

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2011025673201**

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

**RE: Atlas One Financial Group, LLC, Respondent
CRD No. 124057**

**Napoleon Arturo Aponte, Respondent
General Securities Representative
CRD No. 3051313**

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondents Atlas One Financial Group, LLC ("Atlas One") and Napoleon Arturo Aponte ("Aponte") 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 us alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. We 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

Atlas One has been a FINRA member since April 2003. The firm is headquartered in Miami, Florida, has three branch offices, 15 registered representatives and is approved to conduct business in corporate debt, equities, mutual funds, options, private placements and variable contracts.

Aponte entered the securities industry in December 1995 when he became associated with a FINRA member. From April 3, 2006 through February 3, 2012, Aponte was associated with Atlas One. From his date of employment at Atlas One through December 31, 2009, Aponte served as a Vice President of Compliance. From January 1, 2010 through his termination of employment at Atlas One, Aponte served as Chief Compliance Officer ("CCO"), Anti-Money

Laundering Compliance Officer ("AMLCO"), Senior Vice President and Registered Options Principal. Aponte holds Series 4, 7, 8, 24, 31 and 63 licenses.

RELEVANT DISCIPLINARY HISTORY

Respondents do not have any disciplinary history.

OVERVIEW

During the time period of February 1, 2007 through May 31, 2011 (the "relevant time period"), Atlas One violated NASD Rules 3011(a) and 2110 and FINRA Rules 3310(a) and 2010 by failing to establish and implement policies and procedures reasonably designed to detect and cause the reporting of suspicious transactions. In several instances, Atlas One, acting through Aponte, failed to detect, analyze, and/or report suspicious transactions, as appropriate. In addition, Atlas One failed to create and maintain accurate books and records, in violation of NASD Rule 3110, FINRA Rule 2010 and SEC Rule 17a-3. Last, Atlas One failed to timely report customer grievances and to update Forms U4 and U5, in violation of NASD Rules 3070 and 2110, FINRA Rules 4530, 1122 and 2010, NASD IM-1000-1 and FINRA By-Laws Article V, Sections 2(c) and 3(b).

FACTS AND VIOLATIVE CONDUCT

Anti-Money Laundering Violations

Suspicious Activity in Atlas One Customer Accounts

1. Background and the HP Accounts

On July 16, 2007, the United States Department of Justice ("DOJ") filed a civil complaint in federal court in Miami, Florida alleging that Angelo "Nino" Rovelli and his financial advisor Pier Francisco Munari had engaged in a conspiracy to launder hundreds of millions of dollars in a judicial bribery scheme in Italy. The complaint alleged that a significant portion of the laundered Italian public corruption proceeds were sent to, or through, bank and brokerage accounts located in the United States. In 2007, Munari was the beneficial owner or held power of attorney over six accounts at Atlas One. The six accounts had been opened at Atlas One between 2004 and March 2007. Each of the six accounts listed the same mailing address in San Jose, Costa Rica and each of the six accounts listed an email address for Atlas One customer HP as the email address for the account. As part of the DOJ's action, Munari's accounts at Atlas One were frozen by the United States government. Ultimately, the United States recovered proceeds from the scheme from 17 financial institutions valued at more than \$110 million dollars.

During the relevant time period, twenty-four Atlas One accounts utilized the mailing address of Atlas One customer HP's business (hereinafter "PCC"), and all of which specifically listed HP as the beneficial owner or where HP held power of attorney for the account (hereinafter the accounts for PCC and HP will be referred to as the "HP

accounts"). Eighteen of the HP accounts had been opened at Atlas One before the DOJ filed its complaint against Rovelli and Munari in July 2007, and before Munari's Atlas One accounts were frozen as part of that action. Despite the fact that PCC and HP had been listed as contact information for the Munari accounts, after the DOJ's action, Atlas One did not perform any additional scrutiny of the HP accounts that had not been part of DOJ's action.

In addition, during the relevant time period, the HP accounts engaged in a pattern of none or very little securities activity while conducting journals-in, journals-out and wire transfers that were inconsistent with the accounts' stated investment profiles. For example, the PCC account had a stated risk exposure of moderate and an investment objective of short term growth, with annual income and liquid net worth stated to be approximately \$5.5 million and \$1.5 million dollars, respectively. According to the account-opening documentation, the expected activity in the account was investments in CD's, government bonds, agency bonds and collateralized mortgage obligations ("CMOs"). During the relevant time period, however, the account conducted only three securities transactions and, concurrently, conducted approximately 125 wire transfers and journals totaling approximately \$10.6 million dollars. The other HP accounts engaged in a similar pattern of little or no securities activity and extensive journals and wire transfers that were inconsistent with the accounts' stated objectives and anticipated activity. In some instances, deposits were made into the HP accounts, followed shortly thereafter by the money being wired out or transferred to a third party.

