

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

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REGISTRATION & DISCLOSURE

Department of Enforcement

Complainant

v.

Fox Financial Management Corporation
(CRD No. 134277)

and

James Edward Rooney Jr.
(CRD No. 1857754)

Respondents

DISCIPLINARY PROCEEDING
NO. 2008011592201

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondents Fox Financial Management Corporation ("Fox Financial") and James Edward Rooney Jr. ("Rooney") sold to approximately 200 customers over \$13,000,000 in zero coupon bonds secured by interests in life insurance policies. The bonds were issued by companies affiliated with Fox Financial and controlled by Rooney. The firm and Rooney failed to disclose to purchasers material facts about the securities, including criminal records of an individual involved in the sale of certain insurance policy interests to the issuers of the zero coupon bonds and criminal records of the entity that conducted medical assessments of the insureds. In addition,

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Respondents failed to disclose that the Costa Rican insurance company that had issued guaranty bonds further securing the zero coupon bonds was the subject of actions by Texas and Florida regulators relating to the unlawful sale of insurance and securities in those states. Respondents' misconduct violated Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder, and NASD Conduct Rules 2110 and 2120.

2. In addition, two of the zero coupon bond offerings sold by Fox Financial, acting through Rooney, were unregistered securities not exempt from registration. Also, the Respondents established improper escrow accounts in four of the zero coupon bond offerings, commingled customer funds, and failed to maintain escrow account statements. Respondents' misconduct violated Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder, 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, and NASD Conduct Rule 2110.
3. Additionally, Fox Financial, acting through Rooney, certified an inadequate test of the firm's system of supervisory controls and also failed to establish, maintain, and enforce written procedures to supervise the type of business in which the firm engaged, and that were reasonably designed to achieve compliance with applicable securities laws and FINRA rules. Fox Financial also failed to evidence that it had reviewed certain transactions that had been effected by Rooney, the firm's only producing manager. Respondents' misconduct violated NASD Conduct Rules 2110, 3010(b) and 3012(a)(2)(c).

RESPONDENTS AND JURISDICTION

4. Fox Financial Management Corporation ("Fox Financial") became a FINRA member firm on August 3, 2005. During all periods mentioned herein, nearly all of the firm's business consisted of the private placement of zero coupon bonds secured by life insurance policies. Fox Financial employs approximately twenty-four registered persons and approximately four non-registered persons. The firm is domiciled in Texas. Its registration as a FINRA member firm remains in effect.
5. The violations alleged herein occurred while Fox Financial was a FINRA member firm. FINRA has jurisdiction to file this complaint against Fox Financial pursuant to Article IV, Section 1 of FINRA's By-Laws.
6. FINRA approved the registration of James Edward Rooney Jr. ("Rooney") as a General Securities Representative and General Securities Principal with Fox Financial on August 3, 2005. At all times referenced herein, Rooney was the President of Fox Financial.
7. The violations alleged herein occurred while Rooney was associated with Fox Financial. FINRA has jurisdiction to file this complaint against Rooney pursuant to Article V, Section 2 of FINRA's By-Laws.

FIRST CAUSE OF ACTION

(Fox Financial, acting through Rooney, Willfully Failed to Disclose
Material Facts in Two Private Placement Offerings)

(Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder,
and NASD Conduct Rules 2110 and 2120)

8. Enforcement realleges and incorporates by reference paragraphs 1-7 above.

9. 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. The transactions involving the FLS 2007-A, LLC and FLS 2007-B, LLC bonds are set forth in Exhibit A attached hereto and incorporated herein by reference.
10. FLS 2007-A, LLC and FLS 2007-B, LLC, acting through Rooney, purchased the interests in the life insurance policies securing the zero coupon bonds from A&O Life Funds, LP, acting through its agent A.W.
11. Fox Financial, acting through Rooney, failed to provide the customers purchasing the FLS 2007-A, LLC bonds and the FLS 2007-B, LLC bonds with the following material facts concerning A.W., the Fund Manager for A&O, and Rooney acted recklessly in making these omissions of material facts: 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 probation which he was still serving at the time that Rooney negotiated the written agreement with A.W. to purchase the interests in A&O's life insurance policies.
12. In connection with selling the FLS 2007-B, LLC bonds, Fox Financial, acting through Rooney failed to provide the customers with the following material facts concerning A&O, and Rooney acted recklessly in making these omissions of material facts: that A&O, its affiliated companies, and 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 advisors, all during the period from January 2007 through June 2007.

