

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019061852801**

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

RE: Haywood Securities (USA) Inc. (Respondent)
Member Firm
CRD No. 42072

Pursuant to FINRA Rule 9216, Respondent Haywood Securities (USA) Inc. (“Haywood USA”) 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

Haywood USA has been a FINRA member since October 1997. It is a wholly owned subsidiary of Haywood Securities, Inc., a Canadian investment dealer. The firm conducts a general securities business. It is headquartered in Vancouver, British Columbia and has 106 registered representatives in three branches in Canada.¹

OVERVIEW

From September 2014 through the present, Haywood USA recommended 134 sales totaling almost \$11 million of 53 different private placements to U.S. customers without conducting reasonable due diligence of the issuers and the offerings. Therefore, from September 2014 until June 30, 2020, the firm failed to establish, maintain, and enforce a supervisory system, reasonably designed to achieve compliance with FINRA Rule 2111, in violation of FINRA Rules 3110 and 2010 and NASD Rule 3010.² From June 30, 2020, to the present, the firm failed to establish, maintain, and enforce a supervisory system reasonably designed to achieve compliance with Regulation Best Interest (Reg BI), in violation of FINRA Rules 3110 and 2010.

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

² FINRA Rule 3110 superseded NASD Rule 3010 on December 1, 2014.

In addition, from September 2014 to February 2023, Haywood USA failed to file offering documents with FINRA in connection with 236 Canadian private placement offerings in violation of FINRA Rules 5123 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a referral by FINRA's Corporate Financing Department.

A. Member firms must conduct reasonable due diligence of private placement offerings.

As of June 30, 2020, broker-dealers and their associated persons are required to comply with Regulation BI under the Securities Exchange Act of 1934. Reg BI requires a broker or, dealer, or a natural person associated with a broker or dealer, when making a recommendation of any securities transaction or investment strategy involving securities (including account recommendations) to a retail customer, to act in the best interest of that retail customer at the time the recommendation is made, without placing the financial or other interest of the broker, dealer, or associated person ahead of the interest of the retail customer. Reg BI's Care Obligation, set forth at Exchange Act Rule 15l-1(a)(2)(ii), requires broker-dealers and their associated persons to exercise reasonable diligence, care, and skill to, among other things, understand the potential risks, rewards, and costs associated with a recommendation. Reg BI's Adopting Release provides that what constitutes "reasonable diligence" depends on, among other things, the complexity of, and risks associated with, the recommended security.³ The Care Obligation requires broker-dealers and their associated persons to have a reasonable basis to believe that the recommendation could be in the best interest of at least some retail customers.

Prior to June 30, 2020, FINRA Rule 2111 required members and associated persons to have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer. Rule 2111.05(a) defined the reasonable-basis obligation to require members and their associated persons to have an understanding of the potential risks and rewards associated with the recommended security or strategy and to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least some investors.

FINRA Rule 3110—and its predecessor NASD Rule 3010—requires member firms to establish, maintain, and enforce a supervisory system, including written procedures, to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws, regulations, and FINRA rules.

Violations of FINRA Rule 3110 are also violations of FINRA Rule 2010, which requires member firms to "observe high standards of commercial honor and just and equitable principles of trade" in the conduct of their business.

³ *Regulation Best Interest: The Broker-Dealer Standard of Conduct*, Exchange Act Release No. 86031, 84 FR 33318 at 33376 (July 12, 2019).

As it relates specifically to private placement securities offerings made under Regulation D, FINRA issued Regulatory Notice 10-22 (April 20, 2010) to remind firms of their obligation to conduct a reasonable investigation of the issuer and the securities they recommend in connection with such offerings. Firms may not rely solely upon the issuer for information concerning the issuer and while firms are not expected to have the same knowledge as an issuer or its management, they are required to conduct a reasonable investigation that independently verifies an issuer's material representations and claims. To satisfy its obligations, a firm should, at a minimum, conduct a reasonable investigation of the issuer and its management; the business prospects of the issuer; the assets held by or to be acquired by the issuer; the claims being made; and the intended use of proceeds of the offering. Furthermore, to demonstrate that it has performed a reasonable investigation, a firm should retain records documenting both the process and results of its investigation. FINRA recently issued Regulatory Notice 23-08 (May 9, 2023) to reiterate and expand upon these principles.

