

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
20120324958-01

TO: Office of Fraud Detection and Market Intelligence
Financial Industry Regulatory Authority ("FINRA")

RE: Frederick Graham Brimmer II, Respondent
CRD No. 5655405

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Frederick Graham Brimmer II ("Brimmer" or "Respondent"), submit 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 me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. I hereby accept and consent, 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

From October 12, 2010 until May 22, 2012, and all relevant times to this AWC, Brimmer was associated with a FINRA member firm as a General Securities Registered Representative. On May 22, 2012, the above FINRA member firm filed a Form U5 terminating Brimmer's registration, following Brimmer's resignation from the firm the preceding day. Thereafter, on June 1, 2012, the above FINRA member firm amended Brimmer's Form U5 to disclose that Brimmer was the subject of an internal review by the firm, following customers' tips, for "possible unethical conduct and violation of firm policy for possibly recommending withdrawals from [customers'] securities accounts" for certain "loan agreements." Since leaving the above-mentioned firm in May 2012, Brimmer has not been associated with any FINRA member firm. Brimmer remains subject to FINRA's jurisdiction pursuant to Article V, Section 4, of FINRA's By-Laws. He has no disciplinary history.

SUMMARY

In connection with Investigation No. 20120324958, FINRA's Office of Fraud Detection and Market Intelligence and Legal Section of the Market Regulation Department (the "staff") conducted an investigation of Brimmer's business activities away from his then employing member firm during the period January 1, 2011 through May 22, 2012 ("review period"). The business activities involved Brimmer's brokerage customers from the member firm and are described below.

FACTS AND VIOLATIVE CONDUCT

Brimmer converted \$10,000 from two elderly brokerage customers (a married couple) (Violations of FINRA Rules 2150 and 2010).

1. In or around the summer of 2011, Brimmer misappropriated \$10,000 from two of his elderly brokerage customers (DM, age 71, and NM, age 68, a married couple) by depositing their funds into his personal bank account. The customers had provided the money to Brimmer for a supposed investment in an autobroker sales business operated by a then neighbor (HH). Rather than invest the money on the customers' behalf, Brimmer deposited the money in his own personal bank account. The customers never received any money or returns back from Brimmer.
2. By converting and making improper use of his customers' funds, as described above, Brimmer violated FINRA Rule 2150(a) and FINRA Rule 2010.

Brimmer committed securities fraud in his solicitation of four elderly customers to purchase certain securities in the form of promissory notes in which they invested a collective total of \$150,000 (Violations of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010).

3. In or around November 2011, Brimmer intentionally and recklessly omitted material facts in connection with his solicitation of at least four elderly brokerage customers: LP (age 74), JY (age 73), and a married couple, GP (age 67) and LP2 (age 64), to purchase certain securities. The material omissions consisted of failing to disclose to each customer that Brimmer anticipated receiving a referral fee totaling \$30,000 for introducing those brokerage customers to JM, who entered into promissory notes with each of those customers and committed to repay the above customers' principal investments (collectively totaling \$150,000), plus returns of 200%, within maturity dates of about a month of the execution of the promissory notes. None of the customers have received any of their principal or promised interest payments as of the maturity date of the promissory notes.

4. By engaging in the foregoing conduct, Brimmer, in connection with the purchase or sale of a security, directly or indirectly, by use of means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange, knowingly and recklessly, employed a device, scheme or artifice to defraud; made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading; and engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit upon other persons, in willful violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and in violation of FINRA Rules 2020 and 2010.

Brimmer engaged in private securities transactions without providing his then employing member firm prior written notice (Violations of NASD Rule 3040 and FINRA Rule 2010).

5. During the review period, Brimmer failed to provide his then employing member firm written notice prior to his involvement in private securities transactions in connection with his referral of at least eight of his elderly brokerage customers (LP, JY, GP and LP2, JT (age 70), BC (age 68), and another married couple, DB (age 71) and RB (age 62)), to private securities transactions associated with JM and a "private placement" bond issue involving other entities purportedly facilitating financing for a bio-fuel project. As with JM's promissory notes, the later bond issue involved investors seeking investment returns in the form of interest by committing funds into a pooled venture to facilitate financing for the establishment of a business. The above eight elderly customers invested a total of approximately \$420,000 in either the above promissory notes with JM or the private placement bond issue. Prior to introducing the above eight elderly customers into the above investments, Brimmer never notified his employing member firm about his plans to make those referrals, his role in the transactions, or any anticipated compensation he expected to receive, if any. The conduct described in this paragraph constitutes violations of NASD Rule 3040 and FINRA Rule 2010.

