

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20110297282-01**

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

RE: ALPS Distributors, Inc., Respondent
Broker-Dealer
CRD No. 16853

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, ALPS Distributors, Inc. ("ALPF", 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 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

The Firm, a registered broker-dealer and a designated "Distributor" and "Marketing Agent" for various Exchange Traded Products ("ETPs"), has been a member of FINRA since December 2, 1985, and its registration remains in effect. The Firm does not have any relevant disciplinary history.

SUMMARY

This matter is based upon a review conducted by the Chicago Equities Surveillance section of the Department of Market Regulation ("Market Regulation") at FINRA of ALPF and its role in the creation and redemption of certain ETPs during the period of July 2011 through August 2011 (the "Review Period").

OVERVIEW

An ETP is a type of security that has similarities to both mutual funds and traditional equities. The two most common types of ETPs are exchange traded funds (ETFs) and

exchange traded notes (ETNs).¹ ETFs are similar to mutual funds in that they hold underlying assets (e.g., common stocks, bonds, currencies) with the type of asset holdings varying by the defined purpose of the ETF. In contrast to mutual funds, which sell and redeem shares once a day at net asset value ("NAV") calculated at the close of the market, shares of ETFs trade on the secondary market on an intra-day basis on national securities exchanges.

Shares of ETPs are registered under the Securities Act of 1933 ("33 Act"). In the case of ETFs organized as investment companies, the fund is also registered under the Investment Company Act of 1940 ("40 Act"). An ETP's prospectus and/or statement of additional information generally contains detail about the administration of the processes by which certain market participants may create or redeem additional sets of shares of the ETP, and the obligations associated with each entity involved. Additional details regarding these processes, including the timeframes within which creation or redemption orders must be processed (this includes orders sent via facsimile, *i.e.*, "manual orders"), are usually set forth in contracts generally referred to as "participation agreements." The prospectus, statement of additional information, and participation agreement will hereinafter be collectively referred to as the "governing documents."

The entities involved in these processes usually include "Authorized Participants" ("APs"), who are typically large financial institutions or market makers that are authorized to place creation or redemption orders; and "Distributors" for '40 Act products or "Marketing Agents" for '33 Act products. Distributors and Marketing Agents are authorized to approve these creation or redemption orders.

In the creation/redemption process, APs usually deliver an in-kind "basket" of underlying securities² held by the ETP in exchange for a "creation unit" of ETP shares (typically 25,000 or 50,000 shares). In the case of a '40 Act product, an AP typically "creates" ETP shares by submitting a creation order to the ETP's transfer agent ("TA"). The TA reviews the order and submits it to the Distributor for approval. The Distributor then reviews and verifies the AP's creation request, and, once approved, the AP transfers shares to the TA or administrator in exchange for a creation unit. The process would generally work in reverse should an AP redeem an ETP by delivering "redemption unit(s)" back to the TA or administrator in exchange for the underlying securities (or cash) of a fund. A similar process applies for Marketing Agents.³

ALPF's role in approving creation and redemption orders varies based on whether the ETP is registered only under the '33 Act or under both the '33 Act and the '40 Act. For ETPs registered only under the '33 Act ("33 Act products"), ALPF is designated as the

¹ ETNs, which are senior unsecured debt obligations of an issuer designed to track the total return of an underlying index or benchmark and which trade on national securities exchanges on an intra-day basis, are not at issue in this matter.

² In some circumstances, an AP may be able to deliver cash in return for creation units.

³ The creation/redemption process plays the important role of transferring ETP shares from the primary market to the secondary market, and vice versa. This process can also help facilitate arbitrage, which helps keep an ETP's price in-line with the value of its index or reference asset.

Marketing Agent in the prospectus, and as such is the party with which APs place creation and redemption requests. ALPF is charged with approving requests submitted in proper form, which includes ensuring that the requests comply with the timeframes set forth in the governing documents. For ETPs registered under the '40 Act ("40 Act products"), ALPF is listed as the Distributor in the prospectus, and as such is tasked with approving creation requests which are placed by APs through the ETP's TA.

