

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2020065125701**

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

RE: Arque Capital, Ltd. (Respondent)
Member Firm
CRD No. 121192

Michael C. Ning (Respondent)
Operations Professional and General Securities Principal
CRD No. 1229733

Pursuant to FINRA Rule 9216, Respondents Arque Capital, Ltd. and Michael C. Ning 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 Respondents alleging violations based on the same factual findings described in this AWC.

I.

ACCEPTANCE AND CONSENT

- A. Respondents accept and consent to the following findings by FINRA without admitting or denying them:

BACKGROUND

Arque Capital has been a FINRA member since 2002. The firm is headquartered in Scottsdale, Arizona, has seven branch offices, and employs 16 registered representatives. The firm's business includes investment banking services and retail brokerage services.¹

Ning entered the securities industry in 1987. He has been associated with and an owner of Arque Capital since 2005 and has been the firm's Chief Executive Officer since 2010. During his association with Arque Capital, he has been registered with FINRA as a General Securities Principal and General Securities Representative since 2005, an Investment Banking Representative since 2010, an Operations Professional since 2011, and an Investment Banking Principal since 2018.²

¹ For more information about Arque Capital, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

² For more information about Ning, visit BrokerCheck® at www.finra.org/brokercheck.

OVERVIEW

Between March 2019 and May 2020, Arque Capital failed to comply with four interrelated financial compliance requirements. First, the firm conducted a securities business on 67 days while it failed to maintain the required minimum net capital, in violation of Section 15(c) of the Securities Exchange Act of 1934, Exchange Act Rule 15c3-1, and FINRA Rules 4110(b)(1) and 2010. Second, the firm failed to provide timely required notifications to FINRA and the SEC regarding its net capital deficiencies and provided one notification that contained a material inaccuracy, in violation of Section 17(a) of the Exchange Act, Exchange Act Rule 17a-11, and FINRA Rule 2010. Third, the firm made and preserved inaccurate balance sheets, trial balances, general ledgers, and net capital computations, in violation of Section 17(a) of the Exchange Act, Exchange Act Rule 17a-3, and FINRA Rules 4511 and 2010. Fourth, the firm filed inaccurate Financial and Operational Combined Uniform Single (FOCUS) reports and filed one late FOCUS report, in violation of Section 17(a) of the Exchange Act, Exchange Act Rule 17a-5, and FINRA Rule 2010.

Between March 2017 and August 2018, Ning willfully failed to timely amend his Uniform Application for Securities Industry Registration or Transfer (Form U4) to disclose two unsatisfied tax liens totaling \$298,194. As a result, Ning violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

Between January 2016 and March 2019, Arque Capital and Ning failed to remit withheld employee payroll taxes, totaling approximately \$125,000, to the U.S. Treasury as they became due, and instead used the funds to pay for other firm business expenses. As a result, Arque Capital and Ning violated FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA examinations of Arque Capital.

I. Arque Capital conducted a securities business while failing to maintain the required minimum net capital.

Section 15(c) of the Exchange Act and Exchange Act Rule 15c3-1 require each broker-dealer to maintain, at all times, a certain minimum amount of net capital. FINRA Rule 4110(b)(1) requires a FINRA member to suspend all business operations during any period in which it is not in compliance with applicable net capital requirements. A violation of Section 15(c) of the Exchange Act, Exchange Act Rule 15c3-1, and FINRA Rule 4110(b) is also a violation of FINRA Rule 2010.

Arque Capital's net capital deficiencies occurred during three periods between July 2019 and March 2020. During these periods, the firm's required minimum net capital ranged between approximately \$6,800 and \$11,400. On 67 days during the periods July 1 through September 10, 2019; December 31, 2019 through January 14, 2020; and February 29 through March 11, 2020, the firm conducted a securities business when its net capital fell below the required minimum amount, with deficiencies ranging from

\$24,726 to \$46,582. These deficiencies occurred because the firm understated its debt relating to commissions payable and misstated allowable assets by overstating commissions receivable from a mutual fund company.

