

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Tracy Rae Turner (CRD No. 1385745),

Respondent.

DISCIPLINARY PROCEEDING
No. 2014040338401

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From September 2013 through April 2014 (the “Relevant Period”), Respondent Tracy Turner participated in private securities transactions by offering and selling interests in three saltwater disposal well facilities (“SWD Interests”) to twelve investors totaling approximately \$4.1 million. The SWD Interests were initially held by an entity named TSWR Development, LLC, with the intention that the interests would be sold to investors to fund the development and operation of the saltwater disposal well facilities (“SWDs”). When SWD Interests were sold to investors, TSWR Fund Management, LLC, an entity affiliated with TSWR Development, LLC, entered into agreements with investors to manage the investment. Thus, the SWD Interests were structured as passive investments, and they touted a high rate of return. For successfully soliciting approximately \$4.1 million of investments, Turner received approximately \$270,000 in compensation.

2. Turner failed at any time to provide written or other notification of his participation in the private securities transactions to his employer member firm, Colorado Financial Service Corporation (“CFSC”). By this conduct, Turner violated NASD Conduct Rule 3040 and FINRA Rule 2010.

3. In September 2013, to promote the SWD Interests, Turner created and made publicly available online an “Offering Memorandum” concerning the offer of SWD Interests in one saltwater disposal well facility. However, the “Offering Memorandum” failed to provide a sound basis for evaluating the investment and made promissory and unwarranted statements and claims. In addition, Turner wrote an accompanying message to the “Offering Memorandum,” also publicly available online, that—like the “Offering Memorandum”— failed to provide a sound basis for evaluating the investment and included a promissory and unwarranted statement. As a result of this conduct, Turner violated FINRA Rule 2210(d) and FINRA Rule 2010.

4. Turner further violated FINRA Rule 2210(b) and FINRA Rule 2010 because the “Offering Memorandum” and the accompanying message were not approved by a registered CFSC principal prior to their dissemination.

RESPONDENT AND JURISDICTION

5. Tracy Rae Turner (CRD No. 1385745) first entered the securities industry in 1985 when he became registered as a general securities representative with a FINRA member firm. In 2005, Turner also registered as a general securities principal with a FINRA member firm. On or about November 8, 2011, Turner registered as an operations professional with a FINRA member firm.

6. On or about January 3, 2012, Turner registered as a general securities representative, a general securities principal, and an operations professional with FINRA member firm CFSC. Turner's registrations with CFSC were terminated on December 1, 2014.

7. Although Turner is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the effective date of termination of Turner's registration with CFSC, namely December 1, 2014; and (2) the Complaint charges Turner with misconduct committed while he was registered or associated with a FINRA member.

FACTUAL ALLEGATIONS

I. Turner Created and Posted Online an Offering Memorandum for Interests in a Saltwater Disposal Facility

8. In September 2013, Turner made available online a document that he referred to as an "Offering Memorandum" (the "OM") in order to solicit investors to purchase percentage working interests in a SWD near Midland, Texas.

9. Turner created the OM, which was not reviewed or approved by CFSC.

10. In the OM, Turner presented an opportunity for investment offering "a 20% direct working investment in a new state-of-the-art Saltwater Disposal Facility in an undisclosed location near Midland, Texas for \$3,000,000."

11. It is a regulatory requirement that oil producers use SWDs for the proper disposal of saltwater by-product generated by drilling. Oil producers pay trucking companies to take their saltwater by-product; the truckers, in turn, transport the saltwater by-product to a SWD that bills the trucking company a small amount per barrel on a monthly basis. SWDs can also generate

revenues in another way. Residual oil left in the saltwater by-product may be captured by SWDs, and then sold to refineries.

12. In the OM, Turner touted a 25.4% cash-on-cash return to investors in the facility. Specifically, on the cover page of the OM, Turner stated that “[i]t provides cash flow of 25.4%.” Within the OM, Turner repeated this promise of cash flow, stating that the SWD offers a “25.4% cash-on-cash return” and that “[t]his is an outstanding opportunity for a 1031 exchange investor seeking a high level of recurring income from a non-leveraged investment.”

13. Turner also wrote a message that accompanied the OM. That message, which remained available online along with the OM, advertised a “[r]are opportunity to acquire a \$3 million direct working interest in a saltwater disposal facility” and that “[i]t provides a 25.4% cash-on-cash return and is ideal for non-leveraged 1031 exchange investors seeking a high level of current income.”

