

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 20140412646-02**

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

RE: BAC Florida Investments Corp., Respondent  
Broker-Dealer  
CRD No. 19453

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, BAC Florida Investments Corp. (the "firm" or "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 the firm 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**

The firm became a member of FINRA on November 9, 1987, and its registration remains in effect. It currently has 23 registered and five non-registered associated persons and engages in a general securities business. The firm operates solely from its main office located in Coral Gables, Florida.

**RELEVANT DISCIPLINARY HISTORY**

The firm has no disciplinary history.

**SUMMARY**

In connection with Matter No. 20140412646, the Fixed Income Investigation staff of FINRA's Department of Market Regulation reviewed certain fixed income securities transactions executed by the firm during the period between July 1, 2013 and June 30, 2014 (the "Review Period").

During the Review Period, the firm, acting through its former Chief Executive Officer

(“CEO”) and Head Trader<sup>1</sup>, engaged in 61 pre-arranged, fixed-income securities transactions with Firm A, another registered broker-dealer, prior to purchasing bonds from, or selling bonds to, customers of Firm B, a registered investment advisor and manager of customer accounts held with the firm. These pre-arranged trades allowed the firm to circumvent a fee agreement it had with Firm B, which limited to no more than 15 basis points the commissions the firm could charge on bond transactions with the customers of Firm B. The firm then published and circulated reports of the non-bona fide pre-arranged transactions in FINRA’s Trade Reporting and Compliance Engine (“TRACE”). The firm’s conduct violated FINRA Rules 5310, 5210, and 2010.

In addition, the firm’s supervisory system and its written supervisory procedures (“WSPs”), particularly with respect to the firm’s supervision of its former Head Trader, were not reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. As a result, the firm also violated NASD Rule 3010 (for conduct on and prior to November 30, 2014), FINRA Rule 3110 (for conduct on and after December 1, 2014), and FINRA Rule 2010.

### **FACTS AND VIOLATIVE CONDUCT**

1. FINRA Rule 5310, in pertinent part, states that “[i]n any transaction for or with a customer or another broker-dealer, a member and persons associated with a member shall use reasonable diligence to ascertain the best market for the subject security and buy and sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions.”
2. FINRA Rule 5210, in pertinent part, states that “[n]o member shall publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such member believes that such transaction was a bona fide purchase or sale such security....”
3. FINRA Rule 2010 requires members to observe high standards of commercial honor and just and equitable principles of trade.

#### **Respondent’s Fee Agreement with Firm B**

4. On July 30, 2013, the firm, acting through its former CEO and Head Trader, and Firm B executed a fee agreement (the “Fee Agreement”), under which the firm agreed to charge Firm B’s customers no more than 15 basis points on every fixed income security the firm purchased from or sold to Firm B, based on the firm’s acquisition cost or proceeds for each such fixed income security.

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<sup>1</sup> The former CEO and Head Trader, Alejandro Falla, was the subject of a separate disciplinary action in FINRA Disciplinary Proceeding No. 20160500923-01 (Dec. 5, 2016).

Respondent's Pre-Arranged Trading with Firm A

5. During the Review Period, the firm, acting through its former CEO and Head Trader, effected 61 pre-arranged, fixed income transactions with Firm A prior to purchasing bonds from, or selling bonds to, 18 customers of Firm B. Those pre-arranged transactions with Firm A were not disclosed to Firm B.
6. In transactions involving the firm's *purchase* of bonds from Firm B's customers, after receiving a sell order from the customers, the firm would sell the bonds in the open market ("the Street"). Rather than purchasing the bonds from the customers based on the sales price of the Street transaction, however, the firm would effect pre-arranged transactions with Firm A, to the detriment of Firm B's customers. The firm did so through its former CEO and Head Trader, who typically contacted Firm A and provided the name and volume of the bonds to be traded and provided the price, within the prevailing market but lower than the Street price the firm received from its sale. He would then purchase the bonds from Firm B's customers with a markdown of 15 basis points on the lower price at which the firm had sold the bonds to Firm A (rather than a markdown on the higher Street price). Within a short period of time thereafter, he would repurchase the bonds from Firm A at a slightly higher price than Firm A earlier paid, to compensate Firm A for facilitating the transactions.
7. In transactions involving the firm's *sale* of bonds to Firm B's customers, after receiving a purchase order from the customers, the firm would purchase the bonds from the Street. Instead of marking up the price of the Street transaction and selling the bonds to the customers on the basis of that price, the firm effected pre-arranged transactions with Firm A. The former CEO and Head Trader typically contacted Firm A and offered to buy the same bonds in the same volume from Firm A at a higher price than the Street transaction (though within the prevailing market). He would then sell the bonds to Firm B's customers with a markup of 15 basis points on the (higher) Firm A sales price (rather than the lower Street price), and soon thereafter resell the bonds to Firm A at a slightly lower price than it earlier paid to Firm A, to compensate Firm A for facilitating the transactions.
8. The firm effected the pre-arranged trades with Firm A to circumvent the markup/markdown limitation specified in the Fee Agreement, enabling the firm to earn extra profits at the expense of Firm B's customers. In doing so, the firm did not provide Firm B with the accurate acquisition costs and sales proceeds of the bond transactions, causing Firm B's customers to receive inferior prices for the bonds they had purchased from or sold to the firm.
9. For example, on October 18, 2013, at approximately 11:01:57, Firm B requested that the firm purchase 500 bonds with CUSIP P9423FBK4 at a price of up to 100.125. Firm B expressly noted that "it would be nice to buy [them] at 100", and the firm, acting through its former CEO and Head Trader, replied that it was purchasing the bonds, and in fact purchased the bonds, at 100.125. Unbeknownst to Firm B, however, according to execution times reported by the firm to TRACE, at 12:32, the

firm had purchased 500 bonds from the Street at a price of 99.95. It did not, however, give Firm B that price. Instead, at 12:38, the firm purchased an additional 500 bonds from Firm A at 100.125. Using the price of 100.125, plus a 15 basis point markup, the firm sold a total of 500 bonds to Firm B at a total price of 100.275. Subsequently, at 13:31, the firm sold 500 bonds back to Firm A at a price of 100.05.

