

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20110297041**

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

RE: Nicholas J. Polito, Jr. ("Polito"), Respondent
CRD No. 2287074

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Nicholas J. Polito, Jr. ("Polito" 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 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

Polito first began working in the securities industry in 1992. From October 2005 until August 2010, Polito was registered as a General Securities Representative ("GSR") through his association with PNC Investments ("PNCI" or the "Firm") (BD No. 129052).

On August 30, 2010, PNCI filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") reporting that Polito was discharged on August 14, 2010 for "violation of policy." On September 29, 2011, the Firm filed an amended Form U5 reporting the results of an internal review of Polito's conduct. The Form U5 explained:

"Mr. Polito was under internal review for allegations concerning account documentation irregularities. The results of the internal review were inconclusive (sic) as to the account documentation

irregularities. However, the representative was terminated for other violations of the firm's code of conduct policy that surfaced during the investigation."

In November 2010, Polito joined Invest Financial Corp. ("Invest Financial") (BD No. 12984) as a GSR. On November 29, 2011, Invest Financial filed a Form U5 for Polito through which it disclosed that Polito had been discharged on November 16, 2011. The Form U5 filing went on to state "Polito was terminated after admitting to falsifying a client's clearing firm statement to conceal the conversion of funds which appears to have occurred at his prior broker-dealer." Polito is not currently associated with any FINRA member firm.

RELEVANT DISCIPLINARY HISTORY

Polito has no relevant disciplinary history with the Securities and Exchange Commission, any state securities regulator, FINRA or any other self-regulatory organization.

OVERVIEW

This matter concern's Polito's violation of FINRA Rules 8210 and 2010 in connection with his failure to appear for an on-the-record interview ("OTR"). Additionally, he violated NASD Rule 2370 and FINRA Rule 2010 by borrowing funds from a customer while employed with a FINRA member firm.

FACTS AND VIOLATIVE CONDUCT

Violation of Rules 8210 and 2010 – Polito failed to appear for an OTR

FINRA Rule 8210(a)(1) requires "a member, person associated with a member, or person subject to FINRA's jurisdiction to provide information orally, in writing, or electronically (if the requested information is, or is required to be, maintained in electronic form) and to testify at a location specified by FINRA staff, under oath or affirmation administered by a court reporter or a notary public if requested, with respect to any matter involved in the investigation, complaint, examination, or proceeding."

FINRA Rule 2010 requires that members and associated persons "observe high standards of commercial honor and just and equitable principles of trade." Failure to comply with requests for information and documentation is a violation of FINRA Rules 2010 and 8210(a)(1).

In a letter dated April 26, 2012, FINRA staff requested, pursuant to Rule 8210, that Polito appear for an OTR at FINRA's New York, New York offices on May 3, 2012. Polito's OTR was requested in connection with an investigation into the

circumstances surrounding the termination of his employment at a member firm. Polito failed to appear for this requested OTR.

By failing to appear for his OTR, Polito violated FINRA Rules 8210 and 2010.

Violation of Rules 2370 and 2010 -- Polito Borrowed Funds from a PNCI Customer

In May 2010, Polito's customer, MS, sold shares of Apple common stock in her PNCI brokerage account with Polito's assistance. The proceeds from the sale were in excess of \$200,000. On June 2, 2010, MS tendered a cashier's check to Polito for \$200,000, which Polito subsequently deposited into an account for his benefit. Polito stated that MS provided the funds to him with a verbal agreement that he would pay the funds to her beneficiaries upon her death. MS and Polito did not have a written loan agreement. PNCI's procedures did not permit Polito to borrow funds from MS. Additionally, Polito never sought PNCI's permission to borrow funds from MS.

By reason of the foregoing, Polito violated NASD Rule 2370 and FINRA Rule 2010.

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

- A bar in all capacities from any association with any FINRA member firm.

Respondent understands that if he 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, he 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. Pursuant to FINRA Rule 8313(e), a bar or expulsion shall become effective upon approval or acceptance of this AWC.

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 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, Respondent specifically and voluntarily waives any right to claim bias or prejudice 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

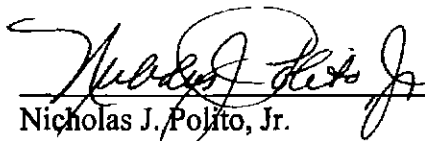
any of the allegations against me;

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 me;
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 my right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party; and

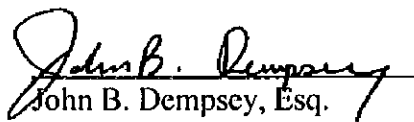
Respondent certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that he has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce Respondent to submit it.

8/16/12
Date



Nicholas J. Polito, Jr.
Respondent

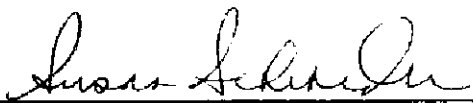
Reviewed by:


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Scranton, PA 18501-0551
(570) 342-6100

Accepted by FINRA:

9/7/12
Date

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


Susan Schroeder, Sr. VP & Deputy Chief of
Enforcement
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