

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

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

FOX FINANCIAL MANAGEMENT
CORPORATION CRD No. 134277

and

JAMES EDWARD ROONEY JR.
CRD No. 11857754

Respondents.

DISCIPLINARY PROCEEDING

No. 2008011592201

Hearing Officer: SNB

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: October 29, 2010

INTRODUCTION

Disciplinary Proceeding No. 2008011592201 was filed on December 11, 2009, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondents Fox Financial Management Corporation ("Fox Financial") and James Edward Rooney Jr. ("Rooney") (collectively "Respondents") submitted an Offer of Settlement (Offer) to Complainant dated October 28, 2010. 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,

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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, Respondents have consented, without admitting or denying the allegations of the Complaint, 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 accompanying Offer, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondents' permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Fox Financial became a FINRA member firm on August 3, 2005. The firm is domiciled in Texas. Its registration as a FINRA member firm remains in effect. Accordingly, Fox Financial is subject to FINRA's jurisdiction. FINRA approved the registration of Rooney as a General Securities Representative and General Securities Principal with Fox Financial on August 3, 2005. Rooney is the president and owner of Respondent Fox Financial. Rooney is currently associated with Fox Financial, a FINRA member firm. Accordingly, Rooney is subject to FINRA's jurisdiction.

FINDINGS AND CONCLUSIONS

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

1. During the period from on or about November 12, 2007 to on or about January 15, 2008, Fox Financial, acting through Rooney, sold zero coupon bonds to customers. The

bonds were secured by interests in life insurance policies and were issued by two limited liability companies affiliated with Fox Financial and controlled by Rooney, Fox Life Settlements ("FLS") 2007-A, LLC and FLS 2007-B, LLC.

2. Fox Financial, acting through Rooney, negligently omitted to purchasers of the FLS 2007-A, LLC bonds and the FLS 2007-B, LLC bonds the following material facts concerning A.W., the Fund Manager for A&O: (i) in April 2004, A.W. had been charged by the State of Texas with forgery of a financial instrument, a felony, and in connection with that felony offense, he had been sentenced to five years deferred adjudication; and (ii) A.W., had been the subject of a Temporary Order of Prohibition issued by the State of Illinois for selling unregistered securities in the State through the use of unregistered investment brokers, all during the period from January 2007 through June 2007.

3. During the period from on or about November 12, 2007 to on or about August 8, 2008, Fox Financial, acting through Rooney, sold zero coupon bonds to customers. The bonds Fox Financial and Rooney sold to customers were secured by interests in life insurance policies and the bonds were all issued by the six limited liability companies affiliated with Fox Financial and controlled by Rooney, FLS 2007-A, LLC, FLS 2007-B, LLC, FLS 2008-A, LLC, FSL 2008-B, LLC, FLS 2008-C, LLC, and FLS 2008-D, LLC.

4. Fox Financial, acting through Rooney, negligently omitted to purchasers of the FLS 2007-A, LLC, FLS 2007-B, LLC, FLS 2008-A, LLC, FSL 2008-B, LLC, FLS 2008-C, LLC, and FLS 2008-D, LLC bonds the following material facts: (i) M.M.R. was owned and managed by G.K., the former President of Amスコ Medical Labs ("Amスコ"), a medical laboratory company; (ii) in July 2005, Amスコ and G.K. pleaded guilty to one count in a federal indictment, namely the misbranding of a drug with intent to mislead the Food and Drug

Administration, a felony; (iii) in September 2006, Amscot and G.K. were convicted of the felony offense to which they pleaded guilty and were both placed on probation for one year and Amscot was fined approximately \$388,000, and G.K. was fined approximately \$1,000.

5. Each of the zero coupon bonds was further secured by a guaranty bond issued by Provident Capital Indemnity, Ltd. ("PCI"), a company domiciled in Costa Rica. The Respondents represented that PCI's guarantee bond would provide the funds necessary to redeem the zero coupon bonds at maturity in the event that the insureds lived beyond the maturity date.