Brimmer engaged in the sale of, or offer to sell, unregistered securities (Violations of FINRA Rule 2010 By Virtue of Brimmer's Violations of Section 5 of the Securities Act of 1933).

6. During the review period, Brimmer, on at least ten occasions, sold, or offered to sell, unregistered securities through the use of the means or instruments of transportation or communication in interstate commerce or of the mails in connection with the private securities transactions described in Paragraphs 3-5 above. Neither a registration statement nor a Form D filing claiming any exemption from registration existed on file with the Securities and Exchange

Commission related to the above transactions. In that connection, Brimmer introduced at least seven elderly brokerage customers (LP, JY, GP and LP2, DB and RB, and JT) to JM's investment (at least four of whom executed such promissory notes) and at least four elderly customers (DB and RB, JT, and BC) to the above-mentioned bond issue (all of whom invested in the bond issue). Further, Brimmer facilitated the processing of payments and paperwork for the customers' investments, accompanied JM to the homes of at least four of those customers where the customers executed promissory notes with JM and where Brimmer signed the promissory notes as a "witness," advised several of the customers of the tax consequences associated with taking IRA distributions from their brokerage accounts for the investments, and maintained copies of customers' contracts and related correspondence associated with their above investments in personal computer storage accounts unconnected to his employing member firm's computer network. In that connection, Brimmer used a combination of means (including phone, electronic mail, and the postal service) in order to communicate with those customers, JM, and the entities involved in the bond issue about the above investments.

7. By selling securities, as described herein, that were neither registered with the SEC nor exempt from registration for his elderly customers, Brimmer acted in contravention of Section 5 of the Securities Act of 1933 and violated FINRA Rule 2010.

Brimmer committed books and records violations and failed to observe high standards of commercial honor and just and equitable principles of trade (Violations of NASD Rule 3110 and FINRA Rules 4511 and 2010).

8. In addition, during the review period, Brimmer violated FINRA books and records requirements and failed to observe high standards of commercial honor and just and equitable principles of trade, by maintaining communications and other records of the above investment activities involving his brokerage customers via personal e-mail and personal computer storage accounts that were unconnected to his then employing member firm's computer network. This conduct constituted violations of NASD Rule 3110 (for his conduct prior to December 5, 2011), FINRA Rule 4511 (for his conduct on or after December 5, 2011), and FINRA Rule 2010.

Brimmer provided false and incomplete testimony (Violations of FINRA Rules 8210 and 2010).

9. On June 6, 2012, in connection with the staff's investigation of this matter, Brimmer provided false and incomplete testimony about multiple factual points relevant to the staff's investigation. In particular, Brimmer provided false or incomplete testimony concerning: (a) his anticipated receipt of a referral fee from

an acquaintance, JM, for referring at least seven of Brimmer's brokerage customers to JM (four of whom executed promissory notes with JM); (b) his familiarity with the above promissory notes involving JM; (c) his familiarity with another unrelated purported "bond issue" to which Brimmer introduced at least four of his customers; (d) his knowledge of whether at least two of his brokerage customers (JY and LP) qualified as accredited investors under securities regulations; (e) his whereabouts when JM discussed the promissory notes at the home of two of his customers (a married couple); and, (f) his involvement in facilitating at least some of his customers' payments and paperwork associated with their above investments away from Brimmer's employing FINRA member firm. The conduct described in this paragraph constitutes violations of FINRA Rules 8210 and 2010.

B. I also consent to the imposition of the following sanctions:

A bar in all capacities from associating with any FINRA member.

I understand that if I am barred from associating with any FINRA member, I become subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar (see FINRA Rules 8310 and 8311).

I understand that this settlement includes a finding that I willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. Pursuant to Article III, Section 4 of FINRA's By-Laws, this makes me subject to a statutory disqualification with respect to association with a member.

The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to FINRA Rule 8313(e), a bar shall become effective upon approval or acceptance of this AWC.

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive 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, I specifically and voluntarily waive 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.

I further specifically and voluntarily waive 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

I understand that:

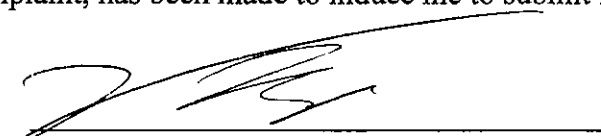
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (“ODA”), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and

C. If accepted:

1. this AWC will become part of my 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 my 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. I 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. I 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.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have 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 me to submit it.

Sept 4, 2012
Date


Frederick Graham Brimmer II

Reviewed by:

Counsel for Respondent

Accepted by FINRA:

9/28/12
Date

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


Cameron K. Funkhouser
Executive Vice President
Office of Fraud Detection and
Market Intelligence