

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015043369501**

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

RE: J.H. Darbie & Co., Inc., Respondent
Broker-Dealer
BD No. 43520

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, J.H. Darbie & Co., Inc. ("JH Darbie" 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 it 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

JH Darbie has been a member of FINRA since February 1998, and its registration remains in effect. The Firm, which is headquartered in New York, New York, conducts a retail brokerage business and employs approximately 50 registered personnel across three branches.

RELEVANT DISCIPLINARY HISTORY

JH Darbie has no relevant disciplinary history with the Securities and Exchange Commission, any state securities regulator, FINRA, or any other self-regulatory organization.

OVERVIEW

From October 2014 through September 2015 (the "Relevant Period"), JH Darbie failed to supervise the variable annuity recommendations and related retail communications of one of its registered representatives, WP, who sent

communications to prospective customers that failed to comply with the content standards of FINRA's advertising rules.

As a result, the Firm violated NASD Rule 3010 and FINRA Rules 3110 and 2010.¹

FACTS AND VIOLATIVE CONDUCT

During the Relevant Period, WP – who also was registered through the Firm as a general securities principal – advertised and sold variable annuities. The Firm, based upon WP's experience and his status as a general securities principal, allowed WP to self-supervise his variable annuity-related activities.

During the Relevant Period, WP sent to prospective customers numerous retail communications – including a form email, a form letter, and an advertisement in a national newspaper – concerning a variable annuity-based investment strategy that WP had developed. These communications failed to comply with the content standards of FINRA's advertising rules in multiple respects. For example, a number of these communications falsely described WP's variable annuity-based strategy as being "at no cost." Because the Firm was allowing WP to self-supervise his variable annuity-related activities, the Firm failed to identify or prevent these violative communications.

FINRA Rule 3110, formerly NASD Rule 3010, requires firms to establish, maintain, and enforce a system of supervision, including written supervisory procedures, reasonably designed to achieve compliance with applicable securities laws and regulations. FINRA Rule 3110(b)(6)(C) provides that a firm's supervisory system shall include procedures prohibiting associated persons who perform a supervisory function from supervising their own activities.

As set forth above, JH Darbie failed to reasonably supervise WP's variable annuity activities and related retail communications.

By virtue of the foregoing, JH Darbie violated NASD Rule 3010 and FINRA Rules 3110 and 2010.

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

- A censure;
- A fine of \$25,000;
- An undertaking that within 90 days of the issuance of this AWC, or such additional period as agreed to by a FINRA staff member in writing, an officer of the Firm shall provide to Kevin Hartzell, Principal Regional Counsel, FINRA, at the address set forth below, a

¹ FINRA Rule 3110 replaced NASD Rule 3010 effective December 1, 2014.

written certification that the Firm's systems, policies and procedures are reasonably designed to achieve compliance with FINRA Rule 3110(b)(6)(C); and

- A further undertaking to file with FINRA's Advertising Regulation Department, for the period of six months from the effective date of this AWC, all new retail communications, as defined in FINRA Rule 2210(a)(5), concerning any variable annuity product, at least ten business days prior to their first use (the "VA Communications"). After ten business days, the VA Communications may be used in the absence of comments from FINRA. The ten business day period shall commence on the date of transmission with respect to filed communications that the Firm successfully uploads to FINRA's Advertising Regulation Electronic Filing (AREF) system or on the day following shipment with respect to filed communications the Firm sends by overnight delivery. However, at any time, upon receipt of comments from FINRA on any of the VA Communications, unless notified otherwise by FINRA, JH Darbie shall take all reasonable steps to withhold or cause to be withheld such VA Communications from further use until the changes specified by FINRA have been made and such VA Communications will be revised and re-filed ten business days prior to any use, unless otherwise agreed to by FINRA staff at its sole discretion. The Firm will be responsible for paying all fees related to those filings.

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

JH Darbie specifically and voluntarily waives any right to claim that it is 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

The Firm 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, the Firm 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.

The Firm 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

JH Darbie 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 its 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. the Firm 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. The Firm 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 its: (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 Firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm 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.

3/20/2018
Date

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

By: Robert Kabinowitz

Title: CEO

Reviewed by:

Anne Buckley
Anne Buckley
Saro Partners
11425 Dancing River Road
Venice, FL 34292
617-271-6736

Accepted by FINRA:

April 11, 2018

Date

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



Kevin Hartzell
Principal Regional Counsel
FINRA Department of Enforcement
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New York, NY 10281
(646) 315-7357; (301) 527-4874