

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Kyle T. Holland,
CRD No. 2308543,

Respondent.

Disciplinary Proceeding
No. 2008011589101

Hearing Officer: LOM

Date: April 27, 2012

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

INTRODUCTION

Disciplinary Proceeding No. 2008011589101 was filed on October 24, 2011, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Kyle T. Holland submitted an Offer of Settlement (Offer) to Complainant dated March 14, 2012. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA 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, without admitting or denying the allegations of the Complaint, as amended by the Offer, 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, as amended by the Offer, 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 FINRA.

BACKGROUND

1. Kyle T. Holland entered the securities industry on January 6, 1993, as a General Securities Representative. Holland has been employed by at least six different FINRA member firms, and currently holds the Series 63 license. Holland was the Managing Director of Fifth Street Capital, LLC, a now- defunct firm, with overall supervisory responsibility of the firm and its employees.
2. Although Holland has not been associated with a FINRA member firm since October 26, 2009, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the date upon which he ceased to be associated with a FINRA member, and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member.

OTHER ENTITY INVOLVED

3. Fifth Street Capital, LLC, a now-defunct firm, became a FINRA registered firm on April 17, 2000. The firm's FINRA membership was finally cancelled on October 26, 2009 for failure to pay membership fees, and subsequently its registration with the SEC was cancelled on August 27, 2010. During the time it was registered with FINRA, the firm engaged in retail sales of corporate equity securities, corporate debt securities and mutual funds. During the first six months of 2009, the firm's revenue, however, was reported at only \$33,449. Fifth

Street reported total revenue during the five years prior to its cancellation as follows: 2004–\$118,916; 2005–\$167,891; 2006–\$432,942; 2007–\$58,336 and 2008–\$362,497.

4. This case arises in part out of Kyle T. Holland’s disregard of sanctions imposed in prior FINRA enforcement actions. At all times relevant to the allegations in this Complaint, Respondent Holland was the Managing Director of Fifth Street Capital, LLC, a now-defunct firm, with overall supervisory responsibility of the firm and its employees.
5. On October 23, 2007, FINRA accepted a Letter of Acceptance, Waiver, and Consent (AWC No. 2006005486601), in which Holland was fined \$20,000 and suspended in all capacities for one month and suspended as a FINOP for three months starting on March 3, 2008, with a requirement to re-qualify as a FINOP by examination before acting in any capacity requiring a FINOP license for, among other things, engaging in certain activities requiring principal registration with FINRA while suspended from acting in all principal capacities as a result of disciplinary action taken against him.
6. By letter dated December 22, 2008, FINRA advised Holland that his registrations were revoked due to the fact that he had failed to timely pay the fine assessed in the October 23, 2007 Letter of Acceptance, Waiver, and Consent (AWC No. 2006005486601).
7. Holland did not pay the final installment on his \$20,000 fine until March 12, 2009.
8. Despite the fact that Holland: (a) had been previously suspended in a principal capacity in two FINRA regulatory actions, once for engaging in certain activities requiring principal registration while suspended from acting in all principal capacities as a result of regulatory action taken against him; and (b) had been advised that his FINRA registrations were revoked due to the fact that he had failed to timely pay a fine assessed against him, Holland blatantly acted in a capacity requiring registration with FINRA.

9. The Department of Enforcement brought this action to hold Respondent Holland responsible for these actions and for the other violations set forth below.

SUMMARY OF VIOLATIONS

10. As set forth in greater detail in the causes of action of this Complaint, Holland, acting in the capacity of Fifth Street's Managing Director, violated NASD and FINRA By-Laws and NASD and FINRA Rules, including:

- (i) Despite the fact that Holland: (a) had been previously suspended in a principal capacity in two FINRA regulatory actions, once for engaging in certain activities requiring principal registration while suspended from acting in all principal capacities as a result of regulatory action taken against him; and (b) had been advised that his FINRA registrations were revoked due to the fact that he had failed to timely pay a fine assessed against him, Holland acted in a capacity requiring registration with FINRA;
- (ii) During the period from February 2006 to June 2008, Holland filed inaccurate and untimely amendments to Forms U4 involving himself;
- (iii) Holland failed to provide an initial and an annual privacy notice to the firm's customers for the years 2006, 2007 and 2008. Holland also failed to adopt policies and procedures that address the protection of customer information and records. Holland failed to provide for an annual independent test of the firm's anti-money laundering compliance program for the years 2006 and 2007.