6. While Fox Financial, acting through Rooney, disclosed that in November 2006, the Texas Department of Insurance ("TDI") had issued an Order alleging that PCI had engaged in the unauthorized business of insurance, Fox Financial, acting through Rooney, negligently omitted to purchasers of the FLS 2007-A, LLC, FLS 2007-B, LLC, FLS 2008-A, LLC, FSL 2008-B, LLC, FLS 2008-C, LLC, and FLS 2008-D, LLC bonds the following material facts: (i) the Emergency Cease and Desist Order ("Order") against PCI for the unauthorized issuance of insurance contained findings that PCI did not hold a certificate of authority to act as an insurer or surety; (ii) TDI's Order contained findings that PCI had not been authorized to do the business of insuring risks in Texas, and that those who had purchased insurance or surety bonds from or through PCI faced serious risk of loss; (iii) TDI's Order contained findings that PCI's conduct had been fraudulent, illegal, hazardous, had created an immediate danger to public safety, and had caused or was reasonably expected to cause public injury which was likely to occur at any moment, and was incapable of being repaired or rectified; and (iv) TDI's Order contained findings that unless PCI was immediately ordered to cease and desist, it would continue to commit such unfair or deceptive acts or practices in Texas in an unauthorized, illegal, and hazardous manner.

7. In addition, on or about January 17, 2008, the Texas State Securities Board ("TSSB") issued its own Emergency Cease and Desist Order against PCI. Fox Financial, acting through Rooney, disclosed the TSSB's Order, including the basis for the fraud allegations. Even though Fox Financial, acting through Rooney, provided customers with some information concerning the TSSB Order, Fox Financial, acting through Rooney, negligently omitted to purchasers of the 2008 offerings the following findings in the TSSB Order, which were material facts: (i) that the TSSB Order contained findings that PCI, through agents, had been offering bonded life contracts and bonds in Texas; (ii) that the TSSB Order contained findings that the alleged agents offering the bonded life contracts were purportedly secured by a bond issued by PCI; (iii) that the TSSB Order contained findings that the agents offering PCI's bonded life contracts and bonds had not registered the bonded life contracts and bonds by qualification, notification, or coordination and no permit had been granted for their sale in Texas; (iv) that the TSSB Order contained findings that PCI had not been registered with the Texas Securities Commissioner as an agent; (v) that the TSSB Order contained findings that PCI's bonded life contracts and bonds were securities; (vi) that the TSSB Order contained findings that PCI had been violating Section 7 of the Texas Securities Act by offering securities in Texas when the securities had not been registered with the Texas Securities Commissioner; (vii) that the TSSB Order contained findings that PCI had been violating Section 12 of the Texas Securities Act by offering securities for sale in Texas without being registered pursuant to the provisions of Section 12 of the Texas Securities Act; (viii) that the TSSB Order contained findings that PCI had been engaging in a fraud in connection with the sale of securities; (ix) that the TSSB Order contained findings that PCI's conduct, acts and practices threatened immediate and irreparable public harm; (x) that the TSSB Order contained findings that PCI had been ordered to

immediately cease and desist from offering for sale any security in Texas; (xi) that the TSSB Order contained findings that PCI had been ordered to immediately cease and desist from acting as a security dealer in Texas; (xii) that the TSSB Order contained findings that PCI had been ordered to immediately cease and desist from engaging in any fraud in connection with the offer for sale of any security in Texas; and (xiii) that the TSSB Order contained findings that PCI had been ordered to immediately cease and desist from offering securities in Texas through an offer containing a statement that was materially misleading or otherwise likely to deceive the public.

8. During the period from on or about March 3, 2008 through on or about May 21, 2008, Fox Financial, acting through Rooney, participated in two private placement offerings of zero coupon bonds issued by FLS 2008-A, LLC and FLS 2008-B, LLC. Each of these offerings claimed an exemption from registration under the Securities Act of 1933; however, the offerings were not separate and distinct, and were, therefore, subject to integration and to the securities registration requirements of public offerings.

