

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2011025618702**

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

RE: NFP Advisor Services, LLC (f/k/a NFP Securities, Inc.), Respondent
Member Firm
CRD No. 42046

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent NFP Advisor Services, LLC. ("NFP," the "Firm," or "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 the Firm 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

NFP has been a FINRA member firm since 1997. NFP conducts a general securities business and is headquartered in Austin, Texas. NFP currently has approximately 1,924 registered individuals and 673 branch offices.

RELEVANT DISCIPLINARY HISTORY

In April 2011, FINRA issued a Letter of Acceptance, Waiver and Consent (No. 2007011393902), in which NFP was censured and fined \$50,000 for violations of NASD Rules 2110, 2210(b), 2210(d) and 3010. The Firm consented to the entry of findings that it had approved advertising materials used by a registered representative in his retail equity indexed annuity ("EIA") business, including at seminars for senior investors that contained false, exaggerated, unwarranted or misleading statements. The Firm failed to document a principal's approval of advertising material used by the representative and failed to maintain a record of

its approval of the representative's other advertising material. The Firm did not supervise the representative's seminars, did not require him to produce a copy of the script he used for the seminars, and did not attend any of the seminars to ensure that they complied with NASD Rules.

In October 2007, FINRA issued a Letter of Acceptance, Waiver and Consent (No. E062005012702), in which NFP was censured and fined \$12,000 for violations of NASD Rules 2110, 3070 and Article V, Section III of the FINRA By-Laws. The firm agreed to findings that it failed to timely file Uniform Termination Notices for Securities Industry Registration (Forms U5) and failed to file accurate and timely reports with FINRA pursuant to Rule 3070.

OVERVIEW

At various times from December 2006 through January 2014, the Firm failed to commit the necessary time, attention and resources to several critical regulatory obligations related to its supervision of registered representatives. These supervisory failures included the following:

- Failure to supervise the private securities transactions of 79 representatives who were dually registered with Registered Investment Advisors (RIAs);
- Failure to preserve securities-related emails sent and received by five of its registered representatives;
- Failure to approve and preserve advertising materials contained on three websites that were maintained by one of its registered representatives; and
- Failure to timely update the Forms U4 of its registered representatives on 81 occasions.

By engaging in the foregoing misconduct, NFP violated FINRA By-Laws Article V, Section 2, FINRA Rules 1122, 2010 (for conduct on and after December 15, 2008) and 4511 (for conduct on and after December 5, 2011), NASD Rules 2110 (for conduct before December 15, 2008), 2210(b), 3010(a), 3040(c)(2), and 3110 (for conduct before December 5, 2011) and Section 17(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 17a-4 promulgated thereunder.

FACTS AND VIOLATIVE CONDUCT

1. *NFP failed to supervise private securities transactions of registered representatives who were dually registered with NFP and an RIA.*

NASD Rule 3040(c) provides that if an associated person "has received or may receive selling compensation" in connection with the sale of a private securities transaction, and the member firm approves the transaction, then the member firm

must supervise the transaction and include it on its own books and records “as if the transaction were executed on behalf of the member.”

The NASD advised in its Notice to Members 94-44 that the requirements of NASD Rule 3040 applied “to all investment advisory activities conducted by [individuals dually registered as registered representatives and registered investment advisors] that result in the purchase or sale of securities by the associated person’s advisory clients, with the exception of their activities on behalf of the member.”

NASD Rule 3010(a) requires member firms to establish and maintain a supervisory system that is reasonably designed to achieve compliance with applicable securities laws and regulations.

FINRA Rule 2010 and its predecessor, NASD Rule 2110,¹ require member firms to “observe high standards of commercial honor and just and equitable principles of trade.”