During the period from January 2007 to at least May 2008, Holland failed to maintain and review correspondence, including electronic mail correspondence, sent to and from the firm. Holland failed to ensure that all of the firm's registered representatives attended the firm's 2006 and 2007 annual compliance meetings;

- (iv) Holland failed to report to FINRA criminal history relating to another individual associated with the firm; failed to report that Holland had been suspended during the period from March 3, 2008 through April 1, 2008; failed to report that the firm had been suspended during the periods from March 26, 2008 through April 2, 2008, and May 2, 2008 through June 2, 2008; and failed to report a customer complaint that had been received by the firm on or about November 18, 2005;
- (v) During the period from January 2006 through December 2008, Holland failed to evidence that he had conducted supervisory reviews of the firm's producing managers. Additionally, Holland failed to submit a Rule 3012 report to the firm's senior management for 2006 and 2007. Finally, Holland failed to provide FINRA with annual notification that Fifth Street Capital was relying on the "limited size and resources" exception as set forth in NASD Conduct Rule 3012(a)(iii) for 2006 and 2007, and Holland submitted the firm's 2008 annual notification to FINRA nine weeks late;

- (vi) By letter dated December 16, 2004, FINRA staff informed Holland that his purchase of Fifth Street Capital had been denied. He was also informed that he had sixty days within which to file Form BDW or unwind his purchase transaction. From February 16, 2005 through October 16, 2009, Holland repeatedly and falsely represented to FINRA that he had unwound the purchase transaction; and
- (vii) Holland provided incomplete and untimely responses to requests for information dated April 23, 2009, and May 4, 2009, both issued pursuant to FINRA Rule 8210, in that his response failed to include complete bank statements and monthly financial reports for Fifth Street Capital. In subsequent requests for information dated May 12, 2009 and May 26, 2009, both issued pursuant to FINRA Rule 8210, FINRA staff again requested that Holland provide bank statements, complete monthly financial reports for Fifth Street Capital, as well as written and electronic correspondence for the period January 1, 2009 to April 23, 2009; however, Holland again provided incomplete and untimely responses to requests for information.

11. As a result of the foregoing conduct, Respondent Holland violated Article V, Section 2 of FINRA's By-Laws and Article V, Section 3 of FINRA's By-Laws; NASD Membership and Registration Rules 1017(k), 1021, 1022(b), and 1031; NASD Conduct Rules 3010(a)(7),

3010(b), 3070(a)(4), 3070(a)(5), 3070(a)(10), 3070(b), 3011(c), 3012 and 2110; and FINRA Rules 8210 and 2010.

FINDINGS AND CONCLUSIONS

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

Registration Violations

Violations of NASD Membership and Registration Rules 1021, 1022(b) and 1031; and NASD Conduct Rule 2110

12. By letter dated December 22, 2008, Holland was advised that his registrations were revoked due to the fact that he had failed to timely pay an assessed fine in the October 23, 2007 Letter of Acceptance, Waiver, and Consent (AWC No. 2006005486601). The letter was sent to Holland's CRD address of record, and to the firm's main address. Holland acknowledged that he received the letter in the first week of January 2009, and that he had spoken to FINRA staff members about the revocation prior to receiving the letter.
13. Holland paid the final installment on his \$20,000 fine on March 12, 2009.
14. During the period from December 22, 2008, through March 12, 2009, while his registrations were revoked, Holland engaged in the following activities, which require registration:
 - Filed a Form BD on behalf of Fifth Street Capital on February 18, 2009;
 - Filed a Form U4 on behalf of an employee of the firm on January 7, 2009;
 - Filed a Form U4 on behalf of an employee of the firm on January 9, 2009;
 - Filed a Form U4 on behalf of an employee of the firm on February 18, 2009;
 - Filed a Form U4 on behalf of an employee of the firm on February 19, 2009;

- Submitted a response to FINRA in connection with the firm's 2008 routine examination, dated February 13, 2009; and
- Filed a FOCUS Part IIA report on behalf of Fifth Street Capital on January 27, 2009.

15. Based on the foregoing, Respondent Kyle T. Holland violated NASD Membership and Registration Rules 1021, 1022(b) and 1031; and NASD Conduct Rule 2110 and FINRA Rule 2010.

