

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

**INVESTMENT MANAGEMENT CORPORATION
(CRD No. 37196)**

**KEVIN KUNZ
(CRD No. 1274540)**

**BRIAN HORNE
(CRD No. 1830136),**

RESPONDENTS.

**DISCIPLINARY PROCEEDING
No. 2005000960301**

HEARING OFFICER: LAWRENCE B. BERNARD

ORDER ACCEPTING OFFER OF SETTLEMENT

INTRODUCTION

Disciplinary Proceeding No. 200500960301 was filed on January 19, 2007, by the Department of Enforcement of the Financial Industry Regulatory Authority ("FINRA"). Respondents Kevin Kunz, Brian Horne and Investment Management Corporation ("IMC" or "the firm") submitted Offers of Settlement ("Offers") to Enforcement on or about December 31, 2007. Pursuant to NASD Rule 9270(e), Enforcement and the National Adjudicatory Council ("NAC"), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA") have accepted the uncontested Offers. Accordingly, this Order now is issued pursuant to NASD Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offers as accepted by Enforcement and approved by the NAC.

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Under the terms of the Offers, Respondents have consented, without admitting or denying the allegations of the Complaint, 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, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understand that this Order will become part of Respondents' permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

IMC, formerly known as Kunz and Cline Investment Management, Inc. (K&C) has been a member of FINRA since December 1994. On December 31, 2007, IMC requested that its FINRA membership be terminated. That request is pending. IMC, which is located in Bountiful, Utah, is owned by Kunz and Horne. During the period relevant to the Complaint, IMC operated a general securities business. At the time the Complaint was filed, IMC employed approximately 39 registered persons.

Kunz entered the securities industry in or about May 1984, when he submitted a Form U4 to become registered with a member firm. Kunz formed K&C with another individual and was registered with K&C as a General Securities Representative and a General Securities Principal when K&C became a member of FINRA in 1994. Kunz was also registered with IMC as a General Securities Representative and Principal and a Municipal Securities Representative and Principal at the time the Complaint initiating this proceeding was filed. Those registrations were terminated on December 31, 2007. Pursuant to Article V, Section 4 of FINRA's By-Laws, Kunz was subject to FINRA jurisdiction for purposes of this Complaint.

Horne entered the securities industries in or about April 1988, when he submitted a Form U4 to become registered with a member firm. In or about December 10, 1999, Horne became registered as a General Securities Representative with IMC and, during 2000 and 2001, he became the Firm's General Securities Principal, Financial and Operations Principal, and Registered Options Principal. Subsequently, in or about February 2001, Horne acquired an ownership interest in IMC. In or about April 2003, Horne became the Firm's President and Chief Compliance Officer and in or about June 2003, Horne became registered as a Municipal Securities Principal. Those registrations were in place at the time the Complaint was filed and were recently terminated on December 31, 2007. Pursuant to Article V, Section 4 of FINRA's By-Laws, Horne is subject to FINRA jurisdiction for purposes of this Complaint.

IMC and Kunz's relevant disciplinary history is set forth below.

FINDINGS AND CONCLUSIONS

It has been determined that the Offers be accepted and that findings be made as follows:

IMC AND KUNZ FAILED TO COMPLY WITH SANCTIONS IMPOSED IN A DISCIPLINARY DECISION, IN VIOLATION OF CONDUCT RULE 2110

On August 21, 1996, IMC, Kunz and another individual were named in *DBCC v. Kunz and Cline Investment Management, Inc.*, Complaint No. C3A960029, which alleged various violations related to an offering. In November 1997, a District Business Conduct Committee (DBCC) found that, during the approximate period December 1994 through September 1995, the Firm, acting through Kunz, sold VesCor securities pursuant to private placement memoranda (PPMs) containing material misrepresentations and omissions, in violation of Conduct Rule 2110; sold

VesCor securities that were neither registered under the Securities Act of 1933 ("1933 Act") nor exempt from registration, in contravention of Section 5 of the 1933 Act and in violation of Conduct Rule 2110; and made unsuitable recommendations to investors with respect to the VesCor securities. The DBCC also found that Kunz, as an individual, paid transaction-based compensation to an individual not registered with the Firm (the Decision).

Kunz and IMC appealed the matter to the National Adjudicatory Counsel (NAC). On appeal, the NAC affirmed all but one of the DBCC's findings in July 1999, dismissing the suitability charge. With respect to sanctions, the NAC imposed upon the Firm a suspension

... from participation in any public or private offering of a security in the capacities of lead underwriter or primary placement or sales agent until such time as:

(a) it retains an independent consultant acceptable to NASD Regulation District No. 3 staff to review the adequacy and completeness of the firm's operational, compliance and supervisory procedures pertaining to participation in such offerings in such capacities;

(b) the independent consultant issues a report to the firm, with a copy to District No. 3 staff, setting forth his or her recommendations for changes and/or additions to such procedures in order to further compliance with all applicable laws, rules and regulations related to the securities industry; and

(c) the firm implements, and demonstrates to District No. 3 staff that it has implemented the recommendations of the consultant.

