

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2010022963601**

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

RE: Michael D. Shaw, Respondent
General Securities Representative
[CRD No. 1571907]

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Michael D. Shaw, submit 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 me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. I hereby accept and consent, 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

Michael D. Shaw entered the securities industry on November 21, 1986 as a General Securities Representative of a member of FINRA. Shaw, during all periods mentioned herein, was associated with member firm VSR, and was registered with FINRA under Article V of the By-Laws as a General Securities Representative. Shaw remains registered with VSR. He has not previously been the subject of any relevant formal disciplinary actions.

OVERVIEW

Michael D. Shaw made misrepresentations in connection with the sale of private placements to three customers and unsuitable recommendations of private placements to four customers. In addition, Shaw falsified customer account documents by overstating net worth and changing the customer risk profiles in the accounts of the same three customers.

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FACTS AND VIOLATIVE CONDUCT

1. During the period from on or about March 16, 2007 through on or about December 12, 2008, Michael D. Shaw, acting on behalf of VSR Financial, recommended and effected the sale of high risk private placements to Customers SA, HA, EF, and BC without having a reasonable basis to believe that the transactions were suitable given the financial circumstances and condition of the customers. Specifically:
 - a. On or about March 16, 2007, Shaw recommended that SA invest \$50,000 in Odyssey Diversified VI ("Odyssey VI"). Subsequently, on or about April 16, 2008, Shaw recommended that SA invest \$125,000 in Arciterra Note Fund III ("Arciterra III"). Finally, on or about August 11, 2008, Shaw recommended that SA invest \$100,000 in Odyssey Diversified Notes IX (Odyssey IX"). Odyssey VI, Arciterra III, and Odyssey IX were each private placement investments offered pursuant to SEC Regulation D, Rule 506. The private placements were high risk investments suitable only for accredited investors with no need for liquidity with respect to the funds invested. SA sought fixed income investments with no more than moderate risk. Furthermore, SA's net worth of \$600,000 did not qualify him as an accredited investor. By August 2008, directly as a result of Shaw's recommendations, SA had approximately 70% of his portfolio concentrated in Odyssey VI, Arciterra III, and Odyssey IX. The concentration level compounded the risk of these already high risk investments. Given SA's moderate risk tolerance and unaccredited status, Shaw had no reasonable basis for recommending that SA invest a total of \$275,000 in the three private placements described above. Shaw earned a net commission on the transactions of \$15,870.00.¹
 - b. On or about December 12, 2008, Shaw recommended that HA invest \$52,000 in Arciterra III. As reflected on the new account form that Shaw completed for HA, HA was not willing to invest any amount in a high risk investment such as Arciterra III. Furthermore, HA's investment objective was to receive income. In addition, HA was not an accredited investor. Her net worth was approximately \$437,000. Given HA's moderate risk tolerance and unaccredited status, Shaw had no reasonable basis for recommending that HA invest \$52,000 in Arciterra III. Shaw earned a net commission on the transaction of \$3,120.00.

¹ VSR and Shaw settled with Customer SA for the unsuitable sales made by Shaw.

- c. On or about March 1, 2005, Shaw recommended that EF invest \$45,000 in MPF Income Fund 22 LLC ("MPF LLC"). Subsequently, on or about May 18, 2006, Shaw recommended that EF invest \$6,400.00 in Behringer Harvard Opp REIT ("Behringer REIT"). Finally, on or about December 12, 2007, Shaw recommended that EF invest \$11,000 in Cole Credit Property Trust II ("Cole Trust II"). MPF LLC was a private placement investment offered pursuant to SEC Regulation D, Rule 506. Behringer REIT and Cole Trust II were each real estate investment trusts that operated on a leveraged basis. The securities involved significant risk and were only suitable for persons who had adequate financial means, a desire for a relatively long term investment, and no need for immediate liquidity. MPF LLC required a liquid net worth of \$200,000. Both Behringer REIT and Cole Trust II required either a liquid net worth of \$150,000 or an annual income of \$45,000. EF met none of these requirements. EF's VSR account of approximately \$69,000 represented her entire liquid net worth, and EF had an annual income of \$40,000.

As reflected on the new account form Shaw completed for EF, EF was not willing to invest any amount in a high risk product, and was only willing to invest 25% in a moderately high risk product and 25% in a medium risk product. By August 2008, directly as a result of Shaw's recommendations, EF had approximately 95% of her portfolio concentrated in MPF LLC, Behringer REIT, and Cole Trust II. The concentration level compounded the risk of these already high risk investments. Given EF's moderate risk tolerance and low liquid net worth, Shaw had no reasonable basis for recommending that EF invest a total of \$62,400 in the three investments described above. Shaw earned a net commission on the transactions of \$4,669.00.

