

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2011025792001**

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

RE: Triad Advisors, Inc., Respondent  
Member Firm  
CRD No. 25803

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Triad Advisors, Inc. ("Triad") 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 Triad alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. Triad 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**

Triad has been a FINRA member since March 1990 and conducts a general securities business, is a registered investment advisor ("RIA") and an insurance agency. Triad clears its transactions through another FINRA member firm on a fully disclosed basis. Triad is headquartered in Atlanta, Georgia but maintains almost 300 offices throughout the United States. Triad employs an independent contractor model and has over 600 registered representatives, some of whom are also investment advisory representatives associated with Triad's RIA. Triad does not have a relevant disciplinary history.

**OVERVIEW**

Triad failed to establish, maintain, and enforce a reasonable supervisory system regarding the use of consolidated reports by its registered representatives. Triad allowed its representatives to create and provide consolidated reports to its customers and specifically made a system available to its registered representatives that permitted consolidated reporting and allowed the representatives to enter values for assets and accounts held away from Triad. However, Triad did not have an adequate system to supervise the accuracy of valuations provided to the customers, in violation of NASD Conduct Rules 3010(a) and (b) and FINRA Rule 2010. Moreover, Triad's failure to adequately supervise the consolidated reports and the manual entries of assets resulted in inaccurate statements being sent to certain customers, in violation of NASD Conduct Rules 2210(d)(1) and 2110 (for conduct before December 15, 2008) and FINRA Rule 2010 (for conduct commencing on December 15, 2008).

Additionally, Triad failed to establish, maintain and enforce a reasonably designed supervisory system and written procedures regarding its examinations of branch offices, in

violation of NASD Conduct Rule 3010(c) and FINRA Rule 2010. Triad further failed to reasonably supervise two former representatives who provided consolidated reports to customers that contained inaccurate and false assets, in violation of NASD Conduct Rule 3010(a) and FINRA Rule 2010. Also, Triad violated NASD Conduct Rule 3012 and FINRA Rule 2010 in that its supervisory controls report for the year 2010 was deficient, in that it failed to adequately focus on known areas of concern regarding Triad's procedures and to detail needed changes or changes that were made to their supervisory policies and procedures.

Furthermore, Triad conducted a securities business while failing to maintain its required minimum net capital on 10 business days in 2009. Triad further created and maintained inaccurate books and records in that it failed to maintain accurate net capital computations during the period from January 2008 through June 2010. Triad filed inaccurate FOCUS reports for the period from January 2008 through June 2010. Moreover, Triad did not promptly file Securities Exchange Act of 1934 ("SEA") Rule 17a-11 notifications regarding the net capital deficiencies in November and December 2009, as required, all in violation of SEA Sections 15(c)(3) and 17(a), SEA Rules 15c3-1, 17a-3, 17a-5(a) and 17a-11, NASD Conduct Rules 3110 and 2110 (for conduct before December 15, 2008) and FINRA Rule 2010 (for conduct commencing on December 15, 2008).

Finally, Triad failed to comply with the requirements of Regulation S-P (17 C.F.R. §248.5) and violated FINRA Rule 2010 in that it failed to send its 2009 privacy policy notice to a group of its customers and failed to enforce its procedures regarding the encryption of electronic messages containing personal confidential information.

## **FACTS AND VIOLATIVE CONDUCT**

### **Consolidated Reports and Correspondence**

A consolidated report is a single document that combines information regarding most or all of a customer's financial holdings, regardless of where those assets are held. Consolidated reports supplement, but do not replace customer account statements required pursuant to NASD Conduct Rule 2340.

In April 2010, FINRA issued Regulatory Notice 10-19 (the "Notice"). The Notice reminded member firms that consolidated reports are communications with the public by the firm and must be clear, accurate, and not misleading. Under the Notice, firms that allow individual representatives to create consolidated reports must supervise the activity. For instance, where the consolidated reports reflect assets held away from the firm, the firm must ensure that registered representatives are taking reasonable steps to accurately reflect information regarding outside accounts and assets.

Since at least April 2010, Triad permitted its representatives to use multiple systems to create and provide customers with consolidated reports. Triad further made available to its representatives the Investigo system, which enables representatives to create consolidated reports. The consolidated reports provided by Triad's representatives to customers were created by a variety of systems, some of which (including the Investigo system) allowed the reports to be customized. Some of these reports included manually input valuations for assets held away from Triad. Yet, Triad was unaware that the Investigo system allowed for manual entries until in or about September 2010.

