

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013037610301**

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

RE: Crowell, Weedon & Co., now known as Crowell Weedon, a Division of D.A. Davidson
& Co., Respondent
Former Member
CRD No. 193

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Crowell, Weedon, a Division of D.A. Davidson, on behalf of Crowell Weedon & Co. (collectively referred to as "Crowell," "Respondent," 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 the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A.** Respondent 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

Crowell Weedon & Co. became a member of FINRA in 1936. On or about August 5, 2013, after the misconduct described herein, Crowell Weedon & Co. was purchased by Davidson Companies, the parent entity of FINRA member D.A. Davidson & Co., and merged with and into West Merger Sub, Inc., a wholly owned subsidiary of Davidson Companies. Following approval of the new West Merger Sub, Inc. entity as a FINRA member, it was merged into D.A. Davidson & Co. and currently operates as Crowell Weedon, a Division of D.A. Davidson. D.A. Davidson & Co. is the successor in interest to Crowell Weedon & Co., as defined in Section 15(b)(2) of the Securities and Exchange Act of 1934.

RELEVANT DISCIPLINARY HISTORY

The Firm has no relevant disciplinary history.

OVERVIEW

The Firm opened a Proprietary Mortgage Backed Securities Trading Desk (the "MBS Desk") in or about April 2011 and closed that desk in July 2012. Between November 2011 and May 2012 (the "Relevant Period"), Respondent, in the course of conducting its net capital computations, failed to take appropriate haircuts on certain proprietary mortgage backed securities ("MBS") held in its inventory, in violation of Section 15c of the Securities and Exchange Act of 1934 ("Exchange Act") and Rule 15c3-1(c)(2)(vii) thereunder and FINRA Rule 2010. This failure also resulted in the Firm overstating its net capital for the seven consecutive months that comprise the Relevant Period in amounts ranging from \$6.6 million to \$7.7 million. Consequently, the Firm's required net capital computations and monthly FOCUS reports filed with FINRA – both books and records of the Firm – were also inaccurate for at least seven consecutive months in violation of Section 17a of the Exchange Act and Rules 17a-3(a)(11) and 17a-5 thereunder, NASD Rule 3110 and FINRA Rules 4511 and 2010.

During the Relevant Period, the Firm likewise failed to establish, maintain and enforce an adequate supervisory system reasonably designed to ensure that proper haircuts were applied to the Firm's proprietary MBS positions and thereby failed to ensure the accuracy of its net capital computations and FOCUS filings. Additionally, during the 15-month existence of the MBS Trading Desk, the Firm failed to establish an adequate supervisory system designed to ensure that any requests to deviate from the established position and loss limits were documented and approved. Based on the foregoing, the Firm violated NASD Rule 3010(a) and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Inaccurate Net Capital Computations

Exchange Act Rule 15c3-1 requires a broker-dealer to maintain a minimum amount of net capital and to compute its net capital in accordance with specified formulas. Exchange Act Rule 15c3-1(c)(2)(vii) requires a broker-dealer to deduct from its net worth 100% of the carrying value of securities it holds in its proprietary account for which there is no ready market or which cannot be publicly offered or sold without registration. This deduction is commonly referred to as a "haircut." The Firm's proprietary MBS holdings fall within this rule.

On July 13, 2001, the Securities and Exchange Commission ("SEC") issued a No Action Letter concerning allowable haircuts applied to Asset-Backed Securities including investment grade mortgage backed securities, in essence setting forth exceptions to the requirements of Exchange Act Rule 15c3-1(c)(2)(vii). Specifically, the No Action Letter sets forth the circumstances under which a haircut percentage less than 100% may be

applied to investment grade mortgage backed securities based on consideration of certain identified factors including, (i) the rating received by the security from a nationally recognized statistical rating organizations ("NRSRO"); (ii) the maturity date; and (iii) the issuance size. Depending on the presence or absence of these factors, permissible haircut percentages range from 2% to 100%. Based on the foregoing, the applicable haircut percentage, applicable to non-investment grade/speculative private-label MBS positions is 100% for purposes of net capital computations. In addition, the foregoing requires that each mortgage backed security position be assessed individually, based on the factors set forth in the No-Action Letter.

FINRA Rule 2010 requires members to "observe high standards of commercial honor and just and equitable principles of trade." A violation of Exchange Act Rule 15c3-1 also constitutes a violation of FINRA Rule 2010.

Inaccurate Haircut Deductions Resulting in Inaccurate Net Capital Computations

The Firm maintained the MBS Desk for approximately 15 months -- from April 2011 through July 2012. During its existence, the MBS Desk engaged in proprietary trading involving primarily non-investment grade/speculative private-label MBS.

