

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2014039170101**

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

**RE: Capital Management Securities, Inc., Respondent
Member Firm
CRD No. 10579**

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Capital Management Securities, Inc. ("CMSI" 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 Respondent 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

CMSI has been a FINRA member firm since July 1, 1982. CMSI is comprised of approximately 21 registered representatives and four branch offices and conducts a general securities business from its main office in Minneapolis, Minnesota.

OVERVIEW

Over a nearly four-year period, CMSI failed to establish, maintain, and enforce a supervisory system and written supervisory procedures reasonably designed to ensure compliance with applicable laws and regulations relating to mutual fund sales charge waivers. As a result, CMSI allowed two of its registered representatives to improperly enter sales charge waivers in connection with 92

mutual fund transactions involving 22 customer accounts. This conduct violated NASD Conduct Rule 3010 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Under certain circumstances, mutual fund companies permit a customer to purchase shares without a sales charge, which is commonly referred to as a purchase at Net Asset Value (NAV). To qualify for the purchase of mutual fund shares at NAV, the prospectus for the mutual fund will identify the requirements. Some funds permit a purchase at NAV if, for example, the customer held an advisory account at the broker dealer at the time of purchase.

From November 2010 through September 2014 (the "relevant period"), two CMSI registered representatives, located in the same branch office, improperly sought sales charge waivers for 22 customers in connection with 92 mutual fund transactions, which resulted in customers not paying sales charges they otherwise would have been required to pay. The mutual funds allowed customers to purchase shares of the funds at NAV without a sales charge if, at the time of the purchase, the customers held an advisory account with the firm. To qualify their customers for this treatment, the representatives (or those working under their direction) improperly indicated that the mutual fund purchases were occurring in advisory accounts. Specifically, when the transactions were entered electronically into the clearing firm's order entry system, the individual inputting the trades checked a "NAV" box on the order entry screen. The system then prompted for an explanation as to why the trades were placed at NAV. The individual responded to this prompt by selecting "Wrap Fee" or "WrapFeeAgmntFile" from a submenu of pre-populated reasons offered by the clearing firm's system.¹ In fact, the subject purchases were not in advisory accounts and did not otherwise qualify for sales charge waivers.

CMSI knew its representatives were conducting certain sales of mutual funds at NAV and approved of the trades described above without taking reasonable steps to confirm that the pricing for the mutual fund transactions was in accordance with the terms of the mutual fund prospectuses. During the relevant period, CMSI did not have a reasonable supervisory system and written supervisory procedures designed to ensure that mutual fund sale charges waivers were obtained in accordance with the terms of the mutual fund prospectuses. As a result, CMSI failed to provide for effective review of mutual fund transactions to ensure that sales charges waivers were granted in appropriate circumstances.

The conduct described above constitutes a violation of NASD Conduct Rule 3010 and FINRA Rule 2010 by CMSI.

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

¹ A wrap fee is a charge levied by an investment advisor to a client for providing a bundle of services and is commonly associated with advisor accounts.

- a censure and a \$25,000 fine.

In addition, Respondent certifies that it has reviewed its supervisory system and written supervisory procedures for mutual fund sales charge waivers based on a customer's status as an advisory client for compliance with FINRA rules and the federal securities laws and regulations. Respondent also certifies that it currently has in place a system and written supervisory procedures reasonably designed to achieve compliance with those rules, laws and regulations.

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 the firm 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 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 Respondent's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal

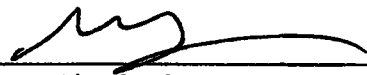
proceedings in which FINRA is not a party.

- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. 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.

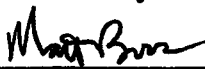
The undersigned, on behalf of the firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that the firm has agreed to its provisions voluntarily; and that no offer, threat,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

Capital Management Securities, Inc.

10-28-2015
Date (mm/dd/yyyy)

By: 
Gregory Alan Stroh
Chief Executive Officer
Capital Management Securities, Inc.

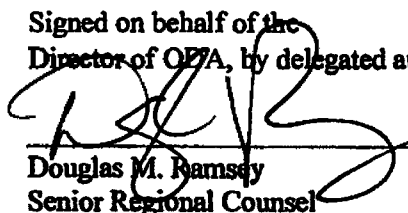
Reviewed by:


Matthew T. Boos, Esq.
Counsel for Respondent Capital Management Securities, Inc.
Fredrikson & Byron, P.A.
200 South Sixth Street, Ste. 4000
Minneapolis MN 55402
612-492-7180

Accepted by FINRA:

11/11/15
Date

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


Douglas M. Ramsay
Senior Regional Counsel
FINRA Department of Enforcement
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Chicago, IL 60603
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