

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2012032025201**

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

RE: Commonwealth Financial Network (BD No. 8032),
Respondent

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent, Commonwealth Financial Network ("CFN" or the "Firm"), 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 it 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

CFN has been a member of FINRA since 1979. The Firm is also registered with the Municipal Securities Rulemaking Board. CFN has approximately 4,550 associated persons operating from 1,154 branch offices, including 126 Offices of Supervisory Jurisdiction, and 106 non-branch offices. CFN's principal office is located in Waltham, Massachusetts. It conducts a general securities business.

RELEVANT DISCIPLINARY HISTORY

In 2005, FINRA issued an AWC against CFN in which the Firm agreed, without admitting or denying the findings, to a censure and a fine of \$1,400,000 for maintaining a revenue sharing program with mutual fund complexes, and for failing to retain internal e-mails, in violation of Securities Exchange Act Rule 17a-4(b)(4) and NASD Conduct Rules.

CFN has no other relevant formal disciplinary history with the SEC, any state securities regulator or any self-regulatory organization.

OVERVIEW

CFN's registered representatives are independent contractors and many operate from branch offices under one or more "doing business as" ("DBA") names. Most of CFN's representatives use non-CFN e-mail "domains," each of which generally represents a branch office and comprises several e-mail accounts associated with their DBAs. During the period from December 7, 2009 to January 28, 2012 (the "Relevant Period"), CFN used a system to comply with its regulatory obligations pertaining to archiving, preserving and supervising the business-related e-mails of its associated persons. E-mails sent through DBA e-mail domains were automatically transmitted to CFN's system for retention and review by CFN.

During the Relevant Period, CFN's supervisory system: (a) failed to subject about 12.6 million outgoing e-mails to CFN's daily e-mail surveillance protocol, constituting a failure to surveil about 90% of the e-mails that the Firm's registered representatives sent through their DBA e-mail accounts; and (b) failed to surveil approximately 474,380 e-mails sent or received by some of its registered representatives. The Firm also failed to establish and maintain procedures to test its e-mail supervisory system and ensure timely notice of systemic failures to its legal and compliance departments. This conduct violated NASD Conduct Rules 3010(a) and 3010(d)(2) and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Beginning In December 2009, CFN Updated Its E-Mail Exchange Software System, But After the Update Failed To Ensure That Its E-Mail Surveillance System Operated Properly

In December 2009, CFN's registered representatives operated 1,017 e-mail domains. By December 2011, the Firm's representatives maintained 1,174 e-mail domains. During the Relevant Period, CFN's Written Supervisory Procedures ("WSPs") required the emails of Firm's representatives to be journaled through CFN's server so that the Firm could capture and review its representatives' e-mails, including those transmitted through DBA e-mail domains. CFN's supervisory system was based in part on a daily review of its registered representatives' e-mails through lexicon searches and a random sampling of e-mails.

During the Relevant Period, CFN "updated" the software that directs the flow of

its registered representatives' e-mails to the Firm's e-mail retention server. The software upgrade was not compatible with the computerized tool that CFN uses to conduct daily reviews of its associated persons' e-mails (the "surveillance tool"). The Firm, however, failed to test its e-mail supervisory system during its software update, and consequently did not identify that the surveillance tool was not surveilling the outgoing DBA e-mails of registered representatives in the Firm's branch offices or forwarding a sampling of those e-mails for review by the Firm's compliance department.

From December 2009 To January 2012, CFN Failed To Surveil Approximately 12.6 Million Outgoing E-Mails, Comprising About 90% Of Its Registered Representatives' Outgoing DBA E-Mails

During the first month that it employed the updated software, CFN failed to perform a daily surveillance review of the outgoing e-mails of one-half of the DBA e-mail domains maintained by the Firm's registered representatives.

Three months later, by March 2010, the Firm's supervisory system failed to perform a daily surveillance review of the outgoing e-mails from any of the DBA e-mail domains operated by the Firm's registered representatives.

During the Relevant Period, until the Firm fixed its computerized supervisory system on January 28, 2012, CFN's registered representatives transmitted approximately 17 million e-mails, and about 14 million of those outgoing e-mails were sent through registered representatives' DBA e-mail domains. During that period, however, CFN failed to subject approximately 12.6 million of those outgoing e-mails to the Firm's daily e-mail surveillance protocol. The unsurveilled e-mails equaled about 90 percent of the outgoing e-mails transmitted by the Firm's registered representatives through their DBA e-mail domains.¹

In May 2011, about sixteen months after the Firm's e-mail surveillance system failed, an employee of the Firm's information technology ("IT") department observed that the surveillance tool was not operating properly. Although the IT department had ongoing contact with the Firm's e-mail vendor concerning the remediation of the surveillance tool, it did not take steps to ensure that all of the Firm's registered representatives' outgoing DBA e-mails were surveilled. The IT department also failed to notify the Firm's legal and compliance departments

¹ Despite the failure of its surveillance tool to review outgoing e-mails, during the Relevant Period CFN did surveil incoming e-mails that were received by its registered representatives, including e-mails sent in reply to its representatives' outgoing e-mails. CFN also timely surveilled its registered representatives' outgoing e-mails that were carbon-copied to CFN employees or other CFN registered representatives and also reviewed certain outgoing emails in connection with branch audits conducted during the Relevant Period.

about the e-mail surveillance system's deficiencies until January 19, 2012, more than eight months after the IT department learned of the problem with the surveillance tool. The Firm's WSPs at that time did not require the IT department to notify the legal and compliance departments when it discovered problems with the Firm's computerized supervisory system.

CFN Failed To Supervise Some Representatives' E-Mails Due To A Second Malfunction In Its E-Mail Surveillance System

While reviewing its failure to surveil its registered representatives' outgoing DBA e-mails, CFN discovered that its supervisory system also failed to surveil some e-mails (both incoming and outgoing) of some representatives both before, and during the Relevant Period. CFN's supervisory system maintained a computerized "directory" of personnel, but was not able to identify some registered representatives who had multiple listings in the directory. Because of this second break-down in its supervisory system, CFN failed to review approximately 474,380 of its registered representatives' e-mails.

CFN Did Not Have An Adequate System And Procedures To Review E-Mails

NASD Conduct Rule 3010 requires firms to establish and maintain systems to supervise their employees that are reasonably designed to achieve compliance with the federal securities laws and FINRA and NASD Rules. NASD Conduct Rule 3010(d)(2) further requires firms to develop procedures for the review of e-mails. As described above, CFN failed to establish and maintain systems and procedures that were reasonably designed to comply with its obligation to review e-mail.

Based on the foregoing, CFN violated NASD Conduct Rule 3010 and FINRA Rule 2010.

OTHER FACTORS

FINRA acknowledges that CFN self-reported the issues described herein in March 2012, undertook an internal review of its supervisory policies, procedures, and systems relating to these issues, and subjected e-mails that had not been reviewed to review. The sanctions below reflect the credit that CFN has been given for self-reporting these issues and providing the information obtained as a result of its internal review to FINRA.

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

- a censure; and

- a fine of \$250,000.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is 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 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 Respondent;
- 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 it;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about its 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 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.

Commonwealth Financial Network

03/07/2014
Date (mm/dd/yyyy)

By: James B. Adelman
James B. Adelman, Esq.
General Counsel

Accepted by FINRA:

March 19, 2014
Date

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

Stuart P. Feldman
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