

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2014041086502**

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

**RE: J.H. Darbie & Co., Inc., Respondent
(BD No. 43520)**

and

**Wolf A. Popper, Inc., Respondent
(BD No. 44974)**

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, J.H. Darbie & Co., Inc. ("Darbie") and Wolf A. Popper, Inc. ("Popper"), collectively, the "Respondents," 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 either firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondents 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

1. J.H. Darbie & Co., Inc.

Darbie has been a FINRA member since February 1998. Darbie is headquartered in New York City and maintains an additional branch office in Hackensack, New Jersey. The firm currently employs approximately 59 registered persons.

2. Wolf A. Popper, Inc.

Popper has been a FINRA member since June 1998. In 2006, Popper became an affiliate of, and came under common ownership and control with, Darbie. At all times relevant to this matter, Popper has been located at Darbie's main office.

RELEVANT DISCIPLINARY HISTORY

The Respondents do not have any relevant disciplinary history.

OVERVIEW

Darbie facilitated the deposit and liquidation of billions of shares of low-priced, microcap stocks for customers without having in place adequate procedures to assure that such liquidation transactions were scrutinized sufficiently. Darbie's conduct occurred between March 2008 and March 2014 (the "Relevant Darbie Period"). Popper also facilitated the deposit and liquidation of billions of shares of low-priced microcap stocks for customers without having in place adequate procedures. Popper's conduct primarily occurred between June 2009 and October 2010. Both firms failed to reasonably detect and investigate red flags indicative of potentially suspicious activity in connection with certain stock transactions, which activity might have required the filing of a suspicious activity report. Both firms also failed to establish and implement adequate Anti-Money Laundering ("AML") programs and procedures.

Darbie also facilitated the sale and unregistered distribution of certain securities on behalf of a group of customers in 2010 and failed to establish and maintain a reasonable supervisory system to ensure that securities being sold were registered or that certain sales transactions were subject to exemption from registration.

Darbie engaged in conduct that contravened Section 5 of the Securities Act of 1933 ("Section 5") and violated NASD Rules 3010(a) and (b), 3011(a) and (c) and 2110, and FINRA Rules 3310(a) and Rule 2010.¹

Popper engaged in conduct that violated NASD Rule 3011(a) and (c) and 2110 and FINRA Rules 3310(a) and 2010.

FACTS AND VIOLATIVE CONDUCT

1. Sales of Unregistered Securities for Certain Customers

Section 5 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.

Between August and December 2010, RM, a Darbie registered representative, and Darbie effected the sale of 2.2 billion shares of two microcap issuers, Triton Distribution Systems, Inc. ("TTDZ") and Vega Biofuels, Inc. ("VGPR"), for certain related accounts (collectively, the "Q Group Accounts"). The issuers were thinly traded and reported no revenues or negative revenues. No registration statement had been filed with the Securities and Exchange Commission ("SEC") or was in effect for the sales, and the sales transactions were not exempt from registration with the SEC.

¹ NASD Rule 2110 was renumbered FINRA Rule 2010 on December 15, 2008. NASD Rule 3011 was renumbered FINRA Rule 3310 on January 1, 2010.

Darbie failed to conduct a reasonable inquiry into the transactions despite red flags indicating that these customers were related and were engaging in unregistered securities distributions, including, by way of example, instructing RM to rotate trading in TTDZ among certain Q Group Accounts.

Had Darbie treated the accounts as related and aggregated the known holdings of those customers in TTDZ and VGPR, it would have been clear that, together, the accounts owned or controlled over 10% of the outstanding shares of those issuers and therefore could not have sold more than 1% of the outstanding shares of the same class of stock of the issuers during any three-month period. The Q Group Accounts' sales exceeded this 1% limitation.

By facilitating these sales of unregistered securities in transactions not subject to an exemption from the registration requirements, Darbie acted in contravention of Section 5, and thus, violated FINRA Rule 2010.

2. Darbie Failed to Establish 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.

During the Relevant Darbie Period, Darbie failed to establish, maintain, and enforce a supervisory system reasonably designed to achieve compliance with Section 5. Darbie failed to ensure reasonably that adequate due diligence was conducted before executing sales in microcap stocks to verify that the transactions were registered or exempt from registration.

Before December 2010, Darbie had no procedures requiring due diligence for penny stocks received electronically, and did not perform due diligence in connection with sales of such stocks. Darbie later adopted due diligence procedures for shares received electronically; however, they were deficient in certain respects and not adequately implemented. Darbie also failed to implement reasonable due diligence with respect to stocks deposited in certificate form despite the fact that it had procedures requiring such due diligence.

