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

RE: Barry Robert Bode, Respondent  
Former Investment Company and Variable Contracts Products Representative  
CRD No. 1203578

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, Respondent Barry Robert Bode (“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. ACCENTANCE 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

Respondent entered the securities industry in February 1984. In November 2004, Respondent became registered as an Investment Company and Variable Contracts Products Representative through an association with FINRA member firm The O.N. Equity Sales Company (CRD No. 2936) (the “Firm”). On February 1, 2019, the Firm filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) stating that it had discharged Respondent, effective January 28, 2019, because he had “engaged in an unapproved outside business activity related to the negotiation and sale of material rights on behalf of a customer for compensation.”

Respondent is not currently associated with a FINRA member, but remains subject to FINRA’s jurisdiction pursuant to Article V, Section 4 of FINRA’s By-Laws.

RELEVANT DISCIPLINARY HISTORY

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

Between September 2017 and July 2018 (the “Relevant Period”), while associated with a member firm, Respondent engaged in a consulting business, contracted with an individual to market the mineral rights she owned in connection with a property, and solicited purchase offers from energy and mineral companies, through a limited liability company (the “LLC”) that he established with two individuals who were not associated with a member firm. Respondent did not seek Firm approval or provide the Firm with written notice before engaging in these outside business activities and therefore violated FINRA Rules 3270 and 2010.

FACTS AND VIOLATIVE CONDUCT

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.....

FINRA Rule 2010 states, “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.” Conduct that violates FINRA Rule 3270 also violates FINRA Rule 2010.

During the Relevant Period, Respondent was the Managing Partner of a limited liability company (the “LLC”) he formed during 2016 with two individuals who were not associated with a member firm. Respondent did not disclose to the Firm that he had formed the LLC. Beginning in September 2017, the LLC performed business consulting services that resulted in $7,000 in consulting fees.

During June 2018, through the LLC, Respondent also contracted with an individual, LM, to market the mineral rights associated with a Colorado property that LM owned. According to the contract, LM was obligated to pay a fee to the extent that Respondent solicited a purchase offer of at least a certain amount. Respondent then solicited several offers to purchase LM’s mineral rights from energy and mineral companies.

Respondent did not disclose that he played any role in the LLC to the Firm before the LLC conducted business. On July 11, 2018, after he had been conducting business through the LLC for approximately 10 months and he had been soliciting offers for LM’s mineral rights for approximately one month, Respondent submitted an outside business activity disclosure form to the Firm. Respondent stated on the form that he would buy and sell real estate, including water and mineral rights. However, Respondent did not
disclose the existence of the LLC or his role in it, that he had entered into a contract with LM through the LLC or that he had marketed LM’s mineral rights.

Subsequently, in July 2018, LM accepted one of the purchase offers Respondent solicited. During October 2018, LM paid Respondent $12,000, through the LLC, pursuant to the terms of the contract.

In December 2018, the Firm located a copy of the LLC’s contract with LM and marketing materials for the sale of mineral rights in Respondent’s Firm email account. In response to subsequent inquiries from the Firm about these documents, Respondent submitted a written statement to the Firm stating, inaccurately, that LM had not paid any fee or compensation for his work. Respondent later acknowledged that LM had paid a fee of $12,000.

By virtue of the foregoing, Respondent violated FINRA Rules 3270 and 2010.

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

- A two month suspension in all capacities; and
- A $5,000 fine.

Respondent 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.

The fine shall be due and payable either immediately upon reassociation with a member Firm, 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.

Respondent specifically and voluntarily waives any right to claim an inability 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

Respondent 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, Respondent specifically and voluntarily waives 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.

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 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.

Respondent 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; 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 him to submit this AWC.

03-25-2020

Date

Barry Robert Bode
Respondent

Reviewed by:

Stephen Csajaghy
Counsel for Respondent
Condit Csahaghy LLC
695 South Colorado Blvd., Suite 270
Denver, Colorado 80246
Accepted by FINRA:

4/2/2020
Date

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

Carolyn O’Leary
Senior Counsel
FINRA
Department of Enforcement
Brookfield Place
200 Liberty Street, 11th Floor
New York, New York 10281