FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT 03
NO. 2015046056403

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

RE: Thomas J. Brenner, Jr., Respondent (CRD No. 1489233)

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 him 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

Respondent Thomas J. Brenner, Jr. ("Respondent" or "Brenner") began in the industry as a general securities representative in April 1986. He became registered as a general principal in July 1999, and has been registered with several FINRA member firms in both capacities. Brenner was registered with First American Securities, Inc. ("FAS" or the "Firm") on December 6, 2011 as a general securities principal and general securities representative, and was the Firm's CEO and President until June 22, 2016, when his registration was terminated, after the Firm's Broker-Dealer Withdrawal ("BDW") Form became effective. He remains subject to FINRA's jurisdiction pursuant to Article V Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

Respondent has no relevant disciplinary history.

OVERVIEW

In 2013 and 2015, Respondent engaged in two separate private placements which were rife with supervisory and substantive violations, including: (1) inadequate due diligence; (2) a failure to have a reasonable basis to recommend the private placements to customers; and (3) investor offering documents which contained misleading and unwarranted statements, omitted material information and made material misrepresentations. Consequently, Respondent violated FINRA Rules 3110, 2111, 2210(d)(1), and Section 17(a)(2) of the Securities Act of 1933 ("Securities Act"). The above also constitute violations of FINRA Rule 2010

FACTS AND VIOLATIVE CONDUCT

A. The PGC Offering

1. Background

On July 1, 2013, FAS entered into a placement agreement for the sale of securities offered in a private placement by a corporation called "PGC" (the "PGC Offering"). PGC was founded and owned by two individuals, one ("CP") who was an indirect owner of FAS by virtue of 50% ownership of FAS' holding company.[1]

CP presented the PGC Offering to FAS. The primary purpose of the PGC Offering was to raise funds to lend money to third-party entities that would purchase, rehab, and resell distressed real estate in Michigan. The PGC Offering offered two share classes: (1) A-class, which was a short-term (1 year) investment with a 7% return; and (2) B-class, which was a medium-term investment (3 years) with an 8% up-front bonus and 8% interest accruing on the principal and the bonus. In total, 76 of the Firm's customers invested in the PGC Offering, raising $3.25 million.

2. Negligent Misrepresentations, Misleading, Exaggerated and Unwarranted Statements, and Material Omissions in Investor Documents

Section 17(a)(2) of the Securities Act makes it unlawful "for any person in the offer or sale of any securities ... by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly to obtain money or property by means of any untrue statement of a material fact, or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." Similarly, FINRA Rule 2210(d) contains the "Content Standards" for communications with the public. Among other things,

[1] Effective January 21, 2016, CP was barred from associating with any FINRA member in any capacity. CP appealed the bar to the Securities Exchange Commission, which appeal is pending.

the content standards set forth in Rule 2210(d)(1) require that communications with the public: (i) be fair and balanced, (ii) provide a sound basis for evaluating any facts relating to a particular security, and (iii) do not contain any exaggerated, unwarranted or misleading statements.

In soliciting customers to purchase the PGC Offering, Brenner provided customers with a Private Placement Memorandum for the PGC Offering dated July 1, 2013 ("PGC PPM") and a "Program Summary," the latter which provided a brief summary of the PGC Offering. By distributing the PGC PPM and Program Summary to investors, Brenner (1) negligently made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and (2) made statements which were not fair and balanced, and were misleading, exaggerated, and unwarranted.

Specifically, both the PGC PPM and the Program Summary contained several statements that claimed or implied that the investments were secured, or suggested a level of safety in the investments, or reliability in forecasting returns by investors. For example, the Program Summary stated that the "real estate backed investment ... concurrently affords the investor an unencumbered security interest in zero-leveraged, pre-screened residential real estate..." The Program Summary also stated that the PGC "model enables the investor the diversification of absolute returns ... and therefore our investment strategy aims to produce a positive return regardless of the traditional equity/debt markets' direction." In fact, the investments were not secured and were highly risky and speculative.

