

**NASD  
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant

v.

**GunnAllen Financial, Inc.**

Broker-Dealer

[CRD No. 17609],

**Jay Marc Israel,**

Associated Person

[CRD No. 1525260]

Respondents

Disciplinary Proceeding  
No. 2005002392101

Hearing Officer: DMF

**ORDER ACCEPTING  
OFFER OF SETTLEMENT**

Date: January 25, 2007

**INTRODUCTION**

Disciplinary Proceeding No. 2005002392101 as filed on May 16, 2006, by the Department of Enforcement of NASD ("Complainant"). Respondent GunnAllen Financial, Inc. submitted an Offer of Settlement ("Offer") to Complainant on January 17, 2007. Pursuant to Code of Procedure Rule 9270(e), the Complainant and the National Adjudicatory Council ("NAC") Review Subcommittee or the Office of Disciplinary Affairs ("ODA") have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to Code of Procedure Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented for the purpose of this proceeding only, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding in which NASD is a party, to the entry of findings of facts and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by NASD.

### **FINDINGS AND CONCLUSIONS**

It has been determined that the Offer be accepted and that findings be made as follows<sup>1</sup>:

### **BACKGROUND**

1. Respondent GunnAllen is currently and was during all times relevant hereto an NASD member firm subject to NASD jurisdiction.
2. During the period from on or about March 27, 2003, through on or about June 24, 2005 (the "relevant time period"), NASD's Web-based Central Registration Depository ("Web CRD") required authorized users to check an acknowledgement box prior to running a CRD search, stating the following:

By selecting this option, I acknowledge that I am considering this person for registration or assignment to responsibilities subject to

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<sup>1</sup> The findings herein are pursuant to Respondent GunnAllen Financial, Inc.'s Offer of Settlement and are not binding on any other party named as a respondent in this or any other proceeding.

..... federal law or SEC rules governing statutory disqualification and  
..... have obtained and will keep on file this person's written consent to  
..... review his/her CRD record for that purpose.

From March 27, 2003, through March 7, 2004, however, the word  
"employment," rather than the phrase "registration or assignment to  
responsibilities subject to federal law and SEC rules governing  
statutory disqualification" was found in the foregoing  
acknowledgement box.

3. On or about March 14, 2005, Web CRD added a warning beneath the  
acknowledgement box that states:

Conducting a Pre-registration search without the written consent of  
the person that is the subject of the search is a violation of the  
agreement governing your use of Web CRD (NASD Entitlement  
Program Agreement and Terms of Use) and may result in  
termination of your access to Web CRD, NASD disciplinary  
actions against you or your firm or other adverse consequences.

**FIRST CAUSE OF COMPLAINT**  
(NASD Conduct Rule 2110 against Respondents Israel and GunnAllen)

4. Complainant realleges and incorporates by reference paragraphs 1-4 above.
5. At least 205 of the Web CRD searches Respondent Israel conducted during the  
relevant time period pertained to individuals who were not seeking registration or  
assignment with GunnAllen.
6. GunnAllen, acting through Respondent Israel, failed to obtain written consent to  
conduct any of the aforementioned 205 Web CRD searches, and falsely certified that  
written consent had been obtained.

7. During the relevant time period and without obtaining prior written consent, GunnAllen, acting through Respondent Israel, conducted Web CRD searches for at least the following unauthorized purposes:
- a. To gain an information advantage in litigation involving GunnAllen and third parties;
  - b. To gather information to provide to third parties as a business courtesy in the hopes of getting a future referral of business;
  - c. To provide third parties for whom Israel rendered consulting or advisory services with information not related to GunnAllen or outside counsel to GunnAllen; and
  - d. To learn the background of various individuals not seeking employment with GunnAllen, including but not limited to, industry regulators.
8. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 by Respondents Israel and GunnAllen.

SECOND CAUSE OF COMPLAINT  
(NASD Conduct Rule 2110 and 3010 against Respondent GunnAllen Financial, Inc.)

9. Complainant realleges and incorporates by reference paragraphs 1-9 above.
10. During the relevant time period, GunnAllen failed to establish and maintain written procedures to supervise the use of Web CRD, failed to supervise the use of Web CRD to ensure that the requisite written consents were obtained prior to conducting all Web CRD searches, and failed to ensure that all Web CRD searches were conducted for authorized purposes.

11. ~~As a result of the foregoing supervisory failures, GunnAllen failed to obtain the~~  
required written consent in connection with at least 205 Web CRD searches  
conducted by Respondent Israel during the relevant time period.
12. Such acts, practices, and conduct constitute separate and distinct violations of NASD  
Conduct Rules 2110 and 3010 by Respondent GunnAllen.

By virtue of such conduct, GunnAllen Financial violated NASD Conduct Rules 3010 and  
2110.

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

### **SANCTIONS**

It is ordered that a censure and a monetary fine in the amount of \$50,000 be assessed against  
GunnAllen Financial, Inc.

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The sanctions imposed herein shall be effective on a date set by NASD staff.

SO ORDERED.

NASD

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

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