

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2014042711601**

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

RE: Financial America Securities, Inc., Respondent
Member Firm
CRD No. 5100

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Financial America Securities, Inc. ("FAS" 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 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

FAS has been a FINRA regulated broker-dealer since 1970. The Firm is headquartered in Cleveland, Ohio. It has approximately 16 registered representatives and is authorized to conduct a general securities business. In 2015, the Firm reported total revenue of approximately \$1,185,000. As of March 31, 2016, the Firm reported net capital of \$36,872.

RELEVANT DISCIPLINARY HISTORY

The Firm has no relevant disciplinary history.

OVERVIEW

From January 2014 to April 2014 (the "Relevant Period") the Firm participated as placement agent in a private offering of shares in issuer CC pursuant to Regulation D of the Securities Act of 1933 (the "Offering"). The Offering commenced as an "all-or-none" contingent offering seeking to raise \$2,000,000 to

allow CC to acquire another company, ME. Before the closing date of the Offering, the issuer revised the terms of the Offering through a Revised Securities Purchase Agreement (the "Revised SPA"), which altered the minimum amount needed to complete the acquisition. The Firm did not return investor funds following a material change to the offering terms, in willful violation of Section 10(b) the Securities Exchange Act of 1934 ("Exchange Act"), Rule 10b-9 promulgated thereunder, and FINRA Rule 2010.

Further, the Firm participated in the Offering in which the issuer used a law firm, rather than a bank, as the escrow agent, in violation of Exchange Act Rule 15c2-4 and FINRA Rule 2010.

Finally, during the Relevant Period, the Firm had inadequate written supervisory procedures for participating in a private placement offering. As a result, the Firm violated NASD Rule 3010(b) and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

The Rule 10b-9 Violation

Exchange Act Rule 10b-9 prohibits the making of a misrepresentation in connection with a "best efforts" underwriting that is undertaken on an "all-or-none" or "part-or-none" basis. The purpose of Rule 10b-9 is to ensure that those who invest in a venture under the condition that it will not go forward unless adequately capitalized are not at risk of losing their investment if that condition is not met. In an offering that is subject to Rule 10b-9, a change in a material term, such as a reduction in the minimum amount needed to release proceeds in escrow, is considered to be a termination of the offering and requires a return of investor funds.

A violation of Exchange Act Rule 10b-9 constitutes a violation of FINRA Rule 2010.

The Firm participated as placement agent for the Offering which commenced in January 2014. CC, a biomolecular company that develops products to detect certain kinds of cancer engaged in the Offering to raise funds to purchase ME, a manufacturer of equipment used to diagnose cancer.

The offering memorandum represented that the Offering was "all-or-none" contingent on raising \$2,000,000 to acquire ME. The offering memorandum provided that all funds would be returned to investors if the contingency was not met by the expected closing date of March 15, 2014. Investors began sending funds to the Firm in March 2014 to be held in escrow pending the satisfaction of the contingency.

The issuer failed to raise \$2,000,000 by March 15, 2014, but the offering memorandum provided that the issuer could extend the offering period for an additional thirty days at its sole discretion. On or about April 2, 2014, the issuer extended the offering period and at the same time changed the terms of the Offering through the Revised SPA. In addition to extending the offering period, the Revised SPA reduced the minimum amount needed to complete the acquisition of ME to \$1,250,000. The Offering achieved the minimum amount set out in the Revised SPA by April 3, 2014, and the acquisition of ME took place on that date.

The Firm did not return funds to the investors in the Offering following the material change to the Offering terms. As a result of the foregoing conduct, the Firm willfully violated Rule 10b-9 promulgated under the Exchange Act and FINRA Rule 2010.

The Rule 15c2-4 violation

Exchange Act Rule 15c2-4 provides that funds raised in a contingent offering be promptly transmitted to a bank, independent of the issuer, which has agreed to hold those funds in escrow and to either forward them to the issuer or return them to investors upon satisfaction or failure of the contingency. Under Rule 15c2-4, a broker-dealer is prohibited from transmitting investor funds to an attorney escrow agent, regardless of whether the attorney is independent of both the broker-dealer and the issuer.

A violation of Rule 15c2-4 constitutes a violation of FINRA Rule 2010.

In connection with the Offering, the Firm received investor funds and transmitted those funds to an account held by a law firm that acted as escrow agent. By transmitting investor funds to a law firm as escrow agent rather than to a bank escrow agent, as required, the Firm violated Exchange Act Rule 15c2-4 and FINRA Rule 2010.

Supervision

NASD Rule 3010(b) requires member firms to establish, maintain and enforce written supervisory procedures ("WSPs") that are reasonably designed to achieve compliance with applicable securities laws and regulations. Notice to Members 10-22 further notified firms that they must have WSPs that are reasonably designed to ensure that each Regulation D offering is properly supervised before such offering is sold to customers. A violation of NASD Rule 3010 constitutes a violation of FINRA Rule 2010.

During the Relevant Period, the Firm did not maintain reasonable WSPs regarding its participation as a placement agent for a Regulation D offering. For example, the Firm WSPs offered no guidance on procedures to follow when there are

material changes to the offering terms in a contingent offering or how to escrow funds pending the outcome of a contingent offering.

As a result of having WSPs that were not reasonably designed to achieve compliance with applicable securities laws and regulations, the Firm violated NASD Rule 3010(b) and FINRA Rule 2010.

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

1. A censure; and
2. a fine of \$12,500¹

Respondent agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are 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 it is 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.

¹ 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.

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 it; and

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.

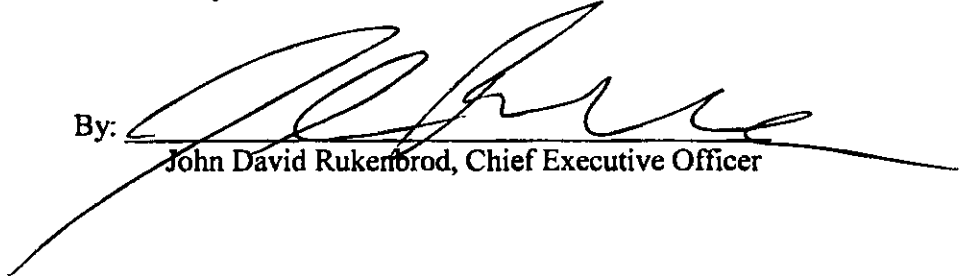
D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement 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.

05/10/2016
Date (mm/dd/yyyy)

Respondent, Financial America Securities, Inc.

By:


John David Rukerbrod, Chief Executive Officer

Accepted by FINRA:

9/26/16
Date

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



Richard Chin
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