FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2009018609501

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

RE: Investors Capital Corp. (BD No. 30613),
Respondent

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Investors Capital Corporation ("ICC" 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 Respondent 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

ICC has been a member of FINRA since October 5, 1992. The firm, based in Lynnfield, MA, is majority owned by Investors Capital Holdings, Ltd., a public company whose shares trade on the American Stock Exchange.

ICC employs approximately 619 registered representatives, along with approximately 284 non-registered back office personnel. The firm operates from approximately 345 branch offices. ICC is a full service broker-dealer whose business focus is retail brokerage.

RELEVANT DISCIPLINARY HISTORY

ICC has the following relevant prior disciplinary history with the Securities and Exchange Commission, any self regulatory organization and/or any state securities regulator:

- On July 12, 2011, ICC entered into an AWC with FINRA in Case No. 2007011545201. The firm consented to findings that it violated NASD Rules 2110 and 3010(a) and IM-2210-8. During the period from June 30, 2006 to July 31, 2007, it failed to establish and maintain an adequate supervisory system, relating to retail collateral mortgage obligation ("CMO") transactions, that was reasonably designed to achieve compliance with applicable securities laws, regulations and rules. FINRA fined the firm $200,000, censured the firm and required the firm to complete an undertaking to review its policies and procedures for suitability of CMOs and certify the adequacy of its policies and procedures.

- On April 9, 2003, ICC entered into an AWC with FINRA in Case No. C11030012. The firm consented to findings that it violated NASD Rules 2110, 2210, 2220, 3010, 3070, 3110, IM-3110, MSRB Rules G-8 and G-9, SEC Rules 15c3-1, 17a-3 and 17a-4. FINRA found that the firm's WSPs, policies and supervisory systems were deficient with respect to branch office inspections, heightened supervision, outside business activities, review of customer transactions, designation of principals, representatives' outside brokerage accounts, anti-money laundering and advertising. The firm failed to commit adequate resources to supervise the firm's growing number of registered representatives. The firm failed to provide any meaningful systems, computerized or otherwise, to assist in the prevention of violations of securities rules and regulations. The firm also conducted a securities business while failing to maintain its required minimum net capital. FINRA censured and fined the firm $250,000 jointly and severally with the Firm's President and the firm's former Chief Compliance Officer.

- On May 15, 2001, ICC entered into a Consent Order with Massachusetts in Case No. E-2001-55. The firm consented to findings that there were supervisory deficiencies in the firm's supervision of a registered representative who purportedly sold private placements without confirming the investor's suitability for the product. Massachusetts fined the firm $50,000 and ordered the firm to retain an independent consultant to review the firm's practices and procedures.

OVERVIEW

From 2005 through 2008 (the "Relevant Period"), ICC failed to establish, maintain and enforce a reasonable supervisory system and lacked written supervisory procedures for the review and approval for sale of new alternative investment products such as Provident Royalties, Inc. ("Provident Royalties") and CIP Leveraged Fund Advisors ("CLFA"). Sales of private placements generated at least 10 percent of the firm's revenues during that period.

ICC's supervisory deficiencies affected the firm's sales of offerings by issuers Provident Royalties and CLFA.

During the Relevant Period, ICC's system for approving such products was deficient in the following respects:

- The firm had no written procedures or formal system for conducting due diligence.

- Instead, the firm relied on an informal process that placed responsibility in the hands of a single individual. ICC gave that individual sole responsibility to review and approve new products (the "New Product Approver").

- ICC's, due diligence relied heavily on due diligence reports that the firm knew were paid for by the issuer(s) and/or sponsor(s) of offering(s). For example, for the Provident Royalties offerings, the New Product Approver reviewed the offering materials and due diligence reports prepared by a law firm that were paid for by Provident Asset Management, LLC (BD No. 128642) ("PAM"), a broker dealer affiliated with Provident Royalties.

- With respect to the Provident Royalties offerings, the firm approved the offerings for sale despite "red flags" set forth in the third party due diligence reports for the Shale 17 and Shale 19 offerings. The firm's supervisory system did not provide for follow up to address the "red flags."

- ICC received due diligence fees from Provident Royalties for the purpose of conducting due diligence on the offerings but ICC did not use these fees to conduct independent due diligence.

- For the CLFA offering, the firm improperly relied on a third party due diligence report that was for a particular CLFA product that the firm did not sell. As a result, ICC in effect did not conduct any due diligence into this particular product.

- ICC did not memorialize its due diligence efforts.

- ICC did not have a system or process to review the due diligence efforts of the New Product Approver.

Accordingly, ICC violated NASD Conduct Rules 3010 and 2110.

