

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2014038906401**

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

RE: Boenning & Scattergood, Inc., Respondent
CRD No. 100

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Boenning & Scattergood, Inc. ("Boenning" 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 Boenning alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Boenning 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

Boenning has been a registered broker-dealer with FINRA or its predecessor since 1939. It is a full-service introducing firm and conducts a general securities business. The Firm is headquartered in West Conshohocken, Pennsylvania and employs approximately 140 registered representatives.

RELEVANT DISCIPLINARY HISTORY

Boenning has no relevant formal disciplinary history with the Securities and Exchange Commission, any self-regulatory organization or any state securities regulator.

OVERVIEW

From April 25, 2011 through March 13, 2014 (the “Relevant Period”), Boenning failed to reasonably supervise a representative’s private securities transactions and use of consolidated reports. In addition, the Firm failed to retain required documentation, including consolidated reports sent to customers and certain business-related instant messages. Finally, the Firm failed to conduct adequate branch inspections and failed to accurately update representatives’ Uniform Applications for Securities Industry Registration or Transfer (“Forms U4”) to disclose representatives’ outside business activities.

As a result, Boenning violated Article V, Section 2 of FINRA’s By-Laws, Section 17 of the Securities Exchange Act of 1934 and SEC Rule 17a-4 thereunder, NASD Rules 3010, 3110 (for conduct prior to December 5, 2011) and 3040 and FINRA Rules 1122, 4511 (for conduct on or after December 5, 2011) and 2010.

FACTS AND VIOLATIVE CONDUCT

1. Boenning Failed to Reasonably Supervise Private Securities Transactions

Under NASD Rule 3040, before participating in a private securities transaction, an associated person must provide written notice to his member firm. Rule 3040 defines a “private securities transaction” as “any securities transaction outside the regular course or scope of an associated person’s employment with a member.” Rule 3040(c)(2) requires a member that has approved an associated person’s participation in a private securities transaction, where the person has received or may receive selling compensation, to record such transaction on its books and records and to supervise the person’s participation in the transaction as if the transaction was executed on behalf of the member.

NASD Notice to Members (“NTM”) 94-44 and NASD NTM 96-33 clarified that member firms must supervise the securities activity of registered representatives who engage in investment advisory activities away from the firm where those registered representatives participate in the execution of securities transactions on behalf of their investment advisor clients.

During the Relevant Period, one of Boenning’s registered representatives operated a registered investment advisor (“RIA”) that held customer accounts at broker-dealers other than the Firm. The RIA was disclosed to Boenning and approved as an outside business activity (“OBA”). Although the representative participated in securities transactions for compensation through the RIA, including transactions executed on behalf of Firm customers, Boenning did not record these securities transactions on the Firm’s books and records or otherwise supervise these activities, as required.

Moreover, throughout the Relevant Period, the Firm's written supervisory procedures failed to address the approval process for private securities transactions or provide procedures for their ongoing supervision.

As a result, Boenning violated NASD Rules 3010 and 3040, and FINRA Rule 2010.

2. *Boenning Failed to Reasonably Supervise or Retain Consolidated Reports*

A "consolidated report" is a document provided by a broker to a customer that combines account information regarding most or all of a customer's assets. In Regulatory Notice 10-19, issued on April 8, 2010, FINRA warned that any member firm that could not adequately supervise consolidated reports prepared by its registered representatives "must prohibit the dissemination of those reports and take the necessary steps to ensure that its registered representatives comply with this prohibition," due to the risk that such reports, if not adequately supervised, could mislead or confuse customers.

In 2014, the Firm discovered that a registered representative was using Microsoft Excel to create consolidated reports and had been sending approximately 120 reports per year to Firm customers. The reports listed the customers' assets, deposits and withdrawals of funds, and rates of return, among other information, but did not contain any disclosures regarding assets held outside of the Firm or the sources of the data on the reports. The representative printed the reports and sent them with a cover letter to his customers without retaining copies in his correspondence file.

During the Relevant Period, Boenning had no written supervisory procedures governing consolidated reports, no system to detect the use of consolidated reports, and no method to review such reports for accuracy. While the Firm ostensibly treated consolidated reports as correspondence, it failed to enforce those procedures as evidenced by its failure to review or retain any of the hundreds of consolidated reports sent during the Relevant Period.

By failing to reasonably supervise consolidated reports, Boenning violated NASD Rule 3010 and FINRA Rule 2010. By failing to retain consolidated reports sent to customers, Boenning violated Section 17 of the Securities Exchange Act of 1934 and SEC Rule 17a-4 thereunder, NASD Rule 3110 and FINRA Rules 4511 and 2010.¹

¹ NASD Rule 3110 was superseded by FINRA Rule 4511 effective December 5, 2011. Accordingly, NASD Rule 3110 applies to Boenning's conduct on or before December 4, 2011. FINRA Rule 4511 applies to conduct beginning on December 5, 2011.