The Decision, as affirmed by the NAC, further required that, for "two years from the date on which K&C receives notices from District No. 3 staff that it has complied with the independent consultant provisions listed above, K&C shall be required to retain independent counsel to review all offering documentation prepared for use in connection with any offering of securities in which it participates in the capacities of lead underwriter or primary sales or placement agent." *DBCC v. Kunz*, Complaint No. C3A960029, 1999 NASD Discip. LEXIS 20, at *76-77 (NAC July 7, 1999).

Kunz and the Firm appealed the NAC decision to the SEC and then to the Tenth Circuit.

In decisions dated January 16, 2002 and March 28, 2003, respectively, the SEC and the Tenth Circuit affirmed the NAC's findings and the sanctions imposed, including the requirement to retain an independent consultant.

Kunz and IMC received a copy of the DBCC, NAC, SEC and Tenth Circuit Decisions and Kunz was aware that IMC was suspended from participation in securities offerings as primary placement or sales agent until the Firm complied with the independent consultant requirement.

From at least March 28, 2003, through April 1, 2005, IMC was suspended from participation in securities offerings as primary placement or sales agent because it had not complied with the independent consultant requirement. Nevertheless, during this time period, Kunz knowingly and willfully caused the Firm to participate as primary placement or sales agent in four VesCor offerings.

- a. From in or about April 2003 through December 2003, IMC sold approximately \$1,549,600.00 of VesCorp [sic] Monthly Income Notes;
- b. From in or about April 2003 through December 2003, IMC sold approximately \$5,024,600.00 of VesCorp [sic] Monthly Accrual Notes;
- c. From in or about May 2004 through August 2004, IMC sold approximately \$3,669,300.00 of VesCorp [sic] IV Monthly Income Notes; and
- d. From in or about May 2004 through August 2004, IMC sold approximately \$6,295,400.00 of VesCorp [sic] IV Monthly Accrual Notes.

IMC also failed to comply with the requirement in the Decision to retain independent counsel to review the offering documentation prepared for use in connection with the offering and sale of the VesCorp [sic] Monthly Income Notes or the VesCorp Monthly [sic] Accrual Notes.

Although IMC did retain an attorney to review certain disclosures in the offering documents for the VesCorp [sic] IV Monthly Income Notes and the VesCorp [sic] IV Monthly Accrual Notes, the scope of his review was inadequate to satisfy the requirements of the Decision. The attorney's review was limited to certain disclosures and did not include a determination whether the private placement memoranda complied with federal or state securities laws. Moreover, IMC did not first satisfy the independent consultant requirement before retaining the attorney, as required by the Decision.

IMC's participation in four VesCor offerings as primary placement or sales agent while suspended from participation in securities offerings as primary placement or sales agent, as more fully described above, constituted conduct inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Conduct Rule 2110 by the Firm.

Kunz's actions in causing IMC to participate in the VesCor offerings while IMC was suspended constituted conduct inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Conduct Rule 2110 by Kunz.

**IMC, KUNZ AND HORNE CAUSED PAYMENTS TO BE MADE TO A NON-MEMBER FIRM,
IN VIOLATION OF CONDUCT RULES 2420 AND 2110**

From approximately January 2003 through December 2003, IMC, acting through Kunz and Horne, processed commissions earned by representatives of the Firm through a non-member mortgage company, Deseret, which is owned by Horne. From in or about April 2003, Horne served as IMC's President and Chief Compliance Officer.

Beginning in or about January 2003, the Firm, acting through Kunz and with the knowledge and implicit consent of Horne, directed VesCor to pay commissions to Deseret earned from IMC's sales of securities offered in four private placements. Those offerings were: Deer Valley Loan Participation Interests, Sienna Vista Office Park Loan Participation Interests, Vescorp [sic] Income Notes and VesCorp [sic] Accrual Notes. More specifically, for the approximate time period January 2003 through December 2003, VesCor paid Deseret approximately \$1,616,183.00 in commissions in connection with the sales of these securities.

Deseret accepted payment from the issuer on behalf of IMC. Deseret, owned and operated by Horne, then paid the commissions to IMC's registered representatives.

During the approximate period from January 2003 through December 2003, Horne and Kunz each received compensation in the form of "overrides" from Deseret in excess of \$100,000.00 in connection with the sales of the securities more fully set forth above.

Directing the payment of compensation for securities transactions to a non-member and causing the non-member to compensate registered persons of IMC, as more fully described above constituted violations of Conduct Rule 2420 by IMC, Kunz and Horne. Further, such conduct was inconsistent with high standards of commercial honor and just and equitable principles of trade and constituted violations of Conduct Rule 2110 by IMC, Kunz and Horne.

