

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2007011545201**

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

RE: Investors Capital Corp.
CRD No. 30613

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent, Investors Capital Corp. ("Investors Capital" or the "Firm") 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 Investors Capital alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

A. Investors Capital 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

Investors Capital is an independent, full-service broker-dealer, offering brokerage services and financial planning to customers. It has been a FINRA member since 1992, is headquartered in Lynnfield, Massachusetts, and employs approximately 611 registered persons, who operate from 342 registered branch offices.

RELEVANT DISCIPLINARY HISTORY

Investors Capital has no prior relevant disciplinary history.

OVERVIEW

From June 30, 2006 to July 31, 2007 (the "Relevant Period"), Investors Capital failed to establish

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and maintain a supervisory system and written procedures regarding the sale of collateralized mortgage obligations ("CMOs") to customers that was reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules. The Firm's procedures were inadequate because they failed to address the increased risks associated with Inverse Floaters and Interest-Only CMOs, and also failed to provide guidance to supervisors, or establish adequate supervisory measures to monitor suitability, in connection with the sale of these riskier CMOs.

During the Relevant Period, Investors Capital's registered representatives sold CMOs to more than 400 retail customer accounts. Included among the CMOs sold were floating rate CMOs ("Inverse Floaters") and 9 interest-only CMOs ("Interest-Only"). Inverse Floaters and Interest-Only CMOs are two riskier types of CMOs, which FINRA has advised are suitable only for sophisticated investors with a high risk profile.

The Firm's written supervisory procedures were further deficient in that they did not require its registered representatives to offer customers the CMO educational materials required by NASD Rules. As a consequence, both during the Relevant Period and afterwards, Investors Capital failed to offer educational materials regarding CMOs to its retail customers as required by NASD Interpretive Memorandum 2210-8 (IM-2210-8) and brokers involved in selling CMOs to retail customers were unaware of this requirement.

By reason of the foregoing, Investors Capital violated IM-2210-8 and NASD Rules 3010(a) and 2110.¹

FACTS AND VIOLATIVE CONDUCT

Background on Inverse Floater and Interest-Only CMOs

A CMO is a fixed income security that pools together mortgages and issues tranches, with various characteristics and risks. Unlike other fixed income products such as certificates of deposits and corporate bonds that provide for the return of the face value of the security on the maturity date, CMOs make principal payments throughout the life of the security with the maturity date being the last date by which all of the principal must be returned. The timing of the return of principal payments can vary depending on interest rate changes.

One of the CMO tranches is the Inverse Floater, 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 LIBOR. In Notice to Members ("NTM") 93-73, FINRA informed members that Inverse Floaters "are only suitable for sophisticated investors with a high-risk profile."²

¹ NASD Rule 2110 was renumbered as FINRA Rule 2010 effective December 15, 2008. The Relevant Period in this matter is prior to December 15, 2008.

² NTM 93-73, Members' Obligations to Customers When Selling Collateralized Mortgage Obligations (CMOs).

Another type of CMO tranche is the Interest-Only CMO, a type of tranche with no face value that pays based on only interest payments that have been separated from underlying mortgage pools. Interest payments for Interest-Only CMOs decrease as the underlying mortgage pools amortize and prepay. As a result, Interest-Only CMO investors may receive less principal back than was initially invested when prepayment rates are high. FINRA informed members in NTM 93-73 that Interest-Only CMOs may only be sold to "sophisticated investors maintaining a high-risk profile."

Investors Capital's CMO Activities

Investors Capital hired a trader in 2001 with experience trading fixed-income products, including various types of CMOs. During the Relevant Period, this trader serviced institutional and retail clients, as well as, operated a fixed-income trading desk for registered representatives with retail customers. Investors Capital registered representatives contacted the fixed-income desk to obtain information on the bond market in general, recommendations on specific fixed-income products, including CMOs, for their retail customers, and to execute fixed-income trades.

Investors Capital's fixed-income desk purchased different CMOs for the firm's retail customer accounts during the Relevant Period, including Inverse Floaters and Interest-Only CMOs. All of the Inverse Floater and Interest-Only CMOs purchased by Investors Capital for its customers during the Relevant Period were issued by government-sponsored enterprises (e.g., Fannie Mae).

Investors Capital Failed To Establish and Maintain Adequate Systems and Procedures Relating to CMOs In Violation of NASD Rules 3010(a) and 2110

NASD Rule 3010(a) provides that each member shall establish and maintain an adequate supervisory system that is reasonably designed to achieve compliance with applicable securities laws and regulations. During the Relevant Period, Investors Capital violated NASD Rule 3010(a) by failing to establish and maintain an adequate supervisory system relating to retail CMO transactions.