3. *Boenning Failed to Retain Business-Related Instant Messages*

During the Relevant Period, certain Boenning representatives used instant messaging services for business-related communications, including communications with Firm customers. Due to the failure of an outside vendor's computer server, Boenning failed to retain all business-related IMs for a one-year period, from January 8, 2014 to January 30, 2015 from this vendor, amounting to 1.5% of the Firm's IMs during that time period. Approximately 57,000 instant messages sent by approximately 53 registered persons were lost and cannot be recovered.

As a result, Boenning violated Section 17 of the Securities Exchange Act of 1934 and SEC Rule 17a-4 thereunder, and FINRA Rules 4511 and 2010.

4. *Boenning Failed to Conduct Adequate Branch Inspections*

NASD Rule 3010(c)(1)(B) requires each member to inspect every non-supervising branch office at least every three years. NASD Rule 3010(c)(1)(C) requires member firms to inspect non-branch offices on a regular, periodic schedule. NASD Rule 3010(c) also requires members to retain a written record of the dates upon which each review and inspection is conducted and to reduce all inspections to a written report. The inspection reports must be kept on file by the member for a minimum of three years and include, without limitation, the testing and verification of the member's policies and procedures, including supervisory policies and procedures in the following areas: (1) safeguarding of customer funds and securities; (2) maintaining books and records; (3) supervision of customer accounts serviced by branch office managers; (4) transmittal of funds between customers and registered representatives and between customers and third parties; (5) validation of customer address changes; and (6) validation of changes in customer account information.

During the Relevant Period, the Firm's compliance personnel failed to review all of the above-listed areas required by NASD Rule 3010(c) when conducting the Firm's branch inspections. In addition, the Firm's compliance personnel did not memorialize branch inspection findings in a written report, as required. Finally, during the Relevant Period, Boenning failed to inspect the Firm's non-branch locations on any regular, periodic basis.

As a result, Boenning violated NASD Rule 3010(c) and FINRA Rule 2010.

5. *Boenning Failed to Accurately Update the Forms U4 of its Registered Representatives to Disclose Outside Business Activities*

Article V, Section 2 of the FINRA By-Laws requires that FINRA member firms keep every associated person's application for registration current by submitting electronic amendments to the application "not later than 30 days after learning of the facts or circumstances giving rise to the amendment."

FINRA Rule 1122 provides that no member firm “shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof.”

On at least 22 separate occasions during the Relevant Period, Boenning failed to accurately report the OBAs of its registered representatives on their respective Forms U4: at least once, the Firm failed to report an OBA altogether, despite the representative’s disclosure in an annual compliance filing; on at least three occasions, the Firm continued to report an OBA that the representative had ceased to have any involvement with; and at least 18 Forms U4 failed to include all required information regarding an OBA or included incorrect information.

As a result, Boenning violated FINRA By-Laws Article V, Section 2, and FINRA Rules 1122 and 2010.

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

- A censure; and
- A fine in the amount of \$100,000.

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 the Firm proposes to pay the fine imposed.

Boenning 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, Boenning 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.

Boenning 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 the Firm;
- 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 Boenning;
 - 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 Respondent'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. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Boenning 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.

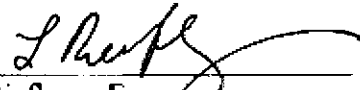
The undersigned, on behalf of Boenning, certifies that a person duly authorized to act on the Firm's behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Boenning agreed to its provisions voluntarily; and that no offer, 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.

7.14/2016
Date (mm/dd/yyyy)

Boenning & Scattergood, Inc.

By: [Signature]
Eliot Duhan, Chief Compliance Officer

Reviewed by:

A handwritten signature in black ink, appearing to read 'L Riefberg', written over a horizontal line.

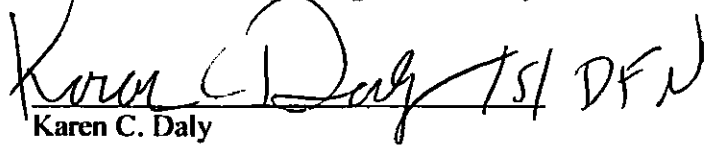
Linda Riefberg, Esq.
Counsel for Respondent
Special Counsel with Cozen O'Connor
277 Park Avenue
New York, NY 10172
Tel: (914) 610-9390

Accepted by FINRA:

August 24, 2016

Date

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

A handwritten signature in black ink, appearing to read "Karen C. Daly", followed by the initials "TS/DFN". The signature is written over a horizontal line.

Karen C. Daly
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