

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20110279104-01**

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

RE: Henry McLain Dickinson, III, Respondent
General Securities Representative
CRD No. 727492

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I 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 me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. I 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

Respondent Henry McLain Dickinson, III ("Dickinson") entered the securities industry in October 1980, when he associated with a FINRA member firm as a General Securities Representative. In January 1999, he first became registered as a Government Securities Representative. Since March 2009, Dickinson has been associated with FINRA member B.B. Graham & Company, Inc. ("BBGC") as a General Securities Representative.

RELEVANT DISCIPLINARY HISTORY

Dickinson has no relevant disciplinary history.

OVERVIEW

Between September 2009 and November 2010, Dickinson, through BBGC, charged excessive mark-ups on twelve transactions through improper interpositioning in violation of NASD Rules 2320 and 2440, IM-2440-1 and IM-2440-2, and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

NASD Rule 2440 provides that:

[i]f a member buys for his own account from his customer, or sells for his own account to his customer, he shall buy or sell at a price which is fair, taking into consideration all relevant circumstances ... If he acts as agent for his customer, the member shall not charge his customer more than a fair commission or service charge, taking into consideration all relevant circumstances...

As set forth in NASD IM-2440-1, in 1943, FINRA adopted a policy setting a guideline of five percent for determining whether a mark-up is unfair or unreasonable. This policy applies equally to commissions on agency trades, and to mark-ups or mark-downs on principal transactions.¹ However, the "5% Policy" is a guideline, not a rule.² A mark-up pattern of five percent or even less may be considered unfair or unreasonable under the policy set forth in IM-2440-1.³

The percentage of the mark-up is only one of the factors to be considered in determining fairness.⁴ IM-2440-1(b) identifies seven other factors that members should take into consideration in determining the fairness of a markup/ commission including: (i) the type of security involved; (ii) the availability of the security; (iii) the price of the security; (iv) the size of the transaction; (v) whether disclosure of the transaction cost was made to the customer prior to the trade; (vi) any pattern of mark-ups; and (vii) the nature of the member's business. IM-2440-2 provides that IM-2440-1 applies to debt securities transactions, and supplements the guidance provided in IM-2440-1.

IM-2440-2(b)(1) establishes a presumption that when a dealer sells a debt security to a customer as principal, the dealer's contemporaneous cost constitutes the prevailing market price of the security for purposes of computing a markup. IM-2440-2(b)(2) states, in substance, that when a dealer sells a security to a customer, countervailing evidence of the prevailing market price of the security may be considered only where the dealer had no contemporaneous purchase in that security, or can show that in the particular circumstances the dealer's

¹ See NTM 93-81 and IM-2440-1(a)(1).

² See IM-2440-1(a)(1).

³ See IM-2440-1(a)(4).

⁴ See IM-2440-1(a)(5).

contemporaneous cost is not indicative of the prevailing market price.

NASD Rule 2320, also known as the "Best Execution Rule," requires a FINRA-regulated broker-dealer, in any transaction for or with a customer, to use reasonable diligence to ascertain the best inter-dealer market for a security and to buy or sell in such a market so that the price to the customer is as favorable as possible under the prevailing market conditions. Rule 2320(b) provides that "[w]hen a member cannot execute directly with a market maker but must employ a broker's broker or some other means in order to insure an execution advantageous to the customer, the burden of showing the acceptable circumstances for doing so is on the retail firm."

On twelve occasions during the period September 2009 and November 2010, Dickinson charged excessive markups on riskless principal corporate bond transactions. For each of those transactions, Dickinson interposed another broker-dealer between two customer transactions in order to charge an unnecessary markup. This involved the nearly simultaneous purchase from one customer and sale to another customer of the same face amount of the same bond in an attempt not to use the actual cost to the firm. Dickinson's markups ranged from 4.58% to 10.433%, resulting in \$127,506 in unfair markups. Dickinson's markups on the transactions were not fair and reasonable taking into consideration all relevant circumstances. In addition, by unnecessarily interpositioning another broker-dealer between transactions, he failed to obtain the most favorable price possible under prevailing market conditions.

As a result of the foregoing, Dickinson violated NASD Rules 2320 and 2440, IM-2440-1 and IM-2440-2, and FINRA Rule 2010.

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

A twenty business-day suspension from association with any FINRA member firms in any capacity.

Respondent has submitted a sworn financial statement and demonstrated an inability to pay. In light of the financial status of Respondent, no monetary sanctions have been imposed.

I understand that if I am barred or suspended from associating with any FINRA member, I become 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, I 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 staff.

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive 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 Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.**

Further, I specifically and voluntarily waive 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.

I 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

I 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 me; and**

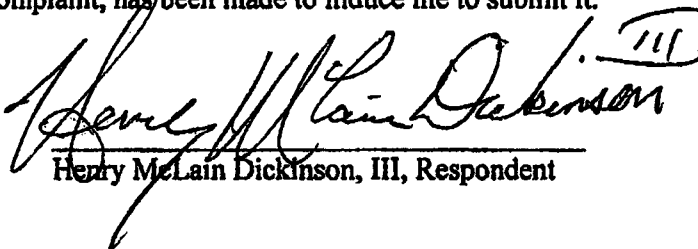
C. If accepted:

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 me;
2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my 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. I 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. I 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 my: (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. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand 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.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I 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 me to submit it.

11/20/14
Date (mm/dd/yyyy)


Henry McLain Dickinson, III, Respondent

Accepted by FINRA:

12/05/14
Date

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



Meghan S. Bailey
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