

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2014040052601**

RECEIVED

JAN 04 2016

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

**RE: Fulcrum Securities, LLC, Respondent
FINRA Member Firm
CRD No.140084**

FINRA District 4

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Fulcrum Securities, LLC ("Fulcrum" 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 Fulcrum alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Fulcrum 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

Fulcrum became a FINRA registered firm in 2006. The Firm has 24 registered persons and three branch offices. Fulcrum engages in a general securities business.

RELEVANT DISCIPLINARY HISTORY

Fulcrum has no relevant disciplinary history.

OVERVIEW

From July 2013 through December 2013, Fulcrum failed to adequately enforce its written supervisory procedures related to anti-money laundering ("AML"), to detect and investigate potentially suspicious activities or potential manipulative trading, in violation of FINRA Rules 3310(a) and 2010.

Additionally, during the same time period, the Firm failed to conduct the required due diligence for two foreign correspondent accounts, in violation of FINRA Rules 3310 and 2010.

Finally, from January 2013 through September 2014, Fulcrum failed to establish and maintain adequate supervisory systems and procedures reasonably designed to comply with Section 5 of the Securities Act of 1933, in violation of NASD Rule 3010 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Fulcrum Failed to Adequately Review and Investigate Potentially Suspicious Activity.

FINRA Rule 3310(a) provides that Firms must establish, implement, and enforce policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious activity or transactions as required by the Bank Secrecy Act, 31 U.S.C. § 5318(g), and the implementing regulations thereunder.

Between approximately July 2013 and December 2013, Fulcrum failed to adequately enforce its written supervisory procedures to adequately detect, investigate and, if appropriate, report potentially suspicious activities or transactions. Specifically, from July 2013 to December 2013, the Firm failed to detect and further investigate potentially suspicious activity or manipulative trading by two customers. During this five-month period, these two customers engaged in 91 securities transactions involving the stocks of sixteen microcap issuers, each of which had little to no revenue or assets. Fulcrum failed to review the 91 transactions at issue, despite the presence of numerous red flags identified in Fulcrum's AML policies and procedures, including that the sixteen microcap issuers had no revenues or products, and that the issuers had all recently undergone dramatic changes to their business structures and company purposes. The stocks of at least eleven of the microcap issuers were the subject of contemporaneous promotional campaigns. Finally, trading in at least four of the stocks was suspended by the Securities and Exchange Commission prior to the transactions at issue. As a result of the foregoing conduct, Fulcrum violated FINRA Rules 3310(a) and 2010.

Fulcrum Failed to Conduct Due Diligence on Correspondent Accounts of Foreign Financial Institutions.

Regulations promulgated under the Bank Secrecy Act require, among other things, that a broker-dealer establish a risk-based due diligence program (that is part of its AML Compliance Program) for any correspondent accounts maintained by foreign financial institutions. *See*, 31 CFR § 1010.610. As part of this program, the broker-dealer must have procedures to identify foreign correspondent accounts.

From July 2013 to December 2013, Fulcrum failed to identify and conduct due diligence for each of the Firm's correspondent accounts for two foreign financial broker-dealers, located in the United Kingdom and Cyprus. Specifically, the Firm failed to maintain documentation evidencing that:

- (1) it had determined whether each correspondent account was subject to enhanced due diligence based on FINRA Rule 3310(b);
- (2) it had assessed the money laundering risk presented by each correspondent account, based on a consideration of all relevant factors; and,
- (3) it had applied risk-based procedures and controls to each correspondent account reasonably designed to detect and report known or suspected money laundering activity, including a periodic review of the correspondent account activity sufficient to determine consistency with information obtained about the type, purpose, and anticipated activity of the account.

As such, the Firm failed to comply with the requirements of the above-referenced regulations promulgated under the Bank Secrecy Act, in violation of FINRA Rules 3310 and 2010.

Fulcrum Failed to Establish and Maintain a Supervisory System or Written Supervisory Procedures Reasonably Designed to Achieve Compliance with Section 5 of the Securities Act of 1933.

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 persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules."

