

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20120304090 -01**

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

RE: BTG Pactual US Capital, LLC, Respondent ("BTG Pactual" or the "Firm")
BD No. 149486

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, 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 the Firm 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

BTG Pactual became registered with FINRA in December 2009. The Firm is a New York-based indirect subsidiary of Banco BTG Pactual S.A. (the "Bank"), a Brazilian institution that is the largest independent investment bank in Latin America. The Firm employs approximately 48 registered representatives in one office in New York, NY, and earns most of its revenue from providing underwriting and brokerage services to a predominantly institutional client base.

RELEVANT DISCIPLINARY HISTORY

BTG Pactual does not have any relevant disciplinary history with the Securities and Exchange Commission, any self-regulatory organization or any state securities regulator.

OVERVIEW

Between September 2010 and January 2011, the Firm acted as an initial purchaser in five offerings of corporate debt as part of a syndicate of underwriters in which BTG Pactual had a firm commitment to purchase securities. SEC Rule 15c3-1(c)(2)(viii) requires a broker or dealer to apply a haircut when computing its net capital based on the market value of securities that the broker or dealer has an open contractual commitment to purchase ("Haircut"). Because the Firm's Financial and Operations Principal (the "FinOp") was unaware that BTG Pactual had a firm commitment to purchase the securities in these five transactions, the FinOp was not aware that the Firm would be subject to the Haircut on the participation dates and did not perform net capital computations that would have shown that the Firm would be undercapitalized on each transaction date as a result of the Haircuts. As a result, BTG Pactual conducted a securities business while net capital deficient on the five dates in which it participated in the underwritings. On all five occasions, the deficiencies were cured on the same day they occurred. For these violations, BTG Pactual has consented to a censure and a fine of \$20,000.

FACTS AND VIOLATIVE CONDUCT

- I. While conducting a securities business on the following dates, BTG Pactual failed to maintain its minimum net capital required by Securities Exchange Act Rule 15c3-1:
 - On Monday, September 8, 2010, BTG Pactual had net capital of (\$5,099,328) after the Haircut with a minimum net capital requirement of \$1,400,631 and deficient net capital of (\$6,499,960).
 - On Thursday, November 4, 2010, BTG Pactual had net capital of \$370,969 after the Haircut with a minimum net capital requirement of \$2,635,545 and deficient net capital of (\$2,264,577).
 - On Thursday, January 13, 2011, BTG Pactual had net capital of (\$28,825,103) after the Haircut with a minimum net capital requirement of \$1,472,959 and deficient net capital of (\$30,298,061).
 - On Thursday, January 20, 2011, BTG Pactual had net capital of (\$57,346,530) after the Haircut with a minimum net capital requirement of \$2,065,669 and deficient net capital of (\$59,412,199).
 - On Friday, January 21, 2011, BTG Pactual had net capital of (\$12,065,590) after the Haircut with a minimum net capital requirement of \$2,065,669 and deficient net capital of (\$14,131,259).

On March 3, 2011, the Firm filed a notification with FINRA and the Securities and Exchange Commission pursuant to SEC Rule 17a-11(b) to

report these deficiencies.

By conducting business on five dates on which it was net capital deficient, BTG Pactual violated SEC Rule 15c3-1 and FINRA Rule 2010.

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

- A censure and a fine of \$20,000.

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. Respondent 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.

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 it;
- 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 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 the Respondent; and
- C. If accepted:
 - 1. this AWC will become part of the Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the Respondent;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the 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. The 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. The 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 Respondent'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. The Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Respondent 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 the Firm 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 the Firm to submit it.

03/14/2013
Date (mm/dd/yyyy)

BTG Pactual US Capital, LLC
Respondent

BTG Pactual US Capital, LLC
BD No. 149486

By: [Signature]
[name and title]

Reviewed by:

[Signature]

Charles S. Gittleman
Counsel for Respondent
Shearman & Sterling LLP
599 Lexington Avenue
New York, NY 10022
(212) 848-7317

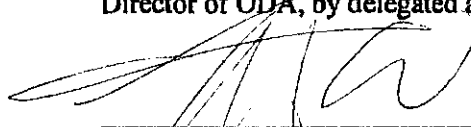
Frederico Monneret Arago - CEO

Accepted by FINRA:

March 27, 2013

Date

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

A handwritten signature in black ink, appearing to read 'Michael Wajda', is written over a horizontal line.

Michael Wajda
Principal Regional Counsel
FINRA Department of Enforcement
One World Financial Center
200 Liberty Street
New York, NY 10281-1003
Tel: (212) 858-4298
Fax: (202) 721-1357



March 15, 2013

Michael Wajda
FINRA
Enforcement - District 10
One World Financial Center
200 Liberty Street - 11th Floor
New York, NY 10281-100

FINRA Exam 20120304090

Statement of Corrective Action

Dear Mr. Wajda,

Thank you for allowing BTG to present the corrective actions that were instituted upon discovery of our net capital deficiencies in 2011. BTG has always held its employees and performance to the highest standards and took immediate and proactive measures to prevent a net capital deficiency from recurring.

In early 2011, after recognizing a possible net capital issue, BTG Pactual staff conducted a thorough examination and determined the facts. The matter was subsequently self-reported to the FINRA regional office. The five temporary net capital deficiencies occurred on the following dates: September 8, 2010, November 4, 2010, January 14, 2011 and January 20, 2011.

After confirming the deficiencies, BTG took immediate action to implement remedial measures, including, without limitation, formalizing our Underwriting Commitment Committee process that will result in enhanced review of commitments in and the capital implications of proposed underwriting transactions.

By the second quarter of 2011, BTG retained the professional accounting services of S D Daniels & Co to assume the responsibilities of Financial and Operations Principal (FinOp) while maintaining our own team of finance professionals.

The temporary capital deficiencies were the result of our erroneous belief that we were participating as a selling agent in certain capital markets transactions when in fact we were participating as a "firm commitment" underwriter or initial purchaser in those transactions. We refer you to Rule 17a-5 of the Securities Exchange Act of 1934, as amended (the "Exchange Act").

In addition, further steps were taken to strengthen the capital base of the entity, as well as seek out viable alternatives when structuring the firm's capital market transactions.

This Corrective Action Statement is submitted by the Respondent. It does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA, or its staff.

BTG Pactual US Capital, LLC
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Member FINRA/SIPC



- On August 31, 2011, additional capital of \$75mm was ratified and injected into the entity to strengthen the entity's capital structure and reinforce the commitment of the firm to the business conducted by the US Broker Dealer.
- In April 2012, upon confirmation from external counsel, firm underwriting commitments were legally structured under Banco BTG Pactual S.A. – Cayman Branch as underwriter and the role of the US BD in the se capital market transactions solely exists as a placement agent. Accordingly, the US BD is no longer required to take a capital charge on the day prior to pricing and it should significantly mitigate the possibility of being undercapitalized in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Olencki", written over a horizontal line.

Jim Olencki
BTG Pactual US Capital, LLC
Compliance Department
James.olencki@btgpactual.com
646-924-2448

This Corrective Action Statement is submitted by the Respondent. It does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA, or its staff.

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