**Inaccurate and Untimely Filings
Willful Violations of Article V, Section 2 of FINRA's By-Laws,
Article V, Section 3 of FINRA's By-Laws, and NASD Conduct Rule 2110**

16. During the period from February 2006 to June 2008, Holland filed inaccurate and untimely amendments to Forms U4 involving himself. Specifically:

- (i) Holland failed to timely file a Form U4 amendment on his own behalf reflecting an arbitration claim. Holland was served with an arbitration notice (Case # 05-06438) involving a customer complaint on January 5, 2006, requiring a Form U4 amendment no later than February 4, 2006. Holland did not amend his Form U4 until September 22, 2006 – 230 days late; and
- (ii) Holland failed to timely file a Form U4 amendment on his own behalf reflecting a settlement with FINRA. Holland signed an Letter of Acceptance, Waiver, and Consent (Case # 2006005486601) on January 11, 2008 which included a \$20,000 fine, suspension in any capacity for 30 days (in effect from March 3, 2008 through April 1, 2008), a suspension in FINOP capacity for

90 days (in effect from March 3, 2008 through June 2, 2008), and a requirement to re-qualify as a FINOP by examination. Holland did not amend his Form U4 within 10 days (i.e., January 21, 2008).

Holland eventually amended his Form U4 disclosing the Letter of Acceptance, Waiver, and Consent on June 11, 2008 – 142 days late.

17. Finally, from March 2008 through October 26, 2009, Holland failed to file Part IIA of Form X-17A-5 in connection with the firm's suspension for failing to pay annual assessment fees, and since May 2008, has failed to file Part IIA of Form X-17A-5 in connection with the firm's suspension for failing to file a 2007 annual audit.
18. The information concerning the U4 amendments in each of the above instances was material, and Holland's inaccurate and untimely amendments to Forms U4 in each of the above instances were willful violations.
19. Based on the foregoing, Respondent Kyle T. Holland willfully violated Article V, Section 2 of FINRA's By-Laws, Article V, Section 3 of FINRA's By-Laws, and NASD Conduct Rule 2110.

**AML and Regulation S-P
Violations of NASD Conduct Rules 3010(a)(7), 3010(b), 3011(c) and 2110**

20. SEC Regulation S-P, "Privacy of Consumer Financial Information," which went into effect on July 1, 2001, requires among other things that all NASD member firms develop and provide annual privacy notices and opt-out notices to their customers. Failing to comply with Regulation S-P is a violation of NASD Conduct Rule 2110.

21. Holland, acting on behalf of Fifth Street, failed to provide an initial and an annual privacy notice to the firm's customers for the years 2006, 2007 and 2008. Holland also failed to adopt policies and procedures that address the protection of customer information and records.
22. Holland failed to provide for an annual independent test of the firm's anti-money laundering compliance program for the years 2006 and 2007. During the period from January 2007 to at least May 2008, Holland failed to ensure that Fifth Street Capital maintain and review correspondence, including electronic mail correspondence, sent to and from the firm. Holland failed to ensure that all of the firm's registered representatives attended the firm's 2006 and 2007 annual compliance meetings.
23. Based on the foregoing, Respondent Kyle T. Holland violated NASD Conduct Rules 3010(a)(7), 3010(b) and 3011(c); and Respondent Kyle T. Holland caused the firm to violate Regulation S-P, in violation of NASD Conduct Rule 2110.

Reporting Violations
Violations of NASD Conduct Rules 3070(a)(4), 3070(a)(5), 3070(a)(10), 3070(b) and 2110

24. Holland failed to report to FINRA criminal history relating to another individual associated with the firm; failed to report that Holland had been suspended during the period from March 3, 2008 through April 1, 2008; failed to report that Fifth Street Capital had been suspended during the periods from March 26, 2008 through April 2, 2008, and from May 2, 2008 through June 2, 2008; and failed to report a customer complaint that had been received by the firm on or about November 18, 2005.

25. Under NASD Rule 3070(a), firms are required to promptly report to FINRA whenever such member or person associated with the member: has been found to violate NASD Rules; is a defendant in civil litigation which settles for more than \$15,000 for individuals and \$25,000 for member firms; and is the subject of any disciplinary action taken by the firm, including a termination, suspension or fine of more than \$2,500. The report under Rule 3070 must be filed within 10 business days. Holland received notice of the above-described events but failed to file a Rule 3070 Report within 10 business days of learning of the events.
26. Based on the foregoing, Respondent Kyle T. Holland violated NASD Conduct Rules 3070(a)(4), 3070(a)(5), 3070(a)(10), 3070(b) and 2110.

