

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20110258687-01**

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

RE: Brookville Capital Partners LLC
(BD No. 102380)

██████████
Financial and Operations Principal, General Securities Representative, General Securities
Principal, Limited Representative - Investment Banking, and Operations Professional
(CRD No. ██████████)

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondents Brookville Capital Partners LLC ("Brookville") and ██████████ 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

Brookville, f/k/a New Castle Financial Services LLC, has been registered as a broker dealer with FINRA and the SEC since August 2000. At all relevant times, the Firm has conducted securities transactions for retail customers and engaged in private placements. The Firm's main office is in Uniondale, New York. The Firm currently has two branch offices and approximately 22 registered persons.

██████████ was first registered with FINRA through Brookville as a Financial and Operations Principal ("FINOP") in February 2006, as a General Securities Representative in July 2006, as a General Securities Principal in September 2006, as a Limited Representative - Investment Banking in January 2010 and as an

Operations Professional in December 2011, and remains registered in those capacities. Since February 2008, [REDACTED] has been President of Brookville.

RELEVANT DISCIPLINARY HISTORY

On August 18, 2008, the Connecticut Department of Banking entered a Consent Order against Brookville, then known as New Castle Financial Services LLC, based on allegations that the Firm operated an unregistered branch office in Connecticut, employing at least four individuals who were not registered, and offering and selling securities to four Connecticut residents and allowing one resident to pre-sign incomplete forms. Pursuant to that Order, various restrictions were placed on the Firm's conduct of business in Connecticut, and the Firm was fined \$50,000.

In June 2010, Brookville submitted an AWC in which the Firm was censured, fined \$200,000, required to retain an independent consultant to conduct a review of the adequacy of its policies, systems, procedures and training, and required to have its associated persons complete 16 hours of AML continuing education training and to fully and promptly cooperate with FINRA in any and all investigations. Brookville also consented to the entry of findings that, among other things, Brookville (i) failed to establish and implement an adequate AML program; (ii) improperly facilitated the distribution of approximately 20 million shares of various unregistered securities; (iii) sold securities using a private placement memorandum that omitted to disclose a convicted felon's association with the issuer; (iv) operated an unregistered branch office in violation of its membership agreement; (v) engaged in improper telephone solicitations; (vi) failed to maintain accurate financial books and records; (vii) operated a securities business while under minimum net capital requirements; (viii) failed to timely forward customer funds it received in connection with contingency offerings to an escrow agent; (ix) failed to establish adequate procedures for review of producing managers' customer account activities; (x) failed to establish and maintain a supervisory system reasonably designed to supervise the sales activities of firm personnel conducted outside of its registered offices; and (xi) failed to establish and maintain a supervisory system for determining whether customer securities were properly registered or exempt from registration.

In June 2010, [REDACTED] submitted an AWC in which he was fined \$30,000, suspended from association with any FINRA member in any principal capacity for two months and agreed to complete 16 hours of AML continuing education training within 120 days of acceptance of the AWC. [REDACTED] also consented to the entry of findings that, among other things, he (i) failed to establish and maintain a supervisory system at the firm to address its responsibilities for determining whether customer securities

were properly registered or exempt from registration; (ii) sold shares of a security to public investors using a private placement memorandum that omitted a convicted felon's association with the issuer; and (iii) failed to clearly assign each registered person to an appropriately registered representative and/or principal responsible for supervising that person's activities and designate principals with actual authority to carry out the supervisory responsibilities over the firm's business.

On March 21, 2011, the New Jersey Bureau of Securities entered an order finding that Brookville failed to comply with the terms of at least two heightened supervisory agreements executed as a condition of registration for those agents in the state of New Jersey. Pursuant to that Order, Brookville was required to execute an updated supervisory agreement for the agent named and was fined \$10,000.

OVERVIEW

During the period from September 2008 through April 2009 (the "Relevant Period"), Brookville failed to establish and maintain a supervisory system, including written procedures, reasonably designed to achieve compliance with applicable NASD and/or FINRA rules in connection with the sale of leveraged, inverse, and inverse-leveraged Exchange-Traded Funds ("Non-Traditional ETFs"). In addition, Brookville allowed its registered representatives to recommend to customers Non-Traditional ETFs without performing reasonable diligence to understand the risks and features associated with the products. As a result, Brookville violated NASD Conduct Rules 3010, 2310, and 2110 (for conduct before December 15, 2008) and FINRA Rule 2010 (for conduct after December 14, 2008).

In addition, in June 2009 Brookville, acting through [REDACTED] caused offering proceeds to be distributed to itself and an issuer in a contingent offering prior to selling the minimum offering contingency amount. As a result, Brookville violated Section 15(c) of the Securities Exchange Act of 1934 ("SEA") and SEC Rule 15c2-4 thereunder, and Brookville and [REDACTED] violated FINRA Rule 2010.