- e. On or about June 23, 2008, Shaw recommended that BC invest \$300,000 in DBSI 2008 Notes Corporation ("DBSI"). DBSI was a private placement investment offered pursuant to SEC Regulation D, Rule 506. It was a high risk investment suitable only for accredited investors who could withstand the entire loss of their investment. On or about July 30, 2008, Shaw recommended that BC invest \$230,000 in Odyssey IX. According to the new account form completed by Shaw for BC, BC's investment objectives were growth and income and her risk tolerance was moderate. By July 30, 2008, directly as a result of Shaw's recommendations, BC had approximately 85% of her portfolio concentrated in DBSI and Odyssey IX. The concentration level compounded the risk of these already high risk investments. Given BC's moderate risk tolerance, Shaw had no reasonable basis for recommending

that BC invest in DBSI or Odyssey IX. Shaw earned a net commission on the transactions of \$33,074.00.¹

Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2310 and 2110 by Michael D. Shaw.

2. From on or about March 16, 2007 through on or about December 12, 2008, Shaw made material misrepresentations or omissions in connection with the purchases or sales detailed in paragraph 1 above. The Offering Memoranda for Odyssey VI and Odyssey IX both state, “[a]n investment in the Notes involves a high degree of risk and may be purchased by persons of substantial financial means who have no need for liquidity in this investment.” Likewise, the Offering Memorandum for Arciterra III states, “[a]n investment in these Notes is highly speculative and involves substantial risks.” The Private Placement Memorandum for DBSI states, “[a]n investment in the Notes is highly speculative . . . [and] should be made only by persons able to bear the risk of and to withstand the total loss of their investment.” Despite the description of each product as “high risk” or “highly speculative” in the offering documents, Shaw intentionally misinformed SA, HA, and BC that the investments were safe and secure. He elaborated upon Arciterra, representing to SA and HA that it was “a relatively low risk investment.”

Such acts, practices, and conduct constitute separate and distinct willful violations of Section 10(b) of the Exchange Act, SEC Rule 10b-5, and NASD Rules 2110 and 2120 by Michael D. Shaw.

3. From on or about March 16, 2007 through on or about December 12, 2008, Shaw falsified account documents for customers SA, HA, and BC. In order to qualify SA as an accredited investor for purposes of investment in private placements, Shaw made repeated updates to SA’s new account profile, increasing SA’s net worth over a period of five years from \$600,000 to \$2,500,000. Shaw also changed SA’s risk profile over time from an instruction that 0% be invested in products described as “high risk aggressive” to a statement that up to 100% could be invested in such products. Shaw knew that SA was not an accredited investor and that SA had never characterized his risk tolerance as anything more than “moderately high risk.”

Shaw also falsified the account documentation for customer HA, changing her net worth from \$800,000 to \$1,500,000 and her risk profile from a preference that no portion be invested in “high risk” products to a statement that up to 45% of her invested assets could be invested in “high risk” products. Shaw

¹ VSR settled with Customer BC for the unsuitable sales made by Shaw.

knew that HA was not an accredited investor and that HA had no tolerance for investments described as "high risk."

Finally, Shaw falsified the new account documentation for BA. Without having any reasonable basis, Shaw reflected BA's net worth as \$10.5 million and stated that she was willing for 100% of her invested assets to be invested in "high risk/aggressive" investments. Shaw knew that BA had no more than \$1 million in net worth and that she had no tolerance for high risk investments.

Such acts, practices, and conduct constitute separate and distinct violations of NASD Rule 2110 by Michael D. Shaw.

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

A bar of Michael D. Shaw from association with any member firm in all capacities.

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 this settlement includes a finding that I willfully violated Section 10(b) and SEC Rule 10b-5 of the Securities Exchange Act of 1934 and that under Article III, Section 4 of FINRA's By-Laws, this makes me subject to a statutory disqualification with respect to association with a member.

The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to FINRA Rule 8313(e), a bar or expulsion shall become effective upon approval or acceptance of this AWC.

II.

WAIVER OF PROCEDURAL RIGHTS

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

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

- B. To be notified of the Formal 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 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.

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 response to public inquiries about my 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. 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 right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

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.

10-10-11
Date

Michael D. Shaw
Michael D. Shaw, Respondent

Reviewed by:

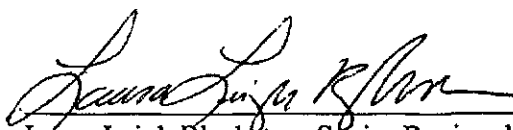
JMS
Counsel for Respondent
Jim M. Stanfield

Accepted by FINRA:

October 20, 2011

Date

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



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