In February 2009, the Firm conducted a non-OSJ branch office examination of the office of one its registered representatives, DM. The Firm learned during this examination that DM was recommending “managed accounts” and “alternative investments” through his outside RIA, MCC, even though he had never disclosed this business to NFP. Thereafter, in October 2009, DM disclosed to the firm that he was managing an investment fund, MIM, LLC, as an outside business activity. The Firm did not adequately investigate red flags or follow-up on the October 2009 disclosure to ensure that DM was not engaging in private securities transactions in violation of NASD Rule 3040. As a result of the Firm’s failure to investigate DM’s outside activities, from February 2009 through DM’s termination from the Firm in May 2011, NFP failed to identify DM’s participation in private securities transactions and failed to supervise DM’s participation in those transactions.

NFP also failed to supervise the advisory activity of 79 registered representatives who were dually registered with NFP and fourteen RIAs. These fourteen RIAs had more than \$3 billion in assets under management, a portion of which was under the management of the 79 registered representatives. In each instance, the dually-registered representatives facilitated securities transactions on behalf of their advisory clients by placing orders with the broker-dealers that carried the accounts of their advisory clients. NFP failed to comply with its responsibilities under NASD Rule 3040(c)(2) to supervise these representatives’ “participation in the transaction[s] as if the transaction[s] were executed on behalf of the member.” Moreover, NFP failed to record these transactions on its own books and records.

By treating registered representatives’ trading activities through the RIAs as outside business activities rather than as private securities transactions, NFP failed

¹ The effective date of FINRA Rule 2010 is December 15, 2008.

to establish and maintain a supervisory system that was reasonably designed to achieve compliance with NASD Rule 3040, and thereby violated NASD Rule 3010(a).

Accordingly, NFP's systemic failure to appropriately supervise its registered representatives' private securities transactions violated NASD Rules 2110 (for conduct before December 15, 2008), 3010(a), and 3040(c)(2), and FINRA Rule 2010 (for conduct on and after December 15, 2008).

2. *NFP failed to preserve securities-related emails that were sent and received by five of its registered representatives.*

NASD Rule 3010(a) requires that member firms establish and maintain a supervisory system that is reasonably designed to achieve compliance with applicable securities laws and regulations.

NASD Rule 3110 (for conduct before December 5, 2011) and FINRA Rule 4511 (for conduct on and after December 5, 2011) require member firms to maintain and preserve their books and records in accordance with SEC Rules 17a-3 and 17a-4.

SEC Rule 17a-4(b)(4) requires that member firms preserve for a period of not less than three years all communications with the public.

A violation of NASD Rules 3010(a) and 3110, FINRA Rule 4511, and SEC Rule 17a-4 is also a violation of FINRA Rule 2010.

Between January 1, 2009 and December 31, 2011, the Firm failed to preserve securities-related emails that were sent and received by registered representatives DM, KS, RA, MV, and DF through unmonitored email addresses. The Firm had corresponded with these registered representatives through these unmonitored email addresses, but failed to investigate whether the email addresses were approved and monitored by the Firm. NFP failed to have a supervisory system that was designed to ensure that all securities-related emails of its representatives were being properly preserved.

Accordingly, NFP violated Section 17(a) of the Exchange Act and Rule 17a-4 thereunder, NASD Rules 3010(a) and 3110 (for conduct before December 5, 2011) and FINRA Rule 2010 and 4511 (for conduct on and after December 5, 2011).

3. *NFP failed to monitor and approve the websites that were managed by one of its registered representatives.*

NASD Rule 2210(b) requires that a "registered principal of the member firm must approve by signature or initial and date each advertisement, item of sales literature and independently prepared reprint" before such materials are communicated to the general public. The Rule further requires that the firm maintain all advertising,

sales literature, and independently managed reprints from the date of first use to three years after the date of last use.

As set forth above, NASD Rule 3110 requires that member firms comply with the record-keeping requirements of Rules 17a-3 and 17a-4, and SEC Rule 17a-4(b)(4) requires that member firms preserve for a period of not less than three years all communications with the public.

A violation of NASD Rules 2210(b), NASD Rule 3110, and SEC Rule 17a-4 is also a violation of FINRA Rule 2010.

