

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2006005546003**

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REGISTRATION & DISCLOSURE

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

RE: Brian Berkowicz, Respondent
CRD No. 4787371

Pursuant to NASD Rule 9216 of FINRA's Code of Procedure, 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

Respondent Brian Berkowicz (CRD No. 4787371) ("Berkowicz") first became registered with FINRA (f/k/a National Association of Securities Dealers, Inc. or NASD) as a General Securities Representative in 2004. From June 14, 2004 through September 1, 2006, Berkowicz was registered as a General Securities Representative and Registered Principal of SAMCO Financial Services, Inc. ("SAMCO"). Berkowicz has not been registered with any member firm since his registration with SAMCO was terminated on September 1, 2006. FINRA retains jurisdiction over Berkowicz pursuant to Article V, § 4(a) of the By-Laws since the conduct which serves as the basis for this action commenced prior to his termination of registration from a member firm and this AWC is filed within two years after the effective date of his termination of registration from a member firm.

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OVERVIEW

During the relevant period of June 14, 2004, through September 1, 2006, Respondent Berkowicz made recommendations to 3 customers to open accounts with SAMCO for purposes of buying and selling Collateralized Mortgage Obligation ("CMO") securities. Each of these customers opened accounts, invested in CMOs, and incurred substantial losses. Based upon the financial situations and needs of his customers, Berkowicz did not have reasonable grounds to believe that his recommendations to these customers to invest in CMOs were suitable. As a result, Berkowicz's recommendations violated NASD Conduct Rules 2310 and 2110. Further, in recommending that customers invest in CMOs, Berkowicz made misstatements of material fact and omitted material facts in connection with the CMO investments, in violation of NASD Conduct Rules 2120 and 2110, and Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder.

Berkowicz knew at the time that he opened accounts for his customers that another registered representative would be exercising discretion over the accounts. Yet at no time did Berkowicz obtain written authorization signed by any of his clients and a firm principal, in order to authorize Berkowicz or anyone at the firm to exercise discretion in any of his customer accounts. Berkowicz was aware that all of his clients had non-discretionary accounts and that he needed to get authorization from his clients before each and every trade. Berkowicz, nonetheless, delegated the authority to this other individual to (a) select particular CMO investments for his customers; (b) decide how much of the security his customers would buy and when; and (c) decide how much margin borrowing would be utilized to purchase CMOs. By allowing this other representative to exercise discretionary authority in 24 of his customers' accounts in this manner, Berkowicz violated NASD Conduct Rules 2510(b) and 2110.

FACTS AND VIOLATIVE CONDUCT

Inverse Floating Rate CMOs

A CMO is a security that pools together mortgages and issues shares, called tranches, with various characteristics and risks. The underlying mortgages serve as the collateral for the CMO and provide principal and interest payments, which are directed to the various tranches and paid to shareholders.

One of the most volatile and risky CMO tranches is the inverse floater CMO ("inverse floater"). An inverse floater is a type of tranche that pays an adjustable rate of interest that moves in the opposite direction from movements of an interest rate index, such as the London Interbank Offered Rate ("LIBOR"). Inverse floaters are thinly traded securities which trade in the over-the-counter market. FINRA informed members as

early as 1993 that inverse floaters "are only suitable for sophisticated investors with a high-risk profile."¹

Inverse floaters typically are highly leveraged and vulnerable to a high degree of price volatility as interest rates move. An increase in the interest rate index decreases the interest rate of an inverse floater and subsequently, the interest earned by the CMO holder. Rising interest rates also generally reduce the prepayment speeds of inverse floaters because home owners are less likely to refinance their mortgages. Although most mortgages include at least a partial repayment of principal with each payment, refinancing results in large principal payments before the expiration of the loan. A slow down in home refinancing may result in a decrease in principal payments to the CMO owner. The smaller repayment of principal extends the maturity date and keeps the owner's investment tied up in the CMO, potentially for as much as 30 years. In addition, an increase in the index reflects an increase in prevailing interest rates, which further decreases the value of the inverse floater. Should the CMO owner need to sell the security on the open market, the trading price could be significantly lower than the original purchase price. Furthermore, inverse floaters generally are traded for institutional clients. Therefore, trades of smaller denominations can be difficult to execute without being subjected to lower than market pricing.

