

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2012030462001**

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

**RE: Headwaters BD, LLC, Respondent
CRD No. 117042**

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Headwaters BD, LLC ("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 AND RELEVANT DISCIPLINARY HISTORY

Respondent, a member firm since March 2002, is an investment banking firm that conducts a limited business that involves providing M&A, capital formation and debt advisory services to institutions and private equity funds. The firm has no retail customers and no retail accounts. The firm has 48 registered representatives and operates out of its main office in Denver, Colorado. The Chief Executive Officer (CEO) and Chief Compliance Officer (CCO) both office out of the firm's main office in Denver, Colorado.

In 2012, Respondent entered into an Offer of Settlement with FINRA to resolve violations found during Examination No. 20100209415. Items encompassed by that Offer of Settlement that are relevant to this matter include : i) failing to maintain written branch office inspection reports in violation of Rule 3010(c); ii) failing to complete an annual report for the years 2006-2009 as required by FINRA Rule 3130/NASD Rule 3013; iii) failing to prepare and submit to management an annual report as required by Rule 3012; and iv) failing to maintain adequate supervisory control procedures in violation of Rule 3010(b). Headwaters was censured and fined \$60,000, of which \$40,000 was joint and several with three individuals associated with the firm.



OVERVIEW

FINRA staff conducted a routine examination of the Respondent covering the time period of February 2, 2010 through July 15, 2012. As discussed in greater detail herein, during the course of the examination, FINRA identified several deficiencies in the areas of supervisory controls and certification, internal inspections, and communications with the public/advertising. These deficiencies constituted violations of FINRA Rules 3130 and 2010, and NASD Rules 3012, 3010, and 2210.

FACTS AND VIOLATIVE CONDUCT

Violations of FINRA Rules 3130, and 2010, and NASD Rules 3012 and 3010

FINRA Rule 3130 requires a CEO to certify annually that the firm has in place processes to establish, maintain and review written supervisory policies and procedures reasonably designed to achieve compliance with applicable FINRA/NASD rules, MSRB rules and federal securities laws and regulations. These processes are to be evidenced in a report reviewed by, among others, the CEO and CCO, which documents the processes. "Beyond the certification requirement, it is the intention of this Rule to foster regular and significant interaction between senior management and the chief compliance officer(s) regarding the member's comprehensive program. *Rule 3130, Supplementary Material, .05*. Rule 3012 requires that a principal of the firm prepare a report that is to be submitted to the firm's senior management detailing, among other things, the firm's system of supervisory controls.

Consistent with Rule 3012, Respondent's supervisory control procedures required, in relevant part, the firm's CCO to annually test and verify that the firm's supervisory procedures were sufficient and amend or create additional procedures as necessary. Testing was to include a review of internal financial reports, audit reports, regulatory examinations, complaints and any litigation. The CCO was to then submit a report to the CEO describing the firm's system of supervisory controls, a summary of the test results and any changes made in response to the test results. Similarly, Respondent's written supervisory procedures (WSPs) pertaining to the "Periodic Review of Firm's Business and Procedures," required, among other items, that it maintain a written record of the dates the firm's supervisory system was reviewed along with the steps taken to conduct the review and any revisions to the supervisory procedures created in response to the test results, a written record of the review of the firm's business, and an annual compliance report containing a tabulation of statistics and reports regarding customer complaints and internal investigations, analysis of significant compliance problems and plans for future systems to detect and prevent such

problems, and an assessment of the prior year's supervisory and compliance efforts in specified areas applicable to the firm.

For the years 2010 and 2011, Respondent did not timely prepare the reports required by NASD Rule 3012 and FINRA Rule 3130. Respondent initially prepared a single report that, in addition to being untimely, did not contain all of the content required by Rules 3012 and 3130, thus failing to comply with either Rule. Both the report for 2010 and the report for 2011 were signed by the Respondent's CCO and CEO in June 2012.

Respondent did not maintain all of the written records of its reviews and testing as required by both its supervisory control procedures and its procedures pertaining to the "Periodic Review of Firm's Business and Procedures."

Respondent's CEO certification required by FINRA Rule 3130 for the year 2011 was untimely. That certification was executed in June 2012. Further, the 2010 certification executed in November 2010 did not certify that the CEO had reviewed a report that evidenced the processes referenced in Rule 3130. This deficiency reflected the fact that, as set forth above, Respondent, in violation of Rule 3130(c), did not prepare the required report for the CEO's review.

