

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2013035275702**

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

**RE:** Agency Trading Group, Inc., Respondent  
Member Firm  
CRD No. 108887

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Agency Trading Group, Inc. ("Agency Trading" 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 Agency Trading alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. Agency Trading 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**

Agency Trading has been a FINRA member since March 30, 2001, which registration currently remains in effect. The firm's main office is located in Wayzata, Minnesota. Agency Trading employs twelve registered persons in two branch offices. The Firm primarily provides trading systems and trading services to institutional customers.

**RELEVANT DISCIPLINARY HISTORY**

Agency Trading has no relevant disciplinary history.

## **OVERVIEW**

From June 1, 2012 through December 31, 2012, Agency Trading failed to establish and maintain an adequate supervisory system and written supervisory procedures, with regard to the Firm's soft dollar arrangements. Through this conduct the Firm violated NASD Rule 3010 and FINRA Rule 2010.

## **FACTS AND VIOLATIVE CONDUCT**

Section 28(e) of the Securities Exchange Act of 1934 creates a safe harbor that allows money managers to pay for "brokerage and research services" provided by broker-dealers. Section 28(e) applies to money managers of RIAs and investment companies; however, broker dealers are required to ensure soft dollar payments are proper.

### **Inadequate Supervisory System - Soft Dollar Arrangements**

From June 1, 2012 through December 31, 2012, Agency Trading failed to establish and maintain an adequate supervisory system with regard to soft dollar arrangements, which resulted in the following improper soft dollar payments:

A. The soft dollars of client DC, a hedge fund, were used to pay the 2012 salary of Agency Trading Group Registered Representative MG. MG's primary duties were to provide trading and research services to DC.

DC's Private Placement Memorandum and Limited Partnership Agreement did not specifically disclose that soft dollars could be used to pay salaries, as required by Section 28(e). The Firm should have known with reasonable inquiry, which it failed to conduct, that it was not appropriate for DC's money manager to pay the salary of an Agency Trading employee with soft dollars.

B. From June 2012 through December 2012, Agency Trading made payments directly to DP, the Managing Partner for the DC hedge fund. The payments totaled \$1,018.43. While the services provided by the third party were proper, the Firm should have reviewed and discovered that its payments to DP were improper because the firm did not pay the third parties directly as required by Section 28(e).

C. Soft dollars were used to reimburse hedge fund RCM directly for research services provided by third parties. From June 2012 through December 2012, Agency Trading made payments directly to RCM totaling \$7,274.64. While the services provided by the third party were proper, the firm again should have reviewed and discovered that its payments to RCM were improper because the

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<sup>1</sup> OCIE Report at 12-13 (citing *Report of Investigation in the Matter of Investment Information, Inc. Relating to the Activities of Certain Investment Advisers, Banks, and Broker-Dealers*, Exchange Act Rel. No. 16679, 1980 SEC LEXIS 1842, at \*24-25 (Mar. 19, 1980)).

firm did not pay the third parties directly as required by Section 28(e).

By failing to establish and maintain an adequate supervisory system with regard to soft dollar arrangements as described above, the Firm violated NASD Rule 3010(a) and FINRA Rule 2010.

**Inadequate Written Supervisory Procedures**

Agency Trading's written supervisory procedures ("WSPs") regarding soft dollar payments were inadequate because they did not contain procedures to ensure that soft dollar payments complied with Section 28(e) of the Exchange Act.

Specifically, the Firm's WSPs failed to address the following areas:

1. The process for review and approval of invoice payments for the services/products received by soft dollar clients;
2. How the Firm ensures that money managers relying on the Section 28(e) safe harbor use soft dollars for products or services that are considered "brokerage" or "research" services as described in Sections 28(e)(3)(A) through (C);
3. How the Firm tracks soft dollar commissions and accounts for their accrual and disbursements of soft dollars;
4. How the Firm memorializes their soft dollar arrangements with either their customers or with any of the third party vendors offering services; and
5. The operative documents relied upon by the Firm's principals to determine that money managers are acting within their discretionary authority when utilizing soft dollars.

Based on the above, the Firm violated NASD Rule 3010(b) and FINRA Rule 2010.

**B. Agency Trading also consents to the imposition of the following sanctions:**

1. A censure; and
2. a fine of \$12,500.00.

Agency Trading agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Agency Trading has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Agency Trading 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**

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

- A. To have a Complaint issued specifying the allegations against Agency Trading;
- 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, Agency Trading 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.

Agency Trading 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**

Agency Trading 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 Agency's Trading permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Agency Trading;**
- 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the Firm's 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. Agency Trading 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. The Firm 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 Agency Trading'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. Agency Trading may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Agency Trading 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.**

Respondent Agency Trading Group, Inc.

5-16-14

Date (mm/dd/yyyy)

By:



Reviewed by:



Ronald A. Zamansky  
Counsel for Respondent Agency Trading Group, Inc.  
Zamansky Professional Corporation  
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Accepted by FINRA:

06-09-14

Date

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



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