

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT**

NO. 20130380026 02

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

RE: Charles Mitchell McInnis, Respondent
General Securities Principal ("GP")
CRD No. 1321666

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Respondent Charles Mitchell McInnis, 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

Charles Mitchell McInnis ("McInnis") first became registered with FINRA as a General Securities Representative ("GS") and GP in 1987 through an association with a FINRA member firm. Following his association with the foregoing firm, McInnis was associated at two other FINRA member firms. In March 2001, McInnis became registered in a number of capacities, including as a GP and a GS, through an association with FINRA member firm CP Capital Securities, Inc. (BD No. 15029) (the "Firm" or "CP Capital").

McInnis was associated with CP Capital until he voluntarily resigned on September 11, 2007. On July 31, 2009, he became re-associated with the Firm and was registered with FINRA as a GS and GP. As of July 2009, McInnis also held registrations for Investment Banking, Municipal Securities Principal, Municipal Securities Representative, Registered Options Principal, and Operations Professional. In July 2009, McInnis was named as the Firm's President, Chief Executive Officer and Chief Compliance Officer. He served in these capacities until he resigned from CP Capital in August 2013.

McInnis is currently associated with another FINRA member firm and therefore remains subject to FINRA jurisdiction.

RELEVANT DISCIPLINARY HISTORY

In May of 2001, the Florida Division of Securities and Investor Protection found that McInnis failed to adequately supervise a broker in violation of Florida Department Rules and Administrative Code and NASD Conduct Rule 3010(b). The broker had engaged in excessive and unsuitable trading in a customer's account.

McInnis consented to sanctions of a fine of \$4,500 and a suspension for a period of one year in a principal, supervisory and managerial capacity.

OVERVIEW

From October 2011 through December 2011 (the "Relevant Period"), the Firm acted as a co-placement agent in connection with a minimum contingency private placement offering (the "Offering") of senior secured notes (the "Notes") issued by a Columbian energy company (the "Issuer"). The Firm's written supervisory policies and procedures ("WSPs") designated McInnis as the supervisory principal responsible for monitoring the Firm and its associated persons' participation in the offer and sale of unregistered offerings and minimum contingency offerings. In his capacity as a supervisory principal, McInnis failed to understand the specific requirements of the two exemptions from registration applicable for the Offering, and also failed to ensure that Firm customer purchases of the Notes complied with the requirements of either of the exemptions. Additionally, McInnis failed to monitor investments in the Offering to determine if the \$5,000,000 minimum contingency was met prior to proceeds being transmitted to the Issuer. By reason of the foregoing, McInnis violated NASD Rule 3010(a) and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

NASD Rule 3010(a) requires that "[e]ach member shall establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules." FINRA Rule 2010 requires that FINRA-regulated firms observe high standards of commercial honor and just and equitable principles of trade. A violation of NASD Rule 3010(a) also is a violation of FINRA Rule 2010.

During the Relevant Period, the Firm's WSPs delegated to McInnis the responsibility to supervise the Firm and its associated persons' participation in the

offer and sale of private placements and minimum contingency offerings to ensure compliance with the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934.

As set forth in the offering memorandum, the Notes were unregistered securities exempt from the registration requirements of Section 5 of the Securities Act pursuant to the Rule 144A safe harbor and the Regulation S exemption. For sales made under Rule 144A, the Offering was to be offered and sold to qualified institutional buyers ("QIBs"). Generally, QIBs are institutions that own or invest at least \$100 million in securities unaffiliated to the institution itself. Pursuant to Regulation S, the Notes were to be offered offshore and to investors who were outside the United States at the time of investment. The Offering was contemplated to be sold to domestic customers who were QIBs under Rule 144A and to foreign customers under Regulation S. McInnis should have been familiar with the terms of these two exemptions because he also was the designated supervisor responsible for: (i) the Firm's due diligence on the Offering, (ii) any agreements entered into by the Firm in connection with the Offering, and (iii) the Firm's review and distribution of the offering memorandum.

