

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013037231101**

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

RE: FOLIO^{fn} Investments, Inc., Respondent
Member Firm
CRD No. 48015

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, FOLIO^{fn} Investments, Inc. ("Folio" 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 Folio alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Folio 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

Folio is a self-clearing broker-dealer with approximately 36 registered representatives, and offices in McLean, Virginia; Palmetto, Florida; and Paradise Valley, Arizona. Folio engages in a range of business lines, including equity sales, mutual fund sales, private placements, as well as alternative web-based securities businesses. Folio has been a FINRA member since 1999.

OVERVIEW

Between November 2012 and April 2013, Folio submitted 121 inaccurate blue sheets to the SEC and 145 inaccurate blue sheets to FINRA. Specifically, Folio's blue sheets erroneously reported as zero the quantity of shares in certain transactions. Additionally, between November 2012 and April 2013, Folio did not have in place an adequate audit system providing for accountability regarding the inputting of records required to be maintained and preserved. As a result of the foregoing conduct, Folio violated Section 17(a) of the Exchange Act and Rules 17a-4(j), 17a-4(f)(3)(v), and 17a-25, thereunder; and FINRA Rules 8211, 8213, and 2010.

FACTS AND VIOLATIVE CONDUCT

Federal securities laws and FINRA rules require that member firms submit trade data in an automated format when requested by the SEC or FINRA. These trade data are commonly known as “blue sheets.”

The SEC, FINRA, and other regulators request blue sheets to assist them in investigations focused on equity trading, including suspicious and insider trading. Blue sheets provide regulators with critical information about suspicious transactions, including the name of the account owner, the nature of the transaction (whether it was a buy, sale, or short sale), and the price at which the transaction occurred. This information is essential to regulators’ ability to discharge their enforcement and regulatory mandates.

The failure of a member firm to provide complete and accurate blue sheet information in response to a regulatory request can impact a regulator’s ability to discharge its obligations, undermine the integrity of its investigations and examinations, and ultimately interfere with its ability to protect investors. It is therefore an essential and fundamental obligation of each member firm to provide complete, accurate, and timely blue sheet submissions.

Submission of Inaccurate Blue Sheets. Section 17(a) of the Exchange Act and Rules 17a-4(j) and 17a-25, thereunder, require broker-dealers to submit “legible, true, complete, and current” blue sheet data to the SEC upon request. FINRA Rules 8211 and 8213 require that member firms submit trade data as prescribed in FINRA Rule 8211 to FINRA upon request.

Between November 2012 and April 2013, Folio submitted 121 inaccurate blue sheets to the SEC and 145 inaccurate blue sheets to FINRA.

Folio allows for the trading of equities, ETFs, mutual funds, and other securities in fractional shares and dollar amounts. Since 2006, when reporting trade data via blue sheets for transactions involving less than one share, Folio would report “zero” for the quantity and the transaction amount.¹ When reporting trade data via blue sheets for transactions involving at least one share, Folio would report the rounded-down whole share quantity, but report the full actual transaction amount.² Thus, it was relatively common for Folio to submit blue sheets reporting transactions with zero as the quantity and the transaction amount.

In or around November 2012, Folio recoded its internal blue sheet program. After this recoding, Folio began erroneously reporting zero as the trade quantity and transaction amount for certain transactions involving at least one share. Between November 2012 and April 2013, Folio submitted 121 inaccurate blue sheets to the SEC and 145 inaccurate blue sheets to FINRA.

¹ FINRA agreed to this protocol.

² For example, when reporting a transaction for .75 shares of a stock priced at \$10, both the quantity and the transaction amount would be reported as zero in the blue sheet. When reporting a transaction for 2.75 shares of the same stock, the quantity would be reported as 2 (rounded down from 2.75) but the transaction amount would be reported as \$27.50 (the actual transaction amount).

Additionally, certain blue sheets submitted by Folio (a) inaccurately reported the Opposing Broker Number, or (b) inaccurately reported the Contra Party Identifier.¹

As a result of the foregoing, Folio violated Section 17(a) of the Exchange Act; Rules 17a-4(j) and 17a-25, thereunder; and FINRA Rules 8211, 8213, and 2010.

Inadequate Audit System. Section 17(a) of the Exchange Act and Rule 17a-4(f)(3)(v), thereunder, require broker-dealers to have “in place an audit system providing for accountability regarding inputting of records required to be maintained and preserved pursuant to Rules 17a-3 and 17a-4 to electronic storage media and inputting of any changes made to every original and duplicate record maintained and preserved thereby.”

Between November 2012 and April 2013, Folio did not have in place an adequate audit system providing for accountability regarding the inputting of records required to be maintained and preserved. As a result, Folio violated Section 17(a) of the Exchange Act and Rule 17a-4(f)(3)(v), thereunder; and FINRA Rule 2010.

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

- (1) a censure; and
- (2) a fine of \$50,000.

Folio further agrees to conduct a review of its policies, systems, and procedures (written or otherwise) relating to its compilation and submission of blue sheet data and the audit deficiencies addressed herein. Within 90 days of the issuance of a Notice of Acceptance of this AWC, an officer of Folio shall certify in writing to James E. Day, Vice President and Chief Counsel, FINRA Department of Enforcement, that (i) Folio has engaged in the comprehensive review described above, and (ii) as of the date of the certification, Folio has in place policies, systems, and procedures to address and correct the violations described in this AWC and also reasonably designed to ensure the firm provides accurate and timely blue sheet submissions as requested by regulators. The Department of Enforcement may, upon a showing of good cause and in its sole discretion, extend the time for compliance with this provision.

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

Folio 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.

¹ The Contra Party Identifier was not required on blue sheet submissions until May 1, 2014. Folio corrected the problem before that date.

II.

WAIVER OF PROCEDURAL RIGHTS

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

- (A) to have a Complaint issued specifying the allegations against it;
- (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, Folio specifically and voluntarily waives any right to claim bias or prejudgment 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.

Folio 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

Folio 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 it; and
- (C) if accepted:

- (1) this AWC will become part of Folio's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
 - (2) this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Folio'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) Folio 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. Folio 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 Folio'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) Folio may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Folio 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 Folio, 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 Folio 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 Folio to submit it.

5-29-2014
(mm/dd/yyyy)

Respondent
FOLIO Investments, Inc.

By: 
Michael J. Hogan
President & Chief Executive Officer
NOT IN AN INDIVIDUAL CAPACITY

Accepted by FINRA:

6/4/14
Date

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



James E. Day
Vice President and Chief Counsel
FINRA Department of Enforcement
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