

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013034981501**

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

RE: Growth Capital Services, Inc., Respondent
CRD No. 124658

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, Growth Capital Services, Inc. (“Growth Capital” 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 Growth Capital 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

Growth Capital became a FINRA member firm in June 2003. The firm engages in multiple business lines, including private placements and mergers and acquisitions, and the firm’s primary business during the relevant period was private placements. The firm has approximately 60 registered representatives and in 25 registered branch offices. Growth Capital does not have any relevant regulatory history.

OVERVIEW

Between approximately October 2008 and April 2013, Growth Capital failed to establish and implement an adequate supervisory system as required by NASD Rule 3010 (a) and (b) to fulfill its supervisory responsibilities with respect to the private securities transactions of a total of five registered representatives.¹ During

¹NASD Rule 3010 was superseded by FINRA Rule 3110 effective December 1, 2014. Because the conduct at issue occurred before December 1, 2013, NASD Rule 3010 is applicable.

the period of October 2008 through April 2011, Growth Capital failed to conduct adequate inspections as required by NASD Rule 3010(c) of its office of supervisory jurisdiction and four non-branch locations. Also during this period, the firm failed to maintain records of its supervision of registered representatives' business-related websites and failed to approve and supervise registered representatives' social media accounts as required by NASD Rules 2210² and 3010, and SEA Rules 17a-3 and 17a-4. Finally, Growth Capital failed to conduct adequate supervisory control systems testing as required by NASD Rule 3012 for 2009 and 2010. As a result of these failures, Growth Capital violated NASD Rules 2210, 3010(a), 3010(b), 3010(c), and 3012 and SEA Rules 17a-3 and 17a-4. And on the basis of these violations, Growth Capital also violated NASD Rule 2110 (for the conduct before December 15, 2008) and FINRA 2010 (for the conduct on or after December 15, 2008).

FACTS AND VIOLATIVE CONDUCT

Supervision of Private Securities Transactions (“PSTs”)

NASD Rule 3010(a) required that a member firm “establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules.” NASD Rule 3010(b) similarly required that a member firm “establish, maintain, and enforce written procedures . . . to supervise the activities of registered representatives, registered principals, and other associated persons” that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of NASD.” NASD Rule 3040 required that an associated person provide written notice of any PST to the member firm and that, once disclosed, the member firm must advise the registered representative in writing stating whether the PST is approved or disapproved. Approved PSTs are then to be recorded on the books and records of the member, and the member is required to supervise the PST as if the PST were executed on behalf of the member.

Between approximately October 2008 and April 2013, Growth Capital did not have an adequate system to supervise PSTs of its representatives for compliance with NASD Rule 3040. Though Growth Capital had written supervisory procedures (“WSPs”) in place that mirrored the requirements of NASD Rule 3040, Growth Capital did not adequately enforce those procedures. Growth Capital failed to understand that certain investment activities in funds disclosed to Growth Capital were PSTs, and failed to adequately supervise the PSTs of its registered representatives.

More specifically, between approximately October 2008 and April 2011, Growth Capital was aware of but did not review investor transactions in funds formed

² NASD Rule 2210 was superseded by FINRA Rule 2210 effective February 4, 2013. Because the conduct at issue occurred before February 4, 2013, NASD Rule 2210 is applicable.

though approved outside business activities (“OBAs”) of four registered representatives, and it did not record the transactions on its books and records. And between approximately August 2012 and April 2013, although red flags indicated that a registered representative was engaging in PSTs through an approved OBA—*e.g.*, the OBA approval form discussed the representative’s intention to raise money through the OBA and another representative disclosed an investment of \$250,000 in the OBA—Growth Capital failed to investigate, review, approve, document or supervise the PSTs. And although Growth Capital was aware that a registered representative had completed two PSTs between August 2012 and April 2013, the firm did not timely review those PSTs, or impose restrictions on the activities of the representative pending its review. Growth Capital thus did not supervise the PSTs for compliance with the disclosure, approval, and documentation requirements of Rule 3040.

By virtue of the foregoing, Growth Capital violated NASD Rules 3010(a) and (b) and NASD Rule 2110 (for the conduct before December 15, 2008) and FINRA Rule 2010 (for the conduct on or after December 15, 2008).

Branch Inspections

NASD Rule 3010(c) required FINRA-registered firms to inspect at least annually every office of supervisory jurisdiction (“OSJ”). That rule also required FINRA registered firms to inspect on a regular, periodic schedule every non-branch location, and to include in its WSPs a schedule and an explanation regarding how it determined the frequency of the examination schedule for non-branch locations.

During the period October 2008 through April 2011, Growth Capital did not conduct annual office inspections of its main OSJ. Additionally, Growth Capital did not establish a reasonable inspection cycle for non-branch locations in its WSPs and failed to inspect four non-branch locations even though the registered representatives had been associated with the firm for over three years.