During the period from April 2010 until June 2012, Triad's supervisory procedures did not

specifically address the use of consolidated reports by its representatives. In short, Triad had inadequate supervisory procedures to address customizable reports or strictly manually created consolidated reports. Triad had no specific procedure to review and capture consolidated reports created and provided by its representatives to customers other than correspondence review and branch examinations. FINRA's investigation revealed more than 240 representatives who were creating and providing consolidated reports to their customers with systems that allowed for customized reports. More specifically, Triad's supervisory system failed to detect consolidated reports provided by two former representatives that contained false assets that were manually entered. As more fully discussed below, one of the representatives sold fictitious promissory notes to customers outside the regular course of his association with Triad, and listed some of the notes on certain consolidated reports that he provided to his customers. The other representative converted \$100,000 of a customer's funds and listed a false asset on consolidated reports that he provided to the customer.

When Triad became aware of the manual entry capabilities of the Investigo system in September 2010, it instituted additional procedures to monitor such entries, but failed to adequately monitor manual entries allowed by other systems. Triad's failure to establish, maintain and enforce adequate procedures to review manual entries in consolidated reports allowed false and inaccurate consolidated reports to be sent to customers by two former representatives on multiple occasions.

Triad's written supervisory procedures required the following disclosure be displayed on outgoing correspondence: "Securities Offered Through Triad Advisors, Inc. Member FINRA/SIPC." Yet, during the period from August 2008 through March 2012, approximately 25 registered representatives located in various branch offices provided consolidated reports to their customers that did not include Triad's required disclosure. Additionally, representatives sent customers manually created consolidated reports that did not contain any disclosures. Other reports contained ad-hoc disclosures, but did not include the disclosure required by Triad's written supervisory procedures. Triad failed to adequately enforce its procedures to ensure that required disclosures were included on all correspondence, including consolidated reports.

Additionally, the required disclosure for outgoing correspondence failed to adhere to best practices regarding disclosures on consolidated reports suggested in the Notice. These best practices suggested a disclosure that consolidated reports are for informational purposes, list the names of the entities where the assets are held, indicate which assets were manually entered and the valuation methodology used to value the manually entered assets. Triad failed to modify its required disclosure until June 6, 2012, when it first established written supervisory procedures directly relating to consolidated reports.

From May 1, 2010 until June 6, 2012, Triad failed to establish, maintain and enforce an adequate supervisory system and written procedures that were reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable NASD and FINRA Rules, regarding the use of consolidated reports including the Investigo system by its representatives. As a result of the foregoing conduct, Triad violated NASD Conduct Rules 2210(d)(1), 3010(a) and (b) and 2110 (for conduct before December 15, 2008) and FINRA Rule 2010 (for conduct commencing on December 15, 2008).

## **Branch Audit Program**

NASD Conduct Rule 3010(c) requires each member to conduct annual inspections of its offices of supervisory jurisdiction (“OSJ”) and inspect branch offices at least every three years. NASD Conduct Rule 3010(c)(2) requires member firms to prepare written reports of office inspections regarding the audits.

Triad’s written supervisory procedures require an annual review of each OSJ. The branch auditor is required to conduct a review for compliance with Triad’s policies and procedures, the securities laws and regulations and FINRA’s Rules. Triad employed a checklist in connection with its branch audits. However, the checklist was not included in Triad’s written supervisory procedures and Triad gave its auditors discretion whether to complete all of the items listed on the checklist, including the review of branch checking accounts, correspondence and consolidated reports.

During the period of November 23, 2009 to May 2011, Triad’s branch audit program was deficient in multiple respects. First, some of the auditors lacked adequate training. Second, in some instances, work papers for branch examinations were not maintained. Third, in some instances, the audits were not reviewed by a compliance principal, as required by Triad’s procedures. Fourth, in certain cases, audit disposition follow-up was left to subsequent examinations, which in some instances were not complete. Fifth, unannounced audits generally were not performed.

The branch audit program deficiencies contributed to Triad’s inability to discover a representative’s (now deceased) sale of fictitious promissory notes to approximately 20 customers, outside the regular course and scope of the representative’s association with Triad. Some of these fictitious notes were further listed on consolidated reports provided by the representative to customers and some were input into the Investigo system provided by Triad.

Based on the foregoing, Triad failed to establish, maintain and enforce a supervisory system and written supervisory procedures reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable NASD and FINRA Rules regarding its examinations of branch offices, in violation of NASD Conduct Rule 3010(c) and FINRA Rule 2010.

