

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013034982602**

RECEIVED

APR 05 2016

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

**FINRA
S.F. ENFORCEMENT OFFICE**

RE: Howard Bernstein, Respondent
General Securities Principal
Research Principal
CRD No. 2834086

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I 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

Howard Bernstein ("Bernstein") was employed in the securities industry from May 1987 through March 2015. Bernstein first registered as a General Securities Representative ("GS") in December 1997, as a General Securities Principal ("GP") in May 1998, as an Equity Trader Limited Representative ("ET") in July 1998, and as a Research Principal ("RP") in October 2004. In October 2009, Bernstein associated with Merriman Capital, Inc. ("Merriman" or the "Firm"), where he registered as a GS, GP and RP and assumed the role of Chief Compliance Officer ("CCO")—a position he held throughout the time period described below. Bernstein subsequently registered as a Limited Representative—Investment Banking in January 2010, and as an Operations Professional in September 2013. Bernstein voluntarily left Merriman in March 2015. Bernstein has not associated or registered with another FINRA member firm since March 2015, but he remains subject to FINRA's jurisdiction pursuant to Article V, Section 4(a) of FINRA's By-Laws of the Corporation. Bernstein has no relevant disciplinary history.

OVERVIEW

Between November 2011 and June 2012, Bernstein—Merriman’s CCO and Director of Research at the time—did not adopt and implement supervisory procedures reasonably designed to ensure that Merriman’s research reports complied with the disclosure requirements of NASD Rule 2711(h). As a result, he violated NASD Rule 2711(i) and FINRA Rule 2010.

Between August 2012 and September 2013, Bernstein—Merriman’s CCO and Anti-Money Laundering (“AML”) Compliance Officer at the time—failed to develop and implement an AML compliance program reasonably designed to achieve and monitor the Firm’s compliance with the requirements of the Bank Secrecy Act (“BSA”) and the implementing regulations thereunder as required by FINRA Rule 3310. As a result, he violated FINRA Rules 3310 and 2010.

FACTS AND VIOLATIVE CONDUCT

Research Report-related Violations

Bernstein was Merriman’s CCO beginning in October 2009, and Bernstein held the Firm’s Director of Research position from at least November 2011 through June 2012. Between November 2011 and June 2012 (the “Research Review Period”), Bernstein did not adopt and implement supervisory procedures reasonably designed to ensure that Merriman and its employees complied with the disclosure requirements of NASD Rule 2711. During the Research Review Period, the Firm’s written supervisory procedures (“WSPs”) relating to research stated that “[r]esearch analysts may not distribute any research report without prior review and approval by Research Department Supervisory Staff” and that the Firm “has an automated system that generates the disclosures required by FINRA [sic] Rule 2711.” The WSPs did not, however, describe any more specific process by which the Firm would ensure that such required disclosures were actually made. Nor did the Firm have any systems in place to track and ensure that certain required disclosure items were included in the research reports it disseminated, such as: (1) the Firm’s, or research analyst’s, ownership of the securities of the subject company; (2) whether the Firm acted as a manager or co-manager of public offerings of the subject company or received or sought compensation for investment banking services; or (3) the Firm’s engagement in providing non-investment banking product or services to the subject company.

In addition, during the Research Review Period, Bernstein failed to review 18 research reports published by Merriman to ensure that disclosures required under NASD Rule 2711(h) were properly included, that the price targets had a reasonable basis, and that the valuation methods used to determine price targets were disclosed in the research reports. Although Bernstein read the 18 reports, he did not adequately review their content, and he failed to verify that the final

versions of the 18 research reports included the required disclosures. The 18 research reports reviewed and approved by Bernstein contained multiple violations of the various disclosure requirements set forth in NASD Rule 2711(h).

By virtue of the foregoing, Bernstein violated NASD Rule 2711(i) and FINRA Rule 2010.

AML-related Violations

As noted above, Bernstein was the Firm's CCO beginning in 2009. Bernstein also was the Firm's AML Compliance Officer from at least August 2012 through September 2013 and, as such, was responsible for the Firm's AML compliance program during that period ("AML Review Period"). During the AML Review Period, Bernstein failed to develop and implement an AML compliance program reasonably designed to achieve and monitor Merriman's compliance with the requirements of the BSA and the implementing regulations promulgated thereunder by the Treasury as required pursuant to FINRA Rule 3310.

During the AML Review Period, Bernstein failed to develop an AML compliance program and related policies and procedures that were tailored to Merriman's business lines and the risks of those business lines—particularly as they related to the trading and liquidation of low-priced securities. Bernstein failed to ensure the Firm was conducting reviews of transaction activity to monitor for, detect, and cause the reporting of suspicious activity in accounts at the Firm. Bernstein did not have any reports that the Firm used to monitor low-priced securities, and he failed to develop any internal automated reports, manual reports, or other means to monitor securities received and disbursed to assist the Firm in monitoring for suspicious activity. Indeed, after customer identification procedures were completed upon the opening of an account, Merriman failed to monitor any trading activity in that account and identified no suspicious activity and made no investigations relating to such activity. Thus, the Firm's AML compliance program—for which Bernstein was responsible—was not reasonably designed and could not have been reasonably expected to detect and cause the reporting of suspicious transactions related to short-term trading of low-priced stocks through the Firm's accounts.

By virtue of the foregoing, Bernstein violated FINRA Rules 3310 and 2010.

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

- A three-month suspension in all principal capacities and a \$30,000 fine.

The fine shall be due and payable either immediately upon reassociation with a member firm, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

I understand that if I am barred or suspended from associating with any FINRA member in a principal capacity, I become subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, I may not be associated with any FINRA member in a principal capacity during the period of the bar or suspension (see FINRA Rules 8310 and 8311). Furthermore, because I am subject to a statutory disqualification during the suspension, if I remain associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

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

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 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.

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 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. 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: (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. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I 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.

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.

3/22/16

Date (mm/dd/yyyy)

[Signature]
Respondent Howard Bernstein

Reviewed by:

[Signature]

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Accepted by FINRA:

10/26/2016
Date

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

[Signature]
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