FACTS AND VIOLATIVE CONDUCT

Private Placement Offerings by Provident Royalties

From at least September 2006 through January 2009, Provident Royalties offered a series of 23 private placements. PAM was a wholesale broker-dealer for these offerings of preferred stock and limited partnership interests that were sold through 50 broker-dealers and raised $485 million from over 7,700 investors.

Provident Royalties claimed that each offering was exempt from registration pursuant to Rule 506 of Regulation D of the federal securities laws. Many of the offerings were designated by the name Shale Royalties, Inc. ("Shale"). The Shale offerings were numbered 2 through 20. Each Shale offering was for two series of non-convertible, redeemable, cumulative preferred stock. Each share of stock was offered at $5,000 per share. The Shale offerings had similar terms and the same stated investment purpose. Provident Royalties offered the Shale offerings continuously for 30 consecutive months. Offering periods overlapped and each offering was limited to 500 investors and varying dollar amounts. When one Shale offering approached a limit, Provident Royalties created the next Shale offering. There were no audited financial statements for any of the Shale offerings.

Provident Royalties' business plan included the acquisition of a combination of producing and non-producing sub-surface mineral interests, working interests and production payments in real property located within the United States.

Although PAM made some direct retail sales of the Provident Royalties private placements, it primarily solicited retail broker-dealers to enter into sales agreements for each Shale offering. Those retail broker-dealers sold the offerings to investors nationwide. The retail broker-dealers received fees and/or commissions for selling the Shale offerings. These broker-dealers also received "due diligence fees," whose purported purpose was to cover costs incurred by the retail broker-dealers in conducting due diligence for the offerings.

PAM made presentations to retail broker-dealers in its Dallas, Texas offices, during which it represented that: (1) investors' funds would be used by each individual Shale offering to purchase interests in the oil and gas business for that offering; (2) the subscription proceeds of each offering would be deposited into an account for that offering and become assets for that offering; (3) approximately 86% of the subscription proceeds would be allocated to acquiring interests in the oil and gas business; and (4) dividends paid to investors would be derived from revenues, primarily from the sale of oil and gas assets.

The owners and principals of Provident Royalties deposited investors' funds into separate bank account designated for each Shale offering knowing that the Shale offerings did not have sufficient revenues to pay investors' dividends as they became due. Although a portion of the proceeds of the Shale offering was used for the acquisition and development of oil and gas exploration and development activities, millions of dollars of investors' funds were transferred from the later Shale offerings' bank accounts to the Provident Royalties operating account in the form of undisclosed and undocumented loans, and were used to pay dividends and returns of capital to investors in the earlier Shale offerings.

The owners and principals of Provident Royalties and PAM did not tell investors, and the Shale private placement memoranda did not disclose, that the investors' funds would be used to make dividend and return of principal payments to earlier investors, rather than being invested in oil and gas assets.

On July 2, 2009, the SEC filed a civil injunctive action in the Northern District of Texas naming Provident Royalties, PAM and others, and the Court granted its request for a temporary restraining order and an emergency asset freeze and appointment of a receiver to take control of the entities and marshal and preserve the assets for the benefit of the defrauded investors. The Court set a hearing on the SEC's motion for a preliminary injunction. Subsequently, the order for the hearing was vacated when all the named defendants agreed to the entry of a preliminary injunction, which remains in effect.

ICC's Sales of Provident Royalties Offerings

ICC sold three of the Shale offerings: Shale 10, Shale 17 and Shale 19. With respect to Shale 10 and Shale 17, dividends on shares of Series A preferred stock were to accrue at the rate of 1.50% per month and dividends on each share of Series B preferred stock were to accrue at the rate of 1.25% per month. Series A preferred stock was redeemable at the end of either 24 or 36 months and Series B at the end of 24 months. Dividend payments were to be paid four months in arrears and thereafter monthly.

For the Shale 19 offering, these terms were somewhat different. For Series A, the dividends accrued at 1.375 per month with maturity at 48 months and for Series B, dividends accrued at 36 months with a maturity at 36 months.

During the period of June 2008 through December 2008, ICC brokers effected a total of 94 transactions with 81 households in three Provident Royalties offerings with a total dollar value of $5,090,000. ICC sold the following:

- Shale 10 - $1,005,000 in 20 transactions.
- Shale 17 - $3,145,000 in 56 transactions.
- Shale 19 - $940,000 in 18 transactions.

The transactions generated total gross commissions and fees of $386,075. ICC also received "due diligence fees" of $49,440. ICC, however, never used these fees to conduct independent due diligence.