10. In effecting these transactions, the firm, acting through its former CEO and Head Trader, did not provide Firm B with the correct acquisition price of the bonds, representing it as 100.125, and failed to disclose that it had purchased the bonds from the Street at 99.95, or that the 100.125 price had been the result of a pre-arranged transaction with Firm A. As a result, Firm B's customers paid a price of 100.275 for the bonds, which was a 32.5 basis point markup based upon the Street transaction and in excess of the 15 basis points specified in the Fee Agreement (100.10).
11. In total, the firm, acting through its former CEO and Head Trader, facilitated 61 customer purchase and sell orders for Firm B's customers, generating \$99,543.21 in fees above the 15 basis points specified in the Fee Agreement.
12. By virtue of the foregoing, Respondent violated FINRA Rules 5310, 5210 and 2010.

#### Respondent's Deficient Supervision

13. NASD Rule 3010(a) and FINRA Rule 3110(a) require a FINRA member firms to "establish and maintain a system to supervise the activities of each ... associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD [or FINRA] Rules."<sup>2</sup>
14. NASD Rule 3010(b) and FINRA Rule 3110(b) further require a FINRA member firm to "establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of [its] ... associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable [NASD or FINRA] Rules...."
15. A violation of NASD Rule 3010 and FINRA Rule 3110 constitutes a violation of FINRA Rule 2010.
16. During the period July 1, 2013 through June 30, 2015, the firm's supervisory system and its WSPs were not reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. Specifically, the firm:

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<sup>2</sup> FINRA Rule 3110 replaced NASD Rule 3010 effective December 1, 2014.

- a. failed to establish and maintain a system to supervise the activities of its former CEO and Head Trader with respect to prohibited activities, such as interpositioning, and non-bona fide transactions, such as pre-arranged trading. The firm's former Chief Compliance Officer ("CCO"), who was responsible for supervising and reviewing the former CEO and Head Trader's trading activities, failed to do so. Instead, the firm allowed its former CEO and Head Trader to review his own trading activities;
  - b. failed to use reasonable efforts to determine that its supervisory personnel were qualified to carry out their assigned responsibilities. In particular, the firm failed to ensure that its former CCO had the requisite qualifications, experience and training to carry out his supervision of the former CEO and Head Trader's trading activities; and
  - c. failed to establish, maintain and enforce WSPs to supervise the activities of its former CEO and Head Trader's trading activities, in particular with respect to prohibited activities, such as interpositioning, and non-bona fide transactions, such as pre-arranged trading.
17. By virtue of the foregoing, Respondent violated NASD Rule 3010 (for conduct on and prior to November 30, 2014), FINRA Rule 3110 (for conduct on and after December 1, 2014), and FINRA Rule 2010.

*Respondent's Investigation and Remediation*

18. Before FINRA completed its investigation of this matter, the firm paid restitution (inclusive of interest) totaling \$117,123.35 to the 18 Firm B customers who were impacted by the 61 pre-arranged transactions.
19. In September 2014, the firm terminated the former CEO and Head Trader's association with the firm.
20. In addition, the firm retained an independent consultant to identify weaknesses in, and recommend enhancement to, the firm's supervisory systems, procedures and controls, particularly as they related to fixed income securities. As a result of the independent consultant's review, the firm took additional corrective actions, including:
- a. terminating its CCO's dual compliance responsibilities with the firm and an affiliated bank;
  - b. appointing a new managing director and a new CCO with responsibility to review transactions effected for the managing director's clients;
  - c. creating a compliance committee to provide guidance regarding compliance-related concerns; and

- d. revising and enhancing its supervisory system and WSPs to identify the trading activities in which the firm engages, the person responsible for supervisory review of each activity, and the frequency and documentation of such reviews.

### **OTHER FACTORS**

In determining to resolve this matter on the basis set forth herein, Enforcement took into account the previously-referenced remedial measures implemented by the firm, including its retention of an independent consultant.

B. The firm also consents to the imposition of the following sanctions:

- A censure; and
- A \$100,000 fine.

The firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. It has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

The firm specifically and voluntarily waives any right that it is 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**

The firm specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against the firm;
- 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, the firm specifically and voluntarily waives 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.

The firm 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**

The firm 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 the firm; and
- C. If accepted:
  - 1. This AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
  - 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. The firm 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. The firm 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 the firm's: (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. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm 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 or its staff.

The undersigned, on behalf of the firm, 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 it 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 the firm to submit it.

8/27/2018  
Date

Respondent  
BAC Florida Investments Corp.

By: [Signature]  
Name: RALPH T. TRIPLE  
Title: PRESIDENT & CEO

Reviewed by:

[Signature]  
Robert J. Harvey, Esq.  
Counsel for Respondent  
Jenks & Harvey LLP  
1555 Palm Beach Lakes Blvd - 18<sup>th</sup> Floor  
West Palm Beach, FL 33401  
(561) 303-2918

Accepted by FINRA:

9/19/18  
Date

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

[Signature]  
Eustace T. Francis  
Senior Counsel  
FINRA Department of Enforcement