

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO: 20060064060-01**

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

RE: Robert Joseph Cole, Respondent
CRD No. 1631160

Pursuant to NASD Rule 9216 of FINRA's Code of Procedure, I submit 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 me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. I hereby accept and consent, 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

Robert Joseph Cole was registered with various member firms of FINRA (f/k/a NASD) from 1989 to October 2007. In 1989 Cole became associated with a FINRA member firm and was terminated in December 1995 for failure to follow corporate policy by selling away. He became associated with another FINRA member firm in December 1995 and was discharged in May 2004 for disseminating non-business related, inappropriate emails. Cole was associated with Leonard & Co. from May 2004 to October 2007 as a registered representative in Leonard's Troy, Michigan branch office. In a Form U-5 filed in November 2007, Leonard stated that it had terminated Cole's registration for violations of the firm's "penny stock policy and management's belief that Mr. Cole engaged in inappropriate dealings with representatives of a publicly traded issuer."

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OVERVIEW

Over the course of several months in the second half of 2006, while a registered representative with Leonard & Co., Cole sold millions of unregistered shares of a penny stock company, Shallbetter Industries, out of accounts at Leonard that he knew were owned and controlled by insiders of Shallbetter. These sales generated millions of dollars for the insiders, and coincided with an "investor relations" or "IR" campaign on behalf of Shallbetter. This campaign included email spam and caused price and volume spikes in Shallbetter trading, which the insiders had predicted to Cole. The insiders told Cole about the upcoming IR campaign, leading Cole to purchase Shallbetter shares for his own account and for two customers. Further, in the midst of this IR campaign, Cole solicited purchases of Shallbetter for other customers for the purpose of stabilizing the price of Shallbetter stock and maximizing the profits for the insiders who were selling millions of shares of Shallbetter.

By virtue of these actions, Cole violated multiple provisions of the federal securities laws and FINRA's rules. He violated Section 5 of the Securities Act of 1933 and thereby NASD Rule 2110 by participating in a public distribution of unregistered shares of Shallbetter without an exemption from registration; Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder, and NASD Rules 2110 and 2120 by participating in a scheme to manipulate the price of Shallbetter stock; and Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder and NASD Rule 2110 by recommending and purchasing Shallbetter stock while in possession of material, nonpublic information provided by insiders. Cole also violated NASD Rules 2315 and 2110 by failing to conduct and document an adequate review of Shallbetter, an OTC equity security, prior to recommending its purchase to customers; and violated NASD Rules 2210 and 2110 by distributing communications to the public that failed to comply with applicable content standards and disclosure requirements.

FACTS AND VIOLATIVE CONDUCT

CM had been a client of Cole's since 1997. Cole joined Leonard in May 2004 and CM opened his brokerage account at Leonard in June of 2004. Between August 2004 and November 2004, CM transferred into accounts at Leonard millions of unregistered shares of Shallbetter, most in certificate form with a restrictive legend affixed.

Before August 2006, Shallbetter was a thinly-traded penny stock quoted on the OTCBB and Pink Sheets and predominantly owned by insiders. Shallbetter purported to own three mineral exploration licenses and interests in Outer Mongolia. On August 25, 2006, the first of three price and trading volume spikes in Shallbetter occurred. This and two additional spikes – on September 8, 2006 and October 30, 2006 – occurred at the same time as an email spam campaign touting Shallbetter as a "quick rising stock" and "a good long-term winner." Three retail accounts at Leonard & Co. in the names of CM, and CM's sons SM and TM (collectively, "M Accounts"), sold Shallbetter at or near the time of the three volume and price spikes. Cole was the registered representative for the M Accounts and for four other Leonard retail accounts that purchased or sold Shallbetter stock during this time period, including his own trust account and his mother's account.

Between August 1, 2006 and November 6, 2006, the M Accounts sold more than 2 million shares of Shallbetter, earning more than \$3.1 million in proceeds, and they wired more than \$2.2 million of the proceeds to U.S. and overseas bank accounts. During this period, Cole earned \$50,166 for his activities in connection with the sale of Shallbetter stock: \$16,838 in profits from his personal trading; \$708 in commissions from solicited trades; and \$32,620 in commissions from CM's, SM's, and TM's trades.