14. CFSC did not review or approve the accompanying message to the OM.

II. The SWD Interests

15. During the Relevant Period, Turner offered and sold SWD Interests in three SWDs located in Texas: (1) the Tom SWD; (2) the Clark SWD; and (3) the Moreland SWD (as previously defined in Paragraph 1, the “SWD Interests”).

16. Turner was compensated from the proceeds of each sale. Turner is the sole proprietor of Turner Financial Group (“TFG”). TFG received a percentage commission, often 7%, of the purchase price. TSWR Development, LLC paid TFG this commission.

17. All of the SWD Interests at issue were offered by TSWR Development, LLC, and investments in the SWD Interests were managed by TSWR Fund Management, LLC.

18. RBJA was the only legally authorized operator of the three SWDs at issue in which interests were offered by TSWR Development, LLC. In that capacity, RBJA was solely responsible for overseeing the day-to-day operations of the SWDs at issue.

19. Sales of the SWD Interests were structured as follows:

- a. Initially, the land for each SWD at issue was leased to RBJA by the respective landowner for the purposes of operating a SWD.
- b. RBJA then sold and assigned to TSWR Development, LLC a percentage interest in each SWD lease, together “with like interest in all equipment on, or hereinafter, placed on the above referenced well.”
- c. In turn, TSWR Development, LLC re-sold some of its assigned percentages of interest in the lease—the SWD Interests—to investors through Turner and others.

20. At the time of each sale, TSWR Development, LLC entered into a purchase and sale agreement with each investor that conveyed a certain percentage of TSWR Development LLC’s “right, title and interest in and to” the SWD’s “operations, associated equipment and lease interest” to the investor for an amount of money.

21. A section of the purchase and sale agreement pertained to Turner. The purchase and sale agreement referenced that TFG was employed by the investor and is acting “solely on the [investor]’s behalf.” Per the purchase and sale agreement, while any fees incurred by the investor’s broker or agent were the sole responsibility of the investor, TFG was to be paid its fees from the gross proceeds of the sale.

22. TSWR Fund Management, LLC entered into management agreements with the investors. Through the management agreements, the SWD Interests became passive

investments. Pursuant to the terms of the management agreement, as manager, TSWR Fund Management, LLC was obligated to “exercise sole discretion and responsibility . . . to determine, supervise, undertake, operate and manage on behalf of [the investor]” as well as maintain the investor’s books and records regarding “its Investment”, provide monthly and year-end reports to the investor, subcontract or otherwise arrange for its duties to be performed, and distribute monthly income to the investor.

23. In the management agreements, TSWR Fund Management, LLC contracted to receive an asset management fee. In addition, “in exchange for managing the development of new disposal wells on this [*sic*] leasehold interest properties,” TSWR Fund Management, LLC contracted to receive a development fee.

24. An assignment of the interest in the lease from TSWR Development, LLC to the purchasing investor was recorded with the county clerk.

III. Turner Engaged in Private Securities Transactions

25. During the Relevant Period, Turner offered and sold SWD Interests in three SWDs located in Texas: (i) the Tom SWD; (ii) the Clark SWD; and (iii) the Moreland SWD.

26. The SWD Interests sold by Turner were securities.

27. Turner failed to give prior written notice to, and receive prior written permission from, CFSC before participating in the sale of the SWD Interests.

28. The first SWDs for which Turner sold SWD Interests were the Clark SWD, located near Pecos, Texas, and the Tom SWD, located in Andrews County, Texas.

29. In September and October 2013, Turner sold SWD Interests in the Tom SWD to two investors:

- a. On or about September 5, 2013, BFT purchased 1.05% of the Tom SWD from TSWR Development for approximately \$119,229. Turner received an approximately 7% commission for this sale in the form of a check from TSWR Development, LLC to TFG for approximately \$8,346.03. The BFT was a CFSC customer.
- b. On or about October 1, 2013, SI purchased 4.4% of the Tom SWD from TSWR Development for approximately \$499,463.31. Turner received an approximately 7% commission for this sale in the form of a check from TSWR Development, LLC to TFG for approximately \$32,675.17.

30. On or about October 1, 2013, Turner sold SWD Interests in the Clark SWD to one investor, SI. SI purchased 3.5% of the Clark SWD from TSWR Development, LLC for approximately \$639,521.48. Turner received an approximately 7% commission for this sale in the form of a check from TSWR Development, LLC to TFG for approximately \$41,838.34.

