

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013035121101**

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

RE: Capital Portfolio Management, Inc. (BD No. 29302),
Respondent

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Capital Portfolio Management, Inc. ("CPMI" or the "Firm" or "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 the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. CPMI 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

CPMI has been a member of FINRA since March 3, 1992. It has one office in Timonium, Maryland, and it currently employs fifteen registered representatives. The majority of the Firm's business activity is in retail brokerage and financial advisory.

RELEVANT DISCIPLINARY HISTORY

CPMI has no prior relevant disciplinary history with the Securities and Exchange Commission, any self-regulatory organization, or any state securities regulator.

OVERVIEW

Prior to March 2013, CPMI stored its employees' electronic correspondence on each employee's computer hard drive. These emails were not kept in the format and media required under prevailing rules and regulations. The Firm also had not complied with other rules and regulations, or its own written supervisory

procedures, concerning the usage and supervisory review of electronic storage media. Further, as CPMI transitioned in March 2013 to a third-party electronic storage media provider, the Firm lost approximately 1,040 emails to and from its president.

FACTS AND VIOLATIVE CONDUCT

Pursuant to NASD Conduct Rule 3110(a) and FINRA Rule 4511, members must make and preserve records as required by all applicable laws, rules, and regulations, including the Securities Exchange Act of 1934 (the "Exchange Act"). Member firms are required to preserve their business-related emails in the format and media required under Exchange Act Rule 17a-4. Specifically, a member must:

preserve for a period of not less than three years, the first two years in an easily accessible place . . . [o]riginals of all communications received and copies of all communications sent by the member . . . (including inter-office memoranda and communications) relating to their business as such

Under Rule 17a-4, a member firm may maintain communications on electronic storage media if, among other things, the communications are stored "exclusively in a non-rewriteable, non-erasable format," and provided that the member has given FINRA advance notice of its use of electronic storage media. The member must also have in place an audit system providing for accountability regarding inputting of records to be maintained and preserved to electronic storage media. Additionally, the member firm must retain an independent third party that has access to and the ability to download information from the electronic storage media.

Prior to its March 2013 retention of a third-party electronic storage media provider, CPMI stored its employees' electronic correspondence on each employee's computer hard drive. These emails were not kept in an "easily accessible" place, nor were the emails stored exclusively in a "non-rewriteable, non-erasable" format, and no independent third party had the necessary access to these records. Moreover, due to glitches that occurred when the firm transitioned email access to a third-party provider, the Firm lost approximately 1,040 emails to and from its president. (CPMI also had not given FINRA advance notice of its use of electronic storage media, and the Firm lacked the required audit system providing for accountability.)

CPMI's written supervisory procedures required compliance with its regulatory obligations concerning the usage and supervisory review of electronic storage media, but the Firm failed to implement or adequately enforce these procedures, and its email review process was inadequate.

Based on the foregoing, CPMI violated NASD Conduct Rule 3110(a) (for the

conduct before December 5, 2011), FINRA Rule 4511 (for the conduct after December 4, 2011), Rule 17a-4 of the Securities Exchange Act of 1934, NASD Conduct Rule 3010, and FINRA Rule 2010.

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

- a censure, and
- a fine of \$15,000.

CPMI agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. CPMI has submitted an Election of Payment form showing the method by which the Firm proposes to pay the fine imposed.

CPMI specifically and voluntarily waives any right to claim that the Firm is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

CPMI specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against the Firm;
- 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, CPMI specifically and voluntarily waives 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.

CPMI 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

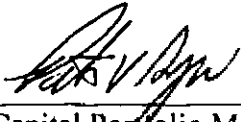
CPMI understands that:

- 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 the Firm; and
- C. If accepted:
 - 1. this AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the Firm;
 - 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. the Firm 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. CPMI 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 the Firm'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.
- D. CPMI may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. CPMI understands that the Firm 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 CPML 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.

11/21/2014
Date (mm/dd/yyyy)

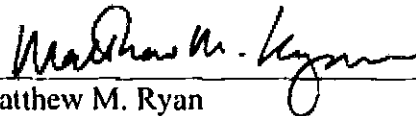

Capital Portfolio Management, Inc., Respondent

By: Patrick V. Dyer

Accepted by FINRA:

December 9, 2014
Date

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


Matthew M. Ryan
Regional Counsel
FINRA Department of Enforcement
1835 Market Street, Suite 1900
Philadelphia, PA 19103-2932
Tel.: 215.963.1994
Fax: 215.496.0434
E-Mail: matthew.ryan@finra.org