Investors Capital's CMO systems and procedures were inadequate because they did not address the increased risks associated with Inverse Floater and Interest-Only CMOs, which were sold to firm customers. The limited written procedures that Investors Capital did have only required brokers to be knowledgeable about CMOs in general, and only required generic disclosures to clients. The procedures failed to provide information to brokers regarding the specific risks associated with Inverse Floater and Interest-Only CMOs or advise them that such tranches were only suitable for sophisticated investors with a high risk profile.

The Firm's supervisory systems and procedures also failed to provide guidance to supervisors in connection with the sale of Inverse Floater and Interest-Only CMOs and failed to establish adequate supervisory measures to monitor suitability for these riskier CMOs. As a result, Inverse Floater and Interest-Only CMOs were sold to approximately 40 customers without an adequate suitability review, including whether the purchasing customers were sophisticated or

had a high risk profile.³ Accordingly, the suitability determinations made by the Firm did not take into account FINRA's guidance in NTM 93-73 regarding the additional risks posed by Inverse Floater and Interest-Only CMOs.

The Firm's systems and procedures also failed to require its brokers to offer to customers the educational materials required under NASD Rule IM-2210-8, and, as a result, brokers involved in selling CMOs to retail customers were unaware of this requirement.

By reason of the foregoing, Investors Capital violated NASD Rules 3010(a) and 2110.

Investor Capital's Failed to Offer Required CMO Educational Materials to Retail Customers In Violation of IM-2210-8 and NASD Rule 2110

IM-2210-8, adopted by FINRA in November 2003, requires that members offer certain educational materials "[b]efore the sale of a CMO to any person other than an institutional investor." The educational materials must include, among other things, the general characteristics and risks of CMOs, and the specific characteristics and risks associated with the various types of CMO tranches. During the Relevant Period, and afterwards, Investors Capital did not offer any CMO related educational materials to its customers, including prior to the sale of a CMO.

By reason of the foregoing, Investors Capital violated IM-2210-8 and NASD Rule 2110.

SANCTIONS

B. Investors Capital also consents to the imposition of the following sanctions:

1. A censure; and
2. A fine in the amount of \$200,000.

Investors Capital further consents to undertake a comprehensive review of its policies and procedures concerning suitability of CMOs and, within 60 days of Notice of Acceptance of this AWC, the Director of Compliance of Investors Capital shall certify in writing to the staff that (1) the Firm has engaged in a comprehensive review of its policies and procedures concerning suitability of CMOs; (2) as of the date of the certification, the Firm has in place sufficient written policies and procedures designed to ensure compliance with its suitability obligation pertaining to CMOs, including but not limited to the matters identified in this AWC.

For good cause shown, and upon receipt of a timely application, FINRA staff may extend the certification deadline set forth above.

³ FINRA did not find these transactions to be unsuitable.

Investors Capital agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. Investors Capital has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed. Investors Capital will be permitted to pay the fine through an installment payment plan requiring an initial payment of \$50,000, and then pay the remaining balance of \$150,000 plus interest as established by FINRA's Finance Department, in equal installments over twelve months.

Investors Capital specifically and voluntarily waives any right to claim that it is unable to pay, now or 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

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

- A. To have a Complaint issued specifying the allegations against the Firm;
- 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, Investors Capital 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.

Investors Capital further specifically and voluntarily waive 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

Investors Capital understands that:

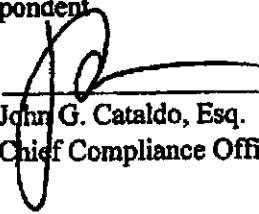
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Investors Capital; and
- C. If accepted:
 - 1. this AWC will become part of Investors Capital's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Investor Capital'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. Investors Capital 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. The Firm 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 Investors Capital's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Investors Capital may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm 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 the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that the undersigned 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 the Firm to submit it.

06/22/2-11
Date

Investors Capital Corp.
Respondent

By: 
John G. Cataldo, Esq.
Chief Compliance Officer

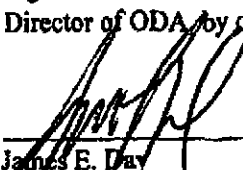
Reviewed by:


Thomas G. Nicholson, Esq.
Counsel for Respondent
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(978) 462-1514

Accepted by FINRA:

7.12.11
Date

Signed on behalf of the
Director of ODA by delegated authority



James E. Day
AVP and Chief Counsel
FINRA Department of Enforcement
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