2. The CT and HBVI Accounts

On March 6, 2009, Atlas One opened an account for customer CT, whose annual income and liquid net worth were \$8 million and \$ 6 million dollars, respectively. On March 18, 2009, Atlas One opened an account for customer HBVI, whose annual income and liquid net worth were \$500,000 and \$850,000, respectively. The accounts had a stated risk exposure of speculation and short term growth and anticipated activity in fixed income and bonds. Shortly after the accounts were opened, they engaged in large wire transfer activity.

For example, on settlement date March 17, 2009, Atlas One, through its riskless principal account, purchased 45,400,000 shares of Nomura structured notes at a price of \$62.12 and sold this position to another firm house account. In connection with the transaction, Atlas One had received two incoming wires in the amounts of \$9,999,975 and \$18,199,973 on March 12, 2009 and March 16, 2009, respectively. On March 18, 2009, the notes were delivered free from Atlas One's account and sent to a Euroclear account for Comercio Exterior, Caracas, Venezuela ("Comercio"). On March 23, 2009 HBVI received the securities via free delivery from a Euroclear account for Comercio. On settlement date March 24, 2009, HBVI sold the securities to Atlas One's riskless principal account at a price of \$56.00, which then sold the securities to CT at this same price. On the same date, CT sold the securities back to the firm's riskless principal account at a price of \$60.07, which then sold the securities to Nomura at a price of \$60.25. Subsequent to selling the notes on settlement date March 24, 2009, HBVI sent an

outgoing wire in the amount of \$25,529,898.83 to a first party account at another financial institution. Two other similar transactions were conducted whereby the CT account was inserted between the HBVI account and Nomura, one of which generated a \$6.4 million dollar profit for the CT account. All three transactions were pre-arranged prior to execution.

3. The MDS Account

On August 13, 2008, Atlas One opened an account for customer MDS. The account had an investment objective of speculation, an annual income and liquid net worth of approximately \$1 million and \$3 million, respectively. From the time the account was opened through March 31, 2010, the account conducted no securities transactions; instead the account effectuated four wire transfers totaling \$32 million dollars. On May 22, 2009, the account received a wire transfer in the amount of \$13,108,709.89. Twelve days later, the account wired \$13,100,000 to a third party. After receiving an inquiry about the wire transfers from its clearing firm, Atlas One relied upon the customer's verbal representation that the outgoing wire was sent to make a down payment for the purchase of an aircraft. Despite the fact that the wires far exceeded the income and resources of the customer, and the lack of other activity in the account, Atlas One, through Aponte, did not identify the account's activity as potentially suspicious.

4. The DW Account

Atlas One opened an account on March 16, 2010 for customer DW. Account-opening documentation indicated that DW was an Argentinian professional polo player who owned a polo goods business, with an annual income and liquid net worth of \$220,000 and \$1.7 million, respectively. The account's stated purpose was speculation and high risk with anticipated activity in stocks, fixed income and mutual funds. Instead of investing in stocks, fixed income or mutual funds, the account had very few securities transactions and engaged in a pattern of wire transfers in and out of the account, often times in increments of less than \$10,000 to and from Nigerian nationals. The total amount of wires in and out of the account was \$355,000 and \$334,000, respectively.

Atlas One's clearing firm notified the firm about its concerns regarding the wire transfers starting in August 2010. The firm recommended that DW transfer the account to a commercial bank since the activity conducted did not appear securities related. However, the activity continued. The firm requested supporting documentation for the transactions from the customer but none was provided.

Atlas One and Aponte Failed to Adequately Implement its AML Compliance Program

FINRA Rule 3310, formerly NASD Rule 3011,¹ FINRA's Anti-Money Laundering ("AML") Rule, requires all member firms to develop and implement a written AML compliance program reasonably designed to achieve and monitor the member's compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, et seq.), and

¹ NASD Rule 3011 was superseded by FINRA Rule 3310 effective January 1, 2010.

the implementing regulations promulgated thereunder by the Department of the Treasury. Rule 3310(a) also requires members to "[e]stablish and implement policies and procedures that can reasonably be expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder." In Notice to Members 02-47, FINRA reminded members of their obligation to look for AML "red flags" and to report suspicious activity by filing a suspicious activity report ("SAR").

During the relevant time period, Atlas One's AML program required Aponte to monitor for potentially suspicious activity and AML red flags, investigate potentially suspicious activity and report suspicious activity by filing a SAR, as appropriate. Atlas One, acting through Aponte, failed to adequately monitor the activity in the HP, CT, HBVI, MDS, and DW accounts. In particular, Atlas One's AML procedures included a list of red flags that are potential indicia of suspicious activity. The activity in the above-described accounts raised a number of AML red flags identified in Atlas One's procedures, but the firm, acting through Aponte, either did not identify the activity as suspicious or did not adequately investigate and respond to the red flags.

