

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2014042263601**

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

RE: Financial West Group, Respondent
Member Firm
CRD No. 16668

Gene C. Valentine
Registered Representative
CRD No. 1079871

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, Respondents 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 either Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondents 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

Financial West Group

Financial West Group (“Financial West” or the “firm”) is a full-service brokerage firm. Financial West has been an active FINRA member firm since 1986. The firm has approximately 105 registered branch offices and approximately 245 registered representatives.

Gene C. Valentine

Valentine entered the securities industry more than 25 years ago and is currently registered with Financial West. Valentine is the firm’s chairman and CEO.

OVERVIEW

From October 2008 through June 2015, Financial West failed to implement adequate written procedures relating to its due diligence in the context of private placements in which the firm participated. In addition, from May 2013 through June 2014 Valentine directed and permitted Financial West to associate with a statutorily disqualified individual. The firm hereby agrees to a censure and \$40,000 fine and Valentine hereby agrees to a 30-calendar-day principal-capacity suspension and \$10,000 fine.

FACTS AND VIOLATIVE CONDUCT

Due Diligence of Private Placements

From October 1, 2008, through June 30, 2015, Financial West's written supervisory procedures failed to address many elements of the firm's due diligence process for private placements. For example, Financial West's written supervisory procedures did not describe the process for approving private placement offerings and did not describe how or when to evaluate private placement offerings. Moreover, Financial West failed to consistently follow the written procedures that it did have (*i.e.*, by failing to document the review as described in the procedures).

FINRA Rule 3110(a) and NASD Rule 3010(a)¹ require that each FINRA member firm establish and maintain a system to supervise the activities of its associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA Rules. FINRA Rule 3110(b)(1) and NASD Rule 3010(b)(1) require that each member firm establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable FINRA rules.

FINRA Regulatory Notice 10-22 provided firms with detailed guidance while reminding them of their "obligation to conduct a reasonable investigation of the issuer and the securities they recommend" in private placement offerings and specifically noted that a firm's supervisory procedures must be reasonably designed to ensure that the firm engages in a rigorous due diligence process. Regulatory Notice 10-22 also stated that "[t]o demonstrate that it has performed a reasonable investigation, a [firm] should retain records documenting both the process and results of its investigation."

¹ NASD Rule 3010 was superseded by FINRA Rule 3110 effective December 1, 2014. Accordingly, NASD Rule 3010 applies for conduct before December 1, 2014, and FINRA Rule 3110 applies to conduct after that date.

As described above, Financial West had inadequate written procedures relating to its due diligence of private placements. Moreover, Financial West failed to follow the written procedures that it did have on a consistent basis. Thus, Financial West violated FINRA Rules 3110(a) and 3110(b)(1) and NASD Rules 3010(a) and 3010(b)(1). As a result of these violations, Financial West also violated FINRA Rule 2010 and former NASD Rule 2110.²

Association with a Statutorily Disqualified Individual

From May 2013 through June 2014, Valentine directed and permitted Financial West to associate with a statutorily disqualified individual, RM, first as an employee and later as an independent contractor.

RM first joined Financial West as an intern in August 2010. Shortly thereafter, RM submitted an initial Form U4 with a request to sit for the Series 7 exam. In his Form U4, RM disclosed that he had pleaded guilty to and had been convicted of a non-investment-related felony in December 2009. In October 2010, FINRA sent the firm a letter notifying it that RM was statutorily disqualified due to his felony conviction. Financial West filed a Form U5 terminating RM's association with the firm in early November 2010.

In May 2013, Financial West rehired RM to assist with the firm's due diligence of alternative investments. From May 2013 through approximately July 2013, RM was directly employed by Financial West. Thereafter, RM continued to assist the firm in conducting due diligence of alternative investments as an off-site independent contractor from July 2013 through June 2014, during which time RM was controlled by the firm and was engaged in the firm's securities business.