Regardless of method of stock deposit, Darbie generally 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. For example, with respect to a large number of deposits, Darbie did not independently verify when the security was acquired, or whether the customer was a 5% owner, a control person or a stock promoter. In addition, Darbie accepted the transfer agent's assertions concerning the tradability of the shares, without taking appropriate steps to verify such information.

Darbie also lacked an adequate system for the review and aggregation of securities held by related customers to determine whether the customers were in a control relationship with the issuer and subject to volume limitations on re-sales. Consequently, Darbie failed to conduct reasonable inquiries surrounding the sales of certain such stocks and failed to aggregate securities holdings among related accounts, entities and account holders.

As a result of the foregoing, Darbie violated NASD Rules 3010(a) and (b) and 2110 and FINRA Rule 2010.

3. Darbie Failed to Establish and Implement a Reasonable AML Program

FINRA Rule 3310(a), which superseded NASD Rule 3011(a) on January 1, 2010, requires firms to “[e]stablish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. §5318(g) [the Bank Secrecy Act] and the implementing regulations thereunder.” The implementing regulation issued by the U.S. Department of the Treasury, 31 C.F.R. § 1023.320 (recodified from 31 C.F.R. § 103.19 on March 1, 2011), requires broker-dealers to file with the Financial Crimes Enforcement Network (“FinCEN”) “a report of any suspicious transaction relevant to a possible violation of law or regulation.”

NASD Notice to Members 02-21 (“NTM 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”).

During the Relevant Darbie Period, Darbie failed to develop and implement an AML program reasonably designed to achieve compliance with the Bank Secrecy Act and its implementing regulations to detect and cause the reporting of suspicious transactions.

Inadequate AML Procedures

During the Relevant Darbie Period, Darbie’s written procedures included examples of “red flags” indicative of potentially suspicious activity, as identified in NTM 02-21. In 2012, Darbie added to its procedures, as an additional red flag indicative of potentially suspicious activity, a customer’s pattern of depositing and liquidating stock and wiring out the proceeds. Darbie’s AML procedures required monitoring for patterns of transactions of unusual size, volume, or type and for red flags listed in its procedures. The procedures also required Darbie to use exception reports to detect and investigate potentially suspicious trading occurring through customer accounts and assess whether to report such activity to FinCEN.

Darbie’s AML procedures were not sufficiently tailored to Darbie’s low-priced stock liquidation business and the associated regulatory risks. Darbie’s written AML procedures also failed to provide meaningful guidance for monitoring for, detecting and investigating potentially suspicious activity, including the deposit and prompt liquidations of large volumes of low-priced, thinly-traded stock deposits.

Failure to Adequately Monitor for AML Red Flags

Darbie's procedures to monitor for red flags and potentially suspicious activity were inadequate. Darbie gathered information about certain stock deposits and separately reviewed daily or monthly commission runs or daily trade blotters; however, its monitoring process was inadequate in several respects:

- The commission runs and trade blotters did not have information about stock deposits and were not designed to identify patterns of suspicious penny stock activity, including large deposits and prompt liquidations, or to otherwise monitor for AML compliance.
- Darbie did not use exception reports or other surveillance tools reasonably designed to capture: (a) patterns of stock deposits quickly followed by liquidations and wiring out of proceeds; (b) suspicious promotional activity occurring at or around the time of customer stock deposits and liquidations; or (c) increased trading volume and/or substantial fluctuation in price of securities being deposited and promptly liquidated. Thus, Darbie did not have in place the tools to adequately scrutinize customer accounts, account relationships, the customer's expected activity, share amounts, share volumes, promotional activity, and liquidation patterns with a view toward detecting potentially suspicious activity.

Because Darbie did not sufficiently review and consider together customer stock deposits and liquidations, the firm was not in a position to reasonably scrutinize large stock deposits followed by prompt liquidations for the purpose of detecting and reporting potential suspicious activity. Until at least February 2012, Darbie was unable to track, in a systematic way: (a) related customer accounts; (b) whether or not account holders of such accounts were acting together to liquidate the same stocks at the same time; and (c) whether stock holdings of such parties should have been aggregated to, among other things, determine whether selling account holders owned 10% or more of the issued and outstanding common stock of issuers whose stock they were seeking to sell.