From January 2013 to September 2014, Fulcrum did not establish and maintain adequate supervisory systems and procedures reasonably designed to comply with Section 5 of the Securities Act of 1933. Section 5 prohibits the offer or sale of any security unless there is a registration statement in effect as to that security or there is an exemption available for the transaction.

FINRA Regulatory Notice 09-05 reiterated members' obligations to comply with securities laws as they relate to unregistered security distributions. As a threshold matter, Regulatory Notice 09-05 provides that "[a]ll firms must have procedures reasonably designed to avoid becoming participants in the potential unregistered distribution of securities" and, "firms may not rely solely on others, such as clearing firms, transfer agents, or issuers' counsel, to fulfill these obligations."

From January 2013 to September 2013, Fulcrum failed to verify that the microcap securities deposited into two foreign correspondent accounts were registered or otherwise freely tradable. Specifically, Fulcrum accepted large deposits of microcap stocks from the referenced foreign broker-dealers, held on behalf of their customers,, but failed to take the appropriate steps to determine how the shares were acquired, the length of time the shares were held, whether the beneficial owner of the shares was affiliated with the issuer or a significant shareholder, or otherwise determine if the unregistered offerings of these microcap securities were lawful. Fulcrum also failed to perform or document any verification of the validity of stock certificates for certain of these microcap securities deposited by the two foreign financial institutions.

After FINRA's 2013 examination of the Firm, in May 2014, Fulcrum revised its written supervisory procedures regarding the sales of large amounts of microcap securities to address the potential unlawful sale of unregistered securities. Those revisions, however, were insufficient to meet the requirements of Section 5. In particular, Fulcrum's revised procedures failed to address all potential unregistered sales of microcap securities because the procedures only required that the Firm examine the sales of microcap securities designated on the lowest OTC Market Tier, rather than vetting the sales of all microcap securities.¹

As a result, between May 14, 2014 through September 30, 2014, Fulcrum failed to conduct reasonable inquiries into three large sales of microcap securities by five related entities with Fulcrum accounts. Specifically, the Firm failed to inquire into the facts and circumstances of the three transactions by: (a) not making any inquiry into the number of the shares that were beneficially owned and/or controlled by the seller and/or its affiliates; (b) not making any inquiry into the microcap stocks shares sold by the related entities because they were not designated as OTC Pink by the OTC Markets Group, Inc.; and (c) relying solely upon the absence of any objection by the clearing firm or transfer agent to determine that the sales were lawfully exempt from registration.

Therefore, between January 2013 to September 2014, Fulcrum failed to establish, maintain and enforce a supervisory system, reasonably designed to ensure compliance with Section 5 of the Securities Act of 1933 and the applicable rules and regulations with respect to the distribution of unregistered non-exempt securities, in violation of NASD Rule 3010 and FINRA Rule 2010.

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

1. A censure; and

¹ The OTC market place is divided in three separate tiers of companies based on their financial standards, compliance with securities laws, and currency of their filings/disclosures. OTC Pink is the lowest tier. Fulcrum did not vet microcap stocks listed on the top two tiers OTCQX and OTCQB.

2. A fine of \$20,000.²

Fulcrum agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Fulcrum has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Fulcrum specifically and voluntarily waives any right to claim that it is unable to pay, now or 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

Fulcrum specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against Fulcrum;
- 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, Fulcrum 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.

Fulcrum 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

² 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 Notice to Members 06-55.

or rejection.

III.

OTHER MATTERS

Fulcrum 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 Fulcrum; and
- C. If accepted:
 - 1. this AWC will become part of Fulcrum's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Fulcrum;
 - 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. Fulcrum 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. Fulcrum 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 Fulcrum'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. The Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Fulcrum 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 Respondent, certifies that a person duly authorized to act on its behalf has read and understood all of the provisions of this AWC and has been given a full

opportunity to ask questions about it; that the Respondent 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 Respondent to submit it.

Respondent Fulcrum Securities, LLC

Dec. 21, 2015
Date (mm/dd/yyyy)


By: WILLIAM P. BEHRENS
Title: PRESIDENT + CEO

Accepted by FINRA:

Jan. 28, 2016
Date

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


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