For example, Atlas One's procedures noted, among several others, the following AML red flags:

- The customer wishes to engage in transactions that lack apparent business sense or apparent investment strategy, or are inconsistent with the customer's stated business strategy;
 - The above-described accounts had anticipated securities investments; however, the accounts engaged in very little or no securities activity, while simultaneously engaging in extensive wire transfers and/or journals. In addition, the three pre-arranged transactions between CT and HBVI lacked business sense and an apparent investment strategy.
- The customer's account shows an unexplained high level of account activity with very low levels of securities transactions;
 - The above-described accounts had high levels of wire transfers and journals, yet little or no securities activity.
- The customer's account has wire transfers that have no apparent business purpose to or from a country identified as a money laundering risk or a bank secrecy haven;
 - As set forth above, many of the wire transfers in and out of the DW account were to or from Nigerian nationals.
- The customer has inflows and outflows of funds or other assets well beyond the known income or resources of the customer;
 - The above-described accounts had incoming and outgoing wire transfers well beyond the stated annual income and liquid net worth, often times occurring within the first week after the account was opened.
- Customer with no discernible reason for using the firm's service;
 - As set forth above, the MDS account had an incoming wire transfer in the amount of \$13,108,709.89, followed shortly by an outgoing wire in almost

the exact same amount, for the purported purpose of purchasing an aircraft.

As a result of the foregoing, Atlas One and Aponte violated NASD Rules 3011(a) and 2110² and FINRA Rules 3310(a) and 2010.

Failure to Create and Maintain Accurate Books and Records

In connection with the above-described transactions by customers CT and HBVI, Atlas One's house account was utilized to receive customer funds and securities on behalf of the customers. Between March 12, 2009 and March 25, 2009, several transactions were conducted by the firm's house account on behalf of CT on the various notes. Atlas One's general ledger, however, during this time period revealed no entries relating to the incoming monies and securities, or the corresponding payables associated with the firm's receipt and control over customer monies and/or securities.

As a result of the foregoing, Atlas One violated NASD Rule 3110, FINRA Rule 2010 and SEC Rule 17a-3.

Failure to Timely Report Customer Grievances and to Update Forms U4 and U5

FINRA staff reviewed 19 filings made by Atlas One to FINRA's 3070³ system during the time period from November 7, 2008 through April 12, 2012. Of the filings that were sampled, Atlas One failed to timely file 16 such grievances required to be reported. Ten of the 19 grievances reviewed by FINRA staff named a registered representative of the firm and were settled in an amount greater than \$15,000; however, the firm failed to timely report these settlements. Furthermore, 15 of the 19 grievances named a registered representative of the firm and claimed damages of \$5,000 or more relating to one or more sales practice issues. Further review of these 15 grievances revealed that in 14 instances, the firm failed to timely amend the Form U4 and/or Form U5 of the respective registered representative named. A summary is as follows:

- Out of 19 grievances filed by the firm with FINRA's 3070/4530 system during the aforementioned time period, 16 were filed between 14 and 789 days late;
- Atlas One filed 10 disclosure events relating to settlements in amounts of greater than \$15,000 ranging from 10 to 397 days late; and
- In 14 instances, the firm failed to amend Forms U4 and U5 in a timely manner, ranging from three to 254 days late.

As a result of the foregoing, Atlas One violated NASD Rules 3070 and 2110, FINRA Rules 4530, 1122, and 2010, NASD IM-1000-1⁴ and FINRA By-Laws Article V, Sections 2(c) and 3(b).

² NASD Rule 2110 was superseded by FINRA Rule 2010 effective December 15, 2008.

³ NASD Rule 3070 was superseded by FINRA Rule 4530 effective July 1, 2011.

⁴ NASD IM-1000-1 was superseded by FINRA Rule 1122 effective August 17, 2009.

B. We also consent to the imposition of the following sanctions:

- Censure and a \$350,000 fine for Atlas One, (\$25,000 of which is joint and several with Aponte); and
- A suspension from association with any FINRA member firm in a principal capacity for three months and a \$25,000 fine for Aponte, which is joint and several with Atlas One (as noted above).

As to Respondents Atlas One and Aponte

We agree to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. We have submitted an Election of Payment form showing the method by which we propose to pay the fine imposed.

We specifically and voluntarily waive any right to claim that we are unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

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

As to Respondent Aponte

I understand that if I am barred or suspended from associating with any FINRA member in a principal capacity, I become 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, I 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 I am subject to a statutory disqualification during the suspension, if I remain associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against us;
- 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, we specifically and voluntarily waive any right to claim bias or prejudgment of the General Counsel, 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.

We 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

We 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 us; and
- C. If accepted:
1. this AWC will become part of our permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against us;
 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about our disciplinary record;
 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 4. We 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. We 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 our: (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. We may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. We understand that we 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 the Atlas One, certifies that a person duly authorized to act on its 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 I 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 Atlas One to submit it.

Atlas One Financial Group, LLC, Respondent

By:



Jorge Kalb
Managing Director/General Principal

Date

4/18/2013

Reviewed by:



Alan Wolper, Esq
Counsel for Respondents
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I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I 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 me to submit it.

By: 

Napoleon Arturo Aponte
Respondent

04-22-13
Date

Reviewed by: 

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5/8/13
Date

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



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