13. By virtue of this conduct, the Respondents Fox Financial and Rooney, by the use of any means or instrumentality of interstate commerce or of the mails, knowingly or recklessly engaged in manipulative or deceptive devices or contrivances in connection with the purchase or sale of securities, and knowingly or recklessly effected transactions in, or induced the purchase or sale of securities by means of manipulative, deceptive or other fraudulent devices or contrivances, thereby willfully violating Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. Respondents Fox Financial and Rooney also violated NASD Conduct Rules 2110 and 2120.

SECOND CAUSE OF ACTION

(Fox Financial, acting through Rooney, Willfully Failed to Disclose
Material Facts in Six Private Placement Offerings)

(Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder,
and NASD Conduct Rules 2110 and 2120)

14. Enforcement realleges and incorporates by reference paragraphs 1-13 above.
15. 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. The transactions involving the FLS 2008-A, LLC, FLS

2008-B, LLC, FLS 2008-C, LLC, and FLS 2008-D, LLC bonds are set forth in Exhibit B attached hereto and incorporated herein by reference.

16. For each insured individual of each life insurance policy securing the zero coupon bonds, Midwest Medical Review, LLC ("M.M.R"). prepared, or caused to be prepared, a medical assessment to determine the life expectancy of the insured. M.M.R.'s medical assessment and life expectancy estimate were important factors in determining the value of the life insurance policies that secured the zero coupon bonds. The medical assessments were used to set the maturity dates of the bonds.
17. Fox Financial, acting through Rooney, failed to provide the customers purchasing the FLS bonds with the following material facts about M.M.R., and further, Rooney acted recklessly in making these omissions of material facts: (i) M.M.R. was owned and managed by G.K.; (ii) G.K. was the former President of Amscot Medical Labs ("Amscot"), a medical laboratory company; (iii) in November 2003, a federal grand jury had indicted Amscot and G.K. on twenty-one counts involving conspiracy and fraud in the introduction of misbranded and adulterated drugs into commerce; (iii) in July 2005, Amscot and G.K. had pled guilty to one count in the Indictment, namely the misbranding of a drug with intent to mislead the Food and Drug Administration, a felony; (iv) in September 2006, Amscot and G.K. were convicted of the felony offense to which they had pled guilty and were both placed on probation for one year; and (v) in connection with their plea of guilty to the aforementioned felony and their subsequent conviction, Amscot was fined approximately \$388,000, and G.K. was fined approximately \$1,000.

18. 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.
19. PCI had a significant regulatory history. While Fox Financial, acting through Rooney, disclosed that in November 2006, the Texas Department of Insurance ("TDI") had issued an Order¹ alleging that PCI had engaged in the unauthorized business of insurance, they failed to provide the customers purchasing the FLS bonds with the following material information about PCI, and further, Rooney acted recklessly in making these omissions of material facts: (i) in November 2006, the Texas Department of Insurance ("TDI") had issued an Emergency Cease and Desist Order ("Order") against PCI for the unauthorized issuance of insurance; (ii) TDI's Order contained findings that PCI did not hold a certificate of authority to act as an insurer or surety; (iii) 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; (iv) 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 (v) TDI's Order contained

¹The Respondents mischaracterized TDI's Order as an "emergency administrative action." As alleged in this Complaint, TDI's Order was entitled Emergency Cease and Desist Order.

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.

20. 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 some information about TSSB's Order, all of which they mischaracterized as "allegations" because TSSB's Order contained "Findings of Fact" against PCI. For example, the Respondents disclosed that PCI had failed to disclose TDI's Order. They also disclosed that Harold Maridon, an individual associated with PCI, had a material criminal history; however, they failed to provide any details regarding Maridon's criminal history. Lastly, the Respondents disclosed that in 1993, PCI had been the subject of a receivership action by the State of Florida for unauthorized insurance.
21. Even though Fox Financial, acting through Rooney, provided customers with some information concerning the TSSB Order, they failed to provide the customers purchasing the FLS bonds through the four 2008 offerings with the following material information about PCI, and further, Rooney acted recklessly in making these omissions of material facts: (i) that the TSSB had found that PCI had been offering bonded life contracts and bonds in Texas; (ii) that the bonded life contracts were purportedly secured by a bond issued by PCI; (iii) that PCI's bonded life contracts and bonds had not been registered by qualification, notification, or coordination and no permit had been granted for their sale in Texas; (iv) that PCI had not been registered with the Texas Securities Commissioner as an agent; (v) that certain

individuals selling the bonded life contracts along with PCI had been convicted of conspiracy to commit mail and wire fraud; (vi) that in connection with the sale of the bonded life contracts and bonds, PCI had represented that it had a 5A rating by Dunn & Bradstreet and that it was offering a "AAA rated corporate bond," all of which were materially misleading statements likely to deceive the public given certain undisclosed facts: (vii) that PCI's bonded life contracts and bonds were securities; (viii) 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; (ix) 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; (x) that PCI had been engaging in a fraud in connection with the sale of securities; (xi) that PCI's conduct, acts and practices threatened immediate and irreparable public harm; (xii) that PCI had been ordered to immediately cease and desist from offering for sale any security in Texas; (xiii) that PCI had been ordered to immediately cease and desist from acting as a security dealer in Texas; (xiv) 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 (xv) 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.