B. Haywood USA failed to conduct reasonable diligence of 53 Canadian private placement offerings.

From September 2014 to the present, Haywood USA has recommended sales to U.S. customers of a certain type of Canadian private placement offering referred to as “non-brokered private placements” (NBPPs), which are offerings in which the firm or its parent do not serve as agent of the issuer but rather act as a “finder” that introduces investors to the issuer. Between September 2014 and February 2023, Haywood USA recommended 134 sales to U.S. customers totaling almost \$11 million of 53 different Canadian NBPPs.

Haywood USA generally did not conduct due diligence of NBPPs beyond a search and review of the issuer's recent public filings. To the extent the firm obtained any information from the issuer, Haywood USA generally sought minimal information and relied mostly on the issuer with little to no independent verification. Generally, the firm did not conduct any independent investigation, such as inquiring about past or pending litigation or disciplinary problems, reviewing the issuer's key contracts, exploring the issuer's business plan, or conducting a site visit. The firm's written supervisory procedures required that the firm's due diligence of NBPPs include, among other things, a search of the regulatory history of the issuer's officers and directors, and that its staff maintain a record and evidence of the due diligence conducted. Haywood USA, however, did not generally conduct a search of such regulatory history, nor did it generally maintain evidence or documentation of its due diligence for NBPPs, including of any searches of public filings.

By failing, from September 2014 until June 30, 2020, to establish, maintain, and enforce a supervisory system reasonably designed to achieve compliance with FINRA Rule 2111, Haywood USA violated FINRA Rules 3110 and 2010 and NASD Rule 3010. And by failing to establish and maintain a supervisory system reasonably designed to achieve compliance with Reg BI from June 30, 2020, to the present, the firm violated FINRA Rules 3110 and 2010.

C. Haywood USA failed to file offering documents with FINRA.

FINRA Rule 5123(a) requires each member that sells a private placement to “submit to FINRA ... a copy of any private placement memorandum, term sheet or other offering document, including any materially amended versions thereof, used in connection with such sale within 15 calendar days of the date of first sale.” FINRA Rule 5123(b) sets forth specific exemptions from Rule 5123. FINRA guidance explains that “a member firm acting in the capacity of ... finder or any other role that promotes or facilitates the sale or offer of private placements must make a filing, *unless* an exemption from filing is available.”⁴ A violation of FINRA Rule 5123 is also a violation of FINRA Rule 2010.

From September 2014 to February 2023, Haywood USA did not make a FINRA Rule 5123 filing in connection with sales of 236 Canadian NBPPs. The firm’s policy was to not make such filings when the sale transactions for an offering were unsolicited and the firm did not receive a finder’s fee from the issuer. The offerings, however, did not qualify for any exemption under FINRA Rule 5123(b).

Therefore, by failing to make the required filings for 236 private placement offerings, Haywood USA violated FINRA Rules 5123 and 2010.

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

- a censure;
- a \$175,000 fine; and
- an undertaking that, within 60 days of the date of the notice of acceptance of this AWC, a member of Respondent’s senior management who is a registered principal of the firm shall certify in writing that, as of the date of the certification, the firm has remediated the issues identified in this AWC and implemented a supervisory system, including written procedures, reasonably designed to achieve compliance with Regulation BI regarding the issues identified in this AWC. The certification shall include a narrative description and supporting exhibits sufficient to demonstrate Respondent’s remediation and implementation. FINRA staff may request further evidence of Respondent’s remediation and implementation, and Respondent agrees to provide such evidence. Respondent shall submit the certification to Jeffrey E. Baldwin, Senior Counsel, at 1601 Market Street, Suite 2700, Philadelphia, PA 19103 and/or Jeffrey.Baldwin@finra.org, with a copy to EnforcementNotice@finra.org. Upon written request showing good cause, FINRA staff may extend this deadline.

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

⁴ <https://www.finra.org/rules-guidance/key-topics/private-placements/filing-guidance> (Section 2.2).

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.

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 it;
- 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 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 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 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.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's 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 Respondent has agreed to the AWC's provisions voluntarily; and that 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 Respondent to submit this AWC.

October 12, 2023
Date

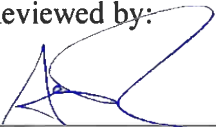


Haywood Securities (USA) Inc.
Respondent

Print Name: Bruce Thompson

Title: Chief Compliance Officer

Reviewed by:




Alan M. Wolper, Esq.
Counsel for Respondent
Ulmer & Berne LLP
500 W. Madison Street, Suite 3600
Chicago, IL 60661-4587

Accepted by FINRA:

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

11/13/2023
Date



Jeffrey E. Baldwin
Senior Counsel
FINRA
Department of Enforcement
1601 Market Street
Suite 2700
Philadelphia, PA 19103