

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2013037235103**

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

RE: Michael Joseph Russo, Respondent  
Former Registered Representative  
CRD No. 3072489

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**

Michael Joseph Russo was registered as a General Securities Representative with ten different FINRA member firms between June 29, 1998 and February 18, 2016. Between November 3, 2010 and November 23, 2013, he was registered with Global Arena Capital Corp. Russo is not currently associated with a FINRA member, but remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of the FINRA By-Laws of the Corporation.

**OVERVIEW**

While registered with Global Arena Capital Corp., Russo communicated with the public about his securities business using unapproved personal emails and text messages. He also sent emails that contained false, exaggerated, unwarranted, or misleading statements, contained inappropriate predictions of performance, and that failed to provide the investor with a sound basis for evaluating the investment or service. Additionally, on two separate occasions Russo made false statements

to FINRA during an examination.

Russo's misconduct violated NASD Rules 3110(a), 2210(d)(1)(A), 2210(d)(1)(B), and 2210(d)(1)(D), and FINRA Rules 4511 and 2010.

### **FACTS AND VIOLATIVE CONDUCT**

#### *Russo Communicated with the Public Using Personal Emails and Text Messages, in Violation of NASD Rule 3110(a) and FINRA Rules 4511 and 2010*

Between December 20, 2010 and January 22, 2013 Russo communicated with the public about his securities business using hundreds of personal emails and text messages. Russo did so even though Global Arena Capital Corp.'s written procedures required him to utilize the firm's email system when sending or receiving business related e-mails and text messages. In addition, on five separate occasions Russo signed attestations stating that he had reviewed, read, and understood the firm's procedures. On two other occasions, Russo signed attestations stating that he had read and reviewed the firm's supervisory procedures regarding client communications and fully understood that personal text messaging could not be used.

NASD Rule 3110(a) and its replacement, FINRA Rule 4511,<sup>1</sup> require member firms to make and preserve books and records in conformity with FINRA Rules, the Exchange Act, and with applicable Exchange Act rules. Securities Exchange Act Rule 17a4-(b)(4) further requires member firms to maintain originals of all communications sent and received by the member. By using his personal email account and text messages to conduct firm business, Russo caused his member firm to fail to maintain records of his communications. Accordingly, Russo violated NASD Rule 3110(a) between December 20, 2010 and December 4, 2011, and FINRA Rule 4511 between December 5, 2011 and January 22, 2013.

In addition, FINRA Rule 2010 requires member firms and their associated persons to "observe high standards of commercial honor and just and equitable principles of trade" in the conduct of their business. Using a personal email account or text messaging to conduct firm business violates FINRA Rule 2010 because it circumvents the firm's written supervisory procedures and causes the firm to violate its record-keeping obligations. Accordingly, Russo violated FINRA Rule 2010.

#### *Russo Made False Statements to FINRA during an Examination, in Violation of FINRA Rule 2010*

During a 2012 FINRA examination of Global Arena Capital Corp., Russo falsely denied using personal emails and text messages to communicate about his securities business. FINRA had asked the firm to have its registered

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<sup>1</sup> Effective December 5, 2011, FINRA Rule 4511 replaced NASD Rule 3110(a).

representatives complete Personal Activity Questionnaires. When he filled out the Questionnaire, Russo falsely denied that he utilized text messaging to communicate with the public about his securities business. In addition, when a FINRA examiner questioned Russo orally about his use of personal emails, Russo falsely claimed that he did not maintain any personal email accounts. Later that day, the FINRA examiner provided Russo with a written request issued pursuant to FINRA Rule 8210. In his written response to the Rule 8210 request and in his subsequent on-the-record testimony, Russo admitted that he had used personal emails and text messages to communicate with the public about his securities business.

As indicated above, FINRA Rule 2010 requires member firms and their associated persons to “observe high standards of commercial honor and just and equitable principles of trade” in the conduct of their business. Providing false information to FINRA staff orally or in writing in response to a FINRA inquiry violates FINRA Rule 2010. By falsely claiming to FINRA Staff that he did not maintain a personal email address or use text messaging to communicate with the public, Russo violated FINRA Rule 2010.

