

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2012033291201**

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

RE: John Joseph Kolinofsky, Jr., Respondent
General Securities Sales Supervisor
General Securities Representative
CRD No. 1988299

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, 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.

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

John Joseph Kolinofsky, Jr. ("Kolinofsky") entered the securities industry in July 1989 and was associated with four current and former FINRA-member broker-dealers as a registered representative and/or supervisor through December 2010. In January 2011, Kolinofsky became associated with Ameriprise Financial Services, Inc. ("Ameriprise" or the "Firm") as a registered representative and a supervisor, and he remains associated with the Firm. Kolinofsky obtained the following securities licenses: Series 7 (1989), Series 63 (1989), Series 8 (1997), Series 3 (1998), and Series 65 (1998).

RELEVANT DISCIPLINARY HISTORY

Kolinofsky has no relevant disciplinary history.

OVERVIEW

Between January 6, 2011 and May 2, 2012 (“the Relevant Period”), Kolinofsky was the branch manager and supervisory principal of the Firm’s office located in Plano, Texas. Kolinofsky supervised WM, among several other registered representatives assigned to that branch office.

During the Relevant Period, WM participated in the sale of approximately \$1.72 million of preferred shares issued by the biopharmaceutical company BioChemics Inc. (“BioChemics”) to nine Ameriprise customers and four Ameriprise registered representatives. WM participated in these transactions without providing prior written notice to the Firm.

Kolinofsky personally invested \$10,000 in BioChemics without first providing notice to Ameriprise. Additionally, Kolinofsky knew that WM was engaged in outside business activities with BioChemics for which WM had not provided prior written notice to the Firm.

By failing to reasonably supervise WM’s participation in private securities transactions and outside business activities, Kolinofsky violated NASD Rule 3010(b) and FINRA Rule 2010. Kolinofsky also violated NASD Rule 3040(b) and FINRA Rule 2010 by entering into a private securities transaction without providing prior written notice to the Firm regarding his personal investment.

FACTS AND VIOLATIVE CONDUCT

Background

NASD Rule 3010(b) provides, in part, that “[e]ach member shall establish, maintain, and enforce written procedures to supervise.... the activities of registered representatives... that are reasonably designed to achieve compliance with applicable securities laws and regulations[.]” Under NASD Rule 3010, a supervisor is responsible for reasonable supervision. This standard creates a duty for supervisors to investigate “red flags” that suggest that misconduct may be occurring and to act upon the results of such investigation. A violation of NASD Rule 3010 is also a violation of FINRA Rule 2010.

NASD Rule 3040(b) requires associated persons to provide written notice to their member firm employer “prior to participating in any private securities transaction.” This Rule is broadly interpreted to reach an associated person who participates in any manner in the transaction, and even very limited involvement by an associated person is sufficient to trigger the requirement that the person give notice to the employer. The term “private securities transaction,” as defined by NASD Rule 3040(e)(1), means any security transaction outside the regular course or scope of an associated person’s employment with a member and applies

to both sales and purchases of securities. A violation of NASD Rule 3040 is also a violation of FINRA Rule 2010.

In January 2011, Kolinofsky became the branch manager and supervisory principal of the Firm's Plano, Texas office, making him responsible for the supervision of the registered representatives assigned to that branch office, including WM. As branch manager, Kolinofsky was responsible for reviewing outside business activities and private securities transactions disclosures, as well as monitoring the brokers under his supervision for general compliance with Ameriprise written supervisory procedures ("WSPs").

According to Ameriprise's WSPs and FINRA rules, Firm registered representatives were prohibited from engaging in outside business activities without providing prior written notice to the Firm. Ameriprise's WSPs also prohibited its registered representatives from selling privately issued securities that were not offered by Ameriprise and from personally investing in such securities without first receiving written permission from the Firm. Ameriprise WSPs also prohibited its registered representatives from sending business-related communications through their personal e-mail accounts.

BioChemics

BioChemics was a biopharmaceutical company that claimed to specialize in a purported transdermal drug delivery system.¹

Both before and during the Relevant Period, WM, who also holds a medical degree, served as a member of the BioChemics Scientific Advisory Board, for which he received BioChemics stock warrants as compensation. In addition, while associated with Ameriprise, WM continued to remain under contract with BioChemics as a compensated solicitor of investments. Under the terms of the solicitation agreement, BioChemics agreed to compensate WM with 500 BioChemics stock warrants for every \$10,000 of investment capital he raised.

