

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2016051209101**

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

RE: Donna Flemming, Respondent
CRD No. 1791388

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 in this AWC.

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

Flemming entered the securities industry in 1988. She was registered with FINRA or its predecessor as a general securities representative from 1988 to February 2019, a general securities principal from 1997 to February 2019, a financial and operations principal from 2000 to February 2019, a municipal securities principal and a registered options principal from 2003 to February 2019, an investment banking representative from 2010 to February 2019, a securities trader and a proprietary trader principal from 2016 to February 2019, and an investment banking principal and an operations professional from 2018 to February 2019. She was also registered as an equity trader limited representative from 1999 to 2016. She associated with Spencer Edwards, Inc. ("SEI") (CRD No. 22067) from 2003 to February 2019. She was SEI's chief executive officer from 2012 to February 2019 and was SEI's chief compliance officer and anti-money laundering ("AML") compliance officer from 2012 until mid-2017. Flemming has not been registered or associated with a FINRA member since SEI's membership with FINRA was cancelled on February 1, 2019. She remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-

Laws of the Corporation. Flemming does not have any relevant disciplinary history.

OVERVIEW

From September 2013 to August 2015, Flemming failed to implement an AML compliance program reasonably designed to detect and cause the reporting of suspicious activity in SEI's primary business—accepting and liquidating customers' deposits of microcap securities—in violation of FINRA Rules 3310(a) and 2010. Additionally, Flemming allowed a subordinate to affix Flemming's signature to representations required by SEI's clearing firm, thereby representing that Flemming had reviewed documents supporting customers' stock deposits, even though she had not actually done so, in violation of FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

FINRA identified the violations described below as the result of a routine examination of SEI.

Failing to implement a reasonable AML program

FINRA Rule 3310 requires the development and implementation of a written AML program reasonably designed to achieve and monitor compliance with the Bank Secrecy Act and the implementing regulations thereunder. Under Rule 3310(a), an AML program must, at a minimum, establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions required to be reported under 31 U.S.C. § 5318(g) and the implementing regulations thereunder. The Treasury Department has advised broker-dealers to determine whether activity raises suspicions by monitoring for various "red flags," and NASD Notices to Members 02-21 and 02-47 emphasize members' duties to detect red flags and, if detected, to perform additional due diligence before proceeding with a suspicious transaction.

From September 2013 to August 2015, Flemming was responsible for SEI's AML program. Her duties included monitoring SEI's compliance with its AML obligations, determining when the firm needed to file suspicious activity reports with the Financial Crimes Enforcement Network, and ensuring that SEI kept and maintained the required records. She was also required to track activity in SEI's customers' accounts for unusual patterns, taking into account red flags of suspicious activity relating to the firm's business. During the period at issue, SEI derived more than 80% of its revenue from accepting customers' deposits of microcap securities and liquidating the shares.

SEI's written procedures listed several red flags of potentially suspicious activity relating to that business, including customers who have questionable backgrounds; engage in patterns of depositing stock in physical form, selling the position, and wiring out the proceeds; trade stock of companies that frequently

and materially changed their business strategy or line of business; exhibit a lack of concern regarding transaction costs; or engage in transactions involving penny stocks in conjunction with other red flags. Flemming was required to monitor for those red flags by noting SEI's basis for accepting large stock deposits, and by evaluating and investigating potentially suspicious activity that the firm identified in the course of reviewing proposed stock deposits.

Flemming completely abdicated those responsibilities. Flemming did not monitor whether customers' deposits and liquidations of microcap securities posed red flags of potentially suspicious activity. In fact, she did not participate in SEI's process for reviewing and accepting stock deposits, instead delegating that authority to an unregistered person, the firm's outside lawyer, whom she did not monitor, audit, or otherwise supervise. Moreover, even when the outside lawyer identified potentially suspicious activity during reviews of proposed stock deposits, Flemming did not investigate. Flemming did not track customers' activity for patterns of suspicious activity. Flemming did not determine whether SEI needed to file suspicious activity reports. Nor did Flemming maintain adequate AML records.

Flemming ignored those responsibilities despite recognizing that SEI's business was inherently risky, and despite the presence of numerous red flags of suspicious activity. During the period at issue, SEI's customers deposited certificates representing billions of shares of companies with little or no established business, including companies that had recently undergone reverse mergers that dramatically changed their business strategy. SEI's customers routinely liquidated those shares within days after depositing them, then quickly withdrew the proceeds. Some of those customers had histories of regulatory discipline or personal or professional ties to the companies whose stock they were liquidating. And, virtually all of those customers' activity involved penny stocks. Flemming failed to detect or investigate any of these pervasive indicia of suspicious activity.

By virtue of the foregoing, Flemming violated FINRA Rule 3310(a) and consequently FINRA Rule 2010.

Falsification of documents

FINRA Rule 2010 requires that individuals associated with member firms observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

From September 2013 to August 2015, SEI's clearing firm required that, when forwarding copies of deposit packets, SEI provide a signed representation from a registered principal of the firm stating that the principal had reviewed documents relating to stock deposits by the firm's customers. Although Flemming did not participate in SEI's reviews of stock deposits, she permitted one of her subordinates, SEI's manager of operations, to affix Flemming's signature to

approximately 75 of the representations required by the clearing firm, thereby falsely representing that Flemming had reviewed the stock deposits.

By virtue of the foregoing, Flemming engaged in conduct inconsistent with just and equitable principles of trade and, therefore, violated FINRA Rule 2010.

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

- A bar from associating in any capacity with any member of FINRA.

I understand that if I am barred 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 (see FINRA Rules 8310 and 8311).

The sanctions imposed in this AWC shall be effective on a date set by FINRA staff. A bar or expulsion shall become effective upon approval or acceptance of this AWC.

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 testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

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 in this AWC

and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

4/21/19
Date (mm/dd/yyyy)

Donna Fleming
Donna Fleming

Reviewed by:

David Zisser
Counsel for Respondent
Jones & Keller
1999 Broadway, Suite 3150
Denver, Colorado 80222
303-573-1600

Accepted by FINRA:

6/11/19
Date

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

J. Loyd Gattis III
J. Loyd Gattis III
Senior Counsel
FINRA Department of Enforcement
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