

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2022075458801**

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

RE: H.C. Wainwright & Co., LLC (Respondent)
Member Firm
CRD No. 375

Pursuant to FINRA Rule 9216, Respondent H.C. Wainwright & Co., LLC 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 accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

H.C. Wainwright has been a FINRA member since 1936. It is headquartered in its one branch office in New York, New York, and presently has 86 registered representatives. H.C. Wainwright provides investment banking services, publishes equity research reports, and engages in sales and trading.¹

OVERVIEW

From December 2020 through March 2022, H.C. Wainwright served as a guarantor on loans ranging from \$50 million to \$175 million taken by its parent company in connection with an employee stock ownership transaction. The firm failed to take an appropriate net capital charge for these loans, resulting in a net capital deficiency for 14 out of 16 months with the largest deficiency being \$164,922,628 and an average deficiency of \$95,931,666. During the relevant period, the firm also made capital withdrawals of \$250,039,448. By conducting a securities business and making capital withdrawals while in net capital deficiency, the firm violated Section 15(c) of the Exchange Act of 1934, Exchange Act Rule 15c3-1, and FINRA Rule 2010.

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

As a result of the firm's failure to include the amounts of the loans in its net capital calculations, H.C. Wainwright also filed 16 inaccurate Finance and Operational Combined Uniform Single (FOCUS) Reports in violation of Section 15(c) of the Exchange Act, Exchange Act Rule 17a-5, and FINRA Rule 2010. Accordingly, it also failed to create and preserve accurate books and records in violation of Section 17(a) of the Exchange Act and Exchange Act Rule 17a-3, as well as FINRA Rules 4511 and 2010. Finally, the firm failed to provide written notice to FINRA prior to agreeing to serve as guarantor to the loans in violation of FINRA Rules 4150(a) and 2010.

FACTS AND VIOLATIVE CONDUCT

H.C. Wainwright Conducted a Securities Business, and Made Capital Withdrawals, While Failing to Maintain its Required Net Capital

Exchange Act Rule 15c3-1 (the "Net Capital Rule") prohibits a broker-dealer from engaging in a securities business if its net capital falls below a minimum amount. The purpose of the Net Capital Rule is to protect customers and creditors from monetary losses that can occur when firms fail.

The Net Capital Rule includes a provision addressing the specific circumstance where a broker-dealer acts as a guarantor for an affiliate. Exchange Act Rule 15c3-1c(d) states that "[n]o broker or dealer shall guarantee, endorse or assume directly or indirectly any obligation or liability of a subsidiary or affiliate unless the obligation is reflected in the computation of net capital . . . pursuant to [the Net Capital Rule]"

In addition, the Net Capital Rule, imposes limitations on a broker-dealer's withdrawal of equity. Exchange Act Rule 15c3-1(e)(2)(iii) provides that "No equity capital of the broker or dealer . . . may be withdrawn . . . if . . . [t]he broker-dealer's net capital would be less than 25 percent of deductions from net worth in computing net capital . . . unless the broker or dealer has the prior approval of the Commission to make such a withdrawal."

A violation of the Exchange Act and Exchange Act Rule 15c3-1 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" in the conduct of their business.

In December 2019, H.C. Wainwright's employees, in the form of an employee stock ownership trust, began to acquire ownership of H.C. Wainwright's parent company and, thus, indirect ownership of H.C. Wainwright. As part of the transaction, H.C. Wainwright's parent company agreed to loan the employee stock ownership trust the funds necessary to complete the acquisition. To fund those loans, the parent company borrowed money from a bank pursuant to two credit agreements, specifically, an agreement in December 2020 for a \$50 million loan and, after that loan was paid down, an agreement in May 2021 for a \$150 million loan that was subsequently refinanced into a \$175 million loan in February 2022. H.C. Wainwright was a party to the credit agreements and served as the sole guarantor for its parent company's loans. The lending

bank, at H.C. Wainwright's request, agreed to remove the firm as guarantor in April 2022.