The PGC PPM also represented that PGC would lend to "as few as one, and as many as five, third party businesses with which the Issuer will contract ("Borrowers")," and that the issuer had yet to contract with, or identify, its first Borrower. This statement was not true. In fact, the PGC Offering was created for the purpose of providing funding to only *one, pre-identified Borrower*, whose owner had a long-standing relationship with CP.

Both the PGC PPM and the Program Summary contained material omissions of fact. Neither the PGC PPM nor the Program Summary disclosed a "going concern" note in PGC's Form 10-Q filed with the SEC on June 30, 2013. Moreover, both the PGC PPM and the Program Summary included a background of PGC's CEO, which touted the CEO's business acumen generally, and in the real estate industry specifically, since 1986, but failed to disclose that he filed for Chapter 7 bankruptcy in 1998. The Program Summary also failed to disclose or discuss a single risk associated with the investment, and therefore omitted material facts.

By reason of the foregoing, from July 2013 (when the first PGC sale occurred) and March 2014 (when the last sale occurred), Brenner violated Section 17(a)(2) of the Securities Act, and FINRA Rules 2210(d)(1) and 2010.

B. The UR LLC Offering

1. Background

"UR LLC" is a limited liability company that was established in March 2015 to provide a funding vehicle to physicians, medical practices, and other types of regulated healthcare providers ("Practices") to finance Practice-owned laboratories that conducted certain urine toxicology tests. UR LLC had three founders and originally three members -- CP (indirect owner of FAS, as defined above) who conceived of the idea, as well as "KG," and "PL." The UR LLC business model contemplated that each Practice would sign a promissory note, agreeing to repay the loan from UR LLC at a negotiated interest rate (the "Practice Loan(s))." The model also contemplated that the Practices would assign to UR LLC a security interest in the medical receivables associated with the laboratory testing ("Medical Receivables"), with UR LLC receiving 100% of the payment on the Medical Receivables until full repayment of the Practice Loans. Once the Practice Loans with UR LLC were fully repaid, the Practices were to receive a portion of the profit associated with the lab testing. The Practice Loans were not to be paid to the Practices themselves, but were to be paid directly to another limited liability company called "NLMS," which was the entity that actually built the laboratory space for the Practices, leased the testing equipment, and provided the personnel for the testing, billing and other related services. CP was also a founder and owner of NLMS.

UR LLC was seeking to raise $7,500,000 by issuing short term (1 year) and medium term (3 year) notes that both paid 7% per annum ("UR Offering"). The UR Offering purported to be a Regulation D Rule 506 offering, although no Form D was filed with the SEC. CP presented Brenner with an exclusive opportunity to sell units of the UR Offering to his customers, in exchange for an 11.5% commission. Beginning on or about March 23, 2015, Brenner began soliciting investors to invest in the UR Offering. By the end of July 2015, Brenner raised a total of $1.63 million from 20 FAS customers. Brenner received $189,000 in commissions from these transactions. Due to the initiation of FINRA's investigation, Brenner ceased soliciting additional investors in the UR Offering by the end of July 2015.

2. Negligent Misrepresentations, Misleading, Exaggerated and Unwarranted Statements, and Material Omissions in Investor Documents

In soliciting investors for the UR Offering, Brenner provided each investor with an application form, a subscription agreement, a promissory note, and an "Executive Summary" describing the UR Offering generally. At various times from March through July 2015, while Brenner was soliciting investors in the UR Offering, CP told Brenner that a Private Placement Memorandum ("UR PPM") was forthcoming. But, the UR PPM was not completed until August 2015, after FINRA's investigation of the UR Offering began and well after Brenner had ceased soliciting investors. Hence, the UR PPM was not provided to investors.

By distributing the Executive Summary, and other documents, to investors, Brenner: (1) negligently made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and (2) made statements which were not fair and balanced, and were misleading, exaggerated, unwarranted.

