

**RECEIVED**

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2015044394701**

**MAY 24 2016**

**FINRA  
S.F. ENFORCEMENT OFFICE**

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

**RE: Daniel S. Miller, Respondent  
General Securities Representative  
CRD No. 5551362**

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Daniel S. Miller, 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**

On April 19, 2013, Miller associated with Growth Capital Services, Inc. and on April 30, 2013, became registered with FINRA through Growth Capital as a General Securities Representative. Miller remained associated with Growth Capital through September 3, 2014. Miller has not been associated with a FINRA member firm since leaving Growth Capital. Miller has no disciplinary history.

**OVERVIEW**

From April 2014 through July 2014, while registered with Growth Capital, Miller participated in undisclosed private securities transactions involving four individuals who collectively invested approximately \$560,000 in an outside investment. Accordingly, Miller violated NASD Rule 3040 and FINRA Rule 2010.

## **FACTS AND VIOLATIVE CONDUCT**

NASD Rule 3040 prohibits an associated person from participating in any manner in private securities transactions without providing prior written notice of these transactions to his member firm. A private securities transaction is any securities transaction outside the regular course or scope of an associated person's employment with a member. The rule requires that the associated person describe to his or her firm in detail the nature of the proposed transaction and his proposed role.

Growth Capital's Written Supervisory Procedures provided that the firm "prohibits any Registered Person from engaging in a private securities transaction outside the regular course or scope of his association or employment with the Firm without requesting, in writing, and receiving written permission from the Firm to participate in the private securities transaction."

When Miller associated with Growth Capital, he disclosed that he was engaged in outside business activities involving two affiliated companies ("Affiliates") involved in crowdfunding of real estate projects. Miller served as secretary and treasurer of the two companies and, in April 2014, became their President.

From about April 2014 through July 2014, one of the Affiliates conducted a private offering of preferred shares. Between April 15, 2014 and June 4, 2014, Miller communicated with certain individuals regarding the offering, provided them with term sheets, and solicited investments from them. Four individuals who Miller had contacted collectively invested approximately \$560,000 in the offering. Miller's contacts with these individuals in connection with the investments were not made in the course of his employment with Growth Capital, and Miller did not provide Growth Capital with written notice prior to participating in these private securities transactions.

By participating in private securities transactions without providing his firm with prior written notice, Miller violated NASD Rule 3040 and FINRA Rule 2010.

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

- a suspension from association with any FINRA member in all capacities for six months; and
- a \$5,000 fine.

I understand that if I am barred or 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 six-month 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 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.

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 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. 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.

05/19/2016  
Date (mm/dd/yyyy)

Daniel Miller  
Daniel S. Miller, Respondent

Reviewed by: 

Joel R. Beck, Esq.  
Counsel for Respondent  
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Accepted by FINRA:

5/26/2016  
Date

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

Christopher Perrin  
Christopher Perrin  
Regional Chief Counsel, West Region  
FINRA Department of Enforcement  
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