Therefore, Arque Capital violated Section 15(c) of the Exchange Act, Exchange Act Rule 15c3-1, and FINRA Rules 4110(b)(1) and 2010.

II. Arque Capital failed to provide timely notice, and provided one inaccurate notice, of its net capital deficiencies.

Section 17(a) of the Exchange Act and Exchange Act Rule 17a-11(b) require each FINRA member whose net capital falls below its minimum net capital requirement to give same-day notice of its net capital deficiency to FINRA and the SEC. A violation of Section 17(a) of the Exchange Act and Exchange Act Rule 17a-11 is also a violation of FINRA Rule 2010.

Arque Capital failed to timely notify FINRA and the SEC of its net capital deficiencies for three periods during which the firm's minimum net capital fell below its minimum requirement. The firm did not provide the required notice (i) for the first period (July 1 to September 10, 2019) until May 20, 2020; (ii) for the second period (December 31, 2019 to January 14, 2020) until December 30, 2021; and (iii) for the third period (February 29 to March 11, 2020) until April 8, 2020.

In addition, Arque Capital provided one notification that contained a material inaccuracy. The notice provided by the firm on April 8, 2020, inaccurately stated that its net capital deficiency ended that day, when in fact it ended earlier on March 11, 2020. The firm did not file an amended notice with FINRA and the SEC reflecting the correct period of the deficiency until December 30, 2021.

Therefore, Arque Capital violated Section 17(a) of the Exchange Act, Exchange Act Rule 17a-11, and FINRA Rule 2010.

III. Arque Capital failed to make and keep accurate books and records.

Section 17(a) of the Exchange Act, Exchange Act Rule 17a-3, and FINRA Rule 4511 require FINRA members to make and keep current books and records, including general ledgers, trial balances, and net capital computations. A violation of Section 17(a) of the Exchange Act, Exchange Act Rule 17a-3, and FINRA Rule 4511 is also a violation of FINRA Rule 2010.

From March 2019 through May 2020, Arque Capital created and maintained inaccurate balance sheets, trial balances, general ledgers, and net capital computations. These inaccurate records resulted from the firm's failure to accrue and record certain expenses, accurately account for commissions payable, commissions receivable, and direct business receivables, and accurately record assets and liabilities. In addition, the firm miscalculated and overstated its net capital.

Therefore, Arque Capital violated Section 17(a) of the Exchange Act, Exchange Act Rules 17a-3, and FINRA Rules 4511 and 2010.

IV. Arque Capital filed inaccurate and untimely FOCUS reports.

Section 17(a) of the Exchange Act and Exchange Act Rule 17a-5 require FINRA members to file timely FOCUS reports. Inherent in the obligation to make and preserve books and records is the requirement that they be accurate. A violation of Section 17(a) of the Exchange Act and Exchange Act Rule 17a-5 is also a violation of FINRA Rule 2010.

As a consequence of the failures described in the preceding section, Arque Capital inaccurately recorded certain financial information—including its liabilities, expenses, ownership equity, revenue, assets, net capital, and minimum net capital requirement—on two quarterly FOCUS reports and nine month-end FOCUS reports filed for the period March 2019 through May 2020.³ In addition to filing inaccurate FOCUS reports, Arque Capital filed one late FOCUS report. The firm’s FOCUS report for the second quarter of 2019 was required to be filed by July 24, 2019. The firm did not file this report until September 4, 2019. As a result, the firm filed the report 42 days late.

Therefore, Arque Capital violated Section 17(a) of the Exchange Act, Exchange Act Rule 17a-5, and FINRA Rule 2010.

V. Ning willfully failed to timely amend his Form U4 to disclose two tax liens.

Under Article V, Section 2(c) of FINRA’s By-Laws, a registered representative must keep his Form U4 current at all times and file amendments to the Form U4 not later than 30 days after learning of the facts or circumstances giving rise to the amendment. FINRA Rule 1122 prohibits registered representatives from filing with FINRA information regarding registration that is “incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof.” A violation of Article V, Section 2(c) of FINRA’s By-Laws and FINRA Rule 1122 also constitutes a violation of FINRA Rule 2010.