Kolinofsky's Failure to Reasonably Supervise WM

During the Relevant Period, WM participated in private securities transactions involving BioChemics. WM referred nine Firm customers and four Ameriprise registered representatives, including Kolinofsky himself, to invest in a BioChemics private offering. WM also facilitated their purchases of \$1.72 million in BioChemics preferred stock, which included assisting Kolinofsky in

¹ On December 14, 2012, the U.S. Securities and Exchange Commission ("SEC") filed a civil enforcement action in the United States District Court for the District of Massachusetts (the "District Court") against BioChemics. In March 2015, the District Court permanently enjoined BioChemics from violating the antifraud provisions of the federal securities laws and entered a supplemental judgment that ordered BioChemics to pay over \$17 million in disgorgement of ill-gotten gains and prejudgment interest and \$750,000 as a civil penalty.

completing a Subscription Agreement for Kolinofsky's personal investment. In connection with the BioChemics private offering, WM also arranged for a BioChemics seminar to be held after-hours at the Firm's Plano, Texas branch office in February 2011. Kolinofsky, as well as other prospective investors, including Firm customers and other Ameriprise registered representatives, were invited to attend the seminar, which Kolinofsky briefly attended. WM gave Kolinofsky and others a PowerPoint presentation used during the seminar. WM also used his personal email, rather than his Ameriprise email, to discuss BioChemics with Kolinofsky and others.

In addition, Kolinofsky was aware that WM was engaged in an outside business activity with BioChemics through WM's participation on the company's Scientific Advisory Board. Kolinofsky was also aware that WM had not provided the Firm with prior written notice of that outside business activity. As the supervisory principal at the branch, Kolinofsky was required to review and pre-approve all outside business activity ("OBA") disclosure forms in order to ensure that Firm registered representatives made the appropriate disclosures in compliance with FINRA Rules. However, on or about February 23, 2011 and April 5, 2011, WM submitted OBA disclosure forms for Kolinofsky's review that did not disclose WM's Scientific Advisory Board position or his solicitation agreement with BioChemics. Although WM's OBA disclosure forms failed to reference any of WM's outside business activities with BioChemics, Kolinofsky nonetheless approved them without following up with WM about his participation in BioChemics.

Despite being aware of WM's business activities with BioChemics, Kolinofsky, in his capacity as branch manager and supervisory principal, did not take any affirmative steps to detect, prevent, and/or report the full scope of WM's misconduct, including: (i) WM's outside business activities; (ii) WM's participation in private securities transactions; and (iii) WM's use of his personal email address for business-related communications. Accordingly, by virtue of the foregoing supervisory deficiencies, Kolinofsky violated NASD Rule 3010(b) and FINRA Rule 2010.

Kolinofsky's Private Securities Transactions/"Buying Away" from the Firm

In or about January 2011, Kolinofsky invested \$10,000 in a BioChemics private offering, acquiring 833 shares of BioChemics preferred stock. Kolinofsky did not inform Ameriprise of his investment in BioChemics. By personally investing in BioChemics without providing prior written notice to Ameriprise, Kolinofsky violated NASD Rule 3040(b) and FINRA Rule 2010.

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

- A one-month suspension from association with any FINRA member in any capacity;

- A three-month (consecutive) suspension from association with any FINRA member in a principal capacity;
- A \$20,000 fine; and
- An undertaking to cooperate with FINRA Department of Enforcement staff (the "Staff") in its continuing investigation of FINRA matter number 20120332912, including but not limited to testifying truthfully at any hearings in this matter, participating in meetings and/or interviews with and by the Staff, and providing the Staff with any requested documents, all without requiring the Staff to rely on FINRA Rule 8210.

I understand that if I am barred or suspended from associating with any FINRA member, 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 any capacity, including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rules 8310 and 8311).

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.

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

I specifically and voluntarily waive any right to claim that I am unable 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

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

- A. To have a Complaint issued specifying the allegations against me;

- 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, I specifically and voluntarily waive 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.

I 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

I understand that:

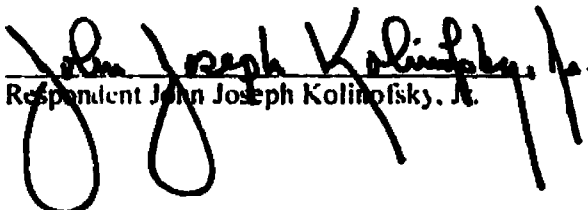
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and
- C. If accepted:
 - 1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
 - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;

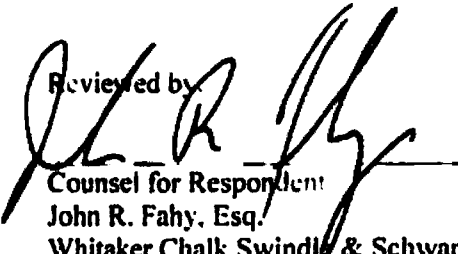
3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
4. I may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. I 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 my: (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. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I 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.

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.

09/09/2015
Date (mm/dd/yyyy)


Respondent John Joseph Kolinosky, Jr.

Reviewed by: 
Counsel for Respondent
John R. Fahy, Esq.
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Accepted by FINRA:

September 24, 2015
Date

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

Susan Light

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