22. Fox Financial, acting through Rooney, also failed to provide the customers purchasing the FLS 2007-A and FLS 2007-B bonds with the following material information about PCI, and further, Rooney acted recklessly in making these

omissions of material facts: (i) in 1993, the State of Florida had obtained a receivership, injunction, and other relief against PCI based upon findings that PCI had unlawfully engaged in the sale of insurance in Florida.

23. By virtue of this conduct, the Respondents Fox Financial and Rooney, by the use of any means or instrumentality of interstate commerce or of the mails, knowingly or recklessly engaged in manipulative or deceptive devices or contrivances in connection with the purchase or sale of securities, and knowingly or recklessly effected transactions in, or induced the purchase or sale of securities by means of manipulative, deceptive or other fraudulent devices or contrivances, thereby willfully violating Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. Respondents Fox Financial and Rooney also violated NASD Conduct Rules 2110 and 2120.

THIRD CAUSE OF ACTION

(Fox Financial, acting through Rooney, Sold Unregistered Securities)

(NASD Conduct Rule 2110)

24. Enforcement realleges and incorporates by reference paragraphs 1-23 above.
25. 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, and at no time was there a registration statement in effect for the FLS 2008-A, LLC or FLS 2008-B, LLC bonds.

26. The FLS 2008-A, LLC offering and the FLS 2008-B, LLC offering were not separate and distinct, and were, therefore, subject to integration because (i) the proceeds raised from both offerings were used to purchase different percentage interests in the same life insurance policy; (ii) both offerings were issued for the same class of security in the form of a zero coupon bond, and both bonds had the same maturity date; and (iii) the same type of consideration in the form of cash was received for both offerings.
27. Both integrated offerings had a total of approximately forty-seven non-accredited investors. For the reasons described above, the FLS 2008-A, LLC offering and the FLS 2008-B, LLC offering became integrated into one offering, the exemption under Regulation D of the Securities Act of 1933 did not apply, and the offerings were subject to the securities registration requirements of public offerings.
28. By virtue of this conduct, Respondents Fox Financial and Rooney violated NASD Conduct Rule 2110 by acting in contravention of Section 5 of the Securities Act of 1933.

FOURTH CAUSE OF ACTION

**(Fox Financial, acting through Rooney, Willfully
Failed to Establish Proper Escrow Accounts, Commingled Funds
And Failed to Maintain Escrow Account Statements)**

**(Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder,
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, and NASD Conduct Rule
2110)**

29. Enforcement realleges and incorporates by reference paragraphs 1-28 above.
30. 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. All of these offerings were contingent offerings and met their contingencies before the due date.

31. Fox Financial, acting through Rooney, represented in the PPMs for these four offerings that the customers' funds would be held in escrow accounts until the minimum amounts had been raised and would thereafter be released to the respective FLS companies.
32. 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.
33. Fox Financial, acting through Rooney, falsely represented that customer funds would not be commingled. Specifically, 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 customer funds from the FLS 2007-A, LLC and FLS 2007-B, LLC offerings were commingled with funds belonging to other individuals and entities. Additionally, customer funds in the FLS 2008-A, LLC and FLS 2008-B, LLC offerings were commingled with each other.
34. 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.

35. During the period from on or about June 10, 2008 to on or about August 20, 2008, Fox Financial, acting through Rooney, allowed the escrowed customer funds from the FLS 2008-C, LLC offering to be invested in a mutual fund, the Wells Fargo Bank's Cash Investment Money Market Fund. This was not a permissible investment under SEC Rule 15c2-4.
36. By virtue of the conduct described in paragraph 33, Respondents Fox Financial and Rooney, by the use of any means or instrumentality of interstate commerce or of the mails, knowingly or recklessly engaged in manipulative or deceptive devices or contrivances in connection with the purchase or sale of securities, and knowingly or recklessly effected transactions in, or induced the purchase or sale of securities by means of manipulative, deceptive or other fraudulent devices or contrivances, thereby willfully violating Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. By virtue of the conduct described in paragraphs 30 through 32, 34 and 35, Respondent Fox Financial also willfully 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, and NASD Conduct Rule 2110. By virtue of the conduct described in paragraphs 30 through 35, Respondent Fox Financial and Rooney violated NASD Conduct Rule 2110.