Registered representatives are required to disclose unsatisfied liens on their Form U4. At all relevant times, Form U4 Question 14M has asked registered representatives, “Do you have any unsatisfied judgments or liens against you?” If a registered representative answers the question in the affirmative, he also is required to provide detailed information about each reportable event, including the amount and date of the lien.

The IRS filed two tax liens against Ning, one for \$79,621 on July 26, 2017, and another for \$218,573 on March 30, 2017. The IRS mailed notice of each tax lien to Ning’s residential address. Although Ning was required to disclose the liens through the filing of

³ The firm filed quarterly FOCUS reports for the first two quarters of 2019 and began filing monthly FOCUS reports in July 2019.

an amended Form U4 within 30 days of receiving notice, Ning failed to amend his Form U4 to disclose the tax liens until August 16, 2018. As a result, Ning willfully failed to timely amend his Form U4 to disclose the tax liens.

Therefore, Ning violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

VI. Arque Capital and Ning failed to remit withheld employee payroll taxes to the U.S. Treasury.

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

From January 2016 through March 2019, Arque Capital withheld federal income, social security, and Medicare taxes (payroll taxes) from its employees. During this period, Ning owned Arque Capital and was its CEO. He controlled the firm's financial affairs and directed the collecting, accounting, and paying of payroll taxes to the U.S. Treasury. Although Ning was aware of the firm's obligation to remit the withheld payroll taxes to the U.S. Treasury when they became due, the firm used those funds to pay for other firm business expenses. As a result, during this period, Arque Capital and Ning failed to remit employees' payroll taxes to the U.S. Treasury as they became due. By March 2019, the firm owed approximately \$125,000 in unpaid payroll taxes.⁴

Therefore, Arque Capital and Ning violated FINRA Rule 2010.

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

For Arque Capital:

- a censure; and
- a \$50,000 fine.

For Ning:

- a seven-month suspension from associating with any FINRA member in all capacities; and
- a \$15,000 fine.

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

⁴ The firm paid the U.S. Treasury the unpaid payroll taxes by February 2021.

For Respondent Ning, 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.

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

Respondent Ning 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.

Respondent Ning understands that this settlement includes a finding that he willfully omitted to state a material fact on a Form U4, and that under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 and Article III, Section 4 of FINRA's By-Laws, this omission makes him subject to a statutory disqualification with respect to association with a member.

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

II.

WAIVER OF PROCEDURAL RIGHTS

Respondents specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a complaint issued specifying the allegations against them;
- 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, Respondents 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 its acceptance or rejection.

Respondents 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

Respondents 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 Respondents; and
- C. If accepted:
 - 1. this AWC will become part of Respondents' permanent disciplinary records and may be considered in any future action brought by FINRA or any other regulator against Respondents;
 - 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. Respondents 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. Respondents 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 Respondents' rights to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondents' testimonial obligations in any litigation or other legal proceedings.

- D. Respondents may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they 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 Arque Capital, certifies that a person duly authorized to act on Respondent Arque Capital'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 Arque Capital 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 Arque Capital to submit this AWC.

Respondent Ning 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 Ning has agreed to the AWC's provisions voluntarily; and 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 him to submit this AWC.

4-24-2023

Date



Arque Capital, Ltd.
Respondent

Print Name: Michael Ning

Title: President & CEO

4-24-2023

Date



Michael C. Ning
Respondent

Reviewed by:

Milena Dolukhanyan

Milena Dolukhanyan, Esq.
Counsel for Respondents
Gartenberg Gelfand Dolukhanyan LLP
15303 Ventura Blvd., Suite 900
Sherman Oaks, CA 91403

Accepted by FINRA:

May 10, 2023

Date

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

Nicholas A. Jablonski

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