Finally, during the period June 2009 through December 2010, Brookville failed to report statistical and summary information for 9 customer complaints. As a result, Brookville violated NASD Conduct Rule 3070(c) and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

1. FAILURE TO MAINTAIN AN ADEQUATE SUPERVISORY SYSTEM AND WRITTEN SUPERVISORY PROCEDURES REGARDING NON-TRADITIONAL ETFs

Background Concerning Non-Traditional ETFs

ETFs are typically registered unit investment trusts (UITs) or open-end investment companies whose shares represent an interest in a portfolio of securities that track an underlying benchmark or index.¹ Leveraged ETFs seek to deliver multiples of the performance of the index or benchmark they track. Some Non-Traditional ETFs are “inverse” or “short” funds, meaning that they seek to deliver the opposite of the performance of the index or benchmark they track. Some funds are both inverse and leveraged, meaning that they seek to achieve a return that is a multiple of the inverse performance of the underlying index or benchmark.

Most Non-Traditional ETFs “reset” daily, meaning that they are designed to achieve their stated objectives only on a daily basis. FINRA noted in its June 2009 Regulatory Notice that “[d]ue to the effect of compounding, their performance over longer periods of time can differ significantly from the performance . . . of their underlying index or benchmark during the same period of time.”² This effect can be magnified in volatile markets. Accordingly, investors were subjected to the risk that the performance of their investments in Non-Traditional ETFs could differ significantly from the performance of the underlying index or benchmark when held for longer periods of time, particularly in the volatile markets that existed during the Relevant Period.

Brookville’s Failure to Establish and Maintain a Reasonable Supervisory System, including Written Procedures, in Violation of NASD Rules 3010 and 2110 and FINRA Rule 2010

NASD Rule 3010(a) states in part that each member shall establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD and FINRA Rules. Final responsibility for proper supervision shall rest with the member.

NASD Rule 3010(b)(1) states in part that each member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered

¹ See FINRA Regulatory Notice (“Notice”) 09-31, *Non-Traditional ETFs* (June 2009).

² *Id.* at 2.

principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable NASD and FINRA Rules.

As described below, Brookville violated NASD Rules 3010 and 2110 (for conduct before December 15, 2008) and FINRA Rule 2010 (for conduct after December 14, 2008) in that during the Relevant Period: (1) the Firm failed to establish and maintain a supervisory system, including written procedures, reasonably designed to achieve compliance with NASD and FINRA Rules in connection with the sale of Non-Traditional ETFs in accounts where the Firm provided brokerage services to certain retail customers; and (2) the Firm failed to provide adequate formal training and guidance to its registered representatives and supervisors regarding Non-Traditional ETFs.

The Firm supervised Non-Traditional ETFs the same way it supervised traditional ETFs until FINRA issued the Regulatory Notice in June 2009. The Firm relied on its general supervisory procedures to supervise transactions in Non-Traditional ETFs during the Relevant Period. However, the general supervisory system the Firm had in place during the Relevant Period was not sufficiently tailored to address the unique features and risks involved with these products. For example, during the Relevant Period, the Firm did not create a procedure to address the risks associated with longer-term holding periods in Non-Traditional ETFs. Thus, during the Relevant Period, the Firm failed to establish a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with applicable NASD and/or FINRA rules in connection with the sale of Non-Traditional ETFs.

In addition, Brookville failed to provide adequate formal training to registered representatives and supervisors regarding the features, risks, and characteristics of Non-Traditional ETFs. For example, prior to April 2009, the Firm failed to establish any guidance or tools to educate registered representatives and supervisors about Non-Traditional ETFs.

2. BROOKVILLE MADE UNSUITABLE RECOMMENDATIONS, IN VIOLATION OF NASD RULES 2310 AND 2110 AND FINRA RULE 2010

The reasonable-basis suitability obligation under NASD Rule 2310 requires a broker-dealer and its registered representatives to, *inter alia*, perform reasonable diligence to understand the nature of a recommended security, as well as the potential risks and rewards. "With respect to leveraged and inverse ETFs, this means that a firm must understand the terms and features of the funds, including how they are designed to perform, how they achieve that objective and the impact that market volatility, the ETF's use of leverage, and the customer's intended holding period will have on their performance."³ In this case, Brookville violated

³ See Notice 09-31, at 3; see also FINRA Regulatory Notice 12-03, *Complex Products – Heightened Supervision of Complex Product* (January 2012), at 5-6.

NASD Rules 2310 and 2110 and FINRA Rule 2010 by allowing its registered representatives to recommend to customers a Non-Traditional ETF without performing reasonable diligence to understand the risks and features associated with it.

