

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015043654701**

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

RE: Houlihan Capital, LLC, Respondent
CRD No. 156028

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, 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 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

Houlihan Capital is a specialized investment banking firm that provides merger and advisory services, private placement, capital raises, liquidity solutions, transaction advisory, secondary market advisory and trading services. Houlihan has been registered with FINRA since July 2011. The firm currently has ten registered representatives and one branch located in Chicago, Illinois.

RELEVANT DISCIPLINARY HISTORY

Respondent does not have relevant disciplinary history.

OVERVIEW

In 2012, Houlihan conducted a contingent securities offering without first establishing an escrow account for investor funds as required by Exchange Act Rule 15c2-4. The firm's failure to use an escrow account resulted from a lack of adequate written supervisory procedures with respect to applicable requirements for contingent offerings. Accordingly, Houlihan violated Exchange Act Rule 15c2-4, NASD Rule 3010, and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

In 2012, Houlihan acted as a placement agent for a contingent private placement offering of securities in a real estate venture. The terms of the offering were set forth in a subscription agreement, which provided that if a minimum of \$3.5 million was not raised by December 31, 2012, the funds raised would be returned to investors.

Exchange Act Rule 15c2-4 requires firms participating in a contingent offering of securities to promptly segregate investor funds either in a separate bank account as agent or trustee for the investors or in a bank escrow account. The Rule protects issuers and investors by ensuring that the issuer will receive the full proceeds promptly if the contingency occurs or that investors will receive a prompt refund if the contingency does not occur.

Further, at all relevant times, NASD Rule 3010 required firms to maintain and establish written supervisory procedures reasonably designed to achieve compliance with applicable NASD and FINRA Rules and with applicable securities laws and regulations, including Exchange Act Rule 15c2-4.¹

With respect to contingent private placement offerings, Houlihan lacked written supervisory procedures reasonably designed to ensure compliance with the escrow requirements of Exchange Act Rule 15c2-4. As a result, beginning mid-2012, Houlihan raised and accepted funds from investors without establishing a separate bank account or an escrow account. Instead, Houlihan held the investors' checks until September 11, 2012, then caused them to be cashed, and the funds deposited in a bank account established in the name of the issuer that was not an escrow account. Funds were held in that account until the \$3.5 million contingency was reached as of September 21, 2012, and the offering proceeded to close in accordance with the subscription agreement.

Based on the foregoing, Houlihan violated Exchange Act Rule 15c2-4, NASD Rule 3010, and FINRA Rule 2010.

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

1. A censure; and
2. A fine of \$15,000.

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 Respondent proposes to pay the fine imposed.

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

¹ NASD Rule 3010 was superseded by FINRA Rule 3110 effective December 1, 2014.

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 Respondent; 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 Respondent, 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 Respondent 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 Respondent to submit it.

9/8/2016
Date (mm/dd/yyyy)

Andrew D. Smith
Respondent PRESIDENT

HOULIHAN CAPITAL, LLC

By: ANDREW D. Smith
Andrew D. Smith
Its: PRESIDENT

Reviewed by:

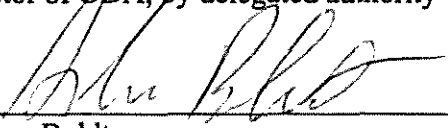


Howard Stein, Esq.
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Accepted by FINRA:

10-11-16
Date

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



Andrew Boldt
Principal Regional Counsel
FINRA Department of Enforcement
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