ICC Sales of CFLA

During the period May 2005 to October 2008, ICC sold $3.159 million private placement units in CLFA, which is an entity that sponsors real estate investment trusts. ICC brokers sold CLFA units to approximately 54 investors and ICC received marketing fees of $45,000.

The PPM for CFLA contained material misstatements concerning the projected timeframe for return of investors' principal investment, the yield on the investment, the amount of money that CLFA would raise in selling the real estate investment trusts, and the true financial picture of an affiliated entity.

ICC's Due Diligence Procedures in 2005 and 2008

1. No Written Procedures

Prior to and during the firm's sales of CLFA in 2005 and sales of Provident Royalties in 2008, ICC did not have any written supervisory procedures governing the process for conducting due diligence on, and approving for sale, potential new alternative investment products such as Provident Royalties and CLFA.

While there were no written procedures, ICC delegated to the New Product Approver responsibility for reviewing and approving new products. ICC had no requirement that the New Product Approver present new products to any committees of firm management for approval.

2. The Manner in Which ICC Conducted Due Diligence

When the New Product Approver learned about a potential new alternative investment product ICC could sell, he typically contacted the issuer to obtain the private placement memoranda (PPM), marketing materials and any business plan for the product; read the business plan; and, if he was still interested in the product for ICC's customers, contacted the appropriate party, such as the issuer or wholesaler, to obtain a third-party due diligence report on the product.

These steps are not set forth in any ICC written supervisory procedures.

ICC was aware that third-party due diligence reports were often paid for by the product sponsor. Nevertheless, the New Product Approver's due diligence largely consisted of reviewing these third-party due diligence reports.

ICC did not perform its own financial analysis of new products such as the Provident Royalties and CLFA products. ICC also did not:

- utilize any checklists in conducting due diligence;

- obtain financial statements for issuer companies (other than what was in PPMs and marketing material provided to him);
- create any documents or records of materials reviewed; or
- prepare any memoranda outlining the steps taken or why it was decided to sign a selling agreement for any particular offering.

In short, there was no documentary evidence that ICC had performed any reasonable due diligence or followed any procedures beyond maintaining and reviewing a copy of the PPM and any third-party due diligence.

3. Supervision of New Product Review and Approval

ICC's supervisory system for approving new products was deficient. ICC did not have a reasonably designed system to ensure that due diligence efforts were properly performed.

ICC delegated authority to sign selling agreements related to investment offerings to the New Product Approver, with the sole instruction that he "only execute selling agreements relating to investment offerings that he had approved per his due diligence." ICC management understood that the New Product Approver relied on third party due diligence reports funded by the issuers.

The firm never reviewed the New Product Approver's due diligence files and did not create any documents that evidenced supervisory review.

ICC's reliance upon a single individual, whose work the firm did not review, was particularly problematic because sales of alternative investments represented ten percent of ICC's gross revenues during 2008.

ICC's Due Diligence on the Provident Royalties Offerings was Unreasonable

Between June and December 2008, ICC entered into selling agreements to sell the Shale 10, 17 and 19 offerings. In each instance, the New Product Approver conducted due diligence and signed the selling agreement with PAM on behalf of ICC. That individual reviewed the PPM, a third party due diligence report for the specific offering and spoke with the law firm that prepared the due diligence report.

The third party due diligence reports, especially those covering the Shale 17 and 19 offerings, contained a number of "red flags" that should have raised concerns for ICC. The "red flags" included the following:

- The reports stated that the Provident Royalties entities were, "collectively reporting (as a group) a net operating loss."

- The reports stated that Provident Royalties had utilized the full amount of its available credit lines totaling $175 million. Thus, in the absence of obtaining additional lines of credit, operating funds would need to come from increased production revenue and/or the divestiture of assets.

- The reports noted that Provident Royalties' business plan had changed somewhat from prior offerings. The report for Shale 17 stated that "a higher percentage of the corporation's capital will probably be deployed for the drilling and completion of new wells."This risk is significant because it was a departure from Provident Royalties' stated business plan which was more focused on the acquisition of mineral interests and real property than on managing and operating drilling operations. For example, while not stated in the Shale 17 report, the Shale 19 report states that "Provident [Royalties'] experience as a field operator is comparatively limited at this time."

- The reports expressed concern that a Provident Royalties insider had engaged in a self-dealing transaction in which real property was sold to the Shale 2 entity by an entity in which that insider had an interest. The reports stated that in the future, Provident Royalties-related entities might similarly acquire property from other Provident Royalties-related entities.

- The reports outlined concerns about a lack of clarity relating to inter-company transactions. For example, the report for Shale 17 stated that "[a]ffiliated Provident [Royalties] entities are reporting $40 million of affiliated accounts receivable at this time" and that those amounts had increased. In other words, the Shale entities from prior Provident [Royalties] offerings had advanced loans and/or monies to other Provident entities. The report for Shale 17 recommended that Provident [Royalties] establish guidelines for any such transactions and that Provident [Royalties] provide heightened disclosure as to these transactions.

