

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2014041919401**

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

RE: Gary Lee Rathbun, Respondent
Former Registered Representative and General Securities Principal
CRD No. 1084721

Douglas Scott Miller, Respondent
Former General Securities Representative
CRD No. 1946240

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

I.

ACCEPTANCE AND CONSENT

- A. We each 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

Gary Lee Rathbun entered the securities industry in 1983. He has been registered with five FINRA member firms. Rathbun joined Triad Advisors, Inc. (Triad) in October 2009, and was registered with Triad as a general securities representative, general securities principal, investment company and variable products representative, operations professional, and securities agent. He was also registered with a registered investment adviser in Toledo, Ohio, Private Wealth Consultants, Ltd. (PWC), of which he is an owner. Rathbun's registration with Triad was terminated on July 14, 2014, when he was permitted to resign. He is still registered with PWC.

Douglas Scott Miller entered the securities industry in 1989. He has been registered with four FINRA member firms. He joined Triad in August 2005, and was registered with that firm as a general securities representative and securities

agent. He is also an owner of and registered with PWC. Miller's registration with Triad was terminated on July 14, 2014, when he was permitted to resign. He is still registered with PWC.

Although Rathbun and Miller are no longer registered or associated with a FINRA member, they each remain subject to FINRA's jurisdiction for purposes of this proceeding pursuant to Article V, Section 4 of FINRA's By-Laws because this AWC (1) is being issued within two years after the date upon which they each ceased to be registered with a FINRA member, namely July 14, 2014, and (2) charges each of them with conduct committed while they were registered with a FINRA member.

OVERVIEW

During the period July 2010 until June 2014, the Respondents participated in the sale of investments in six related limited liability companies (the LLCs) to clients of their registered investment adviser, PWC. Collectively, they sold approximately \$25.5 million of investments in the LLCs to approximately 300 accounts tied to 187 unique clients. This included sales of approximately \$3.3 million to 25 PWC customers who were also customers of their broker-dealer, Triad. The Respondents also sold \$546,000 in other private investments to 17 PWC clients. Although the Respondents disclosed their ownership and operation of PWC to Triad, they failed to provide written notice of their participation in these sales of private securities investments to the broker-dealer. In addition, they made investments, either directly or on behalf of family members, totaling \$230,000 in some of the same LLCs without providing written disclosure to Triad. Finally, the Respondents failed to disclose to Triad that they were paid \$500 per hour by some of the LLCs for monitoring their activities, including making decisions about the business the LLCs engaged in. By virtue of this conduct, the Respondents violated NASD Rules 3030 and 3040 and FINRA Rules 3270 and 2010.

FACTS AND VIOLATIVE CONDUCT

Rathbun founded PWC in 1983. Miller partnered with Rathbun at PWC in 2009 when Rathbun joined him at Triad. At the time of partnership, Rathbun and Miller had approximately \$90 million in assets under management, which grew to approximately \$190 million by 2015. Although the Respondents were registered with Triad, they rarely used that firm to process securities transactions. The majority of the securities transactions conducted by PWC customers, even those with Triad accounts, were executed through other broker-dealers that were disclosed to Triad.

In July 2010, the Respondents began offering their PWC clients the opportunity to invest in limited liability companies in Toledo. These six new limited liability companies engaged in business lines such as factoring as well as equipment leases

and venture lending. In most instances, Rathbun and/or Miller brought the potential investment to the attention of a customer, answered any questions the customer had about the investment, prepared the required paperwork for the customer's signature, walked the customer through completing and signing the required paperwork (including the subscription agreement), had a PWC employee deliver the paperwork to the sponsor company, assisted the customer in completing paperwork to open a trust account in which the investment was held, participated in conveying the customer's funds to the trust company, helped complete additional paperwork authorizing the trust company to purchase the investment, and continued to answer any questions customers had about their investments.

The 300 accounts were tied to 187 unique clients of Respondents who collectively invested approximately \$25.5 million in the LLCs. Approximately \$14,782,000 of these funds came from Rathbun's clients; approximately \$7,470,311 came from Miller's clients; and the rest came from clients they shared.