Darbie did not follow-up appropriately on red flags indicating that a customer had a questionable or negative regulatory background. Darbie's AMLCOs unreasonably relied on the word of customers with known regulatory histories or broker assurances regarding such customers, rather than conducting an appropriate independent review. Darbie also failed to adequately take into account the potentially higher risks posed by those customers when monitoring account activity. Darbie also failed to adequately evidence the reviews that were performed to investigate red flags indicative of potentially suspicious trading activity in customer accounts.

During the Relevant Darbie Period, Darbie failed to detect, adequately investigate, and respond to red flags indicative of potentially suspicious activity in connection with certain customer account activities. For example:

- **At least seven customers engaged in a pattern of penny stock transactions under circumstances suggesting potentially suspicious activity, including patterns of large deposits of penny stocks and liquidation of the shares shortly after their deposits, sometimes during periods of promotional activity, increased trading volume, and/or substantial price fluctuations, often accompanied by proceeds being wired out of the accounts shortly after the liquidations. The potentially suspicious transactions involved billions of shares of at least 21 issuers.**
- **Of the seven customers, five had securities related regulatory histories and/or were the subjects of news reports of potential securities-related regulatory violations. The regulatory histories included, but were not limited to: SEC settlements finding registration violations involving the sale of unregistered or restricted stock; a court judgment finding unregistered securities distributions; a criminal conviction for fraud in the operation of a hedge fund; and an SEC settlement finding deceptive market timing, involving the use of fictitious family trusts. The adverse news reports included information that one customer was under criminal investigation for stock manipulation of micro-cap issuers; information that the SEC filed a complaint against one customer and his advisory firms for defrauding investors by receiving undeserved fees as a result of overvaluing hedge fund positions in a penny stock; and allegations that one customer improperly engaged in financing small companies for convertible shares, which he would then convert to fund short-selling.**
- **Five of the seven customers opened and maintained multiple accounts or accounts in the names of corporate entities without any apparent purpose;**
- **Two of the seven customers engaged in certain trading (purchases) inconsistent with their stated investment strategy (to solely deposit and liquidate stock already acquired); and another customer engaged in trading activity that was inconsistent with his stated net worth.**

Additionally, during the Relevant Darbie Period, Darbie failed to detect, adequately investigate, and respond to the following red flags indicative of potentially suspicious activity involving the Q Group Accounts, including indications that the accounts were commonly owned or controlled, were coordinating their activities, including rotating trading among accounts, and potentially engaging in unregistered stock distributions.

As a result of the foregoing conduct, Darbie violated NASD Rules 3011(a) and 2110 and FINRA Rules 3310(a) and 2010.

4. Popper Failed to Establish and Implement a Reasonable AML Program

In May 2009, Darbie's clearing firm stated it would no longer clear sub-penny stocks, citing a concern over a spike in associated fraudulent transactions. In response, Darbie then coordinated with Popper and allowed certain Darbie customers to open accounts at Popper and deposit and liquidate penny and sub-penny stocks through Popper's clearing firm. However, between June 2009 and October 2010, Popper failed to establish and adequately implement an AML program reasonably expected to cause the detection and reporting of suspicious transactions under the Bank Secrecy Act and its implementing regulations. During that time period, Popper serviced some customers whose primary trading activity involved the deposit and prompt liquidation of penny stocks. Popper's AML program was not reasonably tailored to the risks posed by penny stock liquidation business. Popper's AML program failed to adequately scrutinize customer accounts, account relationships, the customer's expected activity, the low-priced securities, share amounts, share volumes, promotional activity, and liquidation patterns for suspicious activity.

More specifically, Popper failed to detect, adequately investigate, and respond reasonably to the following red flags indicative of potentially suspicious activity.

- Two Darbie customers each opened and maintained two or more accounts at Popper. One customer was the subject of an SEC settlement involving asserted market timing and the other customer was the subject of a press report that he was under criminal investigation for potential manipulation of microcap stocks that occurred years earlier at another firm. The firm had received a grand jury subpoena concerning that customer's accounts at Darbie. Popper did not conduct adequate due diligence related to the customers' backgrounds or perform heightened scrutiny of account activities.
- Those two customers engaged in patterns of large deposits of penny stocks and liquidation of the shares shortly after their deposits, sometimes during periods of increased trading volume, and/or substantial price fluctuations, often accompanied by funds being wired out of the accounts shortly after the liquidations. These potentially suspicious transactions involved deposits and liquidations of billions of shares of penny stocks.