*Russo Violated the Content Standards of NASD Rules 2210(d)(1)(A), 2210(d)(1)(B), and 2210(d)(1)(D) <sup>2</sup> in Emailed Communications with the Public*

Between October 19, 2011 and July 11, 2012, Russo authored and sent at least fifteen emails that contained exaggerated and unwarranted statements, in violation of NASD Rule 2210(d)(1)(B). In addition, he sent at least two emails that contained inappropriate predictions of performance, in violation of NASD Rule 2210(d)(1)(D), and at least three emails that failed to provide the investor with a sound basis for evaluating the investment or service, in violation of NASD Rule 2210(d)(1)(A). The emails that violated the content standards were sent from his Global Arena Capital Corp. email address. Russo sent the emails to customers with whom he had spoken on the phone.

Russo’s emails contained exaggerated and unwarranted claims that if the client spoke with him or agreed to transfer their account, they could make a specified extraordinary return. For example, he claimed that he could at a “minimum” double a client’s money if they invested in a particular security, that he could make a client close to \$1 million in profit if they purchased shares of particular security along with a protective put, and that he could have a client up 50% by the end of the year if they agreed to transfer their account. Russo also made unwarranted claims that he possessed superior information and provided better services than other brokers.

Russo also claimed that his customers’ funds were “safe” because Global Arena Capital Corp.’s clearing firm had an insurance policy that covered losses in excess of SIPC limits. Russo did not explain the protection limits of the insurance or that

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<sup>2</sup> Effective February 4, 2013, after the conduct described herein, NASD Rule 2210 became FINRA Rule 2210.

it did not cover investment losses. He also inaccurately claimed that Global Arena Capital Corp. had not been the subject of any customer complaints.

In addition, when recommending that a client purchase a bond issued by a large European financial institution whose credit rating had recently been downgraded, Russo made several exaggerated and unwarranted statements, including that the proposed investment could "safely buy" the client "\$300,000 worth" of the bond, even though the value of the bond was significantly lower. He also improperly projected the investment performance of the bond, indicating that the client could expect a 150% return in the next four and a half years. He also failed to provide sufficient information for the investor to have a sound basis for evaluating the investment. For example, Russo did not provide the name of the entity issuing the bond, bond type, duration, yield to maturity, yield to call, or the risks associated with the bond.

NASD Rule 2210 imposes content, filing, approval, and record-keeping requirements on member communications with the public, including emailed correspondence. NASD Rule 2210(d)(1)(A) requires that all member communications with the public be "based on principles of fair dealing and good faith," be "fair and balanced," and "provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service." That rule also provides that "no member may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading." In addition, NASD Rule 2210(d)(1)(B) prohibits making any "false, exaggerated, unwarranted or misleading statement or claim," or statements that the "member knows or has reason to know contains any untrue statement of material fact or is otherwise false or misleading." NASD Rule 2210(d)(1)(D) specifically prohibits any prediction or projection of performance, or implication that past performance will recur, or making any exaggerated or unwarranted claim, opinion, or forecast.

As described above, Russo authored and sent emails to members of the public that violated several of the content standards contained in NASD Rule 2210. Specifically, Russo violated NASD Rule 2210(d)(1)(A), NASD Rule 2210(d)(1)(B), and NASD Rule 2210(d)(1)(D). As a result of these Rule violations, Russo also violated FINRA Rule 2010.

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

- A one-year suspension from association with any FINRA member in any capacity; and,
- A fine of \$35,000.

The fine shall be due and payable either immediately upon reassociation with a member firm following the one-year 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.

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

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).

## **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.

4/5/16

Date (mm/dd/yyyy)

  
Respondent Michael Joseph Russo

Accepted by FINRA:

4/29/16

Date

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



Thomas S. Kimbrell  
Senior Counsel  
FINRA Department of Enforcement  
15200 Omega Drive  
Rockville, MD 20850-3241  
Ph: 301-258-8550  
Fax: 202-721-6515