During the period it served as the guarantor of its parent company's loans, H.C. Wainwright was required to include the outstanding amount of those loans as a firm liability for purposes of calculating its net capital position. H.C. Wainwright, however, failed to do so from December 2020 through March 2022. As a result, H.C. Wainwright was in net capital deficiency for 14 of those 16 months with the largest deficiency being \$164,922,628 and an average deficiency of \$95,931,666. In addition, from December 2020 through March 2022, the firm made \$250,039,448 in capital withdrawals, almost all of which were to pay back acquisition-related loans from its parent or the lending bank. By conducting a securities business, and making capital withdrawals, while net capital deficient, H.C. Wainwright violated Section 15(c) of the Exchange Act, Exchange Act Rule 15c3-1, and FINRA Rule 2010.

H.C. Wainwright Filed Inaccurate FOCUS Reports

Exchange Act Rule 17a-5 requires broker-dealers to file accurate FOCUS Reports. A violation of Exchange Act Rule 17a-5 is also a violation of FINRA Rule 2010. By failing to include the amounts of its parent company's loans, for which it was guarantor, as a liability for purposes of calculating its net capital, the firm filed 16 FOCUS Reports between December 2020 and March 2022 with inaccurate net capital computations. Therefore, H.C. Wainwright violated Section 17(a) of the Exchange Act, Exchange Act Rule 17a-5, and FINRA Rule 2010.

H.C. Wainwright Failed to Maintain Accurate Books and Records

FINRA Rule 4511(a) requires member firms to "make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules." Exchange Act Rule 17a-3(a)(11) requires broker-dealers to make and preserve, among other things, a record of "aggregate indebtedness and net capital . . . at least once a month." Inherent in the obligation to make and preserve books and records is the requirement that they be accurate. A violation of Exchange Act Rule 17a-3(a)(11) and FINRA Rule 4511 is also a violation of FINRA Rule 2010.

From December 2020 to March 2022, H.C. Wainwright incorrectly calculated its net capital by failing to account for its parent company's loans and, thus, failed to make and preserve accurate books and records. Therefore, the firm violated Section 17(a) of the Exchange Act and Exchange Act Rule 17a-3(a)(11), as well as FINRA Rules 4511 and 2010.

H.C. Wainwright Failed to Provide Prior Written Notice of Guarantor Status to FINRA

FINRA Rule 4150(a) states that "[p]rior written notice shall be given to FINRA whenever any member guarantees, endorses or assumes, directly or indirectly, the

obligations or liabilities of another person.” FINRA Rule 4150 Supplementary Material .01 requires that such written notice “be given to FINRA at least 10 business days prior to entering into such arrangement or relationship with another person” and the notice include, among other things, “the actual and potential effect of the arrangement or relationship on the member’s capital (including net capital) and operations.” A violation of FINRA Rule 4150 is also a violation of FINRA Rule 2010.

H.C. Wainwright did not provide the required, prior written notice to FINRA in connection with credit agreements it entered into as guarantor for its parent. Therefore, the firm violated FINRA Rule 4150(a) and 2010.

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

- a censure; and
- a \$200,000 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.

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

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:

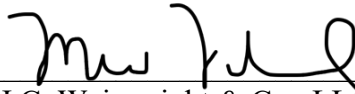
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not 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 right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a

party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.

- 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.

October 26, 2023
Date



H.C. Wainwright & Co., LLC
Respondent

Print Name: Mark W. Viklund

Title: Chief Executive Officer

Reviewed by:

Russell D. Sacks, Esq.
Counsel for Respondent
King & Spalding LLP
1185 Avenue of the Americas
34th Floor
New York, NY 10036

party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.

- 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.

October 26, 2023
Date

H.C. Wainwright & Co., LLC
Respondent

Print Name: _____

Title: _____

Reviewed by:



Russell D. Sacks, Esq.
Counsel for Respondent
King & Spalding LLP
1185 Avenue of the Americas
34th Floor
New York, NY 10036

Accepted by FINRA:

11/14/2023

Date

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



Jeffrey E. Baldwin
Senior Counsel
FINRA
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Philadelphia, PA 19103