## **Supervision**

Supervision is a necessary component of broker-dealer operations. Although the duty to supervise is performed on behalf of the firm by individuals, it is the broker-dealer’s obligation to implement effective procedures and provide a system of follow-up and review. A broker-dealer must also ensure that its representatives are reasonably supervised and that its supervisors diligently exercise their responsibilities.

Triad failed to reasonably supervise two former representatives, one of which sold promissory notes outside the regular course of the representative’s association with Triad and the other converted customer funds. Triad and its branch auditors failed to detect and investigate the sale of promissory notes by one of its representatives. Moreover, Triad failed to detect and investigate manual entries into the Investigo system, which included false assets and false CUSIP numbers, which were entered by the same representative.

In a separate branch audit, Triad also reported that another representative, prior to his

termination, had sent correspondence to customers without forwarding copies to the home office for review. However, Triad failed to adequately follow-up on this deficiency. In fact, the representative had converted \$100,000 from a customer and covered-up the conversion for several years by providing multiple consolidated reports to the customer containing a false asset in the amount of \$100,000.

Earlier detection and investigation may have prevented the loss of additional customers' funds. As a result, Triad failed to reasonably supervise its representatives to ensure compliance with applicable securities laws and regulations and with applicable NASD and FINRA Rules.

Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 3010(a) and FINRA Rule 2010.

### **Supervisory Control Procedures**

Triad's supervisory controls report for year 2010 prepared in March 2011 was deficient. Triad's supervisory controls report for 2010 failed to focus on areas of Triad's procedures such as the use of consolidated reports. The Rule 3012 report for 2010 further failed to detail changes needed to be made or changes that were made to their supervisory policies and procedures regarding consolidated reports.

In view of the foregoing conduct, Triad violated NASD Conduct Rule 3012 and FINRA Rule 2010.

### **Net Capital and Recordkeeping**

In November and December 2009, Triad was required to maintain net capital of between \$257,000 and almost \$310,000, based upon a percentage of its aggregate indebtedness. However, Triad conducted a securities business while failing to maintain its required minimum net capital on November 20, 23, 30, December 1-4, and December 7-9, 2009. Triad's net capital deficiencies ranged from \$33,429 to \$254,106 during this time frame.

In addition, in connection with the foregoing deficiencies, Triad created and maintained inaccurate books and records in that Triad failed to maintain accurate computations of its net capital during the period from January 2008 through June 2010. Furthermore, Triad filed inaccurate FOCUS reports for the period from January 2008 through June 2010. Finally, Triad did not timely file SEA Rule 17a-11 notifications regarding the net capital deficiencies in November and December 2009.

As a result of the foregoing, Triad violated SEA Section 15(c)(3), SEA Rule 15c3-1 and FINRA Rule 2010. Additionally, the foregoing conduct constituted violations of SEA Section 17(a) and SEA Rules 17a-3, 17a-5(a) and 17a-11, NASD Conduct Rule 3110 and 2110 (for conduct before December 15, 2008) and FINRA Rule 2010 (for conduct commencing on December 15, 2008).

### **Regulation S-P**

Triad established and maintained supervisory procedures which required compliance with Regulation S-P (17 C.F.R. § 248 *et seq.*). Additionally, Triad's procedures require the encryption of electronic messages that contain personal confidential information such as account numbers, assets and other personal information. However, Triad failed to

reasonably enforce its procedures to ensure compliance with Regulation S-P regarding the encryption of electronic messages containing personal confidential information. As a result, on several occasions, Triad representatives e-mailed unencrypted consolidated reports containing personal confidential information to customers. Moreover, Triad failed to disseminate privacy policy notices on an annual basis and advise customers of the “Opt-out” provision. Specifically, Triad failed to send its 2009 privacy policy notice to 14,847 customers as required by its procedures and Regulation S-P.

Based on the foregoing, Triad failed to comply with the requirements of Regulation S-P and violated FINRA Rule 2010.

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

- A censure;
- A \$650,000 fine;
- Restitution to the customers listed on Attachment A<sup>1</sup> hereto in the aggregate amount of no less than \$375,000.

A registered principal on behalf of Triad shall submit satisfactory proof of payment of restitution or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted to the undersigned either by letter that identifies the Respondent and the case number or by e-mail from a work-related account of the registered principal of Triad to the undersigned and EnforcementNotice@FINRA.org. This proof shall be provided to the FINRA staff member listed below no later than 120 days after acceptance of the AWC.