By engaging in the above conduct, Respondent violated FINRA Rules 3130 and 2010, and NASD Rules 3012 and 3010(b).

Violations of NASD Rules 3010(b) and 3010(c), and FINRA Rule 2010

NASD Rule 3010(c)(1) provides that each member inspect and review at least annually every office of supervisory jurisdiction and any branch office that supervises one or more non-branch locations and that non-branch locations are to be inspected on a regular periodic schedule. That schedule and an explanation regarding how the member determined the frequency of the examination schedule is to be set forth in the member's written supervisory and inspection procedures. Conduct Rule 3010(c)(2) provides that the office inspection and review must be reduced to a written report and kept on file by the member and include, without limitation, the testing and verification of the member's policies and procedures.

Respondent's WSPs for the time period in question required as follows:

The Firm will inspect annually each OSJ and any Branch Office that supervises non-branch locations. The Firm will inspect non-branch locations and Branch Offices that do not supervise non-branch locations every three years.... The Firm will retain a written record of the dates upon which each review and inspection is conducted. The written report will also include testing and verification of the Firm's policies and procedures, including supervisory policies and procedures, in the following areas:

- 1) Safeguarding of customer funds and securities;

- 
- 
- 2) Maintaining books and records;
 - 3) Supervision of customer accounts serviced by branch office managers;
 - 4) Transmittal of funds between customers and RRs and between customers and third parties;
 - 5) Validation of customer address changes; and
 - 6) Validation of changes in customer account information.

Respondent did not inspect the Denver home office in 2010 and 2011. As this is an OSJ office, per the dictates of Rule 3010(c) and the firm's own procedures, it should have been inspected on an annual basis. Additionally, Respondent did not inspect one of its nine non-branch locations (Irvine, California) once every three years in the manner as required by the firm's WSPs. While the firm's CCO visited the Irvine Office in the years 2010, 2011 and 2012, an inspection that comported with the requirements of Rule 3010(c) and the firm's WSPs was not done at those times.

By engaging in the above conduct, Respondent violated NASD Rules 3010(b) and 3010(c), and FINRA Rule 2010.

Violations of NASD Rule 2210(d)(1)(B) and FINRA Rule 2010

During the review period of February 2, 2010 through July 15, 2012, Respondent's website and certain pieces of sales literature used by the firm contained tombstones for transactions effected by representatives prior to their joining the firm. That fact was not disclosed on the Respondent's website or in the sales literature, and therefore was potentially misleading.

By engaging in the above conduct, Respondent violated NASD Rule 2210(d)(1)(B) and FINRA Rule 2010.

B. Respondent also consents to the imposition of the below sanctions.

- A censure; and
- A fine of \$30,000.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which the firm 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 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 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 it;
- C. If accepted:

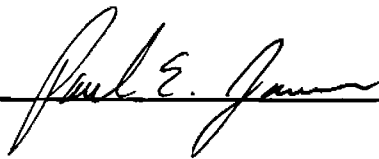
1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondent's disciplinary 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 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; and,

D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that Respondent 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.

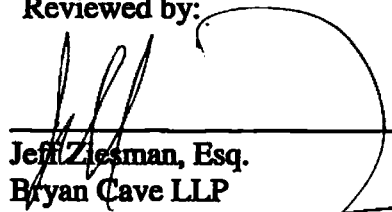
The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Respondent has agreed to its provisions voluntarily; and that no offer,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

Headwaters BD, LLC

11/27/2013
Date (mm/dd/yyyy)

By: 
Title: PRESIDENT & COO

Reviewed by:



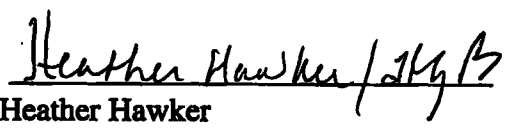
Jeff Ziesman, Esq.
Bryan Cave LLP
One Kansas City Place
1200 Main Street, Suite 3500
Kansas City, MO 64105-2100

Accepted by FINRA:

12.17.2013

Date

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



Heather Hawker
Senior Regional Counsel
FINRA Department of Enforcement
4600 S. Syracuse St., Suite 1400
Denver, Colorado 80237-2719
(303) 446-3110
Fax No. (303) 620-9450
heather.hawker@finra.org