

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015044115601**

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

RE: Arthur J Smithee, Respondent
Registered Representative
CRD No. 1068632

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

I.

ACCEPTANCE AND CONSENT

- A. I 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

Arthur Smithee ("Smithee") was first registered with a FINRA member firm in November 1988. From May 2004 through January 2015, he was registered with LPL Financial, LLP ("LPL" or "the Firm") as a General Securities Representative (Series 7). Smithee's registration with LPL was terminated by Form U5 filed on January 16, 2015. Smithee has been registered in the same capacity with another member firm since January 28, 2015.

OVERVIEW

From October 2008 through February 2014, while registered with LPL, Smithee exceeded the scope of LPL's approval to conduct two consulting businesses. Between February 2009 and January 2015 he also engaged in two undisclosed outside business activities. Additionally, Smithee participated in an undisclosed private securities transaction in June 2009. By virtue of this conduct, Smithee violated NASD Rules 3030,¹ 3040,² and 2110³ and FINRA Rules 3270 and 2010.

¹ NASD Rule 3030 was superseded by FINRA Rule 3270, effective December 15, 2010.

FACTS AND VIOLATIVE CONDUCT

1. Outside Business Activities

In October 2006, Smithee received approval from LPL to engage in an outside business activity ("OBA") disclosed as providing "computer technology consulting and sales." LPL approved Smithee's participation in a second OBA disclosed as providing the same services in September 2009. From October 2008 through February 2014, Smithee provided services through these OBAs to a publically traded company that amounted to day-to-day management of the company and exceeded the scope of his disclosed activities that LPL approved.

From February 2009 through January 2015, Smithee engaged in two additional OBAs that he never disclosed to LPL, including a consulting firm that he managed and an LLC formed to hold a family member's house. In addition, Smithee incorrectly indicated on three LPL annual compliance questionnaires that he had disclosed his involvement in all business activities conducted outside of the firm.

NASD Rule 3030 prohibited registered persons from engaging in a business activity outside the scope of the relationship with their member firm, unless they provided prompt written notice to the firm. FINRA Rule 3270, effective December 15, 2010, provides similarly.

By virtue of the conduct described above, Smithee violated NASD Rules 3030 and 2110 for his conduct prior to December 15, 2008, he violated NASD Rule 3030 and FINRA Rule 2010 for his conduct on or after December 15, 2008 and ~~prior to December 15, 2010, and he violated FINRA Rules 3270 and 2010 for his~~ conduct on or after December 15, 2010.

2. Private Securities Transaction

In June 2009, an LLC managed by Smithee's daughter paid \$150,000 to purchase six million shares of common stock in a publically traded company from the company's outgoing chairman. Smithee proposed the transaction to his daughter and facilitated its execution by, among other things, meeting with the attorney who structured the transaction. The transaction was not executed through LPL, and Smithee did not give LPL prior notice that he would be participating in this transaction.

² NASD Rule 3040 was superseded by FINRA Rule 3280, effective September 21, 2015.

³ NASD Rule 2110 was superseded by FINRA Rule 2010, effective December 15, 2008.

NASD Rule 3040 prohibited associated persons from participating in any manner in private securities transactions without providing prior written notice of such to his member firm.

By virtue of the foregoing, Smithee violated NASD Rule 3040 and FINRA Rule 2010.

B. I also consent to the imposition of the following sanctions:

1. A suspension in all capacities from association with a FINRA member for three months; and
2. A fine of \$10,000.

I agree to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. I have submitted an Election of Payment form showing the method by which I propose to pay the fine imposed.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

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

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

II.

WAIVER OF PROCEDURAL RIGHTS

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

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

I 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

I understand that:

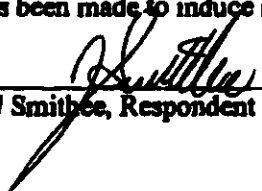
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and
-
- C. If accepted:
1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
 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. I 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. I 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 my: (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. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I 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.

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

03/30/2017
Date (mm/dd/yyyy)


Arthur J. Smith, Respondent

Reviewed by:

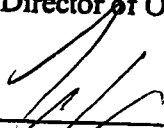


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(801) 322-2516

Accepted by FINRA:

4/25/17
Date

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



Robin W. Sardegna

Senior Counsel

FINRA Department of Enforcement

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