

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2012033291204**

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

RE: William Wesley Marshall, Respondent
General Securities Representative
CRD No. 3267723

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

William Wesley Marshall ("Marshall") graduated medical school before entering the securities industry in February 1998. Marshall was associated with two current and former FINRA-member broker-dealers through January 6, 2011, when he became associated with his current employer, Ameriprise Financial Services, Inc. ("Ameriprise" or the "Firm") as a registered representative in its Plano, Texas office. Marshall obtained his Series 7, Series 63, and Series 65 securities licenses in 1999, 2001, and 2014, respectively.

RELEVANT DISCIPLINARY HISTORY

Marshall has no relevant disciplinary history.

OVERVIEW

During the period from January 6, 2011 through May 2, 2012 (the "Relevant Period"), Marshall participated in the sale of \$1.72 million of privately issued preferred stock to his immediate Firm supervisor, his Complex Manager, two other Ameriprise registered representatives, and several Firm customers, all without having provided prior written notice to Ameriprise. As compensation for facilitating certain private securities transactions, Marshall received common stock purchase warrants from the issuer, BioChemics Inc. ("BioChemics").

Apart from engaging in private securities transactions, Marshall also served as a member of BioChemics' Scientific Advisory Board during his association with the Firm, receiving common stock purchase warrants from BioChemics as compensation. Marshall engaged in this outside business activity without providing prior written notice to Ameriprise.

Moreover, Marshall used an unapproved personal e-mail account to communicate with Firm customers about investing in BioChemics, effectively preventing Ameriprise from fulfilling its supervisory obligations under NASD Rule 3010(d) regarding review and retention of business correspondence.

Marshall also distributed sales literature prepared by BioChemics to investors that failed to disclose his business and personal financial interest in BioChemics. Additionally, although not created by Marshall, such sales literature contained misleading, exaggerated, and/or unwarranted statements and inadequate risk disclosures.

By participating in private securities transactions and outside business activities, as well as distributing improper sales materials, Marshall violated NASD Rule 3040(b), FINRA Rule 3270, NASD Rule 2210(d)(1)(A)-(B), and FINRA Rule 2010. Additionally, Marshall violated FINRA Rule 2010 by using his personal email account to correspond with Firm customers.

FACTS AND VIOLATIVE CONDUCT

Background

NASD Rule 3040(b) requires associated persons to provide written notice to their member firm employer "prior to participating in any private securities transaction." This Rule is broadly interpreted to reach an associated person who participates in any manner in the transaction, and even very limited involvement by an associated person is sufficient to trigger the requirement that the person give notice to the employer. The term "private securities transaction," as defined by NASD Rule 3040(e)(1), means any security transaction outside the regular course or scope of an associated person's employment with a member and applies

to sales of securities. A violation of NASD Rule 3040 is also a violation of FINRA Rule 2010.

FINRA Rule 3270 provides: "No registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member." The purpose of Rule 3270 is to improve the supervision of registered individuals by requiring them to notify firms of outside business activities so that the firms can take steps to prevent harm to the investing public based on unmonitored activities. A violation of FINRA Rule 3270 is also a violation of FINRA Rule 2010.

FINRA Rule 2010 states that "a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." FINRA Rule 0140(a) provides that FINRA Rules "shall apply to all...persons associated with a member" and that "[p]ersons associated with a member shall have the same duties and obligations as a member." An associated person's use of an unapproved e-mail account for securities business-related purposes constitutes a violation of Rule 2010.

NASD Rule 2210(d)(1)(A) required members' communications with the public to be fair and balanced, and to provide the investor with a sound basis for evaluating the facts regarding the securities products or services being discussed. No material fact could be omitted from a communication if such omission caused the communication to be misleading. In addition, NASD Rule 2210(d)(1)(B) prohibited false, exaggerated, unwarranted or misleading statements or claims in members' communications with the public.

Ameriprise's written policies and procedures, as well as FINRA rules, prohibited Firm registered representatives from engaging in outside business activities without providing prior written notice to the Firm. Ameriprise's written policies and procedures also prohibited its registered representatives from selling privately issued securities that were not offered by Ameriprise and from personally investing in such securities without first receiving written permission from the Firm. Ameriprise written policies and procedures also prohibited its registered representatives from sending business-related communications through their personal e-mail accounts.

During the Relevant Period, Ameriprise also required that registered representatives complete annual compliance attestations requiring that they attest to their adherence to Firm policies and procedures and provide necessary disclosures to the Firm. On or about February 23, 2011, Marshall completed an annual compliance attestation in which he attested that he was familiar with the Firm's written policies and procedures and agreed to abide by them (the

“February 2011 Compliance Attestation”). Marshall also attested that he had “disclosed all Outside Business Activities” and that he would update the disclosure and receive pre-approval from his registered principal before he stops, starts, or changes the scope of an activity.