If for any reason Triad cannot locate any customer identified in Attachment A after reasonable and documented efforts within 120 days from the date the AWC is accepted, or such additional period agreed to by a FINRA staff member in writing, Triad shall forward any undistributed restitution to the appropriate escheat, unclaimed property or abandoned property fund for the state in which the customer is last known to have resided. Triad shall provide satisfactory proof of such action to the FINRA staff member identified above and in the manner described above, within 14 days of forwarding the undistributed restitution to the appropriate state authority.

The imposition of any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

- In addition, Triad has represented that it is conducting a comprehensive review of its supervisory system regarding the use of consolidated reports by its representatives as well as its branch audit process. Triad has further represented that it is in the process of adopting new and revised procedures regarding both areas.

By March 31, 2014, a registered principal on behalf of Triad shall certify to FINRA in writing that Triad has conducted a comprehensive review described in the above paragraph, and that, as of the date of the certification, Triad has in place policies and

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<sup>1</sup> Triad has previously entered into settlements with at least 11 other customers paying restitution in varying amounts.

procedures to address and correct the violations described in this AWC. This certification must be submitted to the undersigned and shall be accompanied by a description of the reviews and revisions undertaken by Triad pursuant to this undertaking. The Department of Enforcement may, upon a showing of good cause and its sole discretion, extend the time for compliance with this provision.

Triad agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. Triad has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Triad specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

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

## II.

### WAIVER OF PROCEDURAL RIGHTS

Triad 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, Triad specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, 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.

Triad 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

Triad 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 Triad; and
- C. If accepted:
  - 1. This AWC will become part of Triad’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 response to public inquiries about Respondent’s disciplinary record;
  - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
  - 4. Triad 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. Triad 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 Triad, certifies that a person duly authorized to act on Triad's 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 Triad 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.

12/17/13  
Date

Triad Advisors, Inc., Respondent

By: [Signature]  
Name: MARK METHELMAN  
Title: PRESIDENT / CEO

Reviewed by: [Signature]

Robert J. Anello, Esq.  
Attorney for Respondent  
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Accepted by FINRA:

3/12/14  
Date

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

[Signature]

William Brice LaHue, Senior Regional Counsel  
FINRA, Department of Enforcement  
One Securities Centre, Suite 500  
3490 Piedmont Road, N.E.  
Atlanta, Georgia 30305  
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**ATTACHMENT A**

<b>CUSTOMER INITIALS</b>	<b>RESTITUTION AMOUNT</b>
M.B.	\$240,000
N.R. & W.R.	\$135,000
<b>TOTAL</b>	<b>\$375,000</b>

## **Corrective Action Statement of Triad Advisors, Inc.**

In connection with the issuance of the Acceptance, Waiver & Consent in this matter, Triad Advisors, Inc. (the "Firm") submits this statement describing certain corrective actions it has taken in response to the issues described in the AWC.<sup>1</sup> Triad has committed to FINRA that, by March 31, 2014, it will have in place policies and procedures to address and correct the violations described in the AWC.

### **Net Capital**

The AWC indicates that Triad did not meet minimum net capital requirements for 10 days in November and December 2009. When Triad discovered this conduct, which resulted as a consequence of its accounting for a commission chargeback, Triad investigated the matter and promptly terminated the two employees responsible for these net capital-related issues. Triad also re-calculated and re-filed FOCUS reports for the period of 2008 through June 2010. Furthermore, Triad instituted new measures to ensure the accuracy of the Firm's net capital calculations and implemented new training programs.

### **Consolidated Reports, Correspondence, and Supervision**

The AWC describes Triad's previous branch audit procedures. The Firm has since instituted measures to improve its branch audit programs, including but not limited to strengthening its procedures for performing branch audits and review of branch audit reports. Additionally, the Firm is implementing a significant upgrade to the audit program through a sophisticated audit software package. The AWC also describes circumstances relating to Triad's previous supervision of consolidated reports. The Firm has upgraded its procedures for review of consolidated reports and has hired additional compliance team members. The Firm will further enhance the procedures during the first quarter of 2014.

In addition, the AWC describes circumstances relating to two of the Firm's former independent representatives. One representative sold fictitious promissory notes to customers outside the regular course and scope of the representative's employment by Triad, a scheme which began well before the representative was affiliated with Triad and went undetected for many years. Triad discovered the representative's conduct upon his death. Immediately after learning this information, Triad self-reported the matter to FINRA, the SEC, and law enforcement, including the FBI and the U.S. Attorney's Office for the Eastern District of New York.

Triad discovered the conduct of the second representative during a routine review of correspondence performed by its Compliance team. Triad promptly fired the representative and self-reported the matter to FINRA and the SEC.

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<sup>1</sup> 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.