First, the subscription agreements falsely represented that the broker would receive a 10% commission, when in reality Brenner (the only broker) received an 11.5% commission.

Second, the Executive Summary falsely stated that it "highlights information contained" in the UR PPM and is "qualified in its entirety by the more detailed information appearing elsewhere therein." In fact, at the time that the Executive Summary was distributed and sales to investors made, the UR PPM had not even been created.

Third, the Executive Summary contained claims that stated or implied that the investors had a security interest or capital protection. For example, the Executive Summary implied that investors had an "unencumbered Security Interest in Medical Receivables." In fact, the investors had no security interest in the Medical Receivables -- the issuer, UR LLC, had the security interest. The Summary also stated that "Physician's personal guarantees further support the loan." But, the physicians did not, in fact, personally guarantee the Practice Loans.

The Executive Summary also failed to disclose certain material information to investors. First, it failed to include any discussion of any risks associated with the investment. In fact, investment in the UR Offering was highly speculative and risky. The UR PPM, which was not provided to investors, disclosed those risks, for example, stating: "the Notes are speculative securities that involve a high degree of risk. No Person guarantees that an Investor will realize a significant return on (or even the return of) his or her investment." The Executive Summary, however, contained no discussion of a single risk associated with the investment.

In addition, neither the Executive Summary, nor any other information provided to investors, disclosed that the CEO of UR LLC, "PL," was barred by FINRA in a disciplinary action in November 2011. Pursuant to the "bad actor" rule of the Dodd-Frank Act, this disciplinary event was a required disclosure to investors.

Finally, the Executive Summary referenced the federal Stark/Anti-kickback laws,[2] and stated unequivocally, that if a "physician group maintains ownership in a clinical laboratory, they are permitted to participate in the reimbursements directly associated with their allocated testing samples, thereby capturing the currently outsourced revenue." However, the Executive Summary did not reference the basis upon which this claim was made, and was misleading because it suggested certainty as to the legality of the business structure. In fact, there was a risk that a regulatory body may find that the business structure violated the federal Stark/Anti-kickback laws, or similar state laws. The underlying parties to the business arrangement (the Practices and NLMS) recognized these legal risks by drafting an agreement that allowed a party to terminate the agreement if its attorney provided a "reasonable opinion" that the agreement posed "a significant risk ... under applicable state or federal regulations or laws, including but not limited to the Stark Law ... or the Anti-Kickback Statute." None of the materials provided to investors disclosed any risk relating to the legality of the underlying business arrangement.

By reason of the foregoing, from March 2015 (when the first UR Offering sale occurred) and July 2015 (when the last sale occurred), Brenner violated Section 17(a)(2) of the Securities Act, and FINRA Rules 2210(d)(1) and 2010.

3. Failure to Conduct Adequate Due Diligence

FINRA Rule 3110 requires that a member firm establish, maintain and enforce a supervisory system and written supervisory procedures ("WSPs") that are reasonably designed to achieve compliance with applicable laws, rules and regulations. With respect to private placements, FINRA Notice to Members 10-22 ("NTM 10-22") reminded firms of their obligations to conduct a reasonable investigation of the issuer and the securities they recommend.[3] NTM 10-22 further reminded firms that they must have supervisory procedures under NASD Rule 3010 (now FINRA Rule 3110) that are reasonably designed to ensure that the firm's personnel, *inter alia*, "engage in an inquiry that is sufficiently rigorous to comply with their legal and regulatory requirements," including a reasonable investigation concerning: (1) the issuer and its management; (2) the business prospects of the issuer; (3) the assets held by or to be acquired by the issuer; (4) the claims being made by the issuer; and (5) the intended use of the proceeds of the offering. NTM 10-22 also required firms to retain records documenting their investigation and the results of the investigation.

