

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2016050445901**

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

RE: PNC Capital Markets, LLC, Respondent
CRD No. 15647

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, Respondent PNC Capital Markets, LLC (“PNCCM,” the “Firm” or “Respondent”), 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

PNCCM has been a FINRA member since March 1985. The Firm is a full-service broker-dealer with its principal offices in Pittsburgh, PA. PNCCM has approximately 508 registered representatives and maintains 22 branch offices.

RELEVANT DISCIPLINARY HISTORY

The Firm has no relevant disciplinary history.

OVERVIEW

Beginning in January 2004 and continuing through May 2016, (the “Relevant Period”), the Firm failed to maintain approximately 1.9 million electronic brokerage records in non-erasable and no-rewritable format, sometimes known as WORM format, as required by Section 17(a) of the Exchange Act of 1934 (the “Exchange Act”), Rule 17a-4(f) thereunder, NASD Rule 3110 and FINRA Rule 4511. WORM stands for “write once, read many,” and is intended to prevent the alteration or destruction of broker-dealer records stored electronically. During the Relevant Period, the Firm also experienced a related notice deficiency as well as audit deficiencies that

affected its ability to adequately retain and preserve certain electronic records in WORM format, in violation of Exchange Act 17a-4(f), NASD Rule 3110 and FINRA Rule 4511. Finally, the Firm's written supervisory procedures were not reasonably designed to achieve compliance with Rule 17a-4(f) based on the above-noted findings, in violation of NASD Rule 3010 and FINRA Rule 3110.

The Firm completed remediation of the foregoing deficiencies by May 2016.

FACTS AND VIOLATIVE CONDUCT

Over the past decade, the volume of sensitive financial data stored electronically by broker-dealers has risen exponentially. These broker-dealer electronic records must be complete and accurate, not only to assist FINRA and other regulators in their efforts to protect investors through periodic examinations, but also to ensure member firms can carry out their audit functions. Recent years also have seen increasingly aggressive attempts to hack into electronic data repositories, enhancing the need for firms to keep these records in WORM format.

Section 17(a) of the Exchange Act and Rule 17a-3 thereunder require broker-dealers to make certain records relating to its business, including trade blotters, asset and liability ledgers, order tickets, trade confirmations and other records. Rule 17a-4 specifies the manner and length of time that those records must be maintained. When broker-dealers use electronic storage media to retain records, Rule 17a-4(f)(2)(ii) requires the firms to “[p]reserve the records exclusively in a non-rewritable, non-erasable” or WORM format.

NASD Rule 3110(a) provides, in part, that each member “shall make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations, and statements of policy promulgated thereunder and...[t]he record keeping format, medium and retention period shall comply with” Rule 17a-4.”¹

FINRA Rule 4511 provides, in part, that each member “shall make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules” ... and all “books and records required to be made pursuant to the FINRA rules shall be preserved in a format and media that complies with” Rule 17a-4.

These requirements are an essential part of the investor protection function because preservation of these records is the “primary means of monitoring compliance with applicable securities laws, including antifraud provisions and financial responsibility standards.”²

1. The Firm Failed to Retain Certain Electronic Records in WORM Format

When broker-dealers use electronic storage media to retain records, Rule 17a-4(f)(2)(ii) requires the firms to “[p]reserve the records exclusively in a non-rewritable, non-erasable” or WORM

¹ NASD Rule 3110 was replaced by FINRA Rule 4511, effective December 5, 2011.

² Commission Guidance to Broker Dealers on the Use of Electronic Storage Media under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a-4(f), SEC Interpretation Release No. 34-44238, 17 C.F.R. Part 241, at p. 3 of 15 (May 1, 2001).

format. During the Relevant Period, PNCCM failed to maintain in WORM format approximately 1.9 million electronic records relating to its brokerage business. This deficiency affected multiple categories of records: order tickets, trade confirmations, blotters for securities received and delivered, stock records and ledgers. For example, from November 2007 through May 2016, the Firm failed to maintain in WORM format approximately 961,000 order tickets and, during the same period, approximately 955,000 trade confirmations. Additionally, beginning in January 2004 and continuing through May 2016, PNCCM failed to maintain in WORM format a total of 7,314 customer ledgers and general ledgers.

Based on the foregoing, PNCCM violated Exchange Act Rule 17a-4(f)(2)(ii), NASD Rules 3110 and 2110, and FINRA Rules 4511 and 2010.³

2. The Firm Failed to Provide 90-day Notice to its Designated Examining Authority Prior to Using Electronic Storage Media for One of its Vendors

Exchange Act Rule 17a-4(f)(2)(i) requires a broker-dealer to notify its designated examining authority at least 90 days prior to employing electronic storage media. The Firm failed to provide the required 90 day notice to its designated examining authority (FINRA), prior to retaining one vendor to provide electronic storage for certain records. This deficiency related to one electronic storage system used by the Firm. The Firm implemented this system in May 2011 but did not submit the required notification to FINRA until April 2016.

Based on the foregoing, PNCCM violated Exchange Act Rule 17a-4(f)(2)(i), NASD Rule 3110, and FINRA Rules 4511 and 2010.

3. The Firm Failed to Implement an Audit System Regarding the Inputting of Certain Records in Electronic Storage Media

Exchange Act Rule 17a-4(f)(3)(v) requires a broker-dealer to “have in place an audit system providing for accountability regarding inputting of records required to be maintained and preserved pursuant to Rules 17a-3 and 17a-4 to electronic storage media and inputting of any changes made to every original and duplicate record maintained and preserved thereby.” During the Relevant Period, the Firm did not have an audit system as required by Rule 17a-4(f)(3) for those electronic records it failed to maintain in WORM format.

Based on the foregoing, PNCCM violated Exchange Act Rule 17a-4(f)(3)(v), NASD Rules 3110 and 2110, and FINRA Rules 4511 and 2010.

4. The Firm’s Supervisory System was not Reasonably Designed

NASD Rule 3010(b) and FINRA Rule 3110(b), require a member firm to establish, maintain and enforce written procedures to supervise the types of business in which it engages that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.⁴ During the Relevant Period, PNCCM failed to establish, maintain

³ FINRA Rule 2010 replaced NASD Rule 2110, effective December 15, 2008.

⁴ FINRA Rule 3110 replaced NASD Rule 3010, effective December 1, 2014.

and enforce written supervisory procedures reasonably designed to achieve compliance with Rule 17a-4(f) WORM requirements for certain records that were retained in electronic storage media.

Based on the foregoing, PNCCM violated NASD Rules 3010(b) and 2110, and FINRA Rules 3110(b) and 2010.

- B. The Firm also consents to the imposition of the following sanctions:
1. Censure; and
 2. Fine in the amount of \$500,000.

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 that it is 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

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 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 actions brought by FINRA or any other regulator against it;
 - 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.
- 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 or its staff.

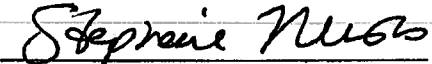
The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Respondent has agreed to its provisions voluntarily; and that no offer, 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 Respondent to submit it.

12/8/16
Date (mm/dd/yyyy)


PNC Capital Markets, LLC

By: Andrew Tino

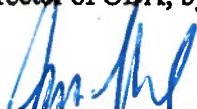
Reviewed by:
Stephanie Nicolas
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Counsel for Respondent
1875 Pennsylvania Avenue, NW
Washington, DC 20006
Phone: 202-663-6825


Counsel for PNC Capital Markets, LLC

Accepted by FINRA:

12/21/16
Date

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


James E. Day
Vice President & Chief Counsel
FINRA Department of Enforcement
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