

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013037842602**

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

RE: Daniel James Smith, Respondent
CRD No. 708743

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Daniel James Smith ("Smith" 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 him 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

Respondent entered the securities industry in 1978 through an association with a former FINRA regulated broker-dealer and was first registered as a General Securities Representative ("GSR") in May 1980. From 1981 to February 2004, Smith worked with several different FINRA regulated broker-dealers. Smith obtained a General Securities Principal ("GSP") registration in August 1993. In February 2004, Smith became associated as a GSR and a GSP with Sidoti & Company, LLC (BD No. 102860) ("Sidoti" or the "Firm"). Since February 2004, Smith has been employed as the Chief Compliance Officer at Sidoti's New York, New York branch office.

RELEVANT DISCIPLINARY HISTORY

Smith does not have any disciplinary history with any state securities agency, the Securities and Exchange Commission, FINRA or any other self-regulatory organization.

OVERVIEW

In June 2013, before the publication of a pre-deal research report, Smith improperly caused a complete draft research report containing the research rating, price target and research summary to be sent to the lead underwriter/co-manager on the deal. He did not indicate any restriction on use or dissemination of the report. At the time, he knew that the subject company had requested from Sidoti a copy of the draft report before its publication. The lead underwriter/co-manager subsequently submitted the complete draft research report to the subject company prior to the publication of the research report. **Sharing complete draft research reports with subject companies is prohibited under NASD Rule 2711.** Smith's conduct in facilitating the submission of the draft report to the subject company violated FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

NASD Rule 2711(c)(1) prohibits members from submitting a research report to the subject company before its publication. NASD Rule 2711(c)(2)(A), however, permits members to submit certain sections of a research report to the subject company prior to publication to verify the factual accuracy of those sections, provided that those sections do not contain the research summary, the research rating or the price target. FINRA Rule 2010 requires registered representatives to observe high standards of commercial honor and just and equitable principles of trade.

The primary business of the Firm is the preparation and distribution of equity research reports. At times, the Firm also participates as an underwriter, placement agent or initial purchaser in securities offerings for issuers for whom it provides research coverage. As Smith had more than three decades of experience in the securities industry, he provided guidance relating to investment banking and research functions at the Firm. In June 2013, Sidoti was a co-manager and a co-underwriter of an initial public offering ("IPO") for an emerging growth company that opened for trading on June 20, 2013. In connection with this offering, Sidoti prepared and issued two pre-deal research reports on March 14, 2013 and June 7, 2013, regarding the upcoming IPO.

On June 3, 2013, before the publication of one of the pre-deal research reports, an officer of the subject company requested a copy of the draft report from an analyst at Sidoti, who authored the report. The analyst declined to provide it. The analyst explained in an email to the officer of the subject company that "Dan Smith is not comfortable with me giving you a copy of the note prior to publication." However, within few hours, the officer of the subject company emailed Smith and stated "it would be helpful to have a look at [the] report before publishing to ensure our #'s are reasonably close to one another." In the evening of June 3, 2012, Smith engaged in at least two telephone conversations with the officer of the subject company and discussed the request with the lead

underwriter/co-manager. Smith then asked Sidoti's Director of Research to send the draft report to the lead underwriter/co-manager. Smith also sent an email to the officer of the subject company and the lead underwriter/co-manager stating that the Director of Research would send the report to the lead underwriter/co-manager on the morning of June 4, 2013.

On June 4, 2013, Sidoti's Director of Research sent to the lead underwriter/co-manager a complete draft research report containing the research rating, price target and research summary without indicating any restriction on use or dissemination of the report. The lead underwriter/co-manager then shared the draft research report with the officer of the subject company prior to the report's publication. Thereafter, the lead/underwriter/co-manager told Sidoti that that the officer of the subject company felt the projections in the draft report were conservative and wanted to have a telephone call before the publication of the report. The report was not changed after it was sent to the subject company.

By causing the draft report to be sent pre-publication to the lead underwriter/co-manager without any restrictions, Smith facilitated the provision of the draft research report to the subject company pre-publication. By reason of the foregoing, Smith violated FINRA Rule 2010.

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

- A suspension from association with any FINRA member in any capacity for a period of 10 business days; and
- A \$7,500 fine.

Respondent agrees to pay the monetary sanction imposed 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 he proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that he is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

Respondent understands that if he is barred or suspended from associating with any FINRA member, Respondent becomes 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, Respondent 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).

The sanction 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:

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- A. To have a Complaint issued specifying the allegations against him;
 - 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 him; 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 him;
 - 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 his (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 he 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.

Respondent Daniel James Smith certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that he 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 him to submit it.

12/3/2015
Date


Daniel James Smith
Respondent

January 5, 2016
Date

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


Susan Light
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Date

Daniel James Smith
Respondent

Reviewed By:



Jeffrey E. McFadden, Esq.
Counsel for Respondent
Stradley Ronon Stevens & Young, LLP
1250 Connecticut Avenue, N.W., Suite 500
Washington, DC 20036
Phone: 202-507-5150

12/3/15
Date

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

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