

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015043584501**

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

RE: Brokerbank Securities, Inc., Respondent
CRD No. 130116

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 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

Brokerbank Securities, Inc. ("Brokerbank" or the "firm") became a FINRA member in May 2004. Brokerbank employs five registered individuals, has two branches, and is headquartered in Minnetonka, Minnesota.

RELEVANT DISCIPLINARY HISTORY

On May 31, 2016, Brokerbank entered into an Order Accepting Offer of Settlement in which the firm was censured and fined \$15,000 in Disciplinary Proceeding No. 2014041087701. The findings and conclusions in that proceeding stated that from January 1, 2014 through October 28, 2015, Brokerbank had an inadequate supervisory system related to the issuance of press releases and issued misleading press releases, in violation of FINRA Rule 3110, NASD Rule 3010, FINRA Rules 2210(d)(1)(A) and (B), and FINRA Rule 2010.

OVERVIEW

Between March 30, 2015 and December 29, 2015, Brokerbank failed to conduct and document reasonable due diligence of a private placement sold by a registered representative of the firm, and did not have a supervisory system reasonably designed to ensure the firm complied with its due diligence obligations, in violation of FINRA Rules 3110 and 2010.

In addition, between June 15, 2012 and October 1, 2015 (the "Review Period"), Brokerbank failed to obtain certain required account information of its customers, and failed to establish and maintain a supervisory system reasonably designed to ensure that such information was obtained by the firm, in violation of FINRA Rules 4511, 3110, and 2010, and SEC Rule 17a-3.

FACTS AND VIOLATIVE CONDUCT

1. Failure to Conduct Reasonable Due Diligence in a Private Placement

FINRA Rule 3110 requires that a member firm establish, maintain, and enforce a supervisory system and written procedures that are reasonably designed to supervise the activities of each associated person and achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. A violation of FINRA 3110 also constitutes a violation of FINRA Rule 2010, which requires members and their associated persons to observe high standards of commercial honor and just and equitable principles of trade.

With respect to private placements, FINRA Regulatory Notice 10-22 ("Reg. Notice 10-22") reminds firms of their obligations to conduct a reasonable investigation of the issuers and the securities they recommend.¹ Reg. Notice 10-22 further reminds firms that they must have supervisory procedures under NASD Rule 3010² that are reasonably designed to ensure, among other things, that the firm's personnel engage in an investigation of each private placement that is sufficiently rigorous to comply with their legal and regulatory requirements, and that they document the process and results of each investigation. Brokerbank's Written Supervisory Procedures (WSPs) had similar language as the above, requiring that the firm observe a set of due diligence standards to "test" the offering of an issuer's securities before Brokerbank agreed to participate in an offering.

From March 30, 2015 to December 29, 2015, Brokerbank served as a placement agent for a Regulation D private placement offering of securities issued by CL corporation ("CL"). CL raised \$2,516,000 in the offering, of which \$2,220,000 was raised by Brokerbank's sales to 24 accredited investors. The terms and

¹ FINRA Regulatory Notice 10-22, *Regulation D Offerings, Obligation of Broker-Dealers to Conduct Reasonable Investigations in Regulation D Offerings* (April 2010).

² FINRA Rule 3110 replaced NASD Rule 3010 effective December 1, 2014.

conditions of the offering were set forth in a confidential private offering memorandum ("CPOM") reviewed and distributed by Brokerbank.

After agreeing to participate as a placement agent in the CL offering, Brokerbank failed to conduct a reasonable due diligence investigation of CL, and also failed to document the results of its due diligence investigation. Furthermore, the firm failed to recognize and investigate contradictory and potentially confusing statements made in the CPOM about material terms of the offering.

Based on the above, Brokerbank violated FINRA Rules 3110 and 2010.

2. Failure to Obtain and Record Customer Account Information in Books and Records

SEC Rule 17a-3(a)(17) requires that broker-dealers maintain, "an account record including the customer's or owner's name, tax identification number, address, telephone number, date of birth, employment status (including occupation and whether the customer is an associated person of a member, broker or dealer), annual income, net worth (excluding value of primary residence), and the account's investment objectives," for each account. FINRA Rule 4511 requires members to make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules.

Between June 15, 2012 and October 1, 2015, Brokerbank used a New Account Form ("NAF") in connection with the opening of new customer accounts which requested each of the required items listed in SEC Rule 17a-3(a)(17) and other specific information with respect to customers' investment profiles. During this period, however, the firm failed to obtain and record required customer information with respect to a significant percentage of customers who purchased interests in private placements. The firm executed private placement transactions in over 20 customer accounts but took no steps to ensure that customer NAFs contained the required customer information, prior to those private placement transactions taking place.

Further, Brokerbank had been placed on notice by FINRA of its failure to obtain and record the types of customer account information referenced in SEC Rule 17a-3(a)(17), as a result of a previous FINRA examination, in 2013. Despite this, the firm failed to establish and maintain a supervisory system reasonably designed to ensure that the firm obtained the required customer account information referenced in SEC Rule 17a-3.

By virtue of the foregoing, Respondent violated SEC Rule 17a-3, FINRA Rule 4511, FINRA Rule 3110, and FINRA Rule 2010.

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

- A censure,
- A fine in the amount of \$5,000,³ and
- An undertaking to submit a Certification, in writing, by the Chief Executive Officer of Brokerbank to FINRA Enforcement within 90 days of the issuance of this AWC, certifying that Brokerbank has enhanced its supervisory system, including its written supervisory procedures, to ensure it obtains customer account information, in accordance with SEC Rule 17a-3(a)(17). In addition, the Certification shall attest to, contain documentation of, and set forth the details of the firm's implementation of the undertaking set forth above.

Respondent agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are 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(s) imposed in this matter.

Within 90 days of the acceptance of this AWC, the Chief Executive Officer on behalf of Brokerbank shall submit a Certification that explains how the firm has corrected its supervisory system and procedures with respect to obtaining required customer profile information in its books and records necessary to make reasonable suitability determinations to address the violations described in this AWC. Such report shall be submitted to Nicholas A. Jablonski at FINRA's Chicago District Office located at 55 West Monroe Street, Ste. 2700, Chicago, IL 60603 by letter that identifies Brokerbank, Case No. 2015043584501. The Department of Enforcement may, upon a showing of good cause and at its sole discretion, extend the time for compliance with this provision.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

³ Pursuant to the General Principles Applicable to all Sanction Determinations contained in the Sanction Guidelines, FINRA imposed a lower fine in this case after it considered, among other things, the firm's revenues, financial resources, and Respondent's limited ability to pay, as demonstrated by a sworn financial statement and supporting documentation.

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 Respondent;
- 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 prejudice 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 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 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 Respondent 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 such person understands and acknowledges that FINRA does not represent or advise the firm and the firm cannot rely on FINRA or FINRA staff members for legal advice; that such person 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.

09/06/2018
Date (mm/dd/yyyy)

PHILIP WRIGHT
Respondent

Brokerbank Securities, Inc.

By: 
Its: CEO.

Accepted by FINRA:

10 SEP 18
Date

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


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