

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND
CONSENT NO. 2011030333801**

To Department of Enforcement
Financial Industry Regulatory Authority (FINRA)

Re Donald Gene DeWaay, Jr.
General Securities Principal, General Securities Representative, Direct
Participation Program Representative, Investment Banking Representative and
Investment Company and Variable Contracts Products Representative
CRD No. 1297174

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Donald Gene DeWaay, Jr. 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 me alleging violations based on the same factual findings described herein.

I. ACCEPTANCE AND CONSENT

- A. I hereby accept and consent, 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

DeWaay entered the securities industry in 1984. From August 24, 2006 through January 9, 2013, DeWaay was associated with FINRA broker-dealer DeWaay Financial Network, LLC ("DFN"), and registered with FINRA as a general-securities principal, general-securities representative, direct-participation representative, investment-banking representative, and investment-company and variable-contracts-products representative.

DeWaay has not been associated with a FINRA broker-dealer since January 9, 2013, but remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws.

Relevant Disciplinary History

None.

Overview

In June 2009, DeWaay conducted a conference call with prospective investors pertaining to a private-placement offering by DFN Partners, LLC. DFN subsequently made a recording of the June 2009 conference available to other potential investors. During the conference call, DeWaay made several statements regarding the offering that were not fair and balanced, and that were misleading, exaggerated, or unwarranted.

Through this conduct, DeWaay violated NASD Conduct Rule 2210 and FINRA Rule 2010.

Facts and violative conduct

Until it ceased operations in January 2013, DFN was a wholly owned subsidiary of DFN Partners, LLC, of which Don DeWaay was the majority owner. Don DeWaay was also a registered representative and registered principal of DFN, as well as the owner of DeWaay Capital Management ("DCM"), an investment-advisory firm.

Beginning in May 2009, DFN conducted a private-placement offering of shares in DFN Partners, LLC (the "DFN Partners offering"). The purpose of the DFN Partners offering was to allow Don DeWaay to sell some of the shares he owned in DFN Partners. As such, the assets, liabilities, and future prospects of DFN were relevant to a potential investor's evaluation of the DFN Partners offering.

On June 24, 2009, DeWaay conducted a conference call for potential investors in the DFN Partners offering. The call lasted roughly 50 minutes. Approximately 20 people listened to all or part of the live call, and the firm, after review by the firm's compliance department, subsequently made a recording of the conference call available to potential investors. At least 11 people accessed the recorded call, all during July 2009.

Don DeWaay was the main speaker on the conference call.

Statements regarding past success and prospects for future success

DeWaay made multiple statements regarding his and DFN's business successes, methods, and outlook that were unwarranted. For example, DeWaay claimed that DFN's past success, his personal appeal, and other developments in the financial industry would allow DFN to recruit and hire "only the most sophisticated [financial] advisors in this nation." He stated:

- "My practice actually produces more revenue than many many broker-dealers, just my practice alone."
- "DeWaay Capital Management would be counted among the very elite practices in the country."
- "There's [sic] a lot of people in the broker-dealer community who might be potential recruits to this model that will embrace this and understand also that the person who that's making the decisions at the top of this company . . . is someone who's actually done it and somebody who is one of the most well-accomplished individuals in this industry; and that's going to be interesting then because that will attract these people to come into this firm because they want to be where we're at."

DeWaay provided no information that would support or substantiate these claims, or that placed them in meaningful context. Moreover, DeWaay's references to his "practice" included DCM, which was not directly involved in the DFN Partners offering.

With regard to his and DFN's previous accomplishments, DeWaay stated:

- "In very challenging economic environment . . . we had about a 47% increase in revenues in a year when most firms had significant negative cash flow and significant decline in business."
- "In its totality a 47% surge in revenue in one of the worst stock market years and economic environments that we've seen in, well, our lifetimes is a pretty extraordinary accomplishment. We believe based on our current projections, that there is going to be a significant increase in 2009."

The conference call provided no support for DeWaay's claims about revenue increases, nor any context – such as concomitant expenses or reasons for revenue changes – by which potential investors might evaluate the significance of any revenue increase.

DeWaay also offered comments about expected future revenues and profits:

- "We're well above budget. Everything's going very well. We anticipate a top line revenue increase rather sharply in 2009 and, frankly, beyond that."

- Regarding mergers-and-acquisitions business, DeWaay stated, "There's not a lot of competition."

The conference call contained no supporting data or contextual information with which potential investors could evaluate the significance of these claims. DeWaay made no effort to substantiate these projections or the suggestion that DFN would encounter little hindrance from the market in acquiring mergers-and-acquisitions business.

Conclusion

Through this conduct, DeWaay violated NASD Conduct Rules 2210(d) and FINRA Rule 2010.

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

1. A suspension of ten business days from associating with any FINRA broker-dealer in any capacity, and
2. A \$7,500.00 fine.

I understand that if I am suspended from associating with any FINRA member, I become 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, I 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 fine shall be due and payable either immediately upon reassociation with a member firm following the ten business-day suspension noted above, 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.

I specifically and voluntarily waive any right to claim that I am 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

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

- A. To have a Complaint issued specifying the allegations against me;
- 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, I specifically and voluntarily waive any right to claim bias or prejudgment of the General Counsel, 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.

I 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

I 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 me; and
- C. If accepted:
 - 1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. I 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. I 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

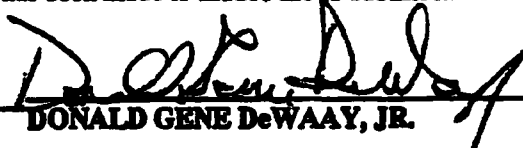
AWC. Nothing in this provision affects my: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I 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 or its staff.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have 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 me to submit it.

7-24-13

Date


DONALD GENE DeWAAY, JR.

Reviewed by:



Counsel for Donald Gene DeWaay, Jr.

Accepted by FINRA:

8/21/2013

Date

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


Adam B. Walker, Principal Regional
Counsel

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