

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013035055102**

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

RE: David L. Potter, Respondent
Former Registered Representative
CRD No. 2991638

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

David L. Potter ("Potter") first became registered in the securities industry as a general securities representative with a FINRA firm in 2002, and was registered with LaSalle Street Securities, LLC ("LSS") in the same capacity, as well as in a principal capacity, from March 2010 until he was terminated on May 13, 2013. Potter has not been registered with a FINRA firm since May 2013.

RELEVANT DISCIPLINARY HISTORY

Potter has no relevant disciplinary history.

OVERVIEW

In connection with an attempted private offering for his investment advisory firm, Potter violated: (1) NASD Rule 3040 for participating in the offering before LSS approved the offering and after LSS requested that he cease participation; (2)

FINRA Rule 5122 for failure to file the offering documents with FINRA's Corporate Finance Department; and (3) FINRA Rule 2010 for making negligent misrepresentations to investors.

FACTS AND VIOLATIVE CONDUCT

Potter was the branch manager of LSS' Tampa branch, from which Potter also ran his affiliated investment advisory business, Platinum Wealth Partners, Inc. ("PWP"). Sometime in late 2012, PWP decided to expand its business and wanted capital to do so. Therefore, in early 2013, PWP commenced a private offering (the "Offering") which was dated March 1, 2013 and subsequently amended to March 5, 2013, and comprised unsecured convertible debenture units. The Offering was being conducted pursuant to Rule 506 of Regulation D under the Securities Act of 1933. The Offering was a "mini-max" offering, with the minimum offering of 60 units for \$1,500,000 and the maximum offering of 120 units for \$3,000,000. Pursuant to the Private Placement Memorandum ("PPM"), the offering period was to expire on March 31, 2013. As the executive managing partner, shareholder and principal of PWP, Potter expected to be compensated as a result of the Offering in the form of profit participation in PWP.

Under the PPM, the funds of each investor were to be placed in a trust account maintained by PWP's attorney ("Attorney Trust Account"). Also pursuant to the PPM, if the offering was undersubscribed such that PWP was unable to sell the minimum units by a date certain (initially March 31, and subsequently extended), then PWP was required to refuse any subscription, including any previously accepted subscriptions, and was required to cause its attorney to return the full amount of the investor proceeds.

On March 5, 2013, Potter sought approval from LSS to engage in the Offering. LSS approved the Offering as a private securities transaction ("PST") pursuant to NASD Rule 3040. However, prior to seeking approval from LSS for the Offering, Potter had already solicited one investor and received a signed subscription agreement for a \$50,000 investment ("Investor 1").

Potter raised investor funds totaling \$1,025,000 pursuant to the Offering and caused these funds to be deposited in the Attorney Trust Account. Despite the fact that the \$1,500,000 minimum contingency disclosed in the PPM had not been met, Potter caused over \$475,000 to be released from the Attorney Trust Account to PWP's operating account over four occasions between April 10, 2013 through May 15, 2013. Potter sought approval for the early release from the Attorney Trust Account from the eight investors to whom he attributed the \$475,000 in funds in the Attorney Trust Account. In doing so, his attorney sent a letter to the eight investors stating, among other things, that PWP:

has obtained subscription agreements for Units valued in excess of the minimum offering amount of \$1,500,000, provided, however

that not all of the subscription funds from all investors have cleared yet. The Company nevertheless has requested we proceed with the issuance of the Debenture in your favor and release of the subscription funds remitted by you, which have cleared, from the Attorney Trust Account, for use contemplated in the Private Offering Memorandum. If you are in agreement with such transfer, please provide your acknowledgement and consent by signing below.

Each of the eight investors signed the acknowledgement and agreement and Potter therefore withdrew the \$475,000 from the Attorney Trust Account. However, at no time did PWP obtain signed subscription agreements valued at \$1,500,000 or more, as stated in the letter.

On or about April 18, 2013, after LSS identified certain problems in the execution of the Offering, LSS requested that Potter stop accepting subscription agreements until LSS received additional information about the Offering. Despite this request, Potter accepted a subscription agreement by another investor ("Investor 2") for \$100,000.