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[2] The Stark Law generally prohibits the referral of Medicare/Medicaid beneficiaries by a physician to an entity for the provision of 'designated health services" if the physician, or the physician's immediate family member, has a financial relationship with the entity, unless a statutory exception applies to that financial relationship. The Federal Anti-Kickback Statute prohibits providers of services or goods covered by a federal healthcare program ("Federal Healthcare Program") from knowingly and willingly soliciting or receiving or providing any remuneration, directly or indirectly, to induce either the referral of an individual, or furnishing or arranging for a good or service for which payment may be made under a Federal Healthcare Program. *See* [illegible]

[3] FINRA Regulatory Notice 10-22, *Regulation D Offerings, Obligation of Broker-Dealers to Conduct Reasonable Investigations in Regulation D Offerings* (April 2010).

The Firm's WSPs had similar language to the above, and listed specifics steps to be taken as a part of the due diligence of a private placement, including among other things:

- a description of the value of the drivers of the business, including a list of key strengths of the business, for example, market niche, customer relationships, and barriers-to-entry;
- a description of the company's competitive advantages and disadvantages, an identification of the company's major competitors, and market analysis;
- identification of industry market trends;
- biographical information for key managers; and
- any current financial projections or business plans, with a discussion of assumptions.

The WSPs designated Brenner as the principal responsible for ensuring compliance with all procedures relating to private placements, including the due diligence requirements. Brenner, however, was not aware that he was the designated principal under the WSPs and had no experience in supervising private placements.

Despite the express references in the Firm's WSPs to due diligence requirements for private placements, neither Brenner, nor anyone else at the Firm, conducted the diligence required by the Firm's WSPs.

Brenner assumed that the due diligence of the UR Offering had been conducted by another principal of the Firm. But that principal was unaware of the Offering and conducted no due diligence. Brenner's review of the UR Offering was limited to talking with CP, and discussing the UR LLC business plan with a few people in the medical or pharmaceutical industries for the purpose of understanding the market demand for the self-owned toxicology laboratories.

Brenner failed to conduct reasonable diligence regarding, among other things, the following areas:

- There was no independent investigation of the issuer or the individuals involved in its management. As stated above, a founder and CEO of UR LLC was permanently barred by FINRA in November 2011. Neither Brenner nor anyone else at the Firm knew about PL's disciplinary history.
- There was no investigation of the economic feasibility of the issuer or its ability to repay the investors investment. In addition, there was no evaluation of the legality of the issuer's business plan, as described above.
- There was no investigation of the claims made by the issuer. As stated above, there were many misrepresentations, material omissions, and

misleading, exaggerated and unwarranted statements made in the materials provided to investors.

As a result of all of the above, from March 2015 (when the first sale occurred) and July 2015 (when the last sale occurred), Brenner violated FINRA Rules 3110 and 2010. In addition to the supervisory deficiencies, the inadequate due diligence caused Brenner to lack a reasonable basis to recommend the UR Offering to customers. Therefore, from March 2015 (when the first sale occurred) and July 2015 (when the last sale occurred), Brenner violated FINRA Rules 2111 and 2010.

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

A deferred fine of $30,000, disgorgement of commissions of $189,000, and a 16-month suspension from associating with any FINRA registered firm in any capacity.

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

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 that he is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

Disgorgement of commissions received, which is ordered to be paid to FINRA in the amount of $189,000 by Brenner, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621, from March 23, 2015 until the date this AWC is accepted by the NAC. Disgorgement 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 understands that if he is barred or suspended from associating with any FINRA member, he 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, 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).

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 him; and

C. If accepted:

1. this AWC will become part of his permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against him;

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 his: (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.

The undersigned certifies that he has read this AWC and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that he has 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 Respondent to submit it.

7-19-16
Date (mm/dd/yyyy)

Respondent, Thomas J. Brenner, Jr.

Reviewed by:

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Accepted by FINRA:

8/12/16
Date

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

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(By: Mark Koerner
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