

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2018057522001**

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

RE: Jeffrey Scott Nimmow, Respondent
Former Investment Company Shares/Variable Contracts Representative
CRD No. 2693601

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Jeffrey Scott Nimmow ("Respondent" or "Nimmow") 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 Respondent alleging violations based on the same factual findings described herein.

I. ACCEPTANCE AND CONSENT

- A. Respondent 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

Nimmow entered the securities industry in 1996 when he passed the Series 6 exam and became associated with a member firm as an Investment Company/Variable Contracts Products Representative. From August 2015 to March 2018, Nimmow was registered with FINRA as an Investment Company Products/Variable Contracts Representative through his association with Forest Securities, Inc. ("FSI" or the "Firm"). In March 2018, FSI filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") terminating Nimmow's registration with FSI. Nimmow is not currently associated with a member firm. However, he remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

Respondent does not have any disciplinary history with the Securities and Exchange Commission, any state securities regulators, FINRA, or any other self-regulatory organization.

OVERVIEW

Between February 2016 and December 2017 ("Relevant Period"), Nimmow engaged in the sale of promissory notes to 18 individual investors totaling more than \$3 million. The promissory notes were unregistered securities, and Nimmow engaged in these sales without disclosing and receiving approval from his firm for each individual private

securities transaction, in violation of FINRA Rules 3280 and 2010. In addition, Nimmow was only registered to sell certain categories of securities and did not possess the proper FINRA registration to sell these promissory notes. Nimmow's conduct violated NASD Rule 1031 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

FINRA Rule 3280(b) states that "[p]rior to participating in any private securities transaction, an associated person shall provide written notice to the member with which he is associated describing in detail the proposed transaction and the person's proposed role therein and stating whether he has received or may receive selling compensation in connection with the transaction." FINRA Rule 3280(e) defines generally a private securities transaction as any securities transaction outside the regular course or scope of an associated person's employment with a member.

NASD Rule 1031(a) states that "[a]ll persons engaged or to be engaged in the investment banking or securities business of a member who are to function as representatives shall be registered as such with the NASD in the category of registration appropriate to the function to be performed as specified in Rule 1032."¹

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. A violation of NASD Rule 1031 or FINRA Rule 3280 also constitutes a violation of FINRA Rule 2010.

In 2013, through an insurance marketing organization with which he was involved, Nimmow became aware of a potential opportunity for clients to loan funds to the Woodbridge Group of Companies, LLC ("Woodbridge"), a self-advertised real-estate investment fund. At that point, Nimmow began following Woodbridge. Based on favorable recommendations of others who participated in the Woodbridge program, by March 2015, Nimmow had decided to inquire of his then broker-dealer whether he could sell Woodbridge's "First Position Commercial Mortgages" ("FPCMs") to customers. The prior firm indicated that it was unlikely to approve any such request.

FPCMs included promissory notes ("FPCM Notes") that were of approximately 12-months in duration and provided a "wholesale" interest rate of typically 9%.² The actual FPCM Notes were entered into with different tranches of the "Woodbridge Mortgage Investment Fund," and the funds from those notes were pooled to provide

¹ NASD Rule 1031 was in effect until September 30, 2018, at which time FINRA Rule 1210 replaced it. The NASD Rule governed during the Relevant Period.

² The "wholesale" interest rate was split between the representative and the customer, and the representative had the discretion to determine how much interest would be paid to the customer and how much would be paid to the representative in the form of up-front commissions. Typically, a first time customer received 5% monthly interest, and the representative received 4% in commissions. If the customer decided to renew the note and roll the principal into a new note for another 12 months, the customer would receive an extra .5% (totaling 5.5% in monthly interest) and the representative would receive 3.5% in an up-front commission.

funding to a “third party commercial borrower” for the purchase or renovation of commercial real estate.³

In August 2015, Nimmow became associated with FSI. In December 2015, before soliciting any sales, Nimmow submitted a request to FSI to add sales of Woodbridge’s FPCMs to his outside business activities (“OBA”). In submitting the request, Nimmow failed to provide reasonable notice to FSI of his proposed activities, including disclosing certain facts to FSI which suggested that the FPCM Notes may be securities.⁴ Later, as Nimmow engaged in private securities transactions by selling the FPCM Notes to 18 investors, he failed to provide notice of each proposed transaction to FSI, as required by FINRA Rule 3280. In addition, Nimmow could not offer the FPCM Notes to his customers because he was not qualified and registered to sell promissory notes that were unregistered securities.⁵

From February 2016 to mid-November 2017, Nimmow sold at least \$3,365,000 in FPCM Notes to 18 investors. Nimmow received approximately \$177,937 in commissions for these transactions.⁶ Two of the investors were FSI customers at the time they made the investment.