During five days of that period, from October 30 through November 3, 2006, Cole sold 1,685,820 shares of Shallbetter from CM's accounts at Leonard into the open market, accounting for more than 20 percent of the total trading during this period and earning proceeds of more than \$2.68 million. As of February 16, 2006, Shallbetter had 20,397,787 shares outstanding. Thus, during this 5-day period, Cole sold more than 8 percent of the issued and outstanding shares of the company on behalf of CM.

Cole Participated in a Scheme to Manipulate the Price of Shallbetter Stock; Purchased and Recommended Purchases of Shallbetter Stock While in Possession of Material Nonpublic Information; and, Knowing His Client to be an Affiliate and Statutory Underwriter of Shallbetter, Participated in the Public Distribution of Unregistered Shallbetter Stock

In May 2006, Cole sent a "Broker's Request for Legend Removal" on behalf of CM, SM, and TM to obtain removal of the restrictive legend from the certificates for the 2.1 million Shallbetter shares that had been placed in the M accounts. In his request for a legal opinion from counsel, Cole claimed that the Shallbetter "shares were acquired and fully paid for, for a period of not less than two years; and that [CM] is not and has not been an affiliate of the issuer during the past three (3) months." At the time that Cole made this representation, however, he knew facts that, taken together, indicated that CM was an affiliate of Shallbetter. After counsel prepared a legal opinion in response to Cole's request, Cole submitted the legal opinion and additional documentation to Leonard's clearing firm in support of a request that the restrictive legend be removed from the certificates. The clearing firm in turn forwarded the request to the transfer agent to initiate the request for legend removal. By June 14, 2006 the restricted legend had been removed from 2.1 million Shallbetter shares in the M Accounts.

In February 2006, Cole had been informed by Shallbetter insiders of the firm's plans to conduct an "investor relations" or IR campaign. In a June 8, 2006 email, TW, Shallbetter president and CM's partner, told Cole that "the IR guys are ready to go as soon as we get the [Shallbetter] shares in the accounts" and requested that Cole buy some shares of Shallbetter to "shore up the price" in expectation of the IR campaign. Cole responded with an email stating, "As far as buying -- happy to oblige -- but need these instructions from account owner. Besides we do not have shares right now so I would think you'd want to try and impact price closer to date of IR program. You tell me." About a week later Cole entered a bid to purchase Shallbetter shares for the purpose of supporting the price of the stock.

The IR campaign relating to Shallbetter began in late August 2006 with a spam email campaign and the issuance of the first in a series of press releases from Shallbetter. From August 25, 2006 to the conclusion of the IR campaign on November 3, 2006, an increasing number of spam messages were sent and coincided with price and volume spikes in the market for

Shallbetter stock. During roughly the same period, from August 28 to November 3, 2006, Shallbetter issued six press releases containing business updates and employment announcements. During this period of time, Cole sold more than 2 million shares of Shallbetter on behalf of TM, resulting in more than \$3.1 million in proceeds.

Cole knew, based on numerous facts, that CM was affiliated with Shallbetter and that he was involved in a distribution of Shallbetter stock. First, CM and Shallbetter shared the same address. CM was closely associated with Shallbetter's management and lived with TW, the President of Shallbetter from September 2003 to August 2006 and a Shallbetter board member. TW also directed Cole to undertake trading and transfer activity in CM's account. CM paid legal and auditing expenses for Shallbetter using Shallbetter shares in his account at Leonard or the proceeds from the sale of Shallbetter stock. Cole also knew that CM exercised control over the activity in and benefited from the proceeds of his sons' accounts at Leonard. As a result, Cole controlled over 10% of the outstanding stock of Shallbetter. Among other indicia, CM sent an email to Cole requesting that Cole call a banker on CM's behalf, stating, "I need him to understand the boys [sic] portfolio is also mine."

Cole placed trades and solicited Shallbetter purchases before and during the IR campaign for the purpose of stabilizing the price of Shallbetter on days when he was selling on behalf of CM. Cole also purchased Shallbetter stock while in possession of material nonpublic information obtained from corporate insiders and recommended the purchase of Shallbetter stock to customers while in possession of and based on such information. This information included the details of the planned IR campaign that was designed to increase the trading price of Shallbetter stock. TW told Cole about the IR campaign in the context of TW's request that Cole buy shares of Shallbetter to "shore up the price" in advance of the campaign.