- The report for Shale 19 outlined continued and immediate concerns about Provident Royalties' lack of audited financial statements with further emphasis on concerns about Provident Royalties' intercompany transactions. The report stated that it "would like to see immediate priority and attention given to make [Provident Royalties'] financial statements more transparent .... To the extent that Provident's affiliated entities were to engage in intercompany transactions in the future, .. [the] terms of these transactions should be prominently documented as footnotes of the financial statements." The report's Conclusion further stated that short of developing more "user friendly" financial statements, "it is difficult to discern how the asset and liability positions of these entities stand at this time."

- The reports emphasized Provident Royalties' lack of audited financial statements. The report for Shale 19 stated "we would like to see audited financial statements, or alternatively, a report from an independent accounting firm validating financial information reported by Provident."

As a result of ICC's inadequate systems and procedures, ICC failed to adequately follow up on these and other "red flags." ICC did not verify, through third party sources (other than the third-party due diligence reports paid for by PAM) the representations made to the firm by Provident Royalties. ICC also did not take steps to scrutinize the offerings' promised high rates of return to ensure that they were legitimate and not payable from the proceeds of later offerings.

Despite these "red flags," the New Product Approver could not recall whether he had any concerns or questions about Provident Royalties and, as noted above, ICC did not memorialize due diligence efforts and observations.

Despite ICC's inadequate supervisory system and lack of due diligence procedures, the firm approved the Provident Royalties Shale 17 and 19 offerings for sale.

<u>ICC's Due Diligence on CLFA Was Unreasonable</u>

In conducting due diligence on CLFA, ICC relied on materials provided to them by a third party due diligence provider and CFLA.

The Firm's reliance on the third party due diligence report was misplaced because the report did not relate to the CLFA private placement but rather to an unrelated product issued by CLFA.

The third party report did not include an analysis of how investors in CLFA would recover their principal investment and whether the projected 18.75% yield was realistic. The New Product Approver did not meet any of the CFLA principals personally nor did he visit the sponsor, relying instead on the due diligence review conducted by the third-party vendor. He also did not conduct a financial analysis or review CLFA's unaudited financial statements.

Despite ICC's inadequate supervisory system and lack of due diligence procedures, ICC approved CLFA for sale.

By reason of the foregoing, ICC violated NASD Conduct Rules 3010 and 2110.

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

- Respondent is censured.

- Respondent shall disgorge commissions and other fees paid to the firm in the total amount of $400,115.00 in partial restitution to investors in the Shale 17 and 19 securities offerings of Provident Royalties.

  For the purpose of distributing such restitution, it shall be paid to Dennis L. Roossien, Jr., Receiver, appointed by the United States District for the Northern District of Texas in *Securities and Exchange Commission v. Provident Royalties LLC et al.* [Civil Action No. 3:09-CV-01238-L-BH; Northern District of Texas (Dallas)].

  Receiver Roossien shall distribute such restitution to the investors in the Shale 17 and 19 securities offering(s) of Provident Royalties, LLC on a pro rata basis in accordance with the distribution mechanism established by the United States District for the Northern District of Texas in the above-referenced Civil Action, but in no event shall the restitution paid pursuant to this AWC be reduced by attorneys' fees or any other fees or costs.

  If a distribution mechanism is not established by the United States District Court in the above-referenced Civil Action by December 31, 2011, then the Receiver shall propose a distribution plan for FINRA's approval.

  A registered principal on behalf of Respondent shall submit satisfactory proof to FINRA of payment of restitution to the above-referenced Receiver. No later than 30 days after acceptance of the AWC, Respondent shall submit such proof to Frank M. Weber, Senior Regional Counsel, Department of Enforcement, One Liberty Plaza, New York, New York 10006 either by letter that identifies the Respondent and the case number or by e-mail from a work-related account of the registered principal of Respondent to EnforcementNotice@FINRA.org.

The imposition of the above-referenced disgorgement or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies;

Respondent has specifically and voluntarily waived any right to claim an inability to pay at any time hereafter the monetary sanction(s) 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 Respondent;

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; and

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 Respondent;

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.

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 Respondent, 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 Respondent 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 Respondent to submit it.

INVESTORS CAPITAL CORPORATION

September 29, 2011
Date

By: Melissa Tarentino

Print Name: Melissa Tarentino

Title: General Counsel

Accepted by FINRA:

November 28, 2011

Date

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

Frank M Weber

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