More specifically, ALPF's role as the Distributor for '40 Act products generally includes confirming that the order process was initiated before the cutoff time, confirming that the TA received the completed order in good form within the relevant timeframes, and sending confirmation of that approval back to the TA in a timely manner. ALPF's role as the Marketing Agent for '33 Act products generally includes handling the initial telephone call to take the AP's order, ensuring timely receipt of the order form from the AP (generally via facsimile), verifying the relevant details on the order form upon receipt, and timely faxing the completed and approved order form back to the AP after "affirming" the order.

ETP creation and redemption transactions occur at NAV, with the underlying portfolio securities delivered to the TA and the shares of the ETP delivered to the AP priced on the NAV in existence on the day in which the order is timely submitted and approved. Depending on the terms of the relevant governing documents, orders submitted after the close of the market are either deemed void, or transacted at the next day's NAV. Under these circumstances, all market participants that create or redeem shares are on equal footing as to price and other information. If broker-dealers accept or approve untimely creation or redemption requests for ETP shares, they may provide an information advantage to APs or other market participants based on news or other market events that could affect the ETP or its holdings, but is not reflected in the NAV pricing for that day. Thus, the role of a Distributor or Marketing Agent as order approver is essential to ensure the timeliness for the creation or redemption process.

As a result of its review Market Regulation found that in nine instances during the Review Period, ALPF improperly approved orders to create or redeem ETP shares that were not completed within the timeframes set forth in the relevant governing documents; failed to make and preserve accurate books and records of orders for creations or redemptions of ETPs that were processed by ALPF during the Review Period in 219 instances; and failed to establish and maintain a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with applicable rules and regulations concerning the creation or redemption approval process for ETPs.

FACTS AND VIOLATIVE CONDUCT

Improper Approval of Creation or Redemption Requests

1. In five instances during the Review Period, ALPF, in its role as Distributor for five ETPs registered under the '40 Act, approved five creation requests that did not comply with the requirements for manual orders set forth in the relevant governing documents. Although the APs placing the orders properly initiated the order process

by telephone prior to the relevant order cutoff times (that is, by market close), the APs did not submit their completed order forms to the TA via facsimile within the required timeframes. Instead, the APs submitted their order forms anywhere from seven to twelve minutes after the times that they were due. ALPF nonetheless improperly approved these orders for processing, instead of treating them as invalid as was required by the relevant governing documents. The conduct set forth in this paragraph constitutes separate and distinct violations of FINRA Rule 2010.

2. In three instances during the Review Period, ALPF, in its role as Marketing Agent for three ETPs registered under the '33 Act, approved one creation request and two redemption requests that did not comply with the requirements for manual orders set forth in the relevant governing documents. In these instances, although the APs placing the orders properly initiated the order process prior to the relevant order cutoff times, the APs did not submit their completed order forms via facsimile to ALPF within the required timeframes, but instead submitted their order forms anywhere from eighteen to 104 minutes after the times that they were due. ALPF nonetheless improperly approved these orders for processing, instead of treating them as invalid as required by the relevant governing documents. The conduct set forth in this paragraph constitutes separate and distinct violations of FINRA Rule 2010.
3. In one instance during the Review Period, ALPF, in its role as Marketing Agent for an ETP registered under the '33 Act, approved a manual redemption order that did not comply with the requirements set forth in the relevant governing documents. The AP placing the order for this redemption failed to initiate the order process prior to the relevant order cutoff time, but instead initiated the order process eleven minutes after such relevant order cutoff time. After receiving the order form nine minutes later, ALPF nonetheless improperly approved this order, instead of treating the order as invalid as required by the relevant governing documents. The conduct set forth in this paragraph constitutes a violation of FINRA Rule 2010.

Recordkeeping Violations

4. For 219 additional manual orders (*i.e.*, sent to ALPF via facsimile) for creations or redemptions that were processed by ALPF during the Review Period, ALPF failed to make and preserve accurate books and records of such orders as the orders contained missing, unintelligible or erroneous information, including missing or inaccurate facsimile time stamps or time stamps that were prior to or after the times the orders were actually placed. Due to these errors, Market Regulation was unable to determine whether additional orders for the creation or redemption of ETPs shares were processed within the required timeframes. The conduct set forth in this paragraph constitutes separate and distinct violations of FINRA Rule 4511 and Securities Exchange Act of 1934 ("SEA") Rule 17a-3.

