

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2014038908001**

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

RE: Emerging Growth Equities, Ltd.
CRD No. 47040

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, Emerging Growth Equities, Ltd. (“EGE,” “Respondent,” or “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 EGE 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 has been a FINRA member since July 1999. The Firm currently employs approximately 12 registered persons at its sole office in King of Prussia, Pennsylvania.

RELEVANT DISCIPLINARY HISTORY

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

OVERVIEW

From May 2010 to April 2014 (the “Relevant Period”), Respondent failed to establish and implement adequate Anti-Money Laundering (“AML”) policies and procedures reasonably designed to detect, investigate and, if necessary, report suspicious transactions. Among other things, the Firm failed to detect, investigate, and adequately respond to potentially suspicious transactions related to the deposit and liquidation of microcap securities. As a result, Respondent violated FINRA Rules 3310(a) and 2010.

Also during the Relevant Period, Respondent failed to establish, maintain, and enforce an adequate supervisory system reasonably designed to prevent the sale of unregistered securities in contravention of Section 5 of the Securities Act of 1933 (“Section 5”), in violation of NASD Conduct Rule 3010 and FINRA Rule 2010.

From September 2012 through April 2014, Respondent published numerous research reports without the review and approval of a qualified principal, as required by NASD Rule 1022. Also, Respondent violated NASD Rule 2711 by (1) providing research reports to subject companies before their publication; (2) publishing certain research reports without required disclosures; and (3) failing to prevent a research analyst from trading in a covered stock during a restricted period. As a result, Respondent violated NASD Rules 1022 and 2711 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

1. Respondent Failed to Establish and Implement an Adequate AML Program

FINRA Rule 3310(a) requires member firms to “develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the member’s compliance with the requirements of the Bank Secrecy Act (31 U.S.C. § 5311, *et seq.*), and the implementing regulations promulgated thereunder by the Department of the Treasury.” In 2002, the Treasury Department adopted an implementing regulation, 31 C.F.R. § 103.19 *et seq.*, which specifically requires broker-dealers to look for and report “any suspicious transaction relevant to a possible violation of law or regulation.”

NASD Notice to Members 02-21, issued in April 2002, provides guidance for AML compliance programs, including that: (a) firms must tailor their AML programs to fit their business model and customer base; (b) firms must monitor for red flags of suspicious activity that suggest money laundering; and (c) if firms detect “red flags,” they should perform additional due diligence and determine whether or not to file a Suspicious Activity Report (“SAR”).

Beginning at least as early as May 2010, Respondent accepted several customers whose account activity included liquidating microcap securities. Respondent’s AML procedures, however, were not sufficiently tailored to address the increased risks of this activity. The Firm’s AML procedures failed to specifically identify the liquidation of microcap securities as a potentially suspicious activity warranting increased scrutiny.

Although the Firm’s AML personnel reviewed certain reports, including a daily trade blotter and commission runs, the Firm did not employ adequate surveillance tools reasonably designed to capture: (a) patterns of stock deposits quickly followed by liquidations and wiring out of proceeds; (b) suspicious promotional activity related to the underlying company occurring at or around the time of

customer stock deposits and liquidations; or (c) increased trading volume and/or substantial fluctuation in the price of securities being deposited and promptly liquidated.

In addition, Respondent did not take adequate steps to learn whether certain customers had criminal histories and/or negative regulatory backgrounds, and, as a result failed to adequately take into account the potentially higher risks posed by those customers when monitoring account activity. Also, Respondent failed to adequately evidence any of the reviews that were performed to investigate red flags indicative of potentially suspicious trading activity in customer accounts. Finally, during the Relevant Period, Respondent failed to detect, adequately investigate, and/or respond to red flags indicative of potentially suspicious activity in connection with certain customer account activities.

