

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2016052541501**

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

RE: BMO Nesbitt Burns Securities Ltd, Respondent
FINRA Member
CRD No. 44057

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, BMO Nesbitt Burns Securities Ltd ("BMO Nesbitt Burns" 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 BMO alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. BMO Nesbitt Burns 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

BMO Nesbitt Burns, a subsidiary of a Canadian-based bank ("the Bank"), is a FINRA member based in Toronto, Ontario. The Firm is an introducing broker-dealer that provides services to retail customers and has approximately 150 registered representatives in 25 branches in Canada.

RELEVANT DISCIPLINARY HISTORY

The Firm has no relevant disciplinary history.

OVERVIEW

Between May 2015 and May 2016 ("the Relevant Period"), BMO Nesbitt Burns incorrectly calculated its net capital causing the Firm not to continuously maintain its required level of net capital. During the Relevant Period, the Firm also filed

inaccurate FOCUS¹ reports and maintained inaccurate books and records. Based on the foregoing, the Firm violated Sections 15(c) and 17(a) of the Securities Exchange Act of 1934 ("Exchange Act"), Exchange Act Rules 15c3-1, 17a-3 and 17a-5 promulgated thereunder, and FINRA Rules 4511 and 2010.

FACTS AND VIOLATIVE CONDUCT

Net Capital Violations

Under Exchange Act Section 15(c) and Rule 15c3-1, broker-dealers are required to maintain a minimum level of highly liquid assets at all times. The rule ensures that, in the event of financial difficulties, a broker-dealer has sufficient assets to liquidate in an orderly fashion without the need for a formal legal proceeding. During the Relevant Period, BMO Nesbitt Burns had a net capital requirement of \$250,000. The Firm improperly calculated its net capital in two ways.

The Custody Issue

BMO Nesbitt Burns counted as net capital approximately \$4 million in United States Treasury Bills held in two accounts at another bank. However, the account documents did not specify that the Firm, and not its ultimate parent the Bank, controlled these two accounts, and therefore these assets should have been disallowed from the net capital calculation. Because the Firm improperly included the United States Treasury Bills held in the name of its parent in its net capital calculations, the Firm had a net capital deficiency during eight months of the Relevant Period ranging from \$26,815 to \$259,764.

The Operating Expenses Issue

Cash deposits with a parent or affiliated bank will only have net capital value to the extent that the deposit represents normal day-to-day operating balances. The Firm maintained two checking accounts with its ultimate parent, the Bank.

During a 2014 examination, FINRA discovered that as of March 31, 2014, the Firm's cash balance in its accounts with the Bank exceeded the three-month trailing average of its operating expenses. That overage should not have been counted as an asset for purposes of the net capital calculation.

After the 2014 examination, the Firm created a new internal control procedure, a worksheet that tracked cash versus the trailing three-month average of operating expenses. In December 2014, the Firm transitioned from a self-clearing broker to an introducing broker. As an introducing broker, the Firm no longer had to maintain cash in a reserve account with the amount owed to customers. However, after transitioning to an introducing broker in December 2014, the Firm failed to treat the funds in its reserve account at the Bank as a non-allowable asset when calculating its net capital. In February 2016, the Firm failed to reinvest maturing

¹ Financial Operational Combined Uniform Single Report.

U.S. Treasury Bills held in that reserve account. In February 2016, the Firm therefore held cash that was \$1.77 million in excess of the trailing three-month average of its operating expenses and improperly identified as available net capital in the Firm's net capital calculation.

Based on the foregoing, the Firm violated Exchange Act Section 15(c), Exchange Act Rule 15c3-1 and FINRA Rule 2010.

Books and Records and Reporting Violations

Exchange Act Section 17(a) and Rule 17a-3 require, among other things, that broker-dealers maintain accurate books and records, including net capital calculations. Exchange Act Rule 17a-5 requires, in relevant part, that broker-dealers file accurate FOCUS Reports. FINRA Rule 4511 requires members to make and preserve accurate books and records as required under the Exchange Act and applicable Exchange Act Rules.

During the Relevant Period, the Firm failed to prepare an accurate computation of its net capital and filed inaccurate FOCUS reports because of its errors in the net capital calculation.

Based on the foregoing, the Firm violated Exchange Act Section 17(a) and Rules 17a-3 and 17a-5 promulgated thereunder, and FINRA Rules 4511 and 2010.

B. BMO Nesbitt Burns also consents to the imposition of the following sanctions:

- A censure; and
- A fine of \$75,000.

The Firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is 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 imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

BMO Nesbitt Burns specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against the Firm;
- 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, BMO Nesbitt Burns 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.

BMO Nesbitt Burns 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

BMO Nesbitt Burns 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. BMO Nesbitt Burns 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.

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.

9/5/2018
Date (mm/dd/yyyy)


BMO Nesbitt Burns Securities Ltd, Respondent

By: TAMARA PERES, PRESIDENT

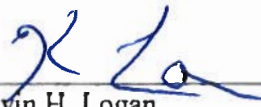
Reviewed by:


Ellen M. Wheeler
Counsel for BMO Nesbitt Burns Securities Ltd
Foley & Lardner LLP
321 North Clark Street
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Chicago, Illinois 60654-5313

Accepted by FINRA:

9/13/2018
Date

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



Kevin H. Logan
Principal Counsel
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