Due to the fact that each inverse floater tranche is uniquely structured and thinly traded, prices used for valuation purposes are determined using theoretical pricing models. These prices are strictly best estimates of value and can vary substantially from prices obtained through actual bidding or market offerings. Consequently, the risk of inverse floaters can be exacerbated by the use of margin borrowing given that the value of the underlying asset is difficult to ascertain until it is actually offered for sale on the market.

SAMCO's Boca Raton Branch Office

During the relevant period of June 14, 2004, through September 1, 2006, Berkowicz was one of eight registered persons working in SAMCO's Boca Raton, Florida branch office. During this period, the business conducted in the Boca Raton branch office consisted almost entirely of investing in inverse floaters.

The head of that branch office, JLS, was a self-proclaimed expert in highly complex mortgage backed securities and its derivative CMOs. JLS's business focused almost exclusively on purchasing large par amounts of inverse floaters and allocating the shares among the branch's retail customer accounts, utilizing margin borrowing to finance the customers' investments, in some cases borrowing twice or three times as much as the equity the customer initially deposited. Within the branch office, Berkowicz and seven other registered representatives were responsible for soliciting potential retail customers to invest in JLS's CMO program. Berkowicz prospected for potential retail

¹ NASD Notice to Members 93-73, Members' Obligations to Customers When Selling Collateralized Mortgage Obligations (CMOs), at 3.

CMO investors by attending networking events and contacting local Certified Public Accounts in the area.

After Berkowicz and the other representatives opened the customers' accounts, JLS employed a trading strategy of buying and selling the same inverse floater for large numbers, or even all, of the branch office's retail customers. JLS determined which inverse floaters to purchase and how shares were to be allocated to individual customers' accounts. In addition, JLS decided how to utilize margin borrowing to fund additional CMO purchases for customers. None of the branch office's customers provided the firm with written authorization for the firm or any of its representatives to exercise discretionary authority over their accounts.

Berkowicz's Recommendations to Customers

At the time that Berkowicz recommended that a customer open an account for the purpose of investing in JLS's CMO program, he was responsible for ensuring that such an investment was suitable for the customer based upon the customer's financial condition. Indeed, NASD Conduct Rule 2310 required Berkowicz to have reasonable grounds for believing that the recommendation was suitable for that customer, based upon the facts disclosed by the customer as to his other security holdings, financial situation and needs. Berkowicz failed to conduct adequate suitability assessments and, as a result, he made numerous unsuitable recommendations to customers who were unsophisticated investors with low risk profiles. These recommendations violated NASD Conduct Rules 2310 and 2110.

In connection with making these unsuitable recommendations to customers, Berkowicz also recklessly made material misrepresentations and/or omitted material information as detailed below in violation of NASD Conduct Rules 2120 and 2110, and Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder.

I. Customer MO

In July 2005, Berkowicz contacted MO and recommended that she open an account with him at SAMCO to invest in CMOs. MO was 32 years old at the time and self-employed. Although MO's new account form reflects 5 years of investment experience in bonds, in actuality, MO was a non-sophisticated investor whose only previous investment experience consisted exclusively of certificates of deposit. The investment experience was not the only incorrect information on MO's new account form. Her new account form stated that her annual income was between \$40,000 and \$64,999, she had net worth between \$500,000 and \$1 million, and liquid net worth between \$125,000 and \$249,999. MO did not, however, have a net worth within that range.

Moreover, the only investment objective indicated on MO's paperwork was "Speculative." Yet, MO clearly was not a speculative investor. When discussing the investment with Berkowicz in July 2005, MO explained to Berkowicz that she would be

relying on interest payments from this investment. After promoting the CMO investment, Berkowicz recommended that MO invest in CMOs despite having no reasonable grounds for believing inverse floaters were suitable investments for her given her limited investment experience, investment objectives, and income needs.