As a consequence of its deficient AML system, Popper failed appropriately to identify, investigate or respond to the above-referenced red flags and consider whether or not to report the activity as suspicious. Moreover, Popper failed to maintain evidence that account activity was being monitored for potentially suspicious activity. As a result of the foregoing, Popper violated NASD Rule 3011(a) and FINRA Rules 3310(a) and 2010.

5. Darbie and Popper Failed to Conduct Independent AML Tests

NASD Rule 3011(c) required annual independent testing of a member firm's AML Compliance Program for firms acting as introducing brokers for retail customer accounts. NASD IM-3011-1 advised member firms that independent AML testing "may not be conducted by a person who performs the functions being tested," or by a person who reports to a person who performs

functions being tested or the designated AML compliance person, except under limited circumstances not applicable to Darbie or Popper.

In 2008 and 2009, an individual who reported to the AMLCO of each firm, and who performed certain functions being tested, conducted Darbie's and Popper's AML tests for 2007 and 2008. Additionally, the 2007 and 2008 AML tests for Darbie were inadequate as they failed to address Darbie's low-priced security deposit and liquidation business.

By failing to conduct AML independent tests as required, Darbie and Popper each violated NASD Rules 3011(c) and 2110 and FINRA Rule 2010.

6. Darbie Failed to Adequately Supervise RM

RM was registered through Darbie from November 2009 to March 2011. While at the firm, his business primarily involved the liquidation of low-priced securities for customers.

In early 2010, RM opened the Q Group Accounts. RM communicated with the Q Group Account customers by email. A review of the activity in RM's customer accounts, his email communications with customers and the new account documentation for those customers reasonably should have revealed red flags for potentially suspicious activity. For example, the most active Q Group Accounts often received large blocks of the same thinly-traded penny or sub-penny stock into their respective accounts at or around the same time and received the stocks from the same sources and in the same manner. Within a short period of time after deposit, and sometimes on the date of deposit, the Q Group Accounts liquidated most, if not all, of their shares into the market. Stock deposit forms for certain Q Group Accounts contained material inaccuracies identifiable on the face of the documents. Additionally, one Q Group Account customer directed the sales for other Q Group Accounts and another Q Group Account customer sought to coordinate the deposit of stock for other Q Group accounts. Darbie did not adequately scrutinize the above-referenced red flags. Darbie unreasonably relied on RM to ensure that an adequate review was conducted for compliance with Section 5, and consequently, did not adequately consider whether the holdings of the Q Group Accounts needed to be aggregated for the purpose of assessing compliance with Section 5 or whether Darbie was facilitating unregistered distributions on behalf of the Q Group customers. Consequently, Darbie failed to supervise adequately RM's sale of hundreds of millions of shares of penny stocks received electronically and liquidated into the marketplace. Additionally, Darbie failed to require or perform adequate due diligence, and properly supervise, RM's sale of billions of shares of penny stock received in certificate form and liquidated into the marketplace. As a result of the foregoing, Darbie violated NASD Rule 3010(a) and FINRA Rule 2010.

7. Darbie Failed to Establish and Implement a Reasonable System for Monitoring of Potential Conflicts of Interest Involving a Registered Representative who Owned a Transfer Agent

From April 2010 through at least March 2014, Darbie employed JG as a registered representative and branch manager at the firm's Hackensack, New Jersey office. Throughout that time, JG owned a stock transfer agent (the "Transfer Agent"). The Transfer Agent's business included

processing security transfers, issuing shares, processing conversions, recording the transfer of ownership of stock, and keeping records regarding issuer shares. The Transfer Agent was heavily involved in processing stock certificates for issuers of microcap securities.

Darbie knew about and approved JG's outside business activities relating to the Transfer Agent. Darbie also knew that JG's activities as a registered representative at Darbie, and the business of other representatives in Darbie's branch office under his supervision, involved liquidating penny stocks for customers. In many instances, JG and Darbie representatives under his supervision liquidated from customer accounts securities that had been processed by the Transfer Agent. Thus, JG had an opportunity to potentially receive compensation from the Transfer Agent for processing the securities and commissions from Darbie generated through the Darbie customer accounts liquidating those same securities. For example, from April 2010 to March 2014, at least 26 of JG's customers at Darbie received penny stocks processed by the Transfer Agent. The deposits taken together involved hundreds of millions of shares of at least nine microcap issuers. Such activity created a potential conflict of interest. Darbie, however, failed to take sufficient steps to supervise JG where stock coming into a Darbie customer account was processed by the Transfer Agent and did not exercise appropriate heightened scrutiny over documentation or information from the Transfer Agent accompanying the deposit of such shares.