On December 4, 2017, Woodbridge filed a voluntary Chapter 11 bankruptcy petition.

Three weeks after the bankruptcy filing, on December 20, 2017, the Securities and Exchange Commission filed a complaint with the United States District Court for the Southern District of Florida against Woodbridge and its former owner, Robert Shapiro, among others, claiming that Shapiro and Woodbridge ran a Ponzi scheme.⁷ In December 2018, the U.S. District Court issued a final judgment, requiring Woodbridge and Shapiro, among other things, to disgorge their ill-gotten gains. The order also required Shapiro to pay a civil penalty.

³ In fact, many of the borrowers were not “third party commercial borrowers” but entities affiliated with Woodbridge.

⁴ In Notice to Members 01-79 (*NASD Reminds Members Of Their Responsibilities Regarding Private Securities Transactions Involving Notes And Other Securities And Outside Business Activities*), the NASD (n/k/a FINRA) noted that Series 6 representatives were increasingly being targeted by issuers and promoters to sell promissory notes to customers, and marketing them to registered persons as non-securities products that do not have to be sold through a broker-dealer. The Notice also stated that because of the “differences in the requirements of Rule 3030 [former OBA rule] and Rule 3040 [former PST rule], it is important for registered persons to establish with their firms whether a particular note is a security and to follow the appropriate NASD rule requirements.” The Notice reminded associated persons that it is not sufficient to verify the non-securities status of a note solely by relying on the advice of the issuer or issuer’s counsel, and that any attempt by associated persons to conduct their own investigation of the issuer is at their own peril. The NASD also made clear that any notice of any securities transaction(s) by the associated person “must describe the proposed transaction(s) in detail and the associated person’s proposed role”

⁵ As an Investment Company and Variable Contracts Products Representative, Nimmow was permitted to solicit and sell only particular categories of securities, including mutual funds and variable annuities. This category of registration does not permit individuals to solicit and sell unregistered securities such as the FPCM Notes.

⁶ Nimmow agreed to disgorge these commissions pursuant to a Consent Order that he entered into with the State of Wisconsin, Department of Financial Institutions, Division of Securities. See *In the Matter of Jeffrey S. Nimmow, et al.*, DFI Case No. 2-236002 (RX) (Sept. 23, 2019).

⁷ *SEC v. Shapiro*, Case No. 17-24624 (S.D. Fla.).

By virtue of the foregoing, Nimmow violated NASD Rule 1031, and FINRA Rules 3280 and 2010.

B. Respondent also consents to the imposition of the following sanctions:

- A bar from association with any FINRA member in any capacity.

Respondent understands that if he is barred or suspended from associating with any FINRA member, he becomes 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, he 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. A bar or expulsion shall become effective upon approval or acceptance of this AWC.

II. WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against him;
- 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, Respondent 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.

Respondent 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

Respondent 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 Respondent; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
 - 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. Respondent 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. Respondent 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 Respondent'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.

Respondent certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; Respondent has agreed to the AWC's provisions voluntarily; and 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 him to submit this AWC.

12/27/2019
Date

Jeffrey Scott Nimmow
Jeffrey Scott Nimmow
Respondent

Reviewed by:

 1-19-2020 none pro tunc 12/27/2019

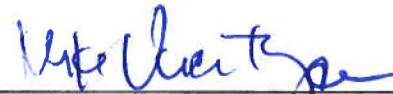
Jeffrey L. Liotta
Counsel for Respondent
Husch Blackwell LLP
555 East Wells Street, Suite 1900
Milwaukee, WI 53202-3819

Accepted by FINRA:

2/10/20

Date

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



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