

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2021072848301**

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

RE: Carolina Financial Securities, LLC (Respondent)
Member Firm
CRD No. 41970

Pursuant to FINRA Rule 9216, Respondent Carolina Financial Securities, LLC 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 in this AWC.

I.

ACCEPTANCE AND CONSENT

- A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

Carolina Financial Securities, LLC has been a FINRA member since 1997. Carolina Financial Securities has nine registered representatives and one branch office, and maintains its headquarters in Brevard, North Carolina. Carolina Financial Securities engages in a general securities business, which mostly consists of private placement sales.¹

OVERVIEW

In 2021, Carolina Financial Securities participated as a placement agent in a contingency offering. In the offering, the firm failed to promptly return customer funds when the minimum contingency was lowered, a material change in the terms of the offering, in willful violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-9 promulgated thereunder, and in violation of FINRA Rule 2010.

¹ For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

During this time, Carolina Financial Securities' supervisory system, including written supervisory procedures (WSPs), was not reasonably designed to achieve compliance with Exchange Act Rule 10b-9, in violation of FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a review by FINRA's Corporate Finance Department.

A. Carolina Financial Securities failed to terminate a contingency offering upon a material change to its terms.

Exchange Act Rule 10b-9 requires, in connection with the sale of securities on an "all-or-none" or "part-or-none" basis, disclosure to investors that consideration paid for securities will be promptly refunded unless the minimum number of securities are sold at a specified price within a specified time, and the total amount due to the seller is received by a specified date. The offering may only be considered "sold" if the securities are sold in bona fide transactions and are fully paid for. A "contingency offering" is when the offering is subject to the satisfaction of an underlying condition, including a minimum contingency amount. While not a guarantee, satisfaction of the minimum contingency may indicate to investors that the offering was priced fairly.

Any change in a material term of an "all-or-none" or "part-or-none" offering requires the offering to be terminated and investor funds to be returned. Investors cannot waive this requirement by affirmatively consenting to the changes, except to extend the termination date of the offering. A broker-dealer that fails to terminate an offering following a material change to the terms of an offering—including changing the minimum contingency amount—violates Exchange Act Rule 10b-9.

A violation of Exchange Act Rule 10b-9 also constitutes a violation of FINRA Rule 2010, which requires member firms to "observe high standards of commercial honor and just and equitable principles of trade" in the conduct of their business.

In 2021, Carolina Financial Securities served as the placement agent for a contingency offering that required the issuer to raise a minimum of \$1 million by July 15, 2021. The private placement memorandum stated that the funds would be used to purchase a holding company and its assets. By June 30, 2021, the issuer had raised less than \$1 million. On June 30, 2021, Carolina Financial Securities sent investors an email stating that the entity and its assets could be purchased at a lower price and requested that investors sign subscription confirmation agreements agreeing to modify the minimum offering amount to \$900,000 or less if the acquisition price of the assets was further reduced. Each investor signed the subscription confirmation agreement. This reduction in the minimum contingency was a change to a material term of the offering that required that the offering be terminated and investor funds be returned. Instead, Carolina Financial Securities released \$882,025 in investor funds from the escrow account to the issuer on June 30, 2021.

Therefore, Respondent willfully violated Exchange Act § 10(b) and Rule 10b-9 promulgated thereunder, and violated FINRA Rule 2010.

B. Carolina Financial Securities failed to supervise for compliance with Exchange Act Rule 10b-9.

FINRA Rule 3110(a) requires that each member firm establish and maintain a supervisory system that is reasonably designed to supervise the activities of each registered representative, registered principal, and other associated persons of the firm and achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. FINRA Rule 3110(b) requires a member firm to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. A violation of FINRA Rule 3110 constitutes a violation of FINRA Rule 2010.

From 2021 to at least 2023, Carolina Financial Securities acted as the placement agent for multiple contingency offerings. Nevertheless, Carolina Financial Securities failed to establish and maintain a supervisory system, including WSPs, reasonably designed to achieve compliance with Exchange Act Rule 10b-9. The firm had no procedures or system to address the firm's obligations if the minimum contingency is not met by the offering's termination date, the termination date is extended, or other material changes are made to the offering terms, including a lowering of the minimum contingency amount. Moreover, Carolina Financial Securities did not designate anyone with responsibility for supervising contingency offerings.

Therefore, the firm violated FINRA Rules 3110 and 2010.

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

- a censure;
- a \$20,000 fine; and
- an undertaking that, within 60 days of the date of the notice of acceptance of this AWC, a member of Respondent's senior management who is a registered principal of the firm shall certify in writing that, as of the date of the certification, the firm has remediated the issues identified in this AWC and implemented a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with Exchange Act Rule 10b-9 regarding the issues identified in this AWC. The certification shall include a narrative description and supporting exhibits sufficient to demonstrate Respondent's remediation and implementation. FINRA staff may request further evidence of Respondent's remediation and implementation, and Respondent agrees to provide such evidence. Respondent shall submit the certification to Isaiah Sakany, Honors Associate, 200 Liberty Street, 11th Floor, New York, NY 10281, and

isaiah.sakany@finra.org, with a copy to EnforcementNotice@finra.org. upon written request showing good cause, FINRA staff may extend this deadline.

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 after the execution of this AWC, the monetary sanction imposed in this matter.

Respondent understands that this settlement includes a finding that it willfully violated Rule 10b-9 of the Securities Exchange Act of 1934 and that under Article III, Section 4 of FINRA's By-Laws, this makes Respondent subject to a statutory disqualification with respect to membership.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

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 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 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 its acceptance or rejection.

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 its subject matter 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 right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.
- 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.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent'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 Respondent understands and acknowledges that FINRA does not represent or advise it and Respondent cannot rely on FINRA for legal advice; that Respondent has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

September 6, 2024

Date

Nicholas Craig Gilmore

Carolina Financial Securities, LLC
Respondent

Print Name: Nicholas Craig Gilmore

Title: CFO

Accepted by FINRA:

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

September 16, 2024

Date

Isaiah Sakany

Isaiah Sakany
Honors Associate
FINRA
Department of Enforcement
200 Liberty Street, 11th Floor
New York, NY 10281