

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013038091902**

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

RE: Finance 500, Inc. ("Respondent" or the "Firm")
CRD No. 12981

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, 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 the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The Firm 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

Finance 500 has been a FINRA regulated broker-dealer since 1982. The Firm's principal place of business is in Irvine, California. The Firm has approximately 29 registered individuals and five branch offices. The Firm is an introducing broker-dealer that specializes in fixed income products and services to institutional clients, although it offers a range of investment products to retail clients across the country. This action concerns Finance 500's investment banking department, which accounted for only 3 percent of the Firm's revenues from 2012 to 2014. The Firm closed its investment banking department in July 2014.

RELEVANT DISCIPLINARY HISTORY

In August 2013, the Firm consented to the entry of an AWC that found violations of FINRA Rules 2010 and 7330, and NASD Rule 3010 related to the Firm's supervisory system and written supervisory procedures ("WSPs") for trade reporting, sale transactions, clearly erroneous trade filing and best execution. The

Firm was censured, fined \$17,500 and required to revise its WSPs. *See* AWC No. 2010021591601.

In December 2011, the Firm consented to the entry of an AWC that found violations of FINRA Rule 2010, and NASD Rules 2110 and 3010(a) and (b), in that from March 2008 to May 2009, the Firm sold approximately 8.5 billion shares of unregistered securities on its customer's behalf in violation of Section 5 of the Securities Act of 1933. The Firm had no system designed to detect and prevent participation in an unregistered distribution of securities and no written procedures addressing the acceptance of securities in certificate or electronic form and the corresponding sale of those securities. The Firm was censured and fined \$50,000. *See* AWC No. 2008013079801.

OVERVIEW

From June 2012 to June 2014 (the "Relevant Period"), Finance 500 failed to establish, maintain and enforce a reasonable supervisory system and written procedures to review and monitor sales of private placements by its investment banking department in the areas of due diligence, suitability, and marketing materials provided to customers. Through this conduct, Finance 500 violated NASD Rules 3010(a) and 3010(b) and FINRA Rule 2010.

Additionally, from March 2013 through June 2014, the Firm used, or permitted issuers to use, private placement marketing materials that were not fair and balanced, made misleading, unwarranted or unsupported statements and failed to disclose Finance 500's name and connection to the issuer. Through this conduct, Finance 500 violated FINRA Rules 2210(d)(1)(A) and (B), 2210(d)(3) and 2010.

FACTS AND VIOLATIVE CONDUCT

During the Relevant Period, Finance 500's investment banking department conducted offerings for four issuers (collectively, "the Offerings").

Issuer 1 is a thinly-traded over-the-counter ("OTC") issuer that trades on the Pink Sheets. Finance 500 worked with Issuer 1 on three offerings from 2012 to 2014 and raised approximately \$2.5 million for Issuer 1 through the sale to customers of convertible notes and common stock.

Issuer 2 is a thinly-traded OTC issuer that trades on the Pink Sheets. Finance 500 raised funds for Issuer 2 through the sale of one secured convertible note for \$400,000.

Issuer 3 is a thinly-traded OTC issuer. In February 2013, Issuer 3 commenced an offering through Finance 500 involving common stock, which closed in November 2013 and raised a total of approximately \$2 million.

Issuer 4 is a privately-held company. In 2013, Finance 500 raised \$25,000 for Issuer 4 through the sale of a convertible note to one customer ("Issuer 4 Convertible Note"). In 2014, Finance 500 also raised approximately \$275,000 through the sale of Issuer 4 common stock ("Issuer 4 Common Stock Offering").

1. Failure to Supervise in Violation of NASD Rules 3010(a) and 3010(b) and FINRA Rule 2010.

NASD Rule 3010(a) requires firms to establish 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 [FINRA] Rules." NASD Rule 3010(b) requires firms to "establish, maintain and enforce written procedures to supervise the types of business in which it engages and 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" FINRA Rules. A violation of NASD Rule 3010 is inconsistent with high standards of commercial honor and just and equitable principles of trade and, therefore, also constitutes a violation of FINRA Rule 2010. During the Relevant Period, with regard to private placements, the Firm lacked a supervisory system and written procedures that were reasonably designed to achieve compliance with FINRA Rules and the securities laws.