As a result of the foregoing, Darbie violated NASD Rule 3010(a) and FINRA Rule 2010.

B. Darbie and Popper also consent to the imposition of the following sanctions:

1. Darbie consents to:
 - a. A censure;
 - b. A fine of \$230,000, \$10,000 of which is joint and several with Popper;
 - c. The following undertakings:
 - i. Darbie shall:
 - A. Retain, within 30 days of the date of the Notice of Acceptance of this AWC, an Independent Consultant, not unacceptable to FINRA staff, to conduct a comprehensive review of the adequacy of Darbie's policies, systems and procedures (written and otherwise) and training relating to:
 1. Compliance with FINRA Rule 3310 and the requirements of the Bank Secrecy Act, 31 U.S.C. §5311, *et. seq.*, and the regulations promulgated thereunder, including, but not limited to, those related to monitoring for,

identifying, investigating, and responding to red flags of suspicious transactions in general and specifically with respect to low-priced securities; and

2. Compliance with Section 5 of the Securities Act of 1933 and the applicable rules and regulations, with respect to the distribution of unregistered securities; and
3. Mitigation of potential conflicts of interest posed by outside transfer agent activities of JG.

The Independent Consultant's review must include the period from at least December 1, 2014 through the date of the Notice of Acceptance of this AWC,

- B. Exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant;
- C. Cooperate with the Independent Consultant in all respects, including by providing staff support. Darbie shall place no restrictions on the Independent Consultant's communications with FINRA staff and, upon request, shall make available to FINRA staff any and all communications between the Independent Consultant and Darbie and documents reviewed by the Independent Consultant in connection with his or her engagement. Once retained, Darbie shall not terminate the relationship with the Independent Consultant without FINRA staff's written approval; Darbie shall not be in and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client privilege or other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports or documents to FINRA;
- D. At the conclusion of the review, which shall be no more than 120 days after the date of the Notice of Acceptance of this AWC, require the Independent Consultant to submit to Darbie and FINRA staff an Initial Report. The Initial Report shall address, at a

minimum: (i) the adequacy of Darbie's policies, systems, procedures, and training relating to (a) FINRA Rule 3310 and the requirements of the Bank Secrecy Act, 31 U.S.C. §5311, *et. seq.*, and the regulations promulgated thereunder, including, but not limited to, those related to monitoring for, identifying, investigating, and responding to red flags of suspicious transactions in general and specifically with respect to low-priced securities, (b) Section 5 of the Securities Act of 1933 and the applicable rules and regulations, with respect to the distribution of unregistered securities, and (c) mitigation of potential conflicts of interest posed by outside transfer agent activities of JG; (ii) a description of the review performed and the conclusions reached; and (iii) the Independent Consultant's recommendations for modifications and additions to Darbie's policies, systems, procedures and training; and

- E. Require the Independent Consultant to enter into a written agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any other employment, consultant, attorney-client, auditing or other professional relationship with Darbie, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any firm with which the Independent Consultant is affiliated in performing his or her duties pursuant to this AWC shall not, without prior written consent of FINRA staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Darbie or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.
- ii. Within 60 days after delivery of the Initial Report, Darbie shall adopt and implement the recommendations of the Independent Consultant or, if it determines that a recommendation is unduly burdensome or impractical, propose an alternative procedure to the Independent Consultant designed to achieve the same objective. Darbie

shall submit such proposed alternatives in writing simultaneously to the Independent Consultant and FINRA staff. Within 30 days of receipt of any proposed alternative procedure, the Independent Consultant shall: (i) reasonably evaluate the alternative procedure and determine whether it will achieve the same objective as the Independent Consultant's original recommendation; and (ii) provide Darbie with a written decision reflecting his or her determination. Darbie will abide by the Independent Consultant's ultimate determination with respect to any proposed alternative procedure and must adopt and implement all recommendations deemed appropriate by the Independent Consultant.