By virtue of the foregoing, Growth Capital violated NASD Rules 3010(c) and 2110 (for the conduct before December 15, 2008) and FINRA Rule 2010 (for the conduct on or after December 15, 2008).

Supervision of Websites and Social Media

As described above, NASD Rule 3010 required each firm to establish and maintain a system and WSPs to supervise the activities of each associated person that were reasonably designed to achieve compliance with applicable federal securities laws and FINRA rules. As part of this responsibility, a registered principal must review prior to use any website or social media account that an associated person intends to employ for a business purpose. A registered principal could approve use of a website or social media account for a business purpose only if the principal had determined that the associated person could and would comply with all applicable rules, including NASD Rule 2210; the federal

securities laws, including the recordkeeping requirements of Exchange Act Rules 17a-3 and a-4; and any additional requirements established by the firm.

Social media sites and websites may contain both static and interactive content. As explained in FINRA Regulatory Notice 10-06 (January 2010), unscripted interactive content does not require principal approval prior to posting, so long as the member supervises and reviews such content in the same manner as required for supervising and reviewing correspondence pursuant to NASD Rule 3010(d). And also as explained in Regulatory Notice 10-06, business related static content posted to a website or a social media site was considered an advertisement subject to prior principal approval under NASD Rule 2210. Firms must retain documentation of principal approval and review of such static content pursuant to SEA Rules 17a-3(a)(20) and 17a-4(b)(1).

During the period October 2008 through April 2011, Growth Capital failed to maintain documentation of principal approval and review for 19 business websites maintained by Growth Capital registered representatives. In addition, Growth Capital failed to establish a policy or system for approval, supervision, or retention of registered representatives' business social media accounts, and did not review, approve, supervise, or retain any of the seven social media accounts maintained by registered representatives for securities-related business purposes during the relevant time period. Content posted by Growth Capital registered representatives during this time period was oversimplified, incomplete, and lacked the disclosures necessary to provide a sound basis for evaluating the facts communicated (including disclosure of FINRA member affiliation, relationships between FINRA members and named non-members, and identification of products and services offered by the member).

By virtue of the foregoing, Growth Capital violated NASD Rules 2210 and 3010, SEA Rules 17a-3 and 17a-4, NASD Rule 2110 (for the conduct before December 15, 2008), and FINRA Rule 2010 (for the conduct on or after December 15, 2008).

Supervisory Controls Testing

NASD Rule 3012 requires each member to designate a principal to establish, maintain, and enforce a system of supervisory control policies and procedures that test and verify that the supervisory procedures are reasonably designed to achieve compliance with applicable securities laws and regulations and FINRA rules. The designated principal must submit a report detailing the system of supervisory controls, the results of testing and any significant exceptions, and any revisions to procedures resulting from testing, on at least an annual basis.

During the period October 2008 through April 2011, the designated principal did not conduct adequate testing of supervisory control policies and procedures as required by NASD Rule 3012. Specifically, the 2009 and 2010 reports reflected

areas tested, but did not reflect the results the tests. Further, the designated principal did not test Growth Capital's supervision of OBAs and PSTs or supervision of websites and social media accounts.

By virtue of the foregoing, Growth Capital violated NASD Rules 3012 and 2110 (for the conduct before December 15, 2008) and FINRA Rule 2010 (for the conduct on or after December 15, 2008).

B. Growth Capital consents to the imposition of the following sanctions:

- censure
- a fine in the amount of \$35,000

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

Growth Capital specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against Growth Capital;
- 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, Growth Capital 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.

Growth Capital 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

Growth Capital 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 Growth Capital; and
- C. If accepted:
 - 1. this AWC will become part of Growth Capital's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Growth Capital;
 - 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. Growth Capital 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. Growth Capital 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 Growth Capital'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. Growth Capital may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct.

Growth Capital 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 Growth Capital, 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 the undersigned, on behalf of Growth Capital, 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 Growth Capital to submit it.

8/23/2017

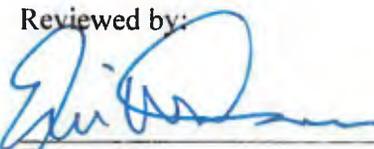
Date (mm/dd/yyyy)

Growth Capital Services, Inc.

By:


BRIAN DUMAS, CEO

Reviewed by:


Eric Ferraro
Fathom Law
111 Sutter St. Ste 1975
San Francisco, CA 94104
415-231-5502

Accepted by FINRA:

9/29/2017
Date

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


Anne K. Davis
Principal Regional Counsel
FINRA Department of Enforcement
100 Pine Street, Suite 1800
San Francisco, CA 94111
(t) 415-217-1119; (f) 415-217-1201