Finance 500's Inadequate Supervision of Due Diligence

Throughout the Relevant Period, the Firm's supervisory system and written procedures regarding private placement due diligence was not adequate. While the Firm conducted due diligence, the Firm had an inadequate system or written procedures regarding who should conduct due diligence on private placements, the scope of responsibilities of the different individuals involved in the due diligence process, or how the Firm should identify, analyze, address or document red flags identified during due diligence. Moreover, while the Firm relied on an outside law firm for assistance with due diligence, the Firm failed to have an adequate system or written procedures defining the scope of the law firm's responsibilities or how the Firm would monitor the law firm's work. The Firm also had an inadequate system or written procedures regarding how it would determine or document when sufficient due diligence had been completed and an offering could proceed.

Finance 500 also failed to conduct a reasonable due diligence of the Issuer 1 and Issuer 2 offerings and one of the Issuer 4 offerings. Specifically, as to the Issuer 1 Offerings, the Firm identified red flags, including Issuer 1's weak senior management, precarious financial position, and failure to pay existing debt holders, but failed to take adequate steps to address these red flags prior to selling the Issuer 1 Offerings to customers. The Firm also failed to identify as a red flag

that Issuer 1's chief executive officer was engaged in self-dealing by having the company pay for her luxury living accommodations. Similarly, Finance 500 identified red flags with the Issuer 2 Offering, including unfavorable terms in employment agreements with the company's executives, as well as the company's lack of audited financial statements, but took no material steps to address these issues prior to selling the Issuer 2 Convertible Note. Finally, Finance 500 sold the Issuer 4 Convertible Note prior to commencing due diligence, and after the sale, identified at least two red flags—the competence of the company's executive management and a dispute between the company and one of its vendors—that it required the company to address prior to commencing the Issuer 4 Common Stock Offering.

Finance 500's Inadequate Supervision of Suitability

The Firm's supervisory system and written procedures regarding suitability in private placements were not reasonable. While the Firm collected some information, the Firm did not have an adequate system or written procedures regarding how it would consistently collect the same threshold suitability documents from each customer, and, in some cases, the documents that it did collect were incomplete and did not include all requested information. Though some transactions were reviewed, the Firm failed to have a reasonable system or written procedures regarding how and when supervisory approval would be given for a particular customer, and at times allowed its supervisory system to be evaded by permitting customers solicited by the Firm's registered representatives to make investments "directly" with the issuer. Additionally, the Firm had an inadequate system or written procedures regarding at which point in the transaction supervisory approval of an investment had to be given, even allowing supervisory approval to be given after all parties, including the issuer, had signed subscription documents. Further, the Firm's WSPs concerning suitability of private placements were vague as to how suitability information should be analyzed or evaluated, such as by describing whether "sufficient net worth" included all assets, or only liquid assets. Likewise, the WSPs offered no guidance on what consideration a customer's concentration in private placements would play in the Firm's suitability analysis.

Finance 500's Inadequate Supervision of Marketing Materials

The Firm's supervisory system and written procedures regarding marketing materials used in connection with private placements was not reasonable. The Firm relied on each registered representative to voluntarily identify all marketing materials he was using with customers and to provide those materials to the Firm for review, but failed to have a reasonable system or written procedures regarding how the Firm would determine whether all marketing materials being used had been approved. The Firm did not learn until after FINRA made a request for advertising materials that unapproved materials regarding the Offerings were being sent to customers and was unaware that presentations to customers had been

made during conference calls. Moreover, the Firm's WSPs contained outdated descriptions of which marketing materials required review and approval and the WSPs related specifically to private placement marketing materials contained only a discussion on general solicitation.

By failing to have a reasonable system and written procedures to supervise private placements and by failing to adequately supervise private placements, the Firm violated NASD Rules 3010(a) and 3010(b) and FINRA Rule 2010.

2. *Use of Unbalanced and Unwarranted Advertising Materials, in Violation of FINRA Rules 2210(d)(1)(A) and (B), 2210(d)(3), 2010.*

FINRA Rule 2210(d)(1), which became effective on February 4, 2013, applies to all member communications, including correspondence, retail communications, and institutional communications. FINRA Rule 2210(d)(1)(A) requires that all member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or industry. FINRA Rule 2210(d)(1)(B) provides that no member may make any false, exaggerated, unwarranted, promissory or misleading statement or claim. Finally, FINRA Rule 2210(d)(3) requires that all retail communications and correspondence must prominently display the name of the member, reflect any relationship between the member and any non-member or individual who is also named, and, if it includes other names, reflect which products or services are being offered by the member. A violation of FINRA Rule 2210 is inconsistent with high standards of commercial honor and just and equitable principles of trade and, therefore, also constitutes a violation of FINRA Rule 2010.