- iii. Within 30 days after the issuance of the later of the Independent Consultant's Initial Report or written determination regarding alternative procedures (if any), Darbie shall provide FINRA staff with a written implementation report, certified by an officer of Darbie, attesting to, containing documentation of, and setting forth the details of Darbie's implementation of the Independent Consultant's recommendations.
- iv. Darbie shall further retain the Independent Consultant to conduct follow-up reviews and submit written follow-up reports,² annually, for three years following the date of the Notice of Acceptance of this AWC. Each follow-up review shall cover the preceding year. The first follow-up report shall be submitted to FINRA staff no later than one year after the date of the Notice of Acceptance of this AWC. The second follow-up report shall be submitted to FINRA staff no later than two years after the date of the Notice of Acceptance of this AWC. The third follow-up report shall be submitted to FINRA staff no later than three years after the date of the Notice of Acceptance of this AWC. In each of the follow-up reports, the Independent Consultant shall address Darbie's implementation of the systems, policies, procedures, and training in the areas denoted in Section B.1.c.i.A.1-3, above, and make further recommendations he or she deems necessary. Within 30 days of the receipt of each of the Independent Consultant's follow-up reports, Darbie shall adopt and implement recommendations contained in each of the follow-up reports. Within 30 days after the issuance of the third and final follow-up report,

² The reviews conducted in connection with the annual follow-up reports shall be in addition to the annual independent testing for compliance required by FINRA Rule 3310(c).

Darbie shall provide FINRA staff with a written implementation report, certified by an officer of Darbie, attesting to, containing documentation of, and setting forth the details of Darbie's implementation of the Independent Consultant's final recommendations.

- v. Upon written request showing good cause, FINRA staff may extend any of the procedural dates set forth above.
 - d. Within 90 days of the date of the Notice of Acceptance of this AWC, Darbie's current Chief Executive Officer shall complete 16 hours of AML training by a provider not unacceptable to FINRA staff. Within 30 days following completion of such training, an officer at Darbie must provide FINRA with written proof of his completion of such training.
 - e. Within 90 days of the date of the Notice of Acceptance of this AWC, Darbie's current Chief Compliance Officer shall complete 16 hours of AML training by a provider not unacceptable to FINRA staff. Within 30 days following completion of such training, an officer at Darbie must provide FINRA with written proof of his completion of such training.
2. Popper consents to:
- a. A censure;
 - b. A fine of \$10,000, which is joint and several with Darbie, as described above;³ and
 - c. If, within three years from the date of Notice of Acceptance of this AWC, Darbie transfers its penny stock liquidation business to Popper, Popper shall agree to comply with the undertakings in this AWC, as set forth in Section B.1.c.

Darbie and Popper agree to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. Darbie and Popper have respectively submitted separate Election of Payment forms showing the method by which each firm proposes to pay the fines imposed.

³ Pursuant to the General Principles Applicable to all Sanction Determinations contained in the Sanction Guidelines, FINRA imposed a lower fine in this case as to Popper after it considered, among other things, Popper's revenues and financial resources. See Notice to Members 06-55.

Darbie and Popper specifically and voluntarily waive any right to claim that they are unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

Darbie and Popper specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against them;**
- 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, Respondents 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.

Respondents 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

Respondents 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 either Darbie and/or Popper; and**
- C. If accepted:**
 - 1. this AWC will become part of the permanent disciplinary records of Darbie and Popper and may be considered in any future actions brought by FINRA or any other regulator against either of them;**
 - 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. Respondents 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. Respondents 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: (i) Respondents' testimonial obligations; or (ii) the right of Darbie and/or Popper to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.**
- D. Respondents may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they 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 Darbie, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and have been given a full

opportunity to ask questions about it, that Darbie 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 Darbie to submit it

6/26/2015
Date (mm/dd/yyyy)

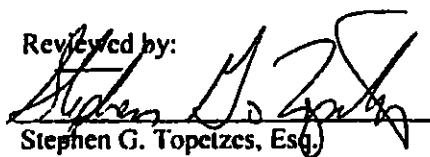
J H. Darbie & Co., Inc. Respondent
By: [Signature]
[Print Name] Robert R. Darbie
[Title] CEO

The undersigned, on behalf of Popper, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that Popper 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 Popper to submit it

6/26/2015
Date (mm/dd/yyyy)

Wolff A. Popper, Inc. Respondent
By: [Signature]
[Print Name] Robert R. Darbie
[Title] CEO

Reviewed by:

A handwritten signature in black ink, appearing to read "Stephen G. Topelizes", is written over a horizontal line.

Stephen G. Topelizes, Esq.
Counsel for Respondents
K&L Gates LLP
1601 K Street, N.W.
Washington, DC 20006
Phone: (202) 778-9328

Accepted by FINRA:

August 6, 2015

Date

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



Gary A. Chodosh

Senior Regional Counsel

FINRA Department of Enforcement

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