Between January 1, 2009 and April 26, 2011, the Firm either knew, or should have known, about three separate securities-related websites that one of its registered representatives, DM, maintained and operated. The Firm failed to provide principal approval of the advertising statements contained on these websites. The Firm further failed to maintain a record of the communications on these websites as required SEC Rule 17a-4.

Accordingly, NFP violated Section 17(a) of the Exchange Act and Rule 17a-4 thereunder, NASD Rules 2210(b) and 3110, and FINRA Rule 2010.

4. *NFP failed to timely update the Forms U4 of its registered representatives to include disclosed outside business activities.*

FINRA By-Laws Article V, Section 2 requires that FINRA member firms keep every associated person's application for registration current by submitting electronic amendments to the application "not later than thirty days after learning of the facts or circumstances giving rise to the amendment."

FINRA Rule 1122 provides that no member firm "shall file with FINRA information with respect to membership or registration that is incomplete or inaccurate so as to be misleading, or which could tend to mislead, or to fail correct such filing after notice thereof."

NASD Rule 3010(a) requires that member firms establish and maintain a supervisory system that is reasonably designed to achieve compliance with applicable securities laws and regulations.

A violation of FINRA By-Laws Article V, Section 2, FINRA Rule 1122 and NASD Rule 3010(a) is also a violation of FINRA Rule 2010.

NFP failed to timely amend Form U4s of its registered representatives in 81 separate instances between April 1, 2011 and July 7, 2014. In each of these instances, the Firm's registered representatives had properly disclosed their participation in an outside business activity ("OBA") pursuant to NASD Rule 3030 (prior to December 15, 2010) or FINRA Rule 3270 (on and after December 15,

2010). Moreover, in March 2014, FINRA advised NFP of its deficiencies in timely-filing Form U4 Amendments for OBAs. Despite having actual knowledge of these deficiencies, the Firm had failed to file U4 Amendments for more than four months after FINRA advised the Firm of this issue. Thus, the Firm failed to correct Forms U4 that it knew were incomplete or inaccurate despite notice thereof.

In addition, although the Firm increased its efforts to encourage registered representatives to report their OBAs with the implementation of FINRA Rule 3270 in 2011, it failed to properly scrutinize these disclosures to ensure that all actual OBAs were being properly disclosed on a Form U4 amendment. Moreover, NFP maintained a manual system for reviewing disclosures and filing Form U4 Amendments that was susceptible to human error. NFP thus did not have a supervisory system in place that was reasonably designed to ensure compliance with its Form U4 reporting obligations pursuant to Article V, Section 2 of FINRA's By-Laws.

As a result of the foregoing, NFP violated FINRA By-Laws Article V, Section 2, NASD Rule 3010(a) and FINRA Rules 1122 and 2010.

B. The Firm also consents to the imposition of the following sanctions:

A censure and a fine of \$500,000.

Respondent agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are 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

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

- A. To have a Complaint issued specifying the allegations against me;
- 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 Ad judicatory Council ("NAC") 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 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 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

The Firm 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 Respondent; and
- C. If accepted:
 - 1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Respondent;
 - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
 - 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,

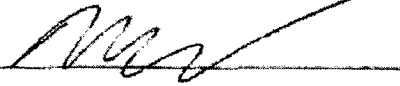
directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondent's: (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. 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 I 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 have been given a full opportunity to ask questions about it; that Respondent 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 me Respondent to submit it.

6/25/2015
Date (mm/dd/yyyy)

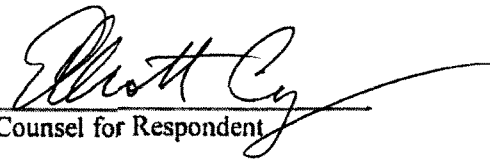
NFP Advisor Services, LLC, Respondent

By: 

Name: MICHAEL PEDLOW

Title: SVP, CLO

Reviewed by:


Counsel for Respondent

Accepted by FINRA:

7/16/2015
Date

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


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