In addition, the Firm allowed one of its registered representatives to make unsuitable recommendations of Non-Traditional ETFs to customers MG and BR, who had primary investment objectives of income or capital preservation without performing reasonable diligence to understand the risks and features associated with the products. As a result, Brookville violated NASD Conduct Rules 2310 and 2110 (for conduct before December 15, 2008) and FINRA Rule 2010 (for conduct after December 14, 2008).

3. ESCROW VIOLATION IN CONNECTION WITH CONTINGENCY OFFERING

SEC Rule 15c2-4 prohibits, *inter alia*, a broker participating in a distribution of securities in a contingent offering from accepting any part of the sale price of the subject security before the contingency has occurred.

Between March 31, 2009 and June 26, 2009, Brookville, acting under the direction of [REDACTED] participated in an offering of REI common stock that was contingent on raising a minimum of \$2,000,000 on or before June 26, 2009. In connection therewith, the private placement memorandum for the offering represented that if the minimum was not raised from sales of securities by June 26, 2009, all funds would be refunded to investors.

REI raised \$2,000,000 by selling \$200,000 of common stock to two affiliates of REI on June 25, 2009. Because the raise of \$2,000,000 included sales to affiliates of REI, the minimum contingency was not properly satisfied. Nevertheless, on June 26, 2009, Brookville, acting through [REDACTED] caused the escrow agent to disburse all funds received to REI and Brookville. As a result, Brookville violated SEA Section 15(c) and SEC Rule 15c2-4 thereunder, and Brookville and [REDACTED] violated FINRA Rule 2010.

4. REPORTING REQUIREMENT VIOLATIONS

NASD Rule 3070(c) (now FINRA Rule 4530(d)) requires FINRA members to report statistical and summary information regarding customer complaints by the 15th day of the month following the calendar quarter in which customer complaints are received by the member.

From on or about June 5, 2009 through on or about December 14, 2010, Brookville received nine customer complaints reportable to FINRA. However, Brookville did not report any of the above-referenced customer complaints until at least April 6, 2011, after FINRA staff brought these matters to Brookville's

attention. By failing to timely report customer complaints to FINRA, Brookville violated NASD Conduct Rule 3070(c) and FINRA Rule 2010.

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

1. Brookville and [REDACTED] each shall be censured.
2. Brookville shall be fined in the amount of \$25,000.⁴
3. Brookville shall pay \$23,578 in restitution, plus interest, to two customers as further detailed below.
4. [REDACTED] shall be fined in the amount of \$5,000.

Respondents agree to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. Respondents have submitted an Election of Payment form showing the method by which Respondents propose to pay the fine imposed.

Restitution is ordered to be paid to customers MG and BR as listed on Attachment A hereto in the total amount of \$23,578, 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 the dates of sale set forth on Attachment A until the date this AWC is accepted by the NAC.

A registered principal on behalf of Respondent firm shall submit satisfactory proof of payment of restitution or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted to Samuel Barkin, FINRA, 1 World Financial Center, New York, NY 10281-1003 either by letter that identifies Brookville and case number 20110258687 or by e-mail from a work-related account of the registered principal of Brookville to EnforcementNotice@FINRA.org. This proof shall be provided to the FINRA staff member listed above no later than 120 days after acceptance of the AWC.

If for any reason Brookville cannot locate any customer identified in Attachment A after reasonable and documented efforts within 120 days from the date the AWC is accepted, or such additional period agreed to by a FINRA staff member in writing, Brookville shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property or abandoned property fund for the state in which the customer is last known to have resided. Brookville shall provide satisfactory proof of such action to the FINRA staff member identified

⁴ Pursuant to the General Principles Applicable to all Sanction Determinations contained in the Sanction Guidelines, FINRA imposed a lower fine in this case after it considered, among other things, the firm's revenues and financial resources. See Notice to Members 06-55.

above and in the manner described above, within 14 days of forwarding the undistributed restitution and interest to the appropriate state authority.

Brookville has specifically and voluntarily waived any right to claim an inability to pay at any time hereafter the monetary sanction(s) imposed in this matter.

The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

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

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 them;
- 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:

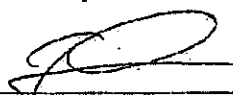
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondents; and
- C. If accepted:
 - 1. this AWC will become part of Respondents' permanent disciplinary record 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 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': (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 Respondents 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.

██████ 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, and 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 Respondents have 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 Respondents to submit it.

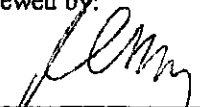
8/16/2013
Date (mm/dd/yyyy)

████████████████████

Brookville Capital Partners LLC

By: 

Reviewed by:



Robert M. Bursky, Esq.
Counsel for Respondent

~~14 Wall Street - 23rd Floor~~
New York, NY

*68 South Street
JFK / CC
Brooklyn, NY 11247*

Accepted by FINRA:

September 30, 2013
Date

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



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