

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015043383901**

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

RE: CapFi Partners LLC (BD No. 113795),
Respondent

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, CapFi Partners LLC ("CapFi" or the "Firm" or "Respondent") 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 the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. CapFi 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

CapFi has been a FINRA member since 2001 and is located in McLean, Virginia. The Firm has approximately six registered representatives and one branch office. CapFi's principal activities are the marketing of hedge funds and private equity funds, the private placement of securities, and investment advisory services.

RELEVANT DISCIPLINARY HISTORY

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

OVERVIEW

CapFi failed to document its review of two representatives' requests to engage in outside business activities and private securities transactions, thereby violating NASD Rules 3010 and 3040 and FINRA Rules 3270 and 2010. CapFi also failed to review a representative's electronic communications, thereby violating NASD Rule 3010 and FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

Supervision of Outside Business Activities and Private Securities Transactions

Where a registered representative requests permission from her member firm to engage in an outside business activity, FINRA Rule 3270 obligates the member firm to evaluate the request and make certain determinations, including whether the outside activity will compromise the representative's responsibilities to the firm, and whether the outside activity should instead be treated as an outside securities activity. Importantly, the member firm "must keep a record of its compliance" with this review process.

Similarly, where a registered representative requests permission from her member firm to engage in a private securities transaction, NASD Rule 3040 obligates the member firm to respond to the request in writing.

More generally, NASD Rule 3010(b) requires each member firm to establish, maintain, and enforce written procedures to supervise its business and its associated persons "reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of [FINRA]."

CapFi's written supervisory procedures required registered representatives who wished to engage in outside business activities or private securities transactions to complete a request form and submit it to the compliance department for review and approval. In determining whether to approve a requested outside business activity, CapFi was to document, in writing, its approval or disapproval of the request, and the Firm was to answer, in writing, seven questions relating to conflicts and supervision. Similarly, in reviewing a request to participate in private securities transactions, CapFi was to note, in writing, its approval of the request or the reason for its disapproval.

In October 2014, registered representative PT submitted a request form to CapFi seeking permission to engage in three private securities transactions. Separately, in November 2014, registered representative KR submitted two request forms to CapFi: one to participate in an outside business activity, and one to participate in a private securities transaction.

CapFi orally conveyed to PT and KR its approval or disapproval of their requests. However, contrary to its written supervisory procedures, CapFi failed to document its review and disposition of PT's and KR's requests to engage in these activities. Accordingly, CapFi violated NASD Rules 3040 and 3010 and FINRA Rules 3270 and 2010.

Review of Electronic Communications

FINRA Rule 3110(b), like its predecessor NASD Rule 3010(b), requires each member firm to establish, maintain, and enforce written procedures to supervise its business and its associated persons "reasonably designed to achieve

compliance with applicable securities laws and regulations, and with applicable FINRA rules.” Those written procedures are required to include procedures for the review of incoming and outgoing written (including electronic) correspondence.

CapFi’s written supervisory procedures required the capture and review of its representatives’ electronic communications. However, from March 2012 to September 2015, the Firm failed to review the electronic communications for representative PT. By failing to enforce its procedures relating to email review, CapFi violated NASD Rule 3010 (for the conduct on or before November 30, 2014), FINRA Rule 3110 (for the conduct on or after December 1, 2014), and FINRA Rule 2010.

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

- a censure, and
- a \$12,500 fine.¹

CapFi 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.

CapFi specifically and voluntarily waives any right to claim that the Firm is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

CapFi specifically and voluntarily waives the following rights granted under FINRA’s Code of Procedure:

- A. To have a Complaint issued specifying the allegations against the Firm;
- 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,

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.

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, CapFi 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.

CapFi 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

CapFi 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 the Firm; and
- C. If accepted:
 - 1. this AWC will become part of CapFi's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the Firm;
 - 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. CapFi 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 CapFi'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; and

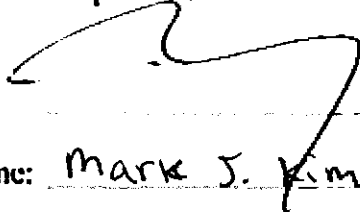
- D. CapFi may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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 understands and acknowledges that FINRA does not represent or advise the Firm and CapFi cannot rely on FINRA or FINRA staff members for legal advice; that CapFi 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.