For example:

- In February 2011, customer EF, who previously had been convicted of insider trading, transferred 25,467 shares of a penny stock into an account at Respondent that he had opened the day before. EF sold all 25,467 shares the same day and, shortly thereafter, wired the proceeds out of the account.
- In April 2013, Respondent opened accounts for CB, a foreign financial institution ("FFI") located in the Cayman Islands, and ASL, a FFI located in Cyprus. Over the next month, CB liquidated nearly 80 million shares of 59 different penny stocks for more than \$10 million in total proceeds. During the same period, ASL sold more than 8 million shares of nine different penny stocks for more than \$4 million. On at least one occasion, CB and ASL used their respective accounts at Respondent to liquidate millions of shares of the same penny stock on the same day.

As a result of the foregoing conduct, Respondent violated FINRA Rules 3310(a) and 2010.

2. EGE Failed to Establish, Maintain and Enforce a Supervisory System Reasonably Designed to Ensure Compliance with Section 5

NASD Rule 3010(a) requires member firms to "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 [and FINRA] rules." Rule 3010(b) requires that firms document the system in the firm's written supervisory procedures.

Respondent was required to establish, maintain and enforce a supervisory system reasonably designed to ensure compliance with Section 5, which prohibits the offer or sale of securities, through interstate commerce or the mails, unless a

registration statement is in effect as to the securities or the offer or sale is exempt from registration.

An adequate supervisory system reasonably designed to prevent the sale of unregistered securities in contravention of Section 5 includes conducting adequate due diligence before executing sales of microcap securities. Here, Respondent relied upon information obtained from the transfer agent or interested parties (*i.e.*, the customer, issuer, and/or persons associated with the issuer) rather than conducting adequate independent reviews to determine whether proposed resale transactions amounted to unregistered distributions.

As a result of the foregoing inadequate supervision, Respondent violated NASD Conduct Rule 3010 and FINRA Rule 2010.

3. Research-Related Violations

NASD Rule 1022(a)(5)

NASD Rule 1022(a)(5) states that: "A person registered solely as a General Securities Principal shall not be qualified to supervise the conduct of a 'research analyst' as defined in Rule 1050 . . . unless such principal has passed a Qualification Examination as specified by the Board of Governors." From September 2012 through April 2014, nearly a quarter of the Firm's research reports (24 out of 107) were published without first being reviewed and approved by a properly qualified principal in violation of NASD Membership and Registration Rule 1022(a)(5).

NASD Rule 2711

NASD Rule 2711(c)(1) states that "a member may not submit a research report to the subject company before its publication," subject to two exceptions, neither of which is applicable here. From September 2012 through April 2014, Respondent violated Rule 2711(c)(1) on 14 occasions by providing research reports to subject companies shortly before their publication.

NASD Rule 2711(g)(2) prohibits a research analyst from purchasing and selling any security issued by a company "that the research analyst follows . . . for a period beginning 30 calendar days before and ending five calendar days after the publication of a research report concerning the company . . ." From September 2012 through April 2014, a research analyst who issued research reports concerning a company twice executed transactions involving the company within the 30 calendar day period before publication of the research reports. Respondent failed to prevent this.

NASD Rule 2711(h) requires that member firms include applicable disclosures on the research reports that they issue, including, *inter alia*, if a firm received compensation for investment banking services from the subject company in the

prior year and certain information relating to ratings distributions and price targets. From September 2012 through April 2014, Respondent issued 24 research reports that failed to include one or more of these required disclosures.

As a result of the foregoing conduct, Respondent violated NASD Rules 1022 and 2711, and FINRA Rule 2010.

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

- Censure; and
- Fine of \$55,000.¹

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.

¹ Pursuant to the General Principles Applicable to all Sanction Determinations contained in the Sanction Guidelines, FINRA imposed a lower fine in this case after it considered, among other things, the firm's revenues and financial resources. See NtM 06-55.

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 Respondent;
- 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; and

- D. Respondent may attach a Corrective Action Statement ("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 the Firm 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.

Emerging Growth Equities, Ltd.

4/15/16
Date (mm/dd/yyyy)

By: Gregory J. Berlacher
Gregory J. Berlacher, President, CEO & CCO

Reviewed by:

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Accepted by FINRA:

5/31/16
Date (mm/dd/yyyy)

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

Karen C. Daly
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FINRA Department of Enforcement
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