

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2018056269003**

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

RE: Paulson Investment Company, LLC, Respondent  
Member Firm  
CRD No. 5670

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent, Paulson Investment Company, LLC ("Respondent" or "Paulson") 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**

Paulson is a boutique investment-banking firm, headquartered in Chicago, Illinois. It has been a FINRA member since April 6, 1971, and its membership is still in effect. Paulson derives more than 50% of its annual revenue from underwriting activities, currently employs approximately 60 registered representatives, and has nine branch offices.

**RELEVANT DISCIPLINARY HISTORY**

Respondent does not have any relevant disciplinary history with the Securities and Exchange Commission, any state securities regulators, FINRA, or any other self-regulatory organization.

**OVERVIEW**

Between May 2017 and April 2018, Paulson sold six private placement offerings claiming exemption from registration under Rule 506 of Regulation D, but without having established pre-existing, substantive relationships with the offerees prior to

participating in those offerings. As a result, each of those sales constituted an unregistered distribution of securities in contravention of Section 5 of the Securities Act of 1933, and, thereby, a violation of FINRA Rule 2010.

### **FACTS AND VIOLATIVE CONDUCT**

Under the Securities Act of 1933 (“the Act”), any offer or sale of a security must either be registered with the SEC or qualify for an exemption. Regulation D under the Act provides a number of exemptions, one of which is Rule 506(b). Under that rule, an issuer obtains a “safe harbor” under Section 4(a)(2) by, among other things, selling to no more than 35 non-accredited investors and not using “general solicitation” or advertising to market its securities. Rule 502(c) generally sets forth the forms of prohibited general solicitation or advertising activities.

The SEC has issued guidance that a broker-dealer, acting on behalf of an issuer, can demonstrate the absence of general solicitation under Rule 502(c) of Regulation D if it demonstrates that it has established a pre-existing, substantive relationship with a prospective investor.<sup>1</sup> For example, a broker-dealer could establish a pre-existing, substantive relationship with a prospective investor through a previous investment in securities offered through the broker-dealer or through submission and approval of an investor qualification questionnaire.<sup>2</sup> The SEC has also issued guidance that “[a] pre-existing relationship is one . . . that was established through . . . a registered broker-dealer . . . prior to the registered broker-dealer[’s] . . . participation in the offering.”<sup>3</sup>

Between May 2017 and April 2018, Paulson sold interests in six separate private placement offerings, each of which claimed exemption from registration pursuant to Rule 506(b) of Regulation D. During this period, Paulson solicited 11 separate individuals to invest approximately \$4.5 million in those offerings. However, Paulson began participating in each offering well before the firm created a substantive relationship with any of these 11 individuals.<sup>4</sup> The firm participated in those offerings by engaging in steps necessary to the distribution of securities, including but not limited to: conducting due diligence on the offerings; assisting the issuers with the preparation of offering materials; communicating with prospective investors; selling interests in the offerings; and executing placement agent agreements.

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<sup>1</sup> See SEC Compliance and Disclosure Interpretations, Question 256.26, dated August 6, 2015.

<sup>2</sup> With regard to the submission and approval of an investor qualification questionnaire, see *H.B. Shaine & Co.*, SEC No Action Letter, 1987 SEC No-Act. LEXIS 2004, \*\*1-2 (May 1, 1987). The questionnaire could not reference any particular offering.

<sup>3</sup> See SEC Compliance and Disclosure Interpretations, Question 256.29, dated August 6, 2015.

<sup>4</sup> See *id.*, Question 260.19, dated August 6, 2015 (“Participation in an offering is not limited to solicitation of investors. Examples of participation in an offering include participation or involvement in due diligence activities or the preparation of offering materials . . . and communicating with the issuer, prospective investors or other offering participants about the offering.”)

While Paulson eventually established a substantive relationship with each of the 11 individuals who invested in the offerings prior to their purchases, that relationship did not exist prior to the firm's participation in those offerings.

For example, Paulson began participating in a private offering of securities on behalf of Issuer No. 1 in 2017. The firm executed the placement agent agreement for that offering on July 31, 2017 and first began selling interests in the offering to investors on September 11, 2017. On or before these dates, the firm did not have a substantive relationship with individual DE. Paulson subsequently established such a relationship with DE and sold him interests in Issuer No. 1's offering on October 23, 2017, but the firm's substantive relationship did not pre-date Paulson's participation in that offering.

Similarly, Paulson began participating in a private offering of securities on behalf of Issuer No. 2 in 2017. The firm executed the placement agent agreement for that offering on October 27, 2017 and first began selling interests in the offering to investors on December 26, 2017. On or before these dates, the firm did not have a substantive relationship with individual KS. Paulson subsequently established such a relationship with KS and sold her interests in Issuer No. 2's offering on February 8, 2018, but the firm's substantive relationship did not pre-date Paulson's participation in that offering.

Paulson solicited and sold the securities of four other private placement offerings to nine other investors in the manner similar to those described above. On each occasion, Paulson failed to have a substantive relationship with each investor prior to the firm's participation in those offerings.

Because Paulson began participating in each of the six private placement offerings prior to establishing a substantive relationship with DE, KS, and the 9 other individuals noted above, the eventual solicitations and resulting sales of those offerings each constituted a general solicitation and resulted in the unregistered distribution of securities.

Based on the above, Paulson acted in contravention of Section 5 of the Act and through its conduct, committed violations of FINRA Rule 2010.

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

A censure and a \$50,000 fine.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is 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 an inability 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. A bar or expulsion shall become effective upon approval or acceptance of this AWC.

## II.

### WAIVER OF PROCEDURAL RIGHTS

Respondent(s) specifically and voluntarily waive(s) 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, 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 action 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 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.

Respondent certifies that it has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; Respondent has agreed to the AWC's provisions voluntarily; and 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 it to submit this AWC.

Paulson Investment Company, LLC

1/14/2020

Date

By: 

Print Name: Trent Davis

Title: CEO

Reviewed by:



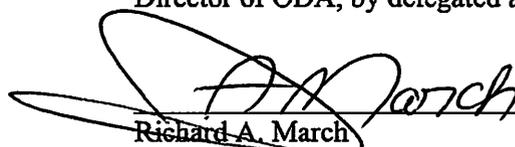
Dexter Johnson  
Counsel for Respondent  
Mallon & Johnson  
120 N. LaSalle Street, Suite 2100  
Chicago, IL 60602

Accepted by FINRA:

January 31, 2020

Date

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



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FINRA  
Department of Enforcement  
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