Although Financial West's written supervisory procedures required that "all registered and non-registered (clerical) persons" being considered for hire were to be checked against FINRA's Central Registration Depository (CRD) system to prevent the firm from hiring anyone subject to a statutory disqualification, no one at the firm checked RM's CRD record to determine if he was subject to a statutory disqualification when he was rehired in May 2013. The firm principal responsible for conducting the CRD review did not learn that RM had been hired until after RM began working for the firm. The principal learned of RM's statutory disqualification when he discovered the employment file relating to RM's 2010 internship. The principal and others in firm management alerted Valentine to RM's felony and the fact that Financial West could not associate with RM without completing an MC-400 Application (Membership Continuance Application) seeking FINRA's permission to associate with RM. Valentine overrode their concerns and permitted Financial West to continue to associate

² NASD Rule 2110 was superseded by FINRA Rule 2010 effective December 15, 2008. Accordingly, NASD Rule 2110 applies for conduct before December 15, 2008, and FINRA Rule 2010 applies to conduct after that date.

with RM by allowing RM to continue his duties on behalf of the firm as an independent contractor.

FINRA's By-Laws Article III, Section 3(b) prohibits member firms from associating with an individual in any capacity if that individual has been statutorily disqualified. A FINRA member may not associate with a disqualified person in any capacity unless and until approved in an eligibility proceeding triggered by the member's submission of an MC-400 Application.

Valentine directed and permitted Financial West to associate with RM while RM was statutorily disqualified. Thus, from May 2013 to June 2014, Financial West and Valentine violated FINRA's By-Laws Article III, Section 3. Additionally, in May 2013, Financial West failed to enforce its written supervisory procedures relating to CRD checks for potential hires designed to prevent the firm from hiring an individual subject to a statutory disqualification in violation of NASD Rule 3010(a). Due to those violations, the firm and Valentine also violated FINRA Rule 2010.

B. Financial West also consents to the imposition of the following sanctions:

- A censure; and
- A \$40,000 fine.

Valentine also consents to the imposition of the following sanctions:

- A 30-calendar-day suspension in a principal capacity; and
- A \$10,000 fine.

Respondents agree to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. Respondents have submitted Election of Payment forms showing the method by which the Respondents propose to pay the fines imposed.

Respondents specifically and voluntarily waive any right to claim that Respondents are unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

Respondent Valentine understands that if he is barred or suspended from associating with any FINRA member in a principal capacity, 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, Respondent Valentine may not be associated with any FINRA member in a principal capacity, during the period of the bar or suspension (*see* FINRA Rules 8310 and 8311). Furthermore, because Respondent Valentine

is subject to a statutory disqualification during the suspension, if he remains associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

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

II.

WAIVER OF PROCEDURAL RIGHTS

Respondents specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against one or both Respondents;
- 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, Respondents specifically and voluntarily waive 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.

Respondents 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

Respondents 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 Respondents; and
- C. If accepted:
 - 1. this AWC will become part of Respondents’ permanent disciplinary records and may be considered in any future actions brought by FINRA or any other regulator against Respondents;
 - 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. Respondents 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. Respondents 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 Respondents’: (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. Respondents may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they 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 Financial West, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC. Valentine certifies that he has

read and understands all of the provision of this AWC. Each of the undersigned have been given a full opportunity to ask questions about it; that we 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 Financial West or Valentine to submit it.

08/03/2016
Date (mm/dd/yyyy)

Ellen Shearin
Financial West Group

8/03/2016
Date (mm/dd/yyyy)

By: Ellen Shearin
[Signature]
Gene C. Valentine

Reviewed by:

Edward S. Zusman
Counsel for Respondent
MARKUN ZUSMAN FRENIERE & COMPTON LLP
465 California Street, Suite 401
San Francisco, California 94104
Tel: (415) 438-4449

Accepted by FINRA:

August 16, 2016
Date

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



Daniel L. Gardner
Senior Counsel
FINRA Department of Enforcement
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