In connection with recommending the CMO program to MO, Berkowicz materially misrepresented to her that inverse floaters were secured government bonds that would return 30% to 100%. In fact, a principal guarantee only applied if MO held the inverse floater until maturity and rising interest rates can extend the expected maturity date of the investment. Further, there is no way to accurately predict investment returns. Berkowicz also omitted material information in discussing and recommending the CMO investment program to MO. Specifically, Berkowicz failed to discuss specific characteristics and risks inherent in inverse floaters. Berkowicz also failed to discuss with MO the use and extent of margin borrowing, in either dollar or percentage terms, that would be exercised in her account.

In July 2005, based upon Berkowicz's recommendation, MO opened an account at SAMCO with an initial deposit of \$140,000, which was her entire liquid net worth. There were a total of four different inverse floaters purchased in MO's account during the relevant period. In August 2005, the first inverse floater purchase was made at a cost of \$117,985.24. Later in August 2005, a second inverse floater was purchased at a cost of \$281,272.17. Because no additional funds were deposited into the account, MO used \$259,257.41 of margin borrowing to fund the two purchases. This margin borrowing exceeded MO's entire liquid net worth and created an unsuitable amount of loss exposure in the account. These two CMOs were sold from the account during April and June 2006. The sales resulted in a realized loss of \$68,473.61.

Two additional CMOs were purchased on April 4, 2006 at costs of \$285,365.04 and \$11,180.79. These securities were still in MO's account on May 31, 2006. Due to a decrease in the value of the remaining securities, MO was issued a margin call for \$97,182.67. MO did not contribute any additional funds to her account after the initial investment of \$140,000. Therefore, the remaining securities were sold to satisfy MO's margin obligations. Because MO did not deposit additional funds, the proceeds from these sales along with her initial investment of \$140,000 were used to satisfy her margin obligations. This resulted in a total loss to MO of her entire investment of \$140,000 which represented all of her liquid net worth.

2. Customers VM and EP

In February 2005, VM and EP were contacted by Berkowicz and solicited to open an account at SAMCO to invest in CMOs. VM and EP, her daughter, were 57 and 31 years old, respectively, when their account was opened and were both employed as sales managers at the same company. Their new account form listed their household income

between \$40,000 and \$64,999, their net worth between \$500,000 and \$1 million, and liquid net worth between \$125,000 and \$249,999. Their new account form indicated previous investment experience, including 20 years with stocks and 5 years with bonds. That investment experience, however, suggests that VM and EP were more sophisticated than they actually were. In 1993, VM inherited, in part, a brokerage account in a divorce settlement. While investments in stocks and bonds were made on VM's behalf in that account, she herself did not make the investment decisions in that account and relied exclusively on the registered representative of that account for investment guidance and advice.

VM was a conservative investor who opened an account based upon Berkowicz's representations that the CMO program was a safe investment. Despite VM and EP's financial condition, risk profile, and level of sophistication, Berkowicz recommended that they open an account at SAMCO for the sole purpose of investing in inverse floaters. Not only was the investment program unsuitable for VM and EP, they did not possess the financial resources to support the margin use in their account.

In February 2005, VM and EP opened an account for the purpose of investing in inverse floaters at SAMCO with an initial deposit of \$25,000. On March 23, 2005, using their initial investment plus \$55,970.67 in margin borrowing, an inverse floater was purchased on their behalf. This margin debt represented between 86% and 139% of VM and EP's annual income based upon the range provided in their new account form. This security was subsequently sold in August 2005 for a realized loss of \$4,389.46. In May 2005, another inverse floater was purchased for VM and EP's account. This purchase for \$10,128.44 was also funded using margin borrowing. This CMO was sold on March 17, 2006 for a realized loss of \$2,161.13.

Inverse floaters were also purchased for VM and EP's account on August 17, 2005 and March 17, 2006. By May 31, 2006, the value of these two CMOs declined substantially and VM and EP were issued a margin call for \$11,915.33. The two securities were subsequently sold to satisfy VM and EP's margin obligations. The total account losses totaled \$29,870.60, which exceeded the customers' initial investment.