From March 2013 through June 2014, Finance 500 used, or permitted issuers to use, certain PowerPoint presentations with customers or prospective customers that contained inadequate risk disclosure and failed to provide a balanced presentation of the risks and rewards of an investment. Specifically, the presentations did not adequately disclose negative financial performance and other risks related to the issuers: the Issuer 1 presentations did not disclose accumulated deficits or the auditor's "going concern" opinion, the Issuer 2 presentation did not disclose the risk on certain assets of the company, and the Issuer 3 presentation did not disclose that the company lacked revenue and had no current customers. Through the foregoing, Finance 500 violated FINRA Rules 2210(d)(1)(A) and 2010.

From March 2013 through June 2014, Finance 500 also used, or permitted issuers to use, certain PowerPoint presentations with customers or prospective customers that made misleading, unwarranted or unsupported statements. Specifically, for Issuer 1, the presentations compared the sales-to-investment ratio of Issuer 1, a start-up company, to that of well-established companies, which was unwarranted given the difference in the sizes of the companies and given that the types of

businesses were incongruent. Similarly, the presentation for Issuer 2 included information about a \$10 million offering of equity or convertible debt, which did not accurately describe the size or terms of the offering with which Finance 500 was involved and, thus, was unwarranted. The presentation for Issuer 3 overstated the size of the target market for Issuer 3's product, which was misleading, and claimed that the company was "revolutionizing" its market, which was exaggerated and unwarranted. And, for Issuer 4, certain of the presentations forecasted revenue growth that was unwarranted and unsupported. Through the foregoing, Finance 500 violated FINRA Rules 2210(d)(1)(B) and 2010.

Additionally, none of the presentations for Issuer 1, Issuer 2 or Issuer 3 disclosed Finance 500's name, or described the relationship between Finance 500 and the issuer. Through the foregoing, Finance 500 violated FINRA Rules 2210(d)(3) and 2010.

- B. The Firm also consents to the imposition of the following sanctions:

A censure and a \$85,000 fine.

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

The Firm 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

The Firm 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, the Firm 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.

The Firm 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

The Firm 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 the Firm; and
- C. If accepted:
1. this AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the Firm;
 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. The Firm 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. The Firm 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 the Firm'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. The Firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm 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 understand all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that the Firm 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 the Firm to submit it.

Finance 500, Inc.

11-20-15
Date (mm/dd/yyyy)

By: 

Reviewed by:



Kevin K. Hull
Counsel for Respondent
9891 Irvine Center Drive, Suite 200
Irvine, CA 92618
Phone: 949-478-4855

Accepted by FINRA:

12/10/15
Date

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



Richard Chin
Chief Counsel
FINRA Department of Enforcement
One World Financial Center
200 Liberty Street
New York, New York 10281-1003
Phone: (646) 315-7322 Fax: (202) 689-3415

FINRA
LETTER OF ACCEPTANCE WAIVER AND CONSENT
NO. 2013038091902

CORRECTIVE ACTION STATEMENT

This Corrective Action Statement is submitted by the Respondent. It does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA, or its staff.

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

RE: Finance 500, Inc.
CRD No. 12981

Without admitting or denying the findings, and solely for the purposes of this proceeding, prior to a hearing and without an adjudication of any issue of law or fact, Finance 500, Inc. ("Finance 500" or the "firm") submits this Corrective Action Statement for the purpose of presenting demonstrable steps taken to correct FINRA's finding that Finance 500 failed to comply with certain rules related to supervision and communications materials connected to its former investment banking business.

The activities that led to the AWC primarily involved oversight of two individuals that constituted the firm's investment banking department between 2012 and 2014. The activities of the investment banking department constituted less than three (3) percent of the firm's revenues during that period. In mid-2014, the firm not only ceased the investment banking and associated private placement activity, it also terminated the registration of the associated registered representatives. The firm is no longer engaged in investment banking activities and has no plans to reenter that business at this time.

In addition to closing the investment banking department and ceasing the related private placement activity, the firm made salutary changes to staffing and personnel at its headquarters office and agreed to be sold to a group of registered persons who were not connected with the firm's prior investment banking and private placement activity nor involved with any other conduct described in the AWC.

Respectfully submitted,

Finance 500, Inc.

11-20-15
Date


By: Robert Hicks, President