Further, during the Relevant Period, the Firm maintained general WSPs regarding the sale of unregistered offerings pursuant to various exemptions. Generally, with respect to all private placements, the WSPs required, among other things, that potential investors complete a purchaser questionnaire "which confirms that the investor meets certain minimum requirements to participate in the private offering." The WSPs delegated McInnis with the responsibility to review the completed questionnaires and approve customer investments in the Offering by signing the required documentation.

While supervising the offering, McInnis approved the use of a questionnaire for the Offering that was designed to determine if a customer was an accredited investor as defined by Rule 501 of Regulation D instead of to determine if the customer's investment would qualify for the Rule 144A safe harbor or the Regulation S exemption. In particular, the questionnaires failed to: (a) identify upon which exemption the customer's transaction was relying; (b) did not include sufficient questions to determine if the investor qualified as being a QIB; and (c) include sufficient information to determine whether an investor's transaction would be deemed to have occurred outside the United States. When approving the use of the questionnaire in the offering, McInnis failed to recognize that the questionnaire was not designed to determine if the customer's investments in the Offering would qualify for either the Rule 144A safe harbor or the Regulation S exemption. Further, McInnis had a lack of understanding of the basic requirements of the Rule 144A safe harbor and Regulation S exemption.

Indeed, based on the information provided in the questionnaires by four customers with U.S. addresses that invested in the Offering, none of them was a qualified institutional buyer under Rule 144A. As such, the Rule 144A safe harbor would

be inapplicable to their investments in the Notes. The Regulation S exemption would generally not apply to a U.S. customer's investments in a Regulation S offering unless the customer placed his buy orders while he was abroad. In connection with the four Firm customers with mailing addresses in the United States, McInnis reviewed their questionnaires and approved all four customers as eligible to invest in the Offering without determining if the customers were located outside of the United States at the time they placed their buy orders to purchase the Notes. McInnis did not make any effort to follow up with the registered representative who obtained the information or the investors themselves to collect the required information to adequately assess eligibility. As the supervisor for Firm's role in the Offering, McInnis should have taken appropriate steps to ensure that Firm customers' investments in the Offering were qualified for either the Regulation S exemption or the Rule 144A safe harbor. McInnis' failures exposed the Offering to the possibility that the Regulation S exemption and Rule 144A safe harbor would be inapplicable to the offering. While the Firm, in hindsight, was able to establish through other evidence that it did not make any sales pursuant to the Rule 144A safe harbor and the sales it did make were exempt under Regulation S, that happenstance was not due to efforts by McInnis.

Additionally, the Offering had a minimum contingency amount of \$5 million, which meant that the Issuer must raise at least that amount or the Offering would not close. In connection with minimum contingency offerings, the WSPs designated McInnis with the responsibility to monitor customer investments in the Offering to ensure that the minimum contingency for the Offering was met. McInnis failed to ensure that the Firm was tracking interest in the Offering to determine if and when the minimum had been met. Additionally, the Firm did not collect and maintain sufficient documentary evidence to support whether or not the \$5 million minimum contingency had been met on the closing date for the Offering. In hindsight, the minimum contingency for the offering was met by the closing date, but that happenstance was not due to the efforts of McInnis.

Based on the foregoing, McInnis violated NASD Rule 3010(a) and FINRA Rule 2010.

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

- An 18 month suspension from associating with a FINRA member-firm in any principal capacity

I understand that if I am barred or suspended from associating with any FINRA member in a principal capacity, 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 a principal capacity, during the period of the bar or suspension (see FINRA Rules 8310 and 8311). Furthermore,

because I am subject to a statutory disqualification during the suspension, if I remain associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

Respondent has submitted a sworn financial statement and demonstrated an inability to pay. In light of the financial status of Respondent, no monetary sanctions have been imposed.

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

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, Charles Mitchell McInnis, 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.

03.28.2016

Date (mm/dd/yyyy)



Respondent, Charles Mitchell McInnis

Accepted by FINRA:

4/29/16

Date

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



Susan Light
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