In January 2011, JK was Marshall’s direct supervisor. During the Relevant Period, JK was the branch manager and supervisory principal of the Firm’s Plano, Texas office where Marshall worked. JK was supervised by JD, a Complex Manager responsible for supervising four Ameriprise branch offices, including the Plano, Texas branch office.

BioChemics

BioChemics was a biopharmaceutical company that claimed to specialize in a purported transdermal drug delivery system.¹ Both before and during the Relevant Period, Marshall, who also holds a medical degree and is a doctor, served as a member of the BioChemics Scientific Advisory Board, for which he received BioChemics stock warrants as compensation. In addition, while associated with Ameriprise, Marshall continued to remain under contract with BioChemics as a compensated consultant. Under the terms of the consulting agreement, BioChemics agreed to compensate Marshall with 1,000 BioChemics stock warrants for every \$10,000 of investment capital BioChemics raised through parties referred to it by Marshall or his brother.

Ameriprise did not offer privately issued shares of BioChemics for purchase by investors.

Although JK was aware of Marshall’s participation on BioChemics’ Scientific Advisory Board at the time Marshall joined the Firm, Marshall never provided Ameriprise with any written notice concerning his activities with BioChemics.

Marshall Participated in Private Securities Transactions Without Providing Prior Written Notice to the Firm

During the Relevant Period, Marshall participated in private securities transactions involving BioChemics. Marshall referred nine Firm customers and four Ameriprise registered representatives, including JK and JD, to invest in a BioChemics private offering. Marshall also facilitated their purchases of \$1.72 million in BioChemics preferred stock, which included providing certain customers with subscription agreements from BioChemics and, in connection

¹ On December 14, 2012, the U.S. Securities and Exchange Commission (“SEC”) filed a civil enforcement action in the United States District Court for the District of Massachusetts (the “District Court”) against BioChemics. In March 2015, the District Court permanently enjoined BioChemics from violating the antifraud provisions of the federal securities laws and entered a supplemental judgment that ordered BioChemics to pay over \$17 million in disgorgement of ill-gotten gains and prejudgment interest and \$750,000 as a civil penalty. Marshall was not a defendant in that action.

with JK, assisting him in the completion of his subscription agreement for his personal investment. As compensation for facilitating certain private securities transactions, Marshall received common stock purchase warrants from BioChemics entitling him to purchase 2,400 shares of BioChemics common stock. Marshall never exercised the warrants.

Additionally, Marshall arranged for a BioChemics information session to be held after business hours on February 17, 2011, in a conference room in the Ameriprise branch office where he worked (the "BioChemics information session"). Marshall created the list of attendees, arranged for food and drinks to be served, and attended the BioChemics information session. JK also attended the BioChemics information session. A PowerPoint prepared by BioChemics was shown to investors and potential investors, including Ameriprise customers and employees, and Marshall also provided copies of the PowerPoint to Ameriprise customers and employees after the conclusion of the BioChemics information session.

Marshall also provided certain Firm customers with e-mail updates of BioChemics clinical trial results.

Marshall never provided Ameriprise with prior written notice of his participation in the sale of \$1.72 million of privately issued shares of BioChemics.

By engaging in such conduct, Marshall violated NASD Rule 3040(b) and FINRA Rule 2010.

*Marshall Engaged In Outside Business Activities
Without Providing Prior Written Notice to the Firm*

Throughout the Relevant Period, Marshall was a compensated member of the BioChemics Scientific Advisory Board. On August 3, 2011, Marshall received a common stock purchase warrant entitling him to purchase 5,000 shares of BioChemics common stock at an exercise price equal to \$10 per share as compensation for his participation on the Scientific Advisory Board. Marshall never exercised the warrants.

Ameriprise required registered representatives to complete outside business activity ("OBA") disclosure forms regarding any OBAs. While Marshall completed Firm OBA disclosure forms on February 23, 2011 and April 5, 2011 that disclosed other OBAs, Marshall never provided written disclosures to Ameriprise concerning his outside activities with BioChemics during the Relevant Period. Moreover, Marshall inaccurately attested on the February 2011 Compliance Attestation that he had disclosed all OBAs in accordance with the Firm's written policies and procedures.

By engaging in such conduct, Marshall violated FINRA Rules 3270 and 2010.