3. Customer KW

In February 2005, Berkowicz spoke with KW and recommended that he open an account at SAMCO for purposes of investing in CMOs. At the time of the account opening, KW was 69 years old and retired. The customer's new account form, indicated household income between \$40,000 and \$64,999, net worth over \$1 million, and liquid net worth between \$125,000 and \$249,999. KW's previous investment experience consisted largely of investments through his retirement accounts. KW invested primarily in growth mutual funds in these accounts as opposed to individual stocks and bonds. In fact, KW had never purchased any individual bonds. As he approached retirement, the

majority of the assets in his retirement accounts were switched to more conservative income funds. KW sought a secure investment to provide additional income in his retirement. KW did not possess the level of sophistication, high risk profile or the financial resources necessary to make inverse floaters a suitable investment for him. Moreover, the extensive use of margin in KW's account to fund inverse floaters was also unsuitable given his financial condition and retiree status. Nonetheless, Berkowicz recommended KW open an account at SAMCO for the purpose of investing in the CMO program.

In connection with recommending the CMO program to KW, Berkowicz misrepresented that his principal was guaranteed because the issuer of the inverse floater could not default. Berkowicz did not disclose that the principal guarantee for inverse floaters applied only if the customer held the inverse floater to maturity and that rising interest rates could extend the expected maturity date of the investment. Berkowicz also falsely represented to KW that the income earned from the CMO investments would always be sufficient to cover the costs of margin borrowing. This is false since a rising interest rate environment can create a situation where the costs of margin borrowing exceed any interest earned from an inverse floater.

In February 2005, KW opened an account at SAMCO with an initial investment of \$25,000. On March 30, 2005, an inverse floater was purchased using the initial investment and \$55,970.67 in margin borrowing. This margin borrowing represented between 86% and 139% of the customer's annual income based upon the ranges provided in the new account form. This inverse floater was subsequently sold in November 2005 for a realized loss of \$12,808.

The proceeds from the November 2005 sale were used to fund a second purchase of a CMO for \$69,304 on November 28, 2005. Margin borrowing again was utilized to help fund the purchase. This CMO was sold on June 27, 2006 for a realized loss of \$15,087.44. In total, KW suffered realized losses of \$26,731.65, which exceeded his principal investment.

Berkowicz Improperly Exercised Discretionary Authority in Customer Accounts

Berkowicz knew at the time that he opened accounts for his customers that JLS would be exercising discretion over the accounts. At no time did Berkowicz obtain written authorization signed by any of his clients and a firm principal, in order to authorize Berkowicz, JLS or the firm to exercise discretion in any of his customer accounts. Berkowicz was aware that all of his clients had non-discretionary accounts and that he needed to get authorization from his clients before each and every trade. Berkowicz, nonetheless, delegated the authority to JLS to (a) select particular CMO investments for his customers; (b) decide how much of the security his customers would buy and when; and (c) decide how much margin borrowing would be utilized to purchase

CMOs. Due to Berkowicz allowing JLS to control all of the trading in his customers' accounts in this manner, Berkowicz's customers were not always contacted by Berkowicz or anyone else at SAMCO for trade authorization prior to trades being executed in their accounts. As a result, Berkowicz improperly exercised discretionary authority in 24 customer accounts in violation of NASD Conduct Rules 2510(b) and 2110.

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

A bar from associating with any member firm in any and all capacities.

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

Respondent understands that if he is barred from associating with any FINRA member, he becomes subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, Respondent 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 NASD Rule 8310 and IM-8310-1.)

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against him;
- 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, 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 NASD Rule 9143 or the separation of functions prohibitions of NASD 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 NASD Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against him; 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 him;
 - 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 NASD Rule 8310 and IM-8310-3; 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 he 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.

Respondent certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that he 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 him to submit it.

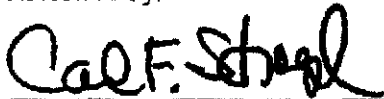
6/16/08

Date



Respondent Brian Berkowicz

Reviewed by:



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Schoeppl & Burke, P.A.
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Boca Raton, FL 33431-5133
Counsel for Respondent

Accepted by FINRA:

Date July 21, 2008

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



Samuel L. Israel

Associate Vice President And Chief
Counsel

FINRA Department of Enforcement

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