

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2016049341201**

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

**RE: Jeffrey M. Johnson
General Securities Representative
CRD No. 5522469**

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

Jeffrey M. Johnson ("Johnson") has been in the securities industry since June 2008 when he registered with a FINRA member firm. Johnson was registered with Morgan Stanley from December 5, 2011 until his termination. Johnson has not been registered with any FINRA member firm since March 18, 2016 but remains subject to the jurisdiction of FINRA pursuant to Article V, Section 4(a) of FINRA's By-Laws, which provides for a two-year period of retained jurisdiction over formerly-registered persons.

RELEVANT DISCIPLINARY HISTORY

Johnson has no relevant disciplinary history.

OVERVIEW

In December of 2013 Johnson partnered with a customer and friend to pursue a business venture designed to monetize a fantasy sports game. Two business

entities were formed and Johnson participated in both entities as an owner and manager. In addition to performing management activities such as writing checks and promoting the business, Johnson participated in raising \$310,000 in both equity and debt financing for the business. Johnson only notified Morgan Stanley of one of the two companies, and his disclosure omitted that he was a manager and owner of the business. Johnson was never approved to conduct private securities transactions.

FACTS AND VIOLATIVE CONDUCT

FINRA Rule 3280, effective September 21, 2015 and NASD Rule 3040 (for conduct occurring prior to September 21, 2015) prohibit an associated person from participating in any manner in a private securities transaction unless, prior to participating in the transaction, the associated person provides written notice to his/her member firm. The term "private securities transaction," is defined in both NASD Rule 3040(e)(1) and FINRA Rule 3280(e)(1) as any security transaction outside the regular course or scope of an associated person's employment with a member. Section 2(a)(1) of the Securities Act of 1933 (the "1933 Act") defines the term "security" as "any note, stock, . . . transferable share . . . or, in general any interest or instrument commonly known as a 'security.'" Section 3(a)(10) of the Securities Exchange Act of 1934 (the "Exchange Act") also defines a security as "[a]ny note, stock, . . . , . . . transferable share, . . . or, in general, any instrument commonly known as a 'security.'"

FINRA Rule 3270 (formerly NASD Rule 3030) provides, in relevant part, that, "No registered person may be 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."

FINRA Rule 2010 requires associated persons, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.

On December 11, 2013 Johnson and a friend (CK) incorporated a Michigan for-profit company called Teaser Fever as part of a business venture to monetize a fantasy sports game. CK was also a customer of Johnson's at Morgan Stanley. Teaser Fever was formed to hold the intellectual property they hoped to eventually turn into an internet web site and application for smart phones. Johnson and CK were each an officer and 50% owner of Teaser Fever. Johnson never disclosed his involvement in Teaser Fever to his employer Morgan Stanley.

Johnson and CK formed a second company called FourPlay Sports, LLC ("FPS") in April of 2014, and began to take steps to develop their fantasy sports website

and application, including entering into contracts with various vendors. Johnson and CK collaborated on all significant business decisions and both invested funds to cover expenses of the company. Johnson had signatory authority for the business account for FPS, and issued checks to cover expenses such as vendors and administrative staff.

In April of 2014 Johnson disclosed to Morgan Stanley a personal investment in FPS as an outside business activity, including a description of what the business was and how it was going to make money. In the description provided, Johnson indicated he would not be soliciting investments for the company and that he was not participating in management of the company. The firm rejected his involvement in the outside activity based on the fact that CK, a firm customer, was a 50% owner and manager of the business.

Despite Morgan Stanley's rejection of Johnson's request to participate in FPS as an outside business activity, Johnson continued to participate in the development of the company, working with CK. As the costs of developing the fantasy sports website and application grew, Johnson and CK began to reach out to potential investors, consisting of family, friends, and business contacts. Eleven persons and entities invested \$310,000 consisting of equity interest and convertible promissory notes. The equity shares purchased by investors clearly meet the definition of a security in either the 1933 Act or the Exchange Act. Promissory notes are presumed to be securities unless it is shown that the note bears a strong resemblance to a category of non-securities notes such as commercial loans or notes secured by mortgages.¹ The promissory notes did not fit into any category of non-securities notes, as they were sold to individual investors interested in profiting from the purchase of the notes, and were potentially convertible into equity in FPS. Most of the investments were made between February and May of 2015, and four of the investors were customers of Johnson's at Morgan Stanley. Johnson did not receive a commission on the sales of the securities.

At no time did Johnson disclose to Morgan Stanley that he would be involved in soliciting customers to invest in FPS. Johnson denied taking part in any private securities transactions in his 2015 annual compliance attestation, despite having begun selling the investments in FPS. Johnson never received approval from Morgan Stanley to engage in private securities transactions outside the firm.

In November of 2015, Johnson again sought approval from the firm to participate in FPS. At that time, he provided limited information about FPS and did not disclose to Morgan Stanley his ownership interest, his role as manager or that he had solicited and received investments from eleven persons, including four Morgan Stanley customers, totaling \$310,000. Because of the limited amount of information disclosed by Johnson, the firm did not object to his involvement in the business at that time. However, while investigating an unrelated customer complaint, the firm investigated the matter further. Upon questioning Johnson

¹ See *Reves v. Ernst & Young*, 494 U.S. 56, 62-65 (1990), *aff'd* 507 U.S. 170 (1993).

denied being anything more than an adviser concerning the FPS application, but the firm had discovered at least one customer to whom Johnson had attempted to sell interest in FPS, and terminated him.

By virtue of the foregoing, Johnson violated NASD Rule 3040, and FINRA Rules 3280, 3270, and 2010.

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

A seven (7) month suspension from association with any FINRA member firm in any capacity and a \$10,000 fine.

The fine shall be due and payable either immediately upon reassociation 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.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction(s) 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:

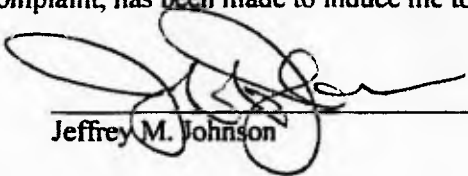
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will 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.

10/10/2017
Date (mm/dd/yyyy)


Jeffrey M. Johnson

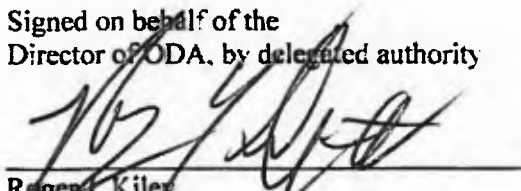
Reviewed by:

Mark Kowalsky
Mark Kowalsky
Counsel for Respondent
Jaffe Raitt Heuer & Weiss
27778 Franklin Road, Suite 2500
Southfield, Michigan 48034
(248) 351-3000

Accepted by FINRA:

10/23/17
Date

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


Roger J. Kiley
Principal Regional Counsel
FINRA Department of Enforcement
55 West Monroe Street, Suite 2700
Chicago, IL 60603
Roger.Kiley@finra.org
(312)899-4353; (312)899-4600 (fax)