31. From January 2014 through April 2014, Turner sold SWD Interests in the Moreland SWD to the following ten investors:

- a. On or about January 7, 2014, the MFT purchased 2.02% of the Moreland SWD from TSWR Development for approximately \$325,000, from which Turner received an approximately 7% commission. TFG received a check from TSWR Development, LLC for approximately \$22,000 in compensation for the MFT transaction. At the time of the sale, the MFT was a customer of CFSC.
- b. On or about January 7, 2014, the PFT purchased 1.58% of the Moreland SWD from TSWR Development for approximately \$255,030, for which Turner received an approximately 7% commission. TFG received a check from TSWR

- Development, LLC for approximately \$18,030 in compensation for the PFT transaction. At the time of the sale, the PFT was a customer of CFSC.
- c. On or about January 23, 2014, BTC purchased 0.93% of the Moreland SWD from TSWR Development for approximately \$150,000, from which Turner received an approximately 7% commission. TFG received a check from TSWR Development, LLC for approximately \$10,500 in compensation for the BTC transaction. At the time of the sale, BTC was a customer of CFSC.
- d. On or about February 14, 2014, the JK LLC purchased 3.33% of the Moreland SWD from TSWR Development for approximately \$500,000, from which Turner received an approximately 3.5% commission. At the time of the sale, Mr. K of the JK LLC was a customer of CFSC.
- e. On or about February 14, 2014, the JL LLC purchased 3.33% of the Moreland SWD from TSWR Development for approximately \$500,000, from which Turner received an approximately 3.5% commission. At the time of the sale, Mr. L of the JL LLC was a customer of CFSC. TFG received a check from TSWR Development, LLC for approximately \$34,989.50 in compensation for the JL LLC and JK LLC transactions.
- f. On or about February 17, 2014, the FFT purchased 1.71% of the Moreland SWD from TSWR Development for approximately \$300,000, from which Turner received a commission. TFG received two checks from TSWR Development, LLC for approximately \$43,500 in total compensation for the FFT transaction. At the time of the sale, the FFT was a customer of CFSC.

- g. On or about March 4, 2014, GG purchased 0.77% of the Moreland SWD from TSWR Development for approximately \$125,000, from which Turner received an approximately 7% commission.
 - h. On or about March 4, 2014, LG purchased 0.77% of the Moreland SWD from TSWR Development for approximately \$125,000, from which Turner received an approximately 7% commission. TFG received a check from TSWR Development, LLC for approximately \$19,000 in compensation for the GG and LG transactions.
 - i. On or about March 5, 2014, the GM LLC purchased 1.55% of the Moreland SWD from TSWR Development for approximately \$250,000, from which Turner received an approximately 7% commission.
 - j. On or about March 12, 2014, the HFT purchased 2.12% of the Moreland SWD from TSWR Development for approximately \$350,000, from which Turner received an approximately 7% commission. At the time of the sale, the HFT was a customer of CFSC. TFG received a check from TSWR Development, LLC for approximately \$42,000 in compensation for the GM LLC and HFT transactions.
32. In total, Turner sold approximately \$4.1 million in SWD Interests to twelve investors, including approximately eight CFSC customers, and, as a result, Turner received approximately \$270,000 in compensation from the sales.

**FIRST CAUSE OF ACTION
SELLING AWAY – PRIVATE SECURITIES TRANSACTION
(NASD Conduct Rule 3040 and FINRA Rule 2010)**

- 33. The Department realleges and incorporates by reference paragraphs 1-32 above.
- 34. NASD Conduct Rule 3040 states, in relevant part, that “[n]o person associated with a member shall participate in any private securities transaction” without “provid[ing]

written notice to the member with which he is associated describing in detail the proposed transaction and the person's proposed role therein and stating whether he has received or may receive selling compensation in connection with the transaction.”

35. NASD Conduct Rule 3040 defines “private securities transaction” as “any securities transaction outside the regular course or scope of an associated person’s employment with a member, including, though not limited to, new offerings of securities which are not registered with the [SEC].” If, as here, an associated person is compensated for their participation, then they must provide advance written notice prior to each transaction.

36. FINRA Rule 2010 requires that members and associated persons observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

37. Turner participated in the sale of the SWD Interests in the Tom SWD, Clark SWD, and Moreland SWD by, among other things, introducing investors to TSWR Development, LLC and RBJA, recommending that they invest in the SWDs, providing information to customers regarding the SWDs, assisting the investors in completing the requisite paperwork, and receiving compensation for investments in the SWDs.

