the firm failed to record those transactions in its books and records. By virtue of such conduct, FFS violated NASD Conduct Rules 3040, 3110 and 3010 and FINRA Rule 2010.
6. During calendar year 2010, FFS failed to establish, maintain and enforce an adequate system of supervisory control policies and procedures. Among other things, FFS's annual report did not detail the firm's system of supervisory controls, did not summarize the test results and any significant identified exceptions, and did not identify additional or amended supervisory procedures created in response to the test results (or indicate there were none). FFS also failed to determine if producing managers were subject to heightened supervision under the standards set forth in NASD Conduct Rule 3012. By virtue of such conduct, FFS violated NASD Conduct Rule 3012 and FINRA Rule 2010.
7. In January 2011, FFS prepared an annual certification from its CEO (or equivalent officer) that it had in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable FINRA rules and federal securities laws and regulations, and that the CEO had conducted one or more meetings with the firm's Chief Compliance Officer in the preceding twelve months to discuss such processes. That certification, however, did not fully comply with the requirements of FINRA Rule 3130. For example, the firm's annual report referenced in the certification failed to document the member's processes for establishing, maintaining, reviewing, testing and modifying its compliance policies as required. By virtue of such conduct, FFS violated FINRA Rules 3130 and 2010.
8. From about January 21, 2010 to about February 15, 2010, FFS failed to approve, prior to use, seven web sites that had been established by representatives associated with the firm. Some sites had been in use for over a year. By virtue of such conduct, FFS violated NASD Conduct Rule 2210(b) and FINRA Rule 2010.

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

- a censure and a \$45,000 fine (of which \$10,000 pertains to the violations of MSRB Rules G-2, G-3 and G-27).

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

Respondent 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

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 it;
- 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, 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 it;
- 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 it;
 - 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 right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party; and
- 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 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.

The undersigned, on behalf of the firm, 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 firm 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.

Fortune Financial Services, Inc.

08/10/2012
mm/dd/yyyy

By: 
Gregory J. Bentley
President

Reviewed by:


Peter K. Blume, Esq.
Counsel for Respondent
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412-394-7762

Accepted by FINRA:

August 24, 2012
Date

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


Thomas M. Huber
Sr. Regional Counsel
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This corrective action statement is submitted by the Respondent, Fortune Financial Services, or FFS. It does not constitute factual or legal findings by FINRA nor does it reflect the views of FINRA or its staff.

FFS principal owner Blake Daniels made a commitment to improve the culture at Fortune beginning in 2010. In July 2010, he named a new CCO and hired third party consultants to perform branch inspections. In July 2011 he engaged the services of a qualified and experienced securities principal to participate in corporate leadership initiatives, and in November 2011, Mr. Daniels stepped down as CEO and President, and hired in this individual, Gregory Bentley to these executive roles. Mr. Daniels remains in place as FFS' FINOP.

I. FFS' actions taken to correct violations of MSRB Rules G-2, G-3 and G-27 (FINRA AWC FINDING #1)

Corrective actions related to this finding include FFS' MSRB registration effective December 5, 2011, and the appointment of a qualified and licensed individual to serve as MSRB Principal (Joanne Brown), and amended policies and procedures

II. FFS' Actions taken to correct violations of Exchange Act Rule 17a-4, NASD Conduct Rule 3110 and FINRA 2010 (FINRA AWC FINDINGS # 2 and #4)

FFS implemented new policies and procedures that require all RRs to send all incoming and outgoing correspondence including faxes to the home office on a monthly basis. FFS believes that the steps it took to address its finding adequately resolve the violations later found by FINRA. A general description of FFS's communications policies follows: A cover form and the attachments must be received by the 15th day of the following month, and the form is required even if there is no correspondence to disclose. The firm penalizes RRs failing to submit the form and correspondence on time by withholding commissions until the documents are received in good order. The CCO attributes the high degree of success of this new program to the stringent penalty for non-compliance. Because offenders do not get paid, the CCO is assured of 100% compliance over time. These procedures were fully implemented as of January 1, 2011.

III. FFS' actions taken to correct violations of NASD Rule 3010 (d) and FINRA Rule 2010 (FINRA AWC FINDING #3)

FFS amended its examination program in 2011 to incorporate a more robust review, incorporating specific requirements of FINRA/NASD rules. By December 1, 2011, FFS had completed all required inspections. In 2012, FFS implemented a new compliance branch audit examination form, and hired a full time employee whose primary responsibility is branch examinations. Also in 2012, FFS conducted formalized training for all supervisory

personnel including its examiner, to inform and instruct the employees regarding the nuances of the examination program.

IV. FFS' actions taken to correct violations of NASD Conduct Rules 3040, 3110, 3010 and FINRA Rule 2010 (FINRA AWC FINDING #5)

FFS implemented enhanced review policies throughout 2011, including new record-keeping procedures that will enable FFS to better understand the nature of business in which its RR/IAs practice and to determine the level of oversight appropriate to the particular business scope of each RR/IA. The new procedures require all new and existing RRs with independent IAs to provide documentation in line with Notices to Members 94-44 and 96-33. As well, the new procedures require regular reporting to the CCO. Most importantly, however, beginning in 2012 the FFS requires all RRs with independent Investment Advisers to undergo a separate independent audit of their investment adviser entity by an individual or firm that is pre-approved by the CCO.

V. FFS' actions taken to correct violations of NASD Conduct Rule 3012 FINRA Rules 2010 and 3130 (FINRA AWC FINDINGS #6 and #7)

As of May 2011, FFS implemented new supervisory control procedures. These procedures were tested in the 1st quarter of 2012. The CEO certified to the report findings within 30 days of the report. In addition to the formalized process, the CCO and CEO continue to work closely together in an effort to orient the CEO to the state of the companies compliance program, including improvements that have been made and improvements are scheduled for implementation.

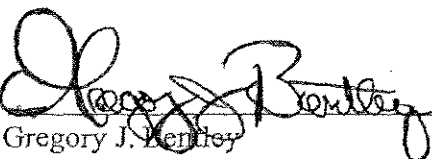
VI. FFS' actions taken to correct violations of NASD Conduct Rules 2210(b) and FINRA Rule 2010 (FINRA AWC FINDING #8)

FFS' CCO has implemented new procedures to better control and review RR websites. FFS requires that all Representatives use either Smarsh or Emerald for their website hosting. Each of these services offers a tool that permits the CCO to review changes made to the website, which will prevent future violations, including the use of inappropriate content.

Respectfully submitted,

Fortune Financial Services, Inc.

08/10/2012
Date (mm/dd/yyyy)

By: 
Gregory J. Bentley
President