

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2011027697301**

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

RE: Empire Executions, Inc., Respondent  
CRD No. 44957

Peter P. Costa, Respondent  
CRD No. 1299571

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Empire Executions, Inc. ("Empire") and Peter P. Costa ("Costa") (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**

Empire is located in New York, New York, and operates as a broker on the floor of the New York Stock Exchange. Empire clears its customer accounts through another broker-dealer and its customer base is institutional. Empire has seven registered representatives and has been a FINRA member since 1999.

Costa is Empire's Chief Executive Officer and Chief Compliance Officer. Costa first registered with FINRA in 1992 and currently is registered with Empire as a General Securities Principal, Operations Professional, and General Securities Representative.

## **RELEVANT DISCIPLINARY HISTORY**

Neither Empire nor Costa has any relevant disciplinary history.

## **OVERVIEW**

Empire operated while in net capital deficiency for periods of time from mid-October 2009 to December 28, 2009; from mid-February 2010 to March 20, 2010; and from mid-July 2010 to August 31, 2010. Empire did not suspend operations during the deficiencies or disclose the deficiencies to the SEC or FINRA.

## **FACTS AND VIOLATIVE CONDUCT**

Empire computes net capital under the basic method and must maintain net capital the greater of either \$5,000 or 6.66% of its aggregate indebtedness. Until June 2009, Empire reported its net capital monthly on its FOCUS Report. After June 2009, it began filing the reports quarterly. Empire's books and records are prepared by an outside accounting firm.

In 2010, during a routine examination, FINRA discovered that Empire had large capital infusions in December 2009 and March 2010. Empire's quarterly FOCUS Reports covering those periods did not disclose any net capital deficiencies. FINRA requested Empire's net capital computations for the periods surrounding the infusions.

Shortly thereafter, Empire filed with the SEC and FINRA a hindsight capital deficiency letter disclosing net capital deficiencies as of October 31, 2009 (deficiency of \$38,369); November 30, 2009 (deficiency of \$97,456); December 27, 2009 (deficiency of \$79,271); February 28, 2010 (deficiency of \$69,195); March 29, 2010 (deficiency of \$29,924); July 31, 2010 (deficiency of \$19,310); and August 30, 2010 (deficiency of \$14,223). Empire also disclosed that Costa was aware of the deficiencies and had infused capital on several occasions to cure them. Costa infused capital on December 28, 2009 (\$100,000); March 30, 2010 (\$100,000); and August 31, 2010 (\$30,000).

As a result of the foregoing conduct, Empire violated Section 15(c) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 15c3-1, thereunder; Section 17(a) of the Exchange Act and Rule 17a-11, thereunder; NASD Rule 3130(e) (applies to 2009 net capital deficiency); and FINRA Rules 4110(b)(1) (applies to 2010 net capital deficiencies) and 2010.

As a result of the foregoing conduct, Costa violated NASD Rule 3130(e) (applies to 2009 net capital deficiency) and FINRA Rules 4110(b)(1) (applies to 2010 net capital deficiencies) and 2010.

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

- Empire consents to a censure and a \$25,000 fine, with Costa jointly and severally liable for \$10,000 of that amount;

- Costa consents to a suspension in all capacities for 10 business days and to joint and several liability for \$10,000 of the \$25,000 fine imposed.

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

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

Respondents understand that if Costa is barred or suspended from associating with any FINRA member, 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, Costa may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension (*see* FINRA Rules 8310 and 8311).

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

## 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 us;
- (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:

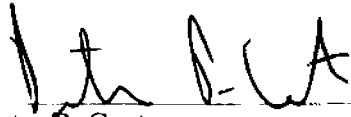
- (a) submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- (b) if this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondents; and
- (c) if accepted:
  - (1) this AWC will become part of each Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Respondent(s);
  - (2) this AWC will be made available through FINRA's public disclosure program in response to public inquiries about each 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) 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 we 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.

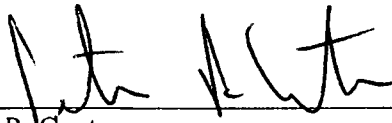
The undersigned, on behalf of Empire, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; has agreed to its provisions voluntarily; and that no offer, threat, inducement, 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 Empire to submit it.

Empire Executions, Inc.

Date (07/22/2013)

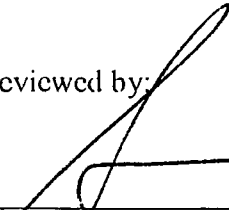
By:   
Peter P. Costa

Costa certifies that he has read and understand all of the provisions of this AWC and has been given a full opportunity to ask questions about it; 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.

  
Peter P. Costa

Date (07/22/2013)

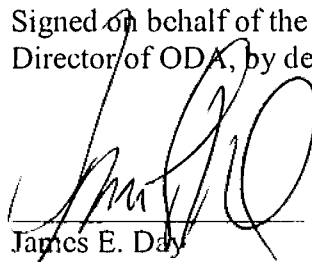
Reviewed by:

  
\_\_\_\_\_  
Scott H. Goldstein  
Counsel for Respondent  
The Goldstein Law Group, P.C.  
61 Broadway, Suite 1915  
New York, N.Y. 10006  
(212) 809-4220

Accepted by FINRA:

8/8/13  
Date

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



James E. Day  
Vice President and Chief Counsel  
FINRA Department of Enforcement  
15200 Omega Drive, Suite 300  
Rockville, MD 20850