During the Relevant Period, the market value of the Firm's MBS positions averaged approximately \$7 million each month. A majority of those MBS positions were non-investment grade and therefore subject to the 100% haircut deduction for the purposes of calculating the Firm's net capital. However, the Firm consistently failed to apply the appropriate haircut deduction. Specifically, between April 2011, when its MBS Desk was established, and October 2011, the Firm incorrectly applied a flat 9% haircut deduction to all its MBS positions, regardless of whether those securities were investment grade or non-investment grade and without consideration of the factors set forth in the SEC No Action Letter.¹ Similarly, between November 2011 and May 2012, the Firm incorrectly applied a flat 15% haircut to nearly all its MBS positions² -- once again without regard to whether the mortgage backed securities were investment grade or non-investment grade and without analysis of the relevant factors described in the SEC No Action Letter.

The Firm's application of incorrect haircuts during the Relevant Period resulted in an overstatement of its monthly net capital for seven consecutive months. The dollar amounts of the overstatement ranged from approximately \$6.6 million to \$7.7 million. While the Firm's actions did not result in any net capital deficiencies during the Relevant Period, the Firm made and maintained inaccurate net capital computations and consequently filed inaccurate FOCUS reports during the Relevant Period.

¹ Member Regulation staff first advised the Firm it was applying incorrect haircuts in or about October 2011 and the Firm was issued a Cautionary Action Letter that addressed its failure to apply correct haircuts for at least a portion of the period between April and October 2011.

² There are six exceptions: from November 2011 through April of 2012, the Firm applied a 100% haircut to one MBS position.

By failing to consider each MBS position individually and to conduct an appropriate analysis as to each in the course of conducting its net capital calculations, the Firm violated Section 15c of the Exchange Act and Rule 15c3-1(c)(2)(vii) thereunder and FINRA Rule 2010.

Inaccurate Books and Records and FOCUS Reports

FINRA Rule 4511(a) and its predecessor, NASD Rule 3110, each require members to make and preserve books and records as required under the FINRA Rules, the Exchange Act and the applicable Exchange Act rules." Under Section 17a of the Exchange Act and Rule 17a-3(a)(11) thereunder, broker-dealers are required to make and keep current accurate books and records, including, but not limited to, a record of the computation of aggregate indebtedness and net capital pursuant to Rule 15c3-1.

Section 17a of the Exchange Act and Rule 17a-5 thereunder require FINRA-registered broker-dealers to file monthly or quarterly FOCUS reports, which must be accurate.

Given the Firm's net capital computations during the seven-month Relevant Period reflected the application of incorrect haircuts to its proprietary MBS positions, the Firm's books and records were inaccurate. These inaccurate calculations were used by the Firm in preparing its monthly FOCUS reports. Consequently, the Firm filed seven inaccurate FOCUS reports with FINRA and the SEC during the Relevant Period.

Based on the foregoing, the Firm violated Section 17a of the Exchange Act and rules 17a-3(a)(11) and 17a-5 thereunder, NASD Rule 3110 (from November 1, 2011 through December 4, 2011) and FINRA Rules 4511 (from December 5, 2011 through May 31, 2012) and 2010.

Supervision

NASD Rule 3010(a) requires FINRA members to establish and maintain a supervisory system, including written procedures, to supervise each type of business in which they engage. The system and procedures must be adequately designed to achieve compliance with applicable securities laws and regulations and with applicable NASD Rules.

During the Relevant Period, the Firm failed to have in place a supervisory system to monitor, detect and apply accurate haircuts to its proprietary mortgage backed security positions in the course of preparing net capital computations. Additionally, during the 15-month existence of the MBS Desk, the Firm failed to establish systems and procedures to ensure that requests for deviations from established position and loss limits, as well as resulting supervisory approvals of those requests were documented.

The Firm had written procedures in place establishing position and loss limits on its MBS Desk and stating that senior management could make changes to these limits at its sole discretion. On various occasions during the time in which the MBS Desk was active,

Firm supervisors were unable to evidence prior approval of those changes to the position and loss limits.

By the foregoing, the Firm violated NASD Rule 3010(a) and FINRA Rule 2010.

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

- 1) A censure; and
- 2) A fine in the amount of \$80,000.

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

Respondent 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

Respondent 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, Respondent 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.

Respondent 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

Respondent 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 Respondent'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 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. Respondent 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. Respondent 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 its: (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. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct.

Respondent 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 Respondent 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.

Crowell, Weedon & Co., by its assignee, D.A. Davidson & Co., as assignee of certain property, rights, assets, liabilities and obligations of Crowell Weedon & Co.



March 7, 2016

Date (mm/dd/yyyy)

James R. Kruger
Vice President, Crowell, Weedon & Co. a
division of D.A. Davidson & Co.

Reviewed by:

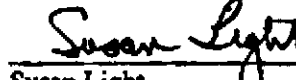

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Accepted by FINRA:

3/9/16
Date

3/24/16

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


Susan Light
Senior Vice President & Chief Counsel
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