

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019060656601**

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

RE: Cantone Research Inc. (Respondent)
Member Firm
CRD No. 26314

Pursuant to FINRA Rule 9216, Respondent Cantone Research Inc. 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 in this AWC.

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

Cantone has been a FINRA member firm since July 1990. It conducts a general securities business that includes the distribution of private placements. The firm is headquartered in Eatontown, New Jersey, and has 9 registered representatives and one branch office.

Respondent does not have any relevant disciplinary history.

OVERVIEW

From December 2018 through May 2019, Cantone acted as the placement agent for a private placement, which was structured as a contingency offering of securities, on behalf of an issuer. In connection with that offering, Cantone failed to deposit investors' funds into a bank escrow account. Cantone thus violated Section 15(c)(2) of the Securities Exchange Act of 1934 (Exchange Act), Rule 15c2-4 thereunder, and FINRA Rule 2010.

In addition, in connection with that same offering, Cantone failed to promptly return funds to investors after the minimum contingency amount was reduced. Cantone also failed to inform investors that the closing date had been extended; investors, therefore, did not affirmatively confirm in writing their decision to continue their investments despite that extension. Cantone thus willfully violated Exchange Act Rule 10b-9 and

thereby violated FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's 2019 cycle examination of Cantone.

A. Cantone Failed to Establish an Escrow Account that Complied with Exchange Act Rule 15c2-4.

Certain private placements are structured as contingency offerings, *i.e.*, securities offered on an "all-or-none" or "part-or-none" basis, which require all or a certain amount of the securities to be sold for the offering to close. Exchange Act Rule 15c2-4 requires a broker-dealer participating in a contingent offering to promptly deposit investor funds into a separate bank account as agent or trustee, or with a bank that has agreed in writing to hold the funds in an escrow account, until the contingency is satisfied. That said, in accordance with established FINRA and SEC guidance, a broker-dealer operating with a minimum net capital requirement of less than \$250,000 must avail itself of the second option under Rule 15c2-4 (*i.e.*, it must use "a bank that has agreed in writing to hold all such funds in escrow") to avoid holding customer funds improperly under Exchange Act Rule 15c3-1.¹ A violation of Exchange Act Rule 15c2-4 is also a violation of FINRA Rule 2010, which requires member firms to "observe high standards of commercial honor and just and equitable principles of trade."

From December 2018 through May 2019, Cantone acted as the placement agent for a contingency offering on behalf of an issuer. Cantone raised \$2,032,000 in investor funds. Cantone, which operated with a minimum net capital requirement of less than \$250,000, however, deposited investor funds into a bank account that Cantone established and controlled (not a separate bank account as agent or trustee), rather than with a bank that had agreed in writing to hold the funds in escrow.

Therefore, Cantone violated Section 15(c)(2) of the Exchange Act, Rule 15c2-4 thereunder, and FINRA Rule 2010.

B. Cantone Willfully Violated Exchange Act Rule 10b-9.

As noted, the issuer's private placement was structured as a contingency offering, and it required a certain amount of the securities to be sold, by a particular date, for the offering to close. Under Exchange Act Rule 10b-9, a contingency offering must provide for the prompt return of investor funds in the event the requisite contingency fails to be met by a certain date. If the minimum investment contingency amount is not raised by that date, the broker-dealer must terminate the offering and promptly return all funds to investors. Moreover, the offering period cannot be extended unless, prior to the contingency deadline, reconfirmation offers are sent to all investors disclosing the extension; investors must affirmatively confirm in writing their decision to continue their investments or their

¹ See FINRA Regulatory Notice 16-08, Contingency Offerings (Feb. 2016), NASD Notice to Members 84-7, SEC Staff Interpretations of Rule 15c2-4 (Jan. 30, 1984).

funds must be returned.²

The issuer's contingency offering required that the issuer raise a minimum of \$500,000 by December 15, 2018. As the closing date approached, Cantone and the issuer agreed to lower the minimum investment contingency amount to \$300,000. Cantone, however, did not return investor funds when \$500,000 had not been raised by December 15, 2018.

Cantone and the issuer also agreed to extend the closing date from December 15, 2018, to December 31, 2018. Cantone, however, did not send written reconfirmation offers to the investors disclosing the extension of the offering period prior to the closing date. As a result, no investors confirmed in writing their decision to continue their investments and their funds were not returned to them. Cantone raised more than the revised minimum offering amount and conducted an initial closing of the offering on December 28, 2018. Following the initial closing, Cantone continued to raise investor funds through May 2019, when the offering ended.

Therefore, Cantone willfully violated Exchange Act Rule 10b-9 and thereby violated FINRA Rule 2010.

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

- a censure; and
- a \$15,000 fine.

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

Respondent specifically and voluntarily waives any right to claim an inability to pay, now or at any time after the execution of this AWC, the monetary sanction imposed in this matter.

Respondent understands that this settlement includes a finding that it willfully violated Rule 10b-9 of the Securities Exchange Act of 1934 and that under Article III, Section 4 of FINRA's By-Laws, this makes Respondent subject to a statutory disqualification with respect to membership.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

² See FINRA Regulatory Notice 16-08 (Feb. 2016) at 2, n.7 ("FINRA has also found that broker-dealers violated SEA Rule 10b-9 by failing to take the proper steps in response to an issuer's extension of the offering period"); see also NASD Notice to Members 87-61 (Sept. 1987).

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 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, 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 its acceptance or rejection.

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

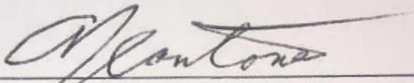
Respondent understands that:

- 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 its subject matter 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 testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Respondent may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent 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.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's 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 Respondent has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than

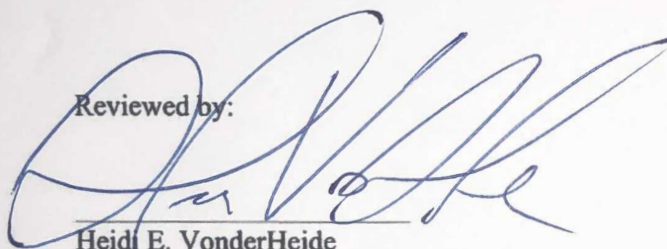
the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

12/18/2020
Date


Cantone Research Inc.
Respondent

Print Name: Anthony J. Cantone

Title: President

Reviewed by: 
Heidi E. VonderHeide
Counsel for Respondent
Ulmer & Berne LLP
500 West Madison St., Suite 3600
Chicago, IL 60661

Accepted by FINRA:

Feb. 1, 2021
Date

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

Stuart P. Feldman
Stuart P. Feldman
Senior Counsel
FINRA
Department of Enforcement
99 High St., 9th Floor
Boston, MA 02110