Marshall Used His Personal E-mail to Discuss BioChemics with Customers

During the Relevant Period, Marshall used his personal e-mail address, rather than his Ameriprise e-mail address, to discuss BioChemics with investors and potential investors. Ameriprise's Electronic Communication Acceptable Use Policy stated, in part, that only Firm email should be used for company-related business. Nonetheless, Marshall communicated with Ameriprise customers/employees about BioChemics through his private e-mail account, rather than his Ameriprise e-mail account. In fact, he specifically instructed at least one individual during the Relevant Period not to use his Ameriprise e-mail. Additionally, on at least three separate occasions, Marshall communicated with JK and JD about BioChemics from his personal e-mail address.

By engaging in such conduct, Marshall prevented Ameriprise from discharging its obligation to review and retain outgoing correspondence in accordance with NASD Rule 3010(d).

Accordingly, Marshall's use of an unapproved personal e-mail account for securities business-related purposes constitutes a violation of FINRA Rule 2010.

Marshall Distributed Violative Sales Literature

In 2011, Marshall distributed sales literature prepared by BioChemics to investors that failed to disclose his business and personal financial interest in BioChemics, which constituted material information necessary in order for investors to have a sound basis for evaluating the nature of the investment in its entirety. For example, Marshall's name was not included on the list of Scientific Advisory Board members that was part of a PowerPoint presentation prepared by BioChemics shown to investors and prospective investors during the February 17, 2011 BioChemics information session that Marshall organized (and attended) at Ameriprise's offices. Marshall personally distributed copies of this PowerPoint to several Ameriprise customers and employees, several of whom invested in BioChemics, including JK and JD, without the Firm's authorization.

The PowerPoint presentation also failed to discuss the significant number of variables that could impact the clinical trials, testing, and market entry discussed therein. In addition, the PowerPoint presentation, and other sales literature prepared by BioChemics that Marshall distributed to investors through his personal e-mail account, contained several misleading, exaggerated, and/or unwarranted statements.

By engaging in such conduct, Marshall violated NASD Rule 2210(d)(1)(A) and (B) and FINRA Rule 2010.

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

- A 15-month suspension from association with any FINRA member in any capacity; and
- A \$10,000 fine.

Marshall understands that if he is barred or suspended from associating with any FINRA member, he becomes 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, he 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).

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

Marshall specifically and voluntarily waives any right to claim that he 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

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

- A. To have a Complaint issued specifying the allegations against him;
- 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, Marshall 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.

Marshall 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

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

Marshall certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that he 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 him to submit it.

12/09/2015
Date (mm/dd/yyyy)

William Marshall
Respondent William Wesley Marshall

Reviewed by:

Jeffrey S. Holik, Esq.
Renee Kramer, Esq.
Shulman, Rogers, Gandal, Pordy & Ecker, p.a.
12505 Park Potomac Avenue, 6th floor
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Tel: 301.945.9285
Counsel for Respondent

Accepted by FINRA:

February 9, 2016
Date

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

Susan Light
Susan Light
Senior Vice President & Chief Counsel
FINRA Enforcement
One Brookfield Place
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Counsel for Respondent

Accepted by FINRA:

Date

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

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**CORRECTIVE ACTION STATEMENT
OF RESPONDENT WILLIAM WESLEY MARSHALL**

This statement outlines the demonstrable steps of Dr. Wesley Marshall to correct the issues underlying the Letter of Acceptance, Waiver and Consent (“AWC”) entered into between Dr. Marshall and the Financial Industry Regulatory Authority (FINRA). At the outset, it bears noting that the conduct giving rise to this matter occurred more than four years ago and since that time Dr. Marshall has maintained an exemplary compliance record.

Dr. Marshall has accepted full responsibility for his actions. When he first was advised in May 2011 that his activities on behalf of BioChemics had not been approved by Ameriprise, Dr. Marshall took immediate steps to come into compliance — he resigned from the BioChemics Scientific Advisory Board and ceased all communications with potential investors. Soon thereafter, Dr. Marshall returned all of the warrants he had received from BioChemics.

Ameriprise has invested substantial resources over the course of these past four years to provide Dr. Marshall with continuous training and coaching to ensure that he understands his compliance obligations. Dr. Marshall served a 30-day suspension from the firm, and, upon returning to work, received comprehensive retraining to ensure that he would be fully compliant with industry rules in the future. Among other things, Dr. Marshall completed training at Ameriprise University, including Compliance Basics – Overview, Compliance Basics II – Essential Topics, and Code of Conduct. He also reviewed Ameriprise’s Financial Code of Conduct and Compliance Manual Sections, including “Understanding Your Compliance Obligations and Resources,” “Restricted and Prohibited Activities,” and “Disclosure of Outside Activities.” In addition, for a period of six months after his suspension, Dr. Marshall met weekly with Ameriprise’s Regional Risk Supervisor to review his work and he participated in weekly compliance-focused meetings with his Field Registered Principal, all of which enabled Dr. Marshall to obtain a greater understanding of Ameriprise’s compliance policies and industry regulations.

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