Deficient Supervision of ETP Creation or Redemption Requests

5. During the Review Period, ALPF's supervisory system, including its written supervisory procedures, did not provide for supervision reasonably designed to achieve compliance with applicable rules and regulations concerning the creation or redemption approval process for ETPs. In particular, the Firm did not have adequate procedures to ensure that orders for the creation and redemption of ETPs adhered to the relevant cutoff times and that such orders were completed within the required timeframes set forth in the relevant governing documents, before they were approved.
6. During the Review Period the Firm failed to have in place an adequate supervisory process and review for comparisons between electronic fax server records and the handwritten order documents maintained by its trade processing department, as well as for review of any material inconsistencies in records or any instances in which fax orders were received outside of the stated cutoff times or timeframes outlined in the governing documents. Moreover, the Firm's written supervisory procedures referenced checklists that ALPF's employees were required to complete for the authorization of creation or redemption requests. Specifically, for each creation or redemption request, ALPF's procedures stated that the Firm employee must complete a checklist to ensure that certain steps are accomplished and the employee attests his/her verification via an initial or signature. However, the checklist for '33 Act products did not require that a check be made that the AP placed the order prior to the cutoff time specified in the relevant governing documents, and the '40 Act product checklist did not require that a check be made to make sure that the AP faxed the completed order form to the TA within the timeframe specified in the relevant governing documents.
7. The conduct set forth above in paragraphs 5 and 6 constitutes a violation of NASD Rule 3010 and FINRA Rule 2010.
8. During the Review Period, ALPF's written supervisory procedures failed to reference any supervisory review of the creation or redemption order taking and approval process for ETPs, and the Firm did not produce adequate evidence of such supervisory reviews. The conduct set forth in this paragraph constitutes a violation of NASD Rule 3010 and FINRA Rule 2010.

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

1. A censure;
2. A fine of \$125,000 (consisting of \$40,000 for the violations of FINRA Rule 2010; \$35,000 for the violations of FINRA Rule 4511 and SEA Rule 17a-3; and \$50,000 for the violations of NASD Rule 3010 and FINRA Rule 2010); and
3. An undertaking requiring the Firm to address the deficiencies described above to ensure that the Firm has implemented procedures that are reasonably designed to achieve compliance with the rules and regulations cited herein. Within 30 business days of the issuance of a Notice of Acceptance of this AWC, a registered principal of the Firm shall submit to the COMPLIANCE ASSISTANT, LEGAL SECTION,

MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850, a signed, dated letter, or an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org providing the following information (1) a reference to this matter; (2) a representation that the Firm has addressed the deficiencies described in paragraphs I.A.5 through I.A.8 above; and (3) the date that the revised procedures were implemented.

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. It 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(s) imposed in this matter.

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

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 the firm;
- 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 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.

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

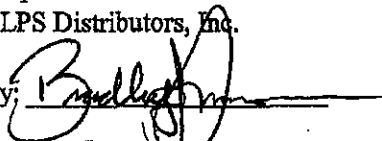
Respondent understands that:

- 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 Respondent; and
- C. If accepted:
 - 1. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
 - 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 the firm'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. The firm understands that it 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 has been given a full opportunity to ask questions about it; that it has agreed to the AWC's 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 the firm to submit it.

9-23-2015
Date

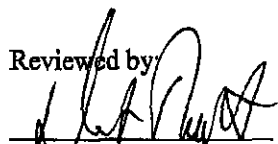
Respondent
ALPS Distributors, Inc.

By: 

Name: Bradley J. Swenson

Title: Chief Operating Officer

Reviewed by:


Daniel Nathan, Esq.

Counsel for Respondent
Morvillo LLP
1101 17th Street, NW
Washington, DC 20036

Accepted by FINRA:

10/13/15
Date

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

Robert A. Marchman Esq.

Robert A. Marchman
Executive Vice President, Legal Section
FINRA Department of Market Regulation