

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2011025591901**

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

**RE:** Hornor, Townsend & Kent, Inc., Respondent  
Member Firm  
CRD No. 4031

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 it 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**

Hornor, Townsend & Kent, Inc. ("Firm") has been a FINRA member since June 1969. The Firm's main office is in Horsham, Pennsylvania, and it has 358 registered branch offices. It conducts a general securities business and employs 1,185 registered persons. The Firm is also registered with the Municipal Securities Rulemaking Board ("MSRB").

**RELEVANT DISCIPLINARY HISTORY**

On October 10, 2006, NASD issued an AWC in which the Firm agreed, without admitting or denying the findings, to a censure and \$125,000 fine for failing to maintain a supervisory system or written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations and rules related to the sale of group variable annuity contracts and failing to properly record such transactions on its books and records.

On July 6, 2005, NASD issued an AWC in which the Firm agreed, without admitting or denying the findings, to a censure and \$325,000 fine for, among other violations, failing to maintain a supervisory system and procedures that were reasonably designed to achieve compliance with the non-cash compensation rule (NASD Conduct Rule 2820).

On July 6, 2005, NASD issued an AWC in which the Firm agreed, without admitting or denying the findings, to a censure and \$150,000 fine for failing to maintain a supervisory system and written procedures reasonably designed to detect and prevent late trading in mutual fund transactions.

### **OVERVIEW**

The Firm failed to establish and maintain a supervisory system and establish, maintain and enforce written supervisory procedures that were reasonably designed to achieve compliance with the rules and regulations concerning its direct application transactions involving mutual funds. In addition, the Firm failed to prepare blotters as required by Rule 17a-3(a)(1) promulgated under the Securities Exchange Act of 1934 ("Exchange Act"). This conduct violated NASD Conduct Rules 3010 and 3110, FINRA Rule 2010, MSRB Rules G-27 and G-8, and Exchange Act Rule 17a-3.

### **FACTS AND VIOLATIVE CONDUCT**

#### **Deficient Supervision of Direct Mutual Fund Transactions**

From at least July 23, 2009 to July 11, 2011, the Firm failed to establish and maintain a supervisory system and establish, maintain and enforce written supervisory procedures reasonably designed to achieve compliance with applicable rules and regulations concerning subsequent transactions in direct application business involving previously purchased mutual funds. Specifically, the Firm's system and procedures failed to provide for the following:

- The review and endorsement by a registered principal of all direct application subsequent transactions involving previously purchased mutual funds, including those in 529 college savings plans; and
- A suitability review of all direct application subsequent transactions involving previously purchased mutual funds, including procedures designed to review the source of funds and review of sales charges (breakpoints).

Throughout that time period, the Firm did not supervise subsequent transactions for direct application business in previously purchased mutual funds. Rather, it relied on its representatives to make the appropriate suitability determination

when recommending any subsequent transactions. The Firm also relied on the fact that one of its principals had conducted a supervisory review for the initial direct application mutual fund transaction. There was, however, no supervisory review by a Firm principal of any subsequent transactions in previously purchased mutual funds. Moreover, Firm principals did not receive or review account statements for direct application products.

By failing to establish and maintain a supervisory system and establish, maintain and enforce written procedures reasonably designed to achieve compliance with applicable rules and regulations concerning its direct application transactions involving mutual funds, the Firm violated NASD Conduct Rule 3010, FINRA Rule 2010 and MSRB Rule G-27.

### **Recordkeeping Violations**

The Firm allowed its registered representatives to maintain individual Checks Received and Forwarded blotters. All transactions reflected on the blotter were processed by the registered representative on a weekly basis and were submitted to a principal at the Firm for review. From at least June 1, 2010 through June 30, 2011, however, the Firm failed to prepare blotters as required by Exchange Act Rule 17a-3(a)(1). A review of the blotters for that time period in two of the Firm's Offices of Supervisory Jurisdiction revealed the deficiencies listed below:

- In approximately 474 instances, the amount of funds received and forwarded was not recorded;
- In approximately 458 instances, the customer account number at which the funds and securities was located was not recorded;
- In approximately 33 instances, the date the customer funds were forwarded was not recorded; and
- In approximately 32 instances, the identity of the seller to which the funds were forwarded was not recorded.

By failing to prepare adequate blotters, the Firm violated NASD Conduct Rule 3110, FINRA Rule 2010, MSRB Rule G-8 and Exchange Act Rule 17a-3.

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

- a censure and \$150,000 fine (\$75,000 of which pertains to the violations of MSRB Rules G-27 and G-8).

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.

**Respondent specifically and voluntarily waives any right to claim 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**

**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 prejudgment of the General Counsel, 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 Respondent;
- C. If accepted:
  - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
  - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondent's disciplinary record;
  - 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 Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party; and
- 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 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 the Firm 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.

Honor, Townsend & Kent, Inc.

09/25/2012  
Date (mm/dd/yyyy)

By: Michelle A. Barry  
Michelle A. Barry  
President and Chief Executive Officer

Reviewed by:

I B K  
Ivan B. Knauer, Esq.  
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Accepted by FINRA:

October 2, 2012  
Date

Signed on behalf of the  
Director of ODA, by delegated authority  
David F. Newman  
David F. Newman  
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FINRA Department of Enforcement  
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