By at least May 23, 2013, Potter knew that the minimum contingency had not been, and would not be, met. He was also notified that the Offering had significant regulatory deficiencies and therefore understood that the Offering needed to be unwound, with the investor funds returned. Potter returned the funds to investors by July 18, 2013.

1) NASD Rule 3040: Failure to Timely Notify LSS Regarding The Offering And Continuing In The Offering After Being Requested To Stop

NASD Rule 3040 requires an associated person to provide his employer with written notice of private securities transactions *before* the transactions take place. The SEC has held that written notice must describe in detail the proposed transactions, the associated person's role in the transactions, and state whether the associated has received or may receive selling compensation with the transactions. NASD Conduct Rule 3040(c) provides that, if the associated person is compensated for the transactions, he must receive the firm's permission before he engages in the transactions. Even if the associated person is not compensated for the transactions, he must receive the firm's acknowledgement of his written notice.

Potter's profit participation in PWP, and the expectation that the Offering would increase the profitability of PWP, constitutes "selling compensation" under NASD Rule 3040. Therefore, Potter should not have participated in the Offering before approval by LSS. Nonetheless, Potter had already secured Investor 1 for a \$50,000 investment prior to approval by LSS. In addition, Potter should have ceased participating in the Offering after having been requested by LSS to do so

on April 18. Yet, Potter secured Investor 2 for a \$100,000 investment after that time. In total, Potter raised \$1,025,000 for the Offering. Of the total amount raised, Potter's solicitations of Investors 1 and 2 for a total of \$150,000 violated Rule 3040. Such conduct also violated FINRA Rule 2010.

2) FINRA Rule 5122: Private Placements of Securities Issued by Members

FINRA Rule 5122 requires with respect to "member private offerings", that firms file the Offering Document with FINRA's Corporate Finance Department at or prior to the first time the document is provided to any prospective investor. The PWP offering constituted a "member private offering" because it was private placement issued by a "control entity" of a member, *i.e.*, an entity that is controlled by a member *or its associated persons*. Potter controlled PWP and was an associated person of LSS, therefore FINRA Rule 5122 applied. No one, including Potter, filed the PWP Offering PPM with FINRA Corporate Finance. Therefore, Potter violated FINRA Rule 5122.

3) FINRA Rule 2010: Negligent Misrepresentations to Investors

In asking certain investors to allow early release of funds in the Attorney Trust Account, Potter's attorney stated, on behalf of Potter, that PWP had obtained subscription agreements to meet the \$1,500,000 minimum offering amount, but that the funds had not all cleared. In fact, only \$1.25 million in signed subscription agreements had been received. Although Potter believed that the \$1.5 million contingency had been met based on oral commitments by investors, he negligently misrepresented in the letter to the investors that PWP had obtained a sufficient number of signed subscription agreements to meet the minimum contingency. In addition, the PPM stated that the PWP financials attached to the PPM were "certified", but were in fact were "compiled". Therefore, Potter – who was the principal shareholder and manager of PWP – misrepresented the nature of the financial statements attached to the PPM. As a result of both of the above negligent misrepresentations, Potter violated FINRA Rule 2010.

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

A five (5) month suspension from associating with any FINRA registered firm in any capacity, and a \$15,000 deferred fine.

The fine shall be due and payable either immediately upon reassociation with a member firm following the 5-month suspension noted above, 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, 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 any capacity, including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rules 8310 and 8311).

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

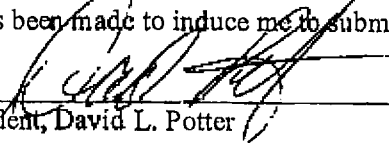
I understand that:

- 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 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: (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.

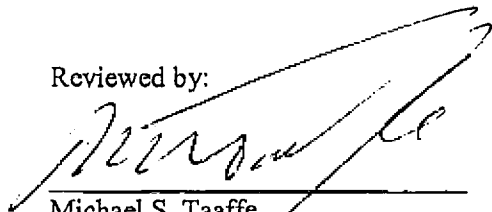
I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its provisions voluntarily; and that

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.

12/10/2014
Date (mm/dd/yyyy)


Respondent, David L. Potter

Reviewed by:



Michael S. Taaffe
Counsel for Respondent
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Accepted by FINRA:

December 17, 2014
Date

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



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