**KUNZ FUNCTIONED AS A PRINCIPAL WHILE
SUSPENDED, IN VIOLATION OF NASD CONDUCT
RULE 2110 AND MEMBERSHIP AND REGISTRATION
RULE 1021**

As a result of the Decision referenced above, Kunz was suspended from associating with any member firm in all capacities for a total of 30 calendar days and in a principal capacity for a total of one year. Kunz's all capacities suspension commenced on May 5, 2003, and ended on June 3, 2003. His principal suspension also commenced on May 5, 2003, and was to end on May 5, 2004. However, as a result of another disciplinary action, as set forth below, his principal suspension continued until August 16, 2004.

In August 2002, an NASD Hearing Panel found that IMC, acting through Kunz, had violated net capital rules; maintained inaccurate books and records; filed inaccurate FOCUS reports; submitted an incomplete and materially inaccurate notice of a possible net capital deficiency; failed to file required information concerning an NASD arbitration award and a settlement; allowed an unregistered person to function in a capacity that required registration; and failed to establish adequate written supervisory procedures with respect to the reporting of arbitration awards and settlements. Kunz and the Firm were fined \$28,757, jointly and severally. Kunz was

barred from serving as a Financial and Operations Principal and suspended from acting in any principal capacity for six months, after which he was required to requalify in any principal capacity in which he sought to be registered. On appeal, the NAC affirmed the Hearing Panel's findings and sanctions in a Decision dated December 15, 2003. *DOE v. Investment Management Corp.*, Complaint No. C3A010045, 2003 NASD Discip. LEXIS 47 (NAC December 15, 2003).

Kunz's bar as Financial and Operations Principal became effective on December 15, 2003. His suspension in all principal capacities commenced on February 16, 2004, thus overlapping with his principal suspension resulting from the previous disciplinary action. Taken together, the two actions caused Kunz to be suspended from association with a member in any principal capacity from May 5, 2003 to August 16, 2004.

Notwithstanding the principal suspensions described above, Kunz functioned as a principal of IMC at various times between approximately May 5, 2003 and August 16, 2004. Kunz engaged in the day-to-day management of the firm's investment banking and securities business by initiating and directing the Firm's participation in the VesCor private placements described above. Further, Kunz was designated as the firm's Anti-Money Laundering contact and compliance officer and as the principal responsible for continuing education.

The foregoing conduct was inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Conduct Rule 2110 by Kunz. Such conduct constituted functioning in a principal capacity without qualifying in the manner specified in the

NASD Membership and Registration Rules and thus, resulted in a violation of Membership and Registration Rule 1021 by Kunz.

HORNE VIOLATED NASD CONDUCT RULES 3010 AND 2110 BY FAILING TO SUPERVISE KUNZ AND IMC

As noted above, IMC, acting through Kunz, failed to comply with sanctions imposed upon the Firm in the NASD Disciplinary Decision by participating in four private placements in the capacity of primary placement and sales agent without satisfying the requirement to first obtain an independent consultant.

Horne became aware in or about December 2002, of the SEC decision, which affirmed the requirement to retain an independent consultant. Moreover, in April 2003, Horne executed and filed, or caused to be filed, an amendment to IMC's Form BD disclosing the Tenth Circuit decision against Kunz and the Firm, that was issued on March 28, 2003. The Form BD amendments cited the case number and described the violations, monetary fines and the all-capacities and principal suspensions levied against either the Firm and/or Kunz.

Horne either knew of the independent consultant requirement as set forth in the Decision or acted with reckless disregard by failing to apprise himself of the sanctions imposed in the Decision. Moreover, Horne knew of the Firm's involvement in the VesCorp [sic] Monthly Income and Accrual Notes and the VesCorp [sic] IV Monthly Income and Accrual Notes. Horne, as the Firm's President and Chief Compliance Officer was responsible for ensuring that the Firm complied with the terms of the Disciplinary Decision. Yet, he knowingly or recklessly permitted

the Firm to participate in these four VesCor offerings, without satisfying the requirement to first hire an independent consultant. In so doing, Horne failed to supervise the activities of IMC and Kunz in a manner reasonably designed to cause the Firm to comply with the sanctions imposed in the Decision.

In addition Horne knew or should have known that Kunz was not permitted to act as a General Securities Principal from May 5, 2003, through August 15, 2004. Notwithstanding his knowledge that Kunz was suspended in all principal capacities, Horne failed to supervise Kunz in a manner reasonably designed to prevent Kunz from functioning in such capacities while suspended.

By reason of his failure to supervise the activities of IMC and Kunz, Horne violated NASD Conduct Rule 3010. Further, by failing to supervise the activities of IMC and Kunz, Horne engaged in conduct that was inconsistent with high standards of commercial honor and just and equitable principles of trade, thereby violating Conduct Rule 2110.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offers are in the public interest, are sufficiently remedial to deter Respondents from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that:

Respondent IMC be expelled from FINRA membership; and

Respondents Horne and Kunz be barred from associating with any FINRA member in any

capacity.

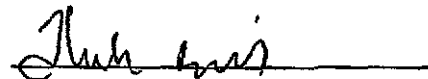
The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to IM-8310-3(e), a bar or expulsion shall become effective upon approval or acceptance of this Order.

SO ORDERED.

January 14, 2008

FINRA

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



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