With the knowledge that Shallbetter was about to conduct an IR campaign, Cole bought 15,000 Shallbetter shares for his own account on August 11 and August 18, 2006, and solicited purchases of 5,000 Shallbetter shares each for two client accounts on August 25, 2006. Three days after this last purchase, Shallbetter began its IR campaign.

Cole Failed to Conduct an Adequate Review of Shallbetter Prior to Recommending Purchases of Shallbetter Stock.

Cole failed to review Shallbetter's financial statements and material business information prior to soliciting his clients to purchase Shallbetter. Cole solicited three of his customers to purchase a total of 20,000 shares of Shallbetter in 2006, yet did not review the SEC filings or any other financial information for Shallbetter prior to the recommendations and did not document any review of Shallbetter, as required by Rule 2315.

Cole Distributed Communications to the Public that Failed to Comply with Applicable Content Standards and Disclosure Requirements.

Cole sent and forwarded thousands of emails from his Leonard email account to customers and prospective customers touting various penny stocks. For example, he sent

customers emails stating that a security (other than Shallbetter) "ha[s] grown significantly over the last few years and [is] expected to keep growing;" "could be huge;" and is "current[ly] at 55 cents – I am looking for several dollars in the next year." In other email messages concerning an IRA portfolio, Cole wrote that he "anticipate[d] good movement based on earnings – maybe a few bucks in the next few months."

Cole also failed to disclose the name of his member firm and his relationship with the firm in his emails to customers and prospective customers, as required by Rule 2210(d)(2)(C). In addition, he sent numerous emails that attached sales literature and independently prepared reprints that were not approved by a principal of his firm prior to use as required by Rule 2210(b)(1). Finally, Cole distributed institutional sales material to non-institutional investors via email.

VIOLATIONS

Cole Violated Section 5 of the Securities Act of 1933 and NASD Rule 2110.

Broker-dealers violate Section 5 if they (1) offer or sell securities for which no registration statement was filed or in effect and (2) make the offering or sale through interstate commerce or the mails, where no exemption from registration is available. Because of their positions as gatekeepers to the public markets, brokers have a responsibility under certain circumstances to conduct a "searching inquiry" to ensure they are not acting in violation of Section 5:

[A] dealer who offers to sell, or is asked to sell a substantial amount of securities must take whatever steps are necessary to be sure that this is a transaction not involving an issuer, person in a control relationship with an issuer or an underwriter. . . . [W]here the surrounding circumstances raise a question as to whether or not the ostensible sellers may be merely intermediaries for controlling persons or statutory underwriters, then searching inquiry is called for.

Distribution By Broker-Dealers of Unregistered Securities, Exchange Act Rel. No. 4445, 27 Fed. Reg. 1251 (1962).

As outlined above, Cole sold millions of unregistered shares of Shallbetter into the public markets. In addition, no exemption applied to the sale of Shallbetter shares conducted by Cole on behalf of his customers. Cole knew that CM was participating in a distribution of Shallbetter stock, that CM effectively controlled 10% of the shares of Shallbetter, and that CM was closely associated with Shallbetter management and was an affiliate of the company. Cole thus violated Section 5 and thereby Rule 2110.

Cole Violated Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder, and NASD Rules 2120 and 2110, by Participating in a Scheme to Manipulate the Price of Shallbetter Shares.

"Manipulation is the creation of deceptive value or market activity for a security, accomplished by an intentional interference with the forces of supply and demand."¹ It includes activities such as "creating the false impression that certain market activity is occurring when in fact such activity is unrelated to the actual supply and demand."²

As described above, in February 2006, Cole was informed of Shallbetter's plans to conduct an IR campaign. On June 8, 2006, TW requested that Cole buy shares of Shallbetter to "shore up the price" in advance of the IR campaign. Cole assisted in that effort, approximately one week later, by entering a bid for the purpose of supporting the price of Shallbetter's stock. Then, in August 2006, Cole entered and later canceled a buy order that artificially raised the price of Shallbetter stock.

By engaging in this conduct, Cole was participating in a scheme to manipulate the price of Shallbetter shares, in violation of Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder, and NASD Rules 2120 and 2110.

Cole Violated Section 10(b) of the Exchange Act and SEC Rule 10b-5 thereunder and NASD Rule 2110 by Purchasing and Recommending Purchases of Shallbetter Stock While in Possession of Material Nonpublic Information.

