

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

Department of Enforcement, Complainant, v. Erick J. Arnett (CRD No. 5007131), Respondent.	Disciplinary Proceeding No. 2015044778302 Hearing Officer – DW <u>ORDER ACCEPTING OFFER OF SETTLEMENT</u> Date: September 29, 2017
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INTRODUCTION

Disciplinary Proceeding No. 2015044778302 was filed on February 13, 2017, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Erick J. Arnett submitted an Offer of Settlement (Offer) to Complainant on September 26, 2017. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, 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, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of

the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Arnett first became associated with a FINRA member firm in 2005. He was registered with former FINRA member firm Dalton Strategic Investment Services, Inc. as a general securities representative from February 2010 to July 2013. In July 2013, Arnett registered with FINRA member firm TCM. He remained registered with TCM until March 2, 2016.

Although Arnett is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the effective date of termination of Arnett's registration with TCM, namely, March 2, 2016, and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

During the time Erick J. Arnett was registered with Dalton Strategic (the "relevant period"), he engaged in an outside business activity by operating a "marketing consulting" firm from January 2010 through January 2013 for compensation without properly disclosing it to his broker-dealer. As a result, Arnett violated NASD Rule 3030 and FINRA Rules 3270 and 2010.¹

¹ NASD Rule 3030 was replaced by FINRA Rule 3270, which became effective on December 15, 2010.

In January 2011, Arnett filed for personal bankruptcy. Arnett willfully failed to timely amend his Form U4 to disclose the bankruptcy, as required. Arnett thereby violated Article V, Section 2(c) of the FINRA By-Laws and FINRA Rules 1122 and 2010.

Arnett Failed to Properly Disclose His Outside Business Activity

During the relevant period, Arnett engaged in an outside business activity by operating a “marketing consulting” firm called Rnett Consulting for which he received compensation. Rnett Consulting’s clients included Arnett’s business partner and fellow-Dalton Strategic representative, MD, and other individuals registered with Dalton Strategic.

Between August 2010 and January 2013, Arnett received 35 checks totaling more than \$60,000 from MD, including 22 checks totaling more than \$27,000 for which MD wrote “CAS” in the memo line of the checks. CAS refers to an entity that provided separately-managed futures and commodities trading accounts and was run by CS, an associate of Arnett and MD, who had also previously been registered with Dalton Strategic. Investments in CAS were not offered by or approved for sale by Dalton Strategic.

Arnett knew that MD was referring clients to CAS. Arnett’s marketing efforts for MD resulted in client referrals by MD to CAS. MD referred approximately 28 people to CAS who collectively invested more than \$2 million. Some of the people MD referred to CAS lost a substantial amount of the money they invested.

During the relevant period, Dalton Strategic’s written supervisory procedures required its registered persons to provide written disclosure to the firm of any business activity, other than a passive investment, outside the scope of their relationship with the firm.

The firm specified the form of the written disclosure and required all such disclosures to include the following details: (1) name of the other business, (2) whether the business is

investment-related, (3) address, (4) nature of the other business, (5) the registered person's position, title, or relationship with the other business, (6) start-date of the relationship, (7) amount of time devoted to the other business, (8) time devoted during securities-trading hours, and (9) a brief description of the duties relating to the other business.

Arnett never disclosed to Dalton Strategic his marketing activities through Rnett Consulting as an outside business activity in the form and with the detail required by the firm.

Arnett Failed to Timely Update His Form U4 to Disclose His Bankruptcy

Arnett filed a voluntary petition for Chapter 7 bankruptcy on January 26, 2011, but he did not disclose the bankruptcy on his Form U4 until May 2, 2012, more than 15 months after filing his petition.

Just six days after Arnett filed for bankruptcy, he submitted his responses to a Dalton Strategic annual compliance questionnaire (the "2010 compliance questionnaire"). The first question on the 2010 compliance questionnaire directed Arnett to "review each page of [his] Form U4, including all DRP pages" to ensure the form was "completely accurate in all respects" and to respond with any required changes. The first DRP—disclosure reporting page—of the Form U4 relates to disclosure question 14K which during the relevant period asked "Within the past 10 years: (1) have you made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition?" Question 10 of the 2010 compliance questionnaire read "Did you have any occurrences of any events that would require you to file a DRP?"² It also directed Arnett to read and review disclosure questions 14A through 14M.

² Registered individuals are required to file a DRP—a disclosure reporting page—when they answer affirmatively to certain disclosure questions in the Form U4 including question 14K. Question 14K read "Within the past 10 years: (1) have you made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition?"

Arnett did not disclose his six-day-old bankruptcy filing in his response to questions 1 or 10 of the 2010 compliance questionnaire. Indeed, Arnett checked “No” in response to question 10.

Arnett filed five inaccurate amendments to his Form U4 between the time he filed for bankruptcy and when he finally disclosed it on his Form U4. Arnett falsely answered “No” to Question 14K in his Form U4 amendments filed on February 23, 2011, March 24, 2011, July 5, 2011, February 23, 2012, and April 27, 2012.

Undisclosed Outside Business Activities

(Violations of NASD Rule 3030 and FINRA Rules 3270 and 2010)

NASD Rule 3030 prohibited registered persons from being “employed by, or accept compensation from, any other person as a result of any business activity, other than a passive investment, outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member” and required that such notice “be in the form required by the member.”

FINRA Rule 3270 prohibits a registered person from being “an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member.”

Arnett provided marketing services to MD and others in exchange for compensation during the relevant period through his outside business activity, Rnett Consulting. Arnett received 35 checks totaling more than \$60,000 from MD alone.

Arnett did not provide prior written notice to Dalton Strategic in the form required by the firm regarding his outside business activity with Rnett Consulting.

As a result of the foregoing conduct, Arnett violated NASD Rule 3030 (for conduct before December 15, 2010) and FINRA Rule 3270 (for conduct after December 14, 2010) and, due to those violations, FINRA Rule 2010.

Failure to Timely Update Form U4

(Violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010)

All applicants for registration with FINRA must complete and sign a Uniform Application for Securities Industry Registration or Transfer ("Form U4"). Article V, Section 2(c) of the FINRA By-Laws requires that associated persons keep their Forms U4 "current at all times," and that amendments to Forms U4 be filed "not later than 30 days after learning of the facts or circumstances giving rise to the amendment." Additionally, FINRA Rule 1122 states that "[n]o ... person associated with a member shall file with FINRA information with respect to ... registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof."

During the relevant period, Question 14K of Form U4 asked in relevant part "Within the past 10 years: (1) have you made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition?"

Arnett's answer to Question 14K on his Form U4 was "no" from January 27, 2011 until he first reported the bankruptcy on his Form U4 on May 2, 2012. This answer was false because Arnett had filed a petition for bankruptcy on January 26, 2011.

Arnett knew that he had filed his petition for bankruptcy on January 26, 2011.

As a result of his conduct, Arnett willfully failed to timely amend his Form U4 to reflect his bankruptcy, as required. Arnett thereby violated Article V, Section 2(c) of the FINRA By-Laws and FINRA Rule 1122. By virtue of those violations, Arnett also violated FINRA Rule 2010.

Based on the foregoing, Respondent violated NASD Rule 3030, FINRA Rule 3270, FINRA Rule 2010, FINRA Rule 1122, and Article V, Section 2(c) of the FINRA By-Laws.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be suspended from association with any FINRA member firm in any capacity for four months and fined \$7,500.

The fine shall be due and payable either immediately upon re-association with a member firm, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

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

SO ORDERED.

FINRA

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



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