The Respondents profited from these investments in two ways. First, the investments were included in the assets under management for which PWC (which they owned) charged investment advisory fees. Second, the Respondents established an arrangement pursuant to which they were paid \$500 per hour each to monitor their customers' investments by going to the office of the LLCs every week and reviewing the financial statements of the six LLCs as well as the companies whose receivables were being factored, who were leasing equipment, or who were borrowing venture capital. As part of this "monitoring" arrangement, the Respondents had the ability to reject new leases and new factoring or other lending arrangements on behalf of the LLCs if they thought they presented too much risk. Between 2010 and 2014, the Respondents were paid more than \$600,000 in monitoring fees, or an average of \$60,000 each per year.

In addition, the Respondents, directly, or on behalf of family members, made personal investments in some of the LLCs they promoted and sold to their customers. Rathbun invested a total of \$150,000 in two of the LLCs on behalf of family members in 2011 and 2013, and Miller invested a total of \$80,000 in two LLCs in 2010 and 2013.

NASD Rule 3040¹ prohibited a person associated with a member from participating in any private securities transaction without first providing written notice to his employer describing in detail the proposed transaction, his role in it, and whether he may receive compensation. If compensation was involved, additional details had to be furnished to the firm, and if the firm approved the person's involvement, the firm was required to record the transaction on its books and supervise the activity. FINRA addressed the applicability of these requirements to registered investment advisors in *Notices to Members 94-44* and

¹ NASD Rule 3040 was superseded by FINRA Rule 3280 on September 21, 2015.

96-33, noting that registered representatives who are also registered investment advisors must provide prior written notice of specified information to their broker-dealers when they participate in the execution of securities transactions, as the Respondents did here.

The Respondents failed to comply with this requirement. Although the information regarding the investments was available to Triad both through consolidated holdings reports the Respondents periodically submitted to Triad, as well as other means, the Respondents did not affirmatively provide written notice to the firm that they were participating in the sale of investments in the LLCs or seek Triad's permission to do so. Furthermore, although the Respondents were advised by the compliance officer of PWC that they did not have to disclose these sales to their broker-dealer, they failed to seek the advice of their broker-dealer's compliance officer or to conduct any independent research into their disclosure requirements or Triad's supervisory procedures. In addition, the Respondents failed to appropriately disclose the investments they made personally or on behalf of family members in the entities described above. Their failure to do so violated NASD Rule 3040.

In addition, NASD Rule 3030 and its successor, FINRA Rule 3270,² prohibit an associated person from being employed by, or accepting compensation from, any other person as a result of any business activity outside the scope of his relationship with his employer firm without providing written notice to the member with which he is associated. The Respondents received compensation for providing services to the LLCs, specifically for monitoring their investment performance and providing input into decisions regarding the counterparties with which those entities conducted business or extended credit. This activity extended beyond the scope of the investment advisory services that the Respondents had disclosed to Triad. The Respondents were therefore required to disclose that they were engaged in a business activity outside the scope of their relationship with Triad. Although the Respondents disclosed their receipt of the monitoring fees to their clients, the Respondents failed to appropriately disclose to Triad their additional business arrangement with the LLCs, and their failure to do so violated NASD Rule 3030 (for conduct prior to December 15, 2010) and FINRA Rule 3270 (for conduct on or after December 15, 2010).

* * *

By virtue of the foregoing, Rathbun and Miller each violated NASD Rules 3030 and 3040 and FINRA Rule 3270. By so doing, they each also violated FINRA Rule 2010.

B. We each also consent to the imposition of the following sanction:

A bar from association with any FINRA member firm in all capacities.

² NASD Rule 3030 was superseded by FINRA Rule 3270 on December 15, 2010.

The sanctions imposed herein shall be effective on a date set by FINRA staff. A bar or expulsion shall become effective upon approval or acceptance of this AWC.

We each understand that if we are barred from associating with any FINRA member, we 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, we may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar (see FINRA Rules 8310 and 8311).

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against us;
- 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, we each 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.

We each 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

We each 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 us; and
- C. If accepted:
 - 1. this AWC will become part of our permanent disciplinary records and may be considered in any future actions brought by FINRA or any other regulator against us;
 - 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. we 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. We 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 our: (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.

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

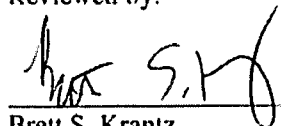
5-16-16
Date


Gary Rathbun
Respondent

5/16/16
Date


Douglas Miller
Respondent

Reviewed by:


Brett S. Krantz
Counsel for Respondents
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Accepted by FINRA:

5/17/16
Date

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


Edwin Aradi
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