

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2021072487001**

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

RE: Rush F. Harding III (Respondent)
Former General Securities Representative, Former General Securities Principal and
Former Municipal Securities Principal
CRD No. 501131

Pursuant to FINRA Rule 9216, Respondent Rush F. Harding III 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

Harding entered the securities industry in 1976. From September 1979 to September 2021, Harding was associated with Crews & Associates, Inc. (Crews) as a General Securities Representative and, beginning in 1985, as a General Securities Principal and a Municipal Securities Principal. Harding co-founded Crews in 1979. Throughout his tenure, Harding served as Crews' head trader and, from 2000 to December 2019, as its Chief Executive Officer.

According to the Uniform Termination Notice for Securities Industry Registration (Form U5) filed by Crews on September 7, 2021, the firm permitted Harding to resign while he was "under heightened supervision and internal review." In a Form U5 Amendment, Crews disclosed that it had completed its internal review, concluding that, for "numerous transactions with an institutional client ... [o]ver a four-year period, Mr. Harding inserted additional trading activity with other broker dealer(s)," that his "actions concealed that he was receiving brokerage commissions beyond his agreed upon compensation" and that "the trades were conducted in contravention of his arrangement with the client." Harding is not currently associated with any FINRA member but remains subject to FINRA's jurisdiction under Article V, Section 4 of FINRA's By-Laws.

In August 2021, Harding was sanctioned by the Securities and Exchange Commission for willfully violating MSRB Rule G-17 by directing Crews to recommend a customer buy bonds through a tender offer without disclosing to the customer a conflict of interest

arising from a Crews affiliate holding the same securities. Harding was also sanctioned for willfully violating MSRB Rule G-27 by failing to maintain a reasonably designed system to supervise for municipal securities activities at Crews, and for causing Crews to violate Section 15B(c)(1) of the Securities Exchange Act of 1934, which prohibits broker-dealers from effecting transactions in municipal securities in contravention of MSRB rules. The SEC censured Harding, ordered him to cease and desist from future violations of Section 15B(c)(1), prohibited him from participating in a new issue or tender offer of municipal securities for a year, and imposed a total of \$146,481 in disgorgement, prejudgment interest, and civil penalties.¹

OVERVIEW

From January 2017 to June 2021, Harding, while associated with Crews, violated MSRB rules in connection with 94 municipal securities transactions with a bank affiliate of Crews. Based on requirements imposed on the affiliate by the affiliate's banking regulators, Crews agreed with its affiliate that it would not charge a markup on municipal bonds sold to the bank. Harding contravened the arrangement with the affiliate and circumvented his firm's prohibition against a markup by indirectly selling marked-up bonds to the affiliate from the Crews general inventory account using third-party broker-dealers as intermediaries. As a result, the bank affiliate paid \$918,476 in markups and fees that it would not have paid had Harding sold it the bonds directly from the account dedicated for bank affiliate transactions instead of indirectly from the general inventory account. By interpositioning third-party broker-dealers in the transactions, and by contravening his firm's arrangement with its affiliate, Harding willfully violated MSRB Rules G-18(b) and G-17.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a cause exam by FINRA's Department of Member Supervision following Crews' filing of Harding's Form U5.

MSRB Rule G-18(a) requires that in any transaction in a municipal security for or with a customer or a customer of another broker, dealer, or municipal securities dealer, a dealer must use reasonable diligence to ascertain the best market for the subject security and buy or sell in that market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. MSRB Rule G-18(b) provides that "a dealer must not interject a third party between itself and the best market for the subject security in a manner inconsistent with paragraph (a) of this rule."

MSRB Rule G-17 provides that each broker, dealer, and municipal securities dealer, in the conduct of its municipal securities activities, "shall deal fairly with all persons and shall not engage in any deceptive, dishonest or unfair practice."

Since August 2015, Crews made over 1,000 secondary-market municipal bonds sales to an affiliated bank. The affiliate's banking regulators prohibited the affiliate from paying a

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

markup when buying secondary market bonds from Crews. As a result, Crews agreed with its affiliate to not sell its secondary market bonds with a markup. Crews therefore created two trading accounts for Harding, who was responsible for sourcing bonds for the affiliate between August 2015 and September 2021: (i) an account for bonds Crews intended to sell to its affiliate, in which markups were not added, and (ii) a general inventory account, in which the firm added markups, intended for use when selling to other customers. Harding had discretion over where to place bonds Crews had purchased. After acquiring bonds, Harding determined whether to place the bonds in the firm's affiliate-related account or general inventory. Because bonds placed in the Crews general inventory account included a markup, Harding was prohibited from selling those bonds directly to the bank affiliate.

Harding contravened Crews' arrangement with its bank affiliate and circumvented his firm's prohibitions against markups to the affiliate in connection with 94 municipal securities transactions between January 2017 and June 2021. For each such transaction, Harding indirectly sold bonds he had allocated to general inventory, and thus contained a markup, to Crews' affiliate using third-party broker-dealers as intermediaries. Specifically, Harding offered the marked-up bonds anonymously through a broker's broker. He then informed another broker-dealer that the bonds were available through the broker's broker and of potential interest to Crews' affiliate. The other broker-dealer then purchased the bonds and sold them, with another markup, to Crews' affiliate. On the 94 transactions, Crews' affiliate paid \$918,476 in aggregate markups and other fees to Crews and third-party broker-dealers that it would not have paid had Harding placed the bonds in the affiliate-related account and sold them directly to the affiliate in the agreed-upon manner. After discovering the 94 transactions in the summer of 2021, Crews permitted Harding to resign and reimbursed its affiliate \$918,476, obtaining contribution from Harding for a portion of that amount.

By interjecting third-party broker-dealers and effecting the 94 transactions such that Crews' affiliate paid additional and unnecessary markups and fees, Harding caused a customer to pay prices for the securities that were not as favorable as possible under prevailing market conditions. In addition, by charging a markup on the transactions in contravention of the firm's arrangement with the affiliate and in circumvention of his firm's prohibition against such markups, Harding engaged in deceptive, dishonest, or unfair conduct. As a result, he willfully violated MSRB Rules G-18(b) and G-17.

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

- a one-year suspension from associating with any FINRA member in all capacities and
- a \$30,000 fine.

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

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.

Respondent understands that this settlement includes a finding that he willfully violated MSRB Rules G-18(b) and G-17 and that under Article III, Section 4 of FINRA's By-Laws, this makes him subject to a statutory disqualification with respect to association with a member.

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 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 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 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.

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 in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce him to submit this AWC.

5/03/23
Date

Rush F. Harding III
Rush F. Harding III
Respondent

Reviewed by:

Howard J. Rosenberg
Howard J. Rosenberg, Esq.
Counsel for Respondent
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Suite 2000
Chicago, IL 60602

Accepted by FINRA:

05/16/2023
Date

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

Jeffrey E. Baldwin
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Senior Counsel
FINRA
Department of Enforcement
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