Cole purchased Shallbetter securities and recommended that others do so based on material nonpublic information provided by corporate insiders, including knowledge of a pending IR and promotional campaign for Shallbetter. He purchased 15,000 shares for his own account on two occasions in August 2006 and solicited trades of 5,000 shares each for two clients on August 25, 2006, while in possession of this material nonpublic information acquired from corporate insiders. As a result, Cole violated Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder, and Rule 2110.

Cole Violated NASD Rules 2210 and 2110 by Distributing Materials that Failed to Comply with Applicable Content Standards and Disclosure Requirements.

Rule 2210(d) establishes the content standards for communications with the public, and provides in pertinent part that:

All member communications with the public shall be based on principles of fair dealing and good faith and should provide a sound basis for evaluating the facts in regard to any particular security or securities or type of security, industry discussed, or service offered.

¹ *In re Swartwood, Hesse, Inc.*, Exchange Act Rel. No. 31212, 52 S.E.C. Docket 1557, text acc. n.16 (Sept. 22, 1992); *Sullivan & Long v. Scattered Corp.*, 47 F.3d 857, 864 (7th Cir. 1995); *SEC v. Kimmes*, 799 F. Supp. 852, 859 (N.D. Ill. 1992).

² *Hundahl v. United Benefit Life Insurance Co.*, 465 F. Supp. 1349, 1360 (N.D. Tex. 1979).

No material fact or qualification may be omitted if the omission, in the light of the context of the material presented, would cause the communication to be misleading.

Communications with the public include, *inter alia*, correspondence, sales literature, institutional sales material, and independently prepared reprints. Correspondence is defined in Rule 2211(a)(1), and "consists of any written letter or electronic mail message" distributed to one or more existing customers and fewer than 25 prospective customers within in any 30 day period. Sales literature is defined in Rule 2210(a)(2) as any written or electronic communication with the public which does not meet the definition of correspondence, institutional sales material or independently prepared reprints. Rule 2210(b)(1) requires that a registered principal approve each item of advertising and sales literature.

As set forth more fully above, Cole sent numerous emails from his Leonard email account to customers and prospective customers that constituted communications with the public, and were subject to Rule 2210. The emails customers contained numerous statements touting various stocks. At least 17 of those e-mails contained insufficient risk disclosures, were not fair and balanced, contained inappropriate performance projections, failed to disclose the name of his firm and his relationship with the firm, and attached sales literature and independently prepared reprints that had not been approved by a principal. These activities violated Rule 2210 and 2110.

Cole Violated NASD Rule 2315 by Failing to Conduct an Adequate Review of Shallbetter before Recommending its Purchase.

NASD Conduct Rule 2315 requires that, before a member or associated person recommends the purchase of a stock not listed on a national exchange or NASDAQ and that does not qualify for transaction reports via the Consolidated Tape, the member or associated person review the current financial statements and current material business information about the issuer, and make a determination that such information, and any other information available, provides a reasonable basis for making the recommendation. The rule also requires documentation of the information reviewed, the date of the review, and the identity of the reviewer.

As described above, Cole failed to conduct or document a review of Shallbetter's financial statements and material business information to develop a reasonable basis for soliciting his clients to purchase Shallbetter. Cole solicited three of his customers to purchase Shallbetter in 2006, but did not review the SEC filings or any other financial information for Shallbetter prior to the recommendations. Therefore, Cole violated Rule 2315.

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

1. A permanent bar from associating with any FINRA member.

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

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against me;
- 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, I specifically and voluntarily waive 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.

I further specifically and voluntarily waive 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

I understand 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

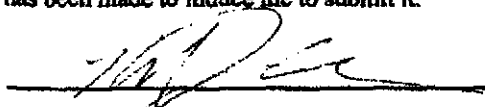
any of the allegations against me; and

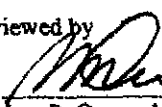
C. If accepted:

1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my 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. I 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. I 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 my right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have 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 me to submit it.

12-16-08
Date


Respondent
Robert Joseph Cole

Reviewed by  12/17/08
Stephen P. Ormond
Counsel for Respondent
Kupelian Ormond & Magy, P.C.
25800 Northwestern Highway, Suite 950
Southfield, MI 48075

Accepted by FINRA:

6/9/09
Date

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



Thomas B. Lawson

Chief Counsel

FINRA Department of Enforcement

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