**Supervisory Systems Violations
Violations of NASD Conduct Rules 3012 and 2110**

27. During the period from January 2006 through December 2008, Holland failed to evidence that Fifth Street Capital had conducted supervisory reviews of the firm's producing managers. Additionally, Holland failed to ensure that Fifth Street Capital submitted a Rule 3012 report to the firm's senior management for 2006 and 2007. Finally, Holland failed to provide FINRA with annual notification that the firm was relying on the "limited size and resources" exception as set forth in NASD Conduct Rule 3012(a)(iii) for 2006 and 2007, and Holland filed the firm's 2008 annual notification to FINRA nine weeks late.
28. Notice to Members 05-75 states that a member's first Rule 3012 report must encompass the period from January 31, 2005 up to an initial submission date. A review of Fifth Street's Annual Report to the Board of Directors indicated a failure to comply with NASD Rule 3013. Specifically, Holland, as the firm's Managing Director, failed to submit a report by April 1,

2006. Holland filed the firm's first report on August 10, 2008, two years after the required date.

29. Moreover, Holland failed to adequately discuss specific areas described by Rule 3012 in the August 2008 report. Specifically, the report Holland failed to adequately discuss: (i) the details of the firm's system of supervisory controls; (ii) procedures for conducting the tests and gaps analysis; and (iii) records demonstrating the dates the tests were completed.
30. Based on the foregoing, Respondent Kyle T. Holland violated NASD Conduct Rules 3012 and 2110.

**Continuing Membership Violations
Violations of NASD Membership and Registration Rule 1017(k) and
NASD Conduct Rule 2110**

31. Prior to April 2004, Fifth Street Capital, LLC was owned by another individual and known as Gray Capital Partners.
32. By letter dated December 8, 2003, the former owner of Gray Capital Partners submitted an NASD Membership Rule 1017 application to FINRA's District 6 office, for the purpose of notifying FINRA of his intent to sell the firm. On April 6, 2004, the firm made a Form BD amendment filing that reflected the addition of Holland as a Managing Director and part owner of Gray Capital Partners. Later that month, the firm submitted a purchase agreement reflecting that Gray Capital Corporation had sold 60% of the firm to Holland Business Ventures, Inc., an entity owned and controlled by Holland.
33. On June 3, 2004, Holland made a Form BD filing changing the name of the broker-dealer from Gray Capital Partners to Fifth Street Capital, LLC.

34. By letter dated December 16, 2004, FINRA staff informed Holland that his purchase of Fifth Street Capital had been denied. He was also informed that he had sixty days within which to file Form BDW or unwind his purchase transaction.
35. From February 16, 2005 through October 26, 2009, Holland has repeatedly and falsely represented to FINRA that he had unwound the April 2004 purchase transaction.
36. Based on the foregoing, Respondent Kyle T. Holland violated NASD Membership and Registration Rule 1017(k) and NASD Conduct Rule 2110.

**Incomplete Response to Requests for Information
Violations of FINRA Rules 2010 and 8210**

37. Holland provided incomplete and untimely responses to requests for information dated April 23, 2009, and May 4, 2009, both issued pursuant to FINRA Rule 8210, in that his response failed to include complete bank statements and monthly financial reports for Fifth Street Capital. In subsequent requests for information dated May 12, 2009 and May 26, 2009, both issued pursuant to FINRA Rule 8210, FINRA staff again requested that Fifth Street Capital and Holland provide bank statements, complete monthly financial reports and written and electronic correspondence for the period January 1, 2009 to April 23, 2009; however, Holland again provided incomplete and untimely responses to requests for information.
38. Holland provided some of the information FINRA requested, but failed to provide the bank statements and monthly financial reports for Fifth Street Capital. To date, Holland has failed to provide all the financial documents requested pursuant to FINRA Rule 8210.
39. Based on the foregoing, Respondent Kyle T. Holland violated FINRA Rules 2010 and 8210.

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 FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

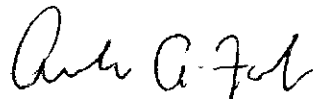
It is ordered that Respondent be barred from association with any FINRA member firm in any capacity.

The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to FINRA Rule 8313(e), a bar or expulsion shall become effective upon approval or acceptance of this Order.

SO ORDERED.

FINRA

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



Andrew A. Favret, Senior Special Counsel
FINRA Department of Enforcement
1100 Poydras Street
Energy Centre, Suite 850
New Orleans, LA 70163-1108
Phone: (504) 522-6527 Fax: (504) 522-4077
Email: andrew.favret@finra.org