

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20140413337-01**

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

RE: Bruce William McNabb, Respondent
General Securities Representative
CRD No. 1738135

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I 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 me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. I 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

Respondent entered the securities industry with Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "Firm") in August, 1987. Respondent received his Series 7 license on October 17, 1987; his Series 63 license on October 27, 1987; and his Series 65 license on October 21, 1994. In 1996, Respondent left the Firm and from then until 2009 he was associated with several FINRA-regulated broker-dealers as a registered representative and/or financial advisor. In October, 2009, Respondent rejoined the Firm as a registered representative.

On May 9, 2014, the Firm filed a Form U5 (Uniform Termination Notice for Securities Industry Registration) stating that Respondent's employment terminated on April 16, 2014. The Firm reported that Respondent's termination resulted from "conduct involving failure to disclose an outside business activity and failure to adhere to firm standards related to gifts and entertainment, resulting in a loss of management confidence." Respondent is not currently associated with a FINRA member, but FINRA retains jurisdiction over Respondent pursuant to Article V, Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

Respondent has no relevant disciplinary history.

OVERVIEW

Respondent violated NASD Conduct Rule 3040 and FINRA Rule 2010 from at least December 2013 through April 2014, by participating in a \$4 million private securities transaction without providing prior written notice to the Firm.

Respondent represented a group of three investors, one of whom was a Firm customer, in connection with a transaction in which they formed an entity that purchased stock in AU, a corporation ("AU Corp."), for \$4 million.

FACTS AND VIOLATIVE CONDUCT

NASD Rule 3040(b) provides that "[p]rior to participating in any private securities transaction, an associated person shall provide written notice to the member with which he is associated describing in detail the proposed transaction and the person's proposed role therein and stating whether he has received or may receive selling compensation in connection with the transaction..."

NASD Rule 3040(1) defines a "private securities transaction" as any "securities transaction outside the regular course or scope of an associated person's employment with a member, including, though not limited to, new offerings of securities which are not registered with the [SEC]..."

A violation of NASD Rule 3040 constitutes a violation of FINRA Rule 2010.

In 2013 and 2014, the Firm's policies provided that its employees could not engage in private securities transactions without prior written approval from the Firm.

In December, 2013, RV contacted Respondent to discuss AU Corp., which at the time was the subject of a Chapter 11 bankruptcy proceeding in the United States District Court for the Northern District of Illinois. RV stated that he and another person, SP, were attempting to organize a restructuring of AU Corp. Neither RV nor SP were Firm customers. Thereafter, Respondent approached a Firm customer, JH, and a customer of an affiliated entity, GS, and informed them about AU Corp.¹ JH and GS expressed interest in joining RV in attempting to restructure AU Corp. JH, GS and RV requested that Respondent negotiate on their behalf with SP and his company, OCP.

¹ GS was a client of an affiliate of the Firm with a common corporate parent, but did not maintain a brokerage account at the Firm.

On January 9, 2014, Respondent sent a letter to OCP expressing interest in investing in AU Corp. Respondent's letter stated that "a Texas based group of three accredited investors I represent [i.e., JH, GS and RV] ... currently possess the financial capacity and willingness to capitalize and restructure [AU Corp.][.]" Respondent's letter further offered an investment of up to \$4 million in exchange for shares in AU Corp. and other consideration, and offered management services to assist AU Corp. in emerging successfully from bankruptcy.

On or about January 22, 2014, GS and others formed RPG, an entity whose sole purpose was to invest in AU Corp. The same day, OCP and RPG executed a Term Sheet (the "Term Sheet"), which provided, in relevant part: "RPG shall invest \$4 million for 100% of the Series B shares / ownership interests in [AU Corp.]." The Term Sheet further provided, in relevant part: "[I]t is contemplated that [GS] will serve as CEO and [Respondent] will serve as CFO [of AU Corp.]" Finally, the Term Sheet stated that GS and Respondent would each serve as a director on AU Corp.'s reconstituted board. On or about January 27, 2014, Respondent flew to Chicago with GS to meet with AU Corp. executives. On January 30, 2014, RPG and AU Corp. entered into a confidentiality agreement signed by Respondent on behalf of RPG.

On or about February 1, 2014, RPG commenced direct negotiations with AU Corp. representatives regarding a restructuring. Respondent was significantly involved in those discussions, regularly receiving and sending relevant e-mails, as well as updates on the status of AU Corp.'s bankruptcy proceeding.

On March 31, 2014, AU Corp. filed a reorganization plan in federal bankruptcy court. The plan provided that RPG or persons it designated would invest \$4 million in AU Corp. in exchange for "100% of the authorized shares of capital stock in and to the Reorganized Debtor[.]" On April 28, 2014, the bankruptcy court entered an order confirming the plan. On or about May 13, 2014, RPG designees GS and EWLP (an investment fund affiliated with JH) purchased stock in AU Corp. consistent with the reorganization plan.

Respondent never disclosed his involvement in the AU Corp. transaction to the Firm. As a result of his work on the transaction, Respondent commenced employment at AU Corp. as Chief Financial Officer ("CFO"), Secretary and Treasurer following his termination by the Firm. On May 13, 2014, Respondent was appointed to AU Corp.'s Board of Directors. On or about January 9, 2015, Respondent received 222 Series B Units, which included equity securities, in a successor entity to AU Corp. in exchange for no capital contribution. Those units afforded Respondent a 5% profits participation interest in AU Corp.'s successor entity.

Respondent's conduct violated NASD Rule 3040 and FINRA Rule 2010. During the period from December 2013 through his termination by the Firm on April 16, 2014, Respondent participated in the purchase of shares in AU Corp. by, *inter*

alia, introducing potential investors to one another; representing and advising a group of potential investors, including GS, in negotiations to purchase AU Corp.; signing an agreement on behalf of RPG, a party to the negotiations; and impliedly endorsing a potential transaction by agreeing to serve as a board member and CFO of AU Corp. Respondent never provided prior written notice to the Firm regarding his participation in the AU Corp. transaction, nor did he receive permission from the Firm to participate in the transaction.

By virtue of this conduct, Respondent participated in a private securities transaction in violation of NASD Rule 3040 and FINRA Rule 2010.

B. I also consent to the imposition of the following sanctions:

A two-year suspension from association with any FINRA member in any capacity; and

A fine of \$50,000.

I understand that if I am barred or suspended from associating with any FINRA member, I become subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rules 8310 and 8311).

The fine shall be due and payable either immediately upon reassociation with a member firm following the two-year suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

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

A. To have a Complaint issued specifying the allegations against me;

- 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, I 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.

I 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

I 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 me; and
- C. If accepted:
 - 1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
 - 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. I 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. I 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 my: (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. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I 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.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have 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 me to submit it.

04/07/2016

Date (mm/dd/yyyy)



Respondent

Reviewed by:



Dan R. Waller, P.C.

Stephen P. Carson

Secore & Waller, L.L.P.

Merit Tower

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Phone: (972) 776-0200

Accepted by FINRA:

4/13/16
Date

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



Richard Chin

Chief Counsel

FINRA Department of Enforcement

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