CapFi Partners LLC (BD No. 113795),
Respondent

3/1/17
Date

By: 

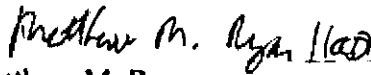
Name: Mark J. Kimsey

Title: _____

Accepted by FINRA:

March 15, 2017
Date

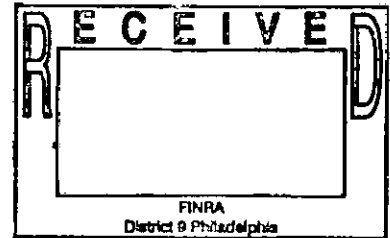
Signed on behalf of the
Director of ODA, by delegated authority


Matthew M. Ryan
Principal Regional Counsel
FINRA Department of Enforcement
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Philadelphia, PA 19103-2339
Tel.: (215) 209-7094
Fax: (215) 209-7022
Email: matthew.ryan@finra.org

CapFi PARTNERS LLC

February 28, 2017

Mr. Matthew Ryan
Principal Regional Counsel
FINRA
1600 Market Street
Suite 2700
Philadelphia, PA 19103



Dear Mr. Ryan:

The following is CapFi Partners LLC ("CapFi") Statement of Corrective Action.

STATEMENT OF CORRECTIVE ACTION

Supervision of Outside Business Activities and Private Securities Transactions

CapFi has reviewed its policies and procedures related to Outside Business Activities and Private Securities Transactions at its 2016 Annual Compliance Meeting and again after receipt of this AWC. CapFi has reiterated the requirement to its associated persons that they are required to complete the Outside Business Activity Request form and submit it to Chief Compliance Officer (or CEO), and that they must receive written approval prior to engaging in the activity.

CapFi, with the support of its securities compliance consultant has conducted additional due diligence concerning Outside Business Activity requests which includes, but is not limited to, reviews of website addresses, email addresses, regulatory requirements, copies of licenses, compensation agreements and marketing materials if any. CapFi prohibits its associated persons from engaging in a Private Securities Transactions without first requesting and receiving written permission to do so by CapFi's Chief Compliance Officer. Each associated person is required to execute a document upon registration with CapFi indicating their understanding of CapFi's policies with regard to Private Securities Transactions. CapFi's securities compliance consultant works to support CapFi's CEO, Mr. Mark Kimsey, in his duties and responsibilities in this area. Together they compile the necessary documentation to conduct due diligence on any Private Securities Transaction request, including, but not limited to, subscription agreements, ppm, offering documents, presentations, teasers, payment documentation, IRS Forms 1099, FATCA and FBAR Forms, statements, net asset value calculations and wire instructions.

CapFi PARTNERS LLC

All approved Private Securities Transactions will be recorded and included in the records of the broker-dealer. Mr. Kimsey, will supervise the associated person's participation in the approved transactions.

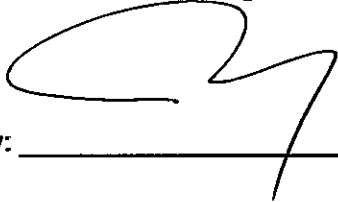
CapFi has retained the services of a securities compliance consultant to work to mitigate the finding in this AWC and to support the Chief Compliance Officer, Mr. Kimsey, in CapFi's ongoing efforts to ensure that a repeat of the inadvertent deficiencies noted herein do not occur.

CapFi would like the Staff to note that the firm discharged Mr. Philip Toub on June 30, 2016 for failing to disclosure Outside Business Activities, outside brokerage accounts and Private Securities Transactions and for failing to follow firm policies. CapFi will work diligently to the extent feasible to oversee and supervise the outside of its associated persons.

Review of Electronic Information

CapFi has captured and reviewed emails to and from the email address ptoub@tacticalcapitalpartners.com for the period March 2012 through September 2015. CapFi has instructed and trained its associated persons both in its Continuing Education, Firm Element training and in its Annual Compliance Meetings on the prohibition and usage of un-approved, non-firm retained email addresses. Repeated training at inception of associated person's registration with the firm and during formal training sessions and meetings will continue on an ongoing basis.

Date: 3/1/17

By: 

Name: Mark J. Kimsey

Title: _____

This Corrective Action Statement is submitted by the Respondent. It does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA, or its staff.