38. The investors invested money in the SWDs by purchasing SWD Interests from TSWR Development, LLC, and entering into management agreements with TSWR Fund Management, LLC that allowed the investors to remain passive and obligated TSWR Fund Management, LLC to exercise “sole discretion and responsibility . . . to determine, supervise, undertake, operate and manage [the well] on behalf of [the investor],” among other responsibilities.

39. The investors purchased the SWD Interests with the expectation that they would receive profits derived entirely from the efforts of others with respect to the successful operation of the SWD.

40. Turner received compensation from TSWR Development for the sales of the SWD Interests.

41. The SWD Interests sold for the Tom SWD, the Clark SWD, and the Moreland SWD were securities, and Turner's sales of the SWD Interests were private securities transactions.

42. Turner failed to give prior written notice to, and receive prior written permission from, his firm, CFSC, before participating in these private securities transactions.

43. As a result of the foregoing conduct, Turner violated NASD Conduct Rule 3040 and FINRA Rule 2010.

**SECOND CAUSE OF ACTION
MISLEADING AND OTHER VIOLATIVE COMMUNICATIONS WITH THE PUBLIC
(FINRA Rule 2210(d) and FINRA Rule 2010)**

44. The Department realleges and incorporates by reference paragraphs 1-43 above.

45. FINRA Rule 2210 established the content standards applicable to all communications with the public during the Relevant Period.

46. The OM and accompanying message were retail communications pursuant to FINRA Rules 2210(a)(1) (as effective from February 4, 2013, through July 10, 2014), 2210(a)(5) and (6).

47. FINRA Rule 2210(d)(1)(A) requires that all FINRA broker-dealers' communications with the public to be based on principles of fair dealing and good faith, to be fair and balanced, to provide a sound basis for evaluating the facts in regard to any particular

security or type of security, industry, or service, and to not omit material facts that would render the communication misleading.

48. FINRA Rule 2210(d)(1)(B) prohibits false, exaggerated, promissory, unwarranted or misleading statements or claims in any communication with the public.

49. FINRA Rule 2010 provides that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”

50. Turner created the OM and wrote the accompanying message to the OM.

51. Turner disseminated the OM and accompanying message to more than 25 retail investors because both items were made publicly available on the internet.

The Online Message Accompanying the OM

52. The message that accompanied the OM, which remained publicly available online, failed to identify the risks associating with investing. As a result, the message failed to provide a sound basis for evaluating the investment. The omission of this material information caused the communication to be misleading. Accordingly, Turner’s use of this material violated FINRA Rule 2210(d)(1)(A) and FINRA Rule 2010.

53. In addition, the message that accompanied the OM included the statement that “[i]t provides a 25.4% cash-on-cash return and is ideal for non-leveraged 1031 exchange investors seeking a high level of current income.” This statement is unwarranted and promissory. Accordingly, Turner’s use of this material violated FINRA Rule 2210(d)(1)(B) and FINRA Rule 2010.

The OM

54. The OM failed to provide a sound basis for evaluating the investment, as the risks associated with investing were omitted. The omission of this material information caused the

communication to be misleading. Accordingly, Turner's use of this material violated FINRA Rule 2210(d)(1)(A) and FINRA Rule 2010.

55. In the OM, Turner made the following statements that are promissory and/or unwarranted in violation of FINRA Rule 2210(d)(1)(B):

- a. The statement "[i]t provides cash flow of 25.4%" is promissory.
- b. The statement "[t]his is an outstanding opportunity for a 1031 exchange investor seeking a high level of recurring income from a non-leveraged investment" is unwarranted.
- c. The statement "25.4% cash-on-cash return" is promissory.

56. As a result of this conduct, Turner violated FINRA Rule 2210(d) and FINRA Rule 2010.

THIRD CAUSE OF ACTION
Review, Approval and Retention of Communications with the Public
(FINRA Rules 2210(b) and FINRA Rule 2010)

57. The Department re-alleges and incorporates by reference paragraphs 1 through 56 above.

58. FINRA Rule 2210(b)(1)(A), as in effect throughout the Relevant Period, required an appropriately qualified registered principal of CFSC to approve each retail communication before the earlier of its use or filing with FINRA's Advertising Regulation Department.

59. The online message that accompanied the OM and the OM were not approved by a registered principal of CFSC prior to use, and were not filed with FINRA's Advertising Regulation Department prior to use.

60. Accordingly, Turner violated FINRA Rule 2210(b)(1)(A) and FINRA Rule 2010.

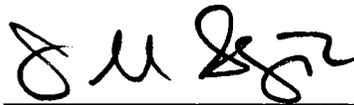
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest; and
- C. order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: November 3, 2016



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