FIFTH CAUSE OF ACTION

(Fox Financial, acting through Rooney, Certified an Inadequate Test of the Firm's System of Supervisory Controls, and Fox Financial Failed to Evidence Supervision Over Rooney, a Producing Manager)

(NASD Conduct Rules 2110, 3012(a)(2)(C) and 3013)

37. Enforcement realleges and incorporates by reference paragraphs 1-36 above.

38. 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.

39. 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 only exception noted in the firm's Rule 3012 report related to the firm's maintenance of electronic mail messages, which apparently had been affected by hacking and computer viruses.

40. 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. By the end of December 2007, Fox Financial had raised, through the sale of zero coupon bonds in private placements, approximately \$2.6 million from customers, generating gross commissions of approximately \$300,000. The firm's gross revenue from the sale of private placements represented approximately 90% of all firm revenue.

41. 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.
42. Despite the flawed nature of the firm's test of its supervisory control system, 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, and that based on that review, Fox Financial had a process in place to (i) establish, maintain and review policies and procedures reasonably designed to achieve compliance with applicable FINRA rules and federal securities laws; (ii) modify such policies and procedures as business, regulatory and legislative changes and events dictate; and (iii) test the effectiveness of such policies and procedures on a periodic basis. Rooney also 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.
43. During all periods referenced in this complaint, Rooney was a producing manager for Fox Financial in that he was responsible for generating 20% or more of the firm's revenue.
44. 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.

45. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2110, 3012(a)(2)(C) and 3013 by Respondents Fox Financial and Rooney.

SIXTH CAUSE OF ACTION

**(Fox Financial, acting through Rooney, Failed to Establish,
Maintain and Enforce Reasonable Written Supervisory Procedures)**

(NASD Conduct Rules 2110 and 3010(b))

46. Enforcement realleges and incorporates by reference paragraphs 1-45 above.
47. During the time period from about November 2007 to about July 2008, Fox Financial, acting through Rooney, failed to establish, maintain, and enforce written procedures to supervise the type of business in which the firm engaged, and which were reasonably designed to achieve compliance with applicable securities laws and FINRA rules.
48. Given that the six private placement offerings referenced herein claimed an exemption under Rule 506 of Regulation D, the firm should have had written supervisory procedures detailing the specific steps that Fox Financial and Rooney would take to ensure compliance with Rule 506; however, the firm's written procedures essentially stated in very general terms, without reference to specific steps, that Rooney would ensure that the firm's private placements met the requirements of Rule 506 of Regulation D.
49. Given that two of the offerings referenced above were subject to integration, Fox Financial should have had written supervisory procedures explaining the steps the firm would take to ensure that the firm's private placements remained in compliance

with Regulation D; however, the firm's written procedures merely recited certain provisions of Rule 502 of Regulation D, and failed to provide the specific steps Rooney would take to ensure compliance with this rule.

50. Fox Financial's written supervisory procedures concerning escrow accounts were also devoid of any substantive content. The written procedures simply stated that because the firm operated pursuant to a \$50,000 minimum net capital requirement, it would comply with SEC Rule 15c2-4(b)(2), that it would deposit customer funds in an escrow account at a bank, and that the escrow agent would have to agree to hold the customer funds until the appropriate event or contingency had occurred. Other than merely reciting certain provisions of Rule 15c2-4, the firm's written procedures failed to contain the steps Rooney would take to ensure that customer funds were held in a proper escrow account, that the funds had not been commingled with any other funds, and that the funds had been invested, if at all, in approved securities under Rule 15c2-4.

51. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 3010(b) by Respondents Fox Financial and Rooney.

RELIEF REQUESTED

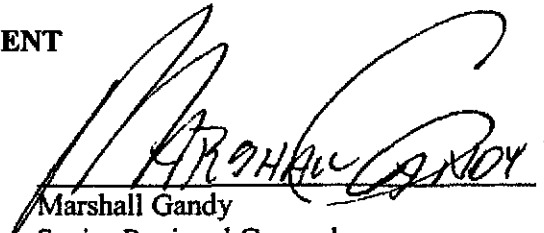
WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed, including that the Respondents be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest.

- B. order that the Respondents bear such costs of this proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.
- C. make specific findings that Respondents Fox Financial and Rooney willfully violated Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder, and that Respondent Fox Financial willfully violated Section 15(c) of the Securities Exchange Act of 1934 and Rule 15c2-4 thereunder; and Section 17(a) of the Securities Act of 1934 and Rule 17a-4 thereunder.

FINRA DEPARTMENT OF ENFORCEMENT

Date: December 11, 2009



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