

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015046154001**

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

RE: Curian Clearing, LLC, Respondent
CRD No. 132938

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Curian Clearing, LLC ("Curian," 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 Curian alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Curian 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

Curian has been a FINRA regulated broker-dealer since March 2005. The Firm has a single office in Denver, Colorado and approximately 12 registered individuals associated with the Firm.

RELEVANT DISCIPLINARY HISTORY

The Firm has no relevant disciplinary history.

OVERVIEW

From November 1, 2008 through March 31, 2015 (the "Relevant Period"), the Firm violated NASD Rule 2110 and FINRA Rule 2010 by failing to deliver prospectuses for approximately 9,032 customer investments in a money market mutual fund, in contravention of Section 5(b)(2) of the Securities Act of 1933 (the "Securities Act"). During the Relevant Period, the Firm also failed to enforce its written procedures to ensure the delivery of prospectuses to customers who invested in the money market mutual fund, in violation of NASD Rules 3010(b)

and 2110 and FINRA Rules 3110(b) and 2010.

FACTS AND VIOLATIVE CONDUCT

Section 5(b)(2) of the Securities Act prohibits the delivery of certain securities unless such delivery is accompanied or preceded by a prospectus that meets the requirements of the Securities Act. A violation of the prospectus delivery requirements constitutes a violation of NASD Rule 2110 and FINRA Rule 2010, which require FINRA regulated broker-dealers to observe high standards of commercial honor and just and equitable principles of trade.¹

During the Relevant Period, certain Firm customers purchased shares of a money market mutual fund through a program known as the Dollar Cost Averaging Program (the "DCA Program Fund"). The Firm was required to provide a prospectus to each of its customers who purchased shares of the DCA Program Fund. However, during the Relevant Period, the Firm failed to deliver DCA Program Fund prospectuses to approximately 4,274 customer accounts for approximately 9,032 transactions in the Fund.

The Firm's failure to deliver prospectuses for the DCA Program Fund was in contravention of Section 5(b)(2) of the Securities Act, and thereby violated NASD Rule 2110 (for conduct occurring before December 15, 2008), and FINRA Rule 2010 (for conduct occurring on or after December 15, 2008).

NASD Rule 3010(b) and FINRA Rule 3110(b) require a member firm to establish, maintain, and enforce written procedures to supervise the types of business in which it engages that are reasonably designed to achieve compliance with applicable securities laws and regulations.² A violation of NASD Rule 3010 or FINRA Rule 3110 is also a violation of NASD Rule 2110 or FINRA Rule 2010, as applicable.

During the Relevant Period, the Firm had written procedures that required the delivery of prospectuses to mutual fund purchasers and provided for a supervisory review to ensure that prospectuses were delivered. However, the Firm did not enforce those procedures for DCA Program Fund purchases by Firm customers. The Firm was under the mistaken belief that prospectuses were not required to be delivered for money market mutual fund transactions in the DCA Program Fund. On June 19, 2015, the Firm reported this matter to FINRA.

As a result, the Firm violated NASD Rule 3010(b) (for conduct occurring before December 1, 2014), FINRA Rule 3110(b) (for conduct occurring on or after December 1, 2014), NASD Rule 2110 (for conduct occurring before December 15, 2008), and FINRA Rule 2010 (for conduct occurring on or after December 15,

¹ FINRA Rule 2010 superseded NASD Rule 2110 effective December 15, 2008.

² FINRA Rule 3110 superseded NASD Rule 3010 effective December 1, 2014.

2008).

B. The Firm also consents to the imposition of the following sanctions:

- a censure; and
- a fine of \$50,000.

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

The Firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) 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

The Firm 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 the Firm'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. 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 the Firm'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. 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.

Curian Clearing, LLC

03/14/2017
Date (mm/dd/yyyy)

By:

James P. Miller
Jim Miller
Chief Executive Officer
Curian Clearing, LLC

Reviewed by:

Wayne Aagon
Wayne Aagon, Esq.
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Accepted by FINRA:

3/15/17
Date

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

Richard Chin
Richard Chin, Chief Counsel
FINRA Department of Enforcement
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