9. During the period from on or about November 12, 2007 to on or about June 2, 2008, Fox Financial, acting through Rooney, sold zero coupon bonds issued by the following four companies: FLS 2007-A, LLC, FLS 2007-B, LLC, FLS 2008-A, LLC and FLS 2008-B, LLC. For these four offerings, Fox Financial, acting through Rooney, used as the escrow agent Lawyers Escrow & Trust Co., LLC, a limited liability company not chartered as a bank. Because the company was not a bank, as that term is defined in Section 3(a)(6) of the Securities Exchange Act of 1934, it could not serve as an escrow agent.

10. In the PPMs for all four offerings, Fox Financial, acting through Rooney, represented that “[n]et proceeds from the sale of Zero Coupon Bonds will not be commingled with those of any entity...” Nevertheless, the escrow agent commingled customer funds from

the FLS 2007-A, LLC and FLS 2007-B, LLC offerings with funds belonging to other individuals and entities. Additionally, the escrow agent commingled customer funds in the FLS 2008-A, LLC and FLS 2008-B, LLC offerings with each other. Rooney failed to detect that customer funds had been commingled because he had neglected to obtain copies of the escrow account statements and maintain such statements among the firm's records.

11. NASD Conduct Rule 3012 became effective January 2005, and requires that a Rule 3012 report be submitted to the firm's senior management on an annual basis. The report must (i) detail each member's system of supervisory controls; (ii) summarize its test results and significant identified exceptions; and (iii) provide any additional or amended procedures created in response to the test results. In a Rule 3012 report dated December 21, 2007, Fox Financial's Executive Representative indicated that he had reviewed the firm's supervisory controls in the following seven areas: (i) safeguarding of customer funds and securities; (ii) the maintenance of the firm's books and records; (iii) the supervision of accounts managed by branch office managers; (iv) the transmittal of funds between customers and third parties; (v) the transmittal of funds between customers and registered representatives; (vi) the validation of customer address changes; and (vii) the validation of changes in customer account information and investment objectives. The firm's test of its system of supervisory controls was flawed because it failed to include a review of the firm's private placement business.

12. NASD Conduct Rule 3013(b) requires that each member firm have its chief executive officer certify annually that the firm has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures.

13. In an Annual Certification of Compliance dated December 21, 2007, Rooney certified that pursuant to NASD Rule 3013, he had reviewed the firm's Rule 3012 report detailing the test of the firm's supervisory controls, Rooney stated in his Annual Certification of Compliance that Fox Financial had established and maintained policies and procedures reasonably designed to ensure compliance with FINRA rules. From December 16, 2007 through December 31, 2007, Rooney was a producing manager for Fox. During that time Fox Financial failed to evidence its supervision over Rooney in that for eight customer Subscription Agreements, Rooney was the only principal who had signed the Agreement indicating that the customer's investment in one of the FLS offerings had been approved.

14. Based on the foregoing, Respondents Fox Financial and Rooney violated Section 15(c) of the Securities Exchange Act of 1934 and Rule 15c2-4 thereunder, Section 17(a) of the Securities Act of 1934 and Rule 17a-4 thereunder, NASD Conduct Rules 2110, 3010(b), 3012(a)(2)(C) and 3013.

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

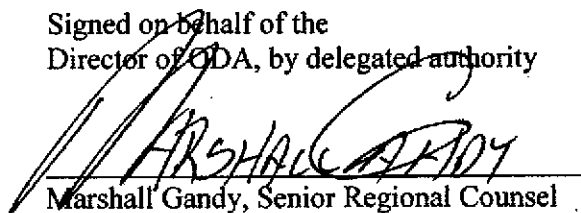
It is ordered that Respondent Fox Financial Management Corporation be censured and fined \$40,000 and Respondent James Edward Rooney Jr. be suspended for 15 business days (in any principal capacity and fined \$20,000.

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

SO ORDERED.

FINRA

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

A handwritten signature in black ink, appearing to read "MARSHALL GANDY", is written over a horizontal line.

Marshall Gandy, Senior Regional Counsel

Texas Bar No. 07616500

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