

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
Case No. 2008011713801**

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

RE: David William Dube (CRD No. 3041983)

Pursuant to Rule 9216 of FINRA's Code of Procedure, Respondent David William Dube ("Dube" or "Respondent") 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 Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent 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

David Dube first became registered with FINRA as a General Securities Representative on August 21, 1998, and as a General Securities Principal on October 23, 1998. Between September 18, 2002 and February 16, 2010, Dube was registered as a General Securities Representative and a General Securities Principal with Peak Securities Corp. ("Peak" or "Firm"), where he served as the Firm's President, Chief Compliance Officer, and AML Compliance Officer. On November 5, 2009, the Firm filed a Form BDW.

Dube's registrations with Peak were terminated on February 16, 2010 and he has not been registered with a FINRA registered firm subsequent to that date. However, FINRA retains jurisdiction over Dube pursuant to Article V, Section 4 (a) of the By-Laws, since the conduct which serves as the basis for this action commenced prior to his termination from Peak and this AWC has been filed within two years after the effective date of his termination of registration.

OVERVIEW

Broker-dealers are required to establish and implement Anti-Money Laundering ("AML") policies, procedures, and internal controls that can be reasonably expected to detect and cause the reporting of suspicious transactions as required by the Bank Secrecy Act and the implementing regulations thereunder.

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Peak's AML Procedures ("AML Procedures") required Dube to monitor customer accounts for suspicious activity and to conduct investigations of suspicious activity upon detection of red flags. Specifically, the AML Procedures required Dube to identify red flags of suspicious activity, initiate investigations, and document how the investigations were conducted. The AML Procedures identified approximately 25 potential anti-money laundering red flags that, upon discovery, should have triggered investigations by Dube. At the conclusion of any investigation, Dube was required to determine if federal law enforcement should be notified via the filing of a suspicious activity report.

Between January 1, 2006 and January 1, 2009 (the "review period"), there were numerous transactions in approximately ten customer accounts where more than one of Peak's specific red flags existed. These transactions were largely purchases and sales of large blocks of penny stocks and occurred in accounts for which Dube served as the registered representative of record. Yet, during the review period, Dube did not identify any accounts as having suspicious activity and therefore did not investigate those red flags.

As a result, suspicious account activity went undetected at Peak during the review period. The suspicious activity should have been identified by Dube as red flag triggering events and resulted in AML investigations and the filing of suspicious activity reports by Dube. By failing to implement the Firm's AML Procedures, Dube failed to detect, investigate, and report suspicious transactions in violation of NASD Conduct Rule 3011.

During the same time period, Respondent exercised trading discretion in two non-discretionary accounts in contravention of NASD Conduct Rule 2510(b) without obtaining prior written customer approval.

From August 22, 2008, through December 3, 2008, David Dube, recommended, sold, and approved the sale by Peak of the Medical Capital Provider Funding VI offering (hereinafter "MPFC VI offering"). Based on his failure to conduct adequate due diligence, Dube (i) failed to have a reasonable basis for recommending the MPFC VI offering as a suitable product; and (ii) failed to enforce written supervisory procedures related to the sale of the MPFC VI offering, in violation of NASD Conduct Rules 2310, 3010 and 2110.

LEGAL STANDARDS AND FACTS

A. Anti-Money Laundering Requirements

In July 2002, the Department of Treasury issued regulations requiring suspicious transaction reporting for broker-dealers.¹ Consequently, since 2002, broker-dealers have been required by FINRA to, among other things,

- (a) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of

¹ 31 C.F.R. §103.19(a)(1) (2002).

transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder;

(b) Establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder.²

A firm's AML procedures must address a number of areas, including monitoring transactions to report suspicious activity where appropriate. For example, when potentially suspicious activity that warrants investigation is identified, a firm must initiate a review of that activity promptly and complete its review within a reasonable period of time.³ Firms are required to file a Form SAR-SF ("SAR-SF") with Treasury's Financial Crimes Enforcement Network ("FINCEN") reporting "any suspicious transaction relevant to a possible violation of law or regulation."⁴

It is not necessary for a broker-dealer to prove that a customer has engaged in illegal activity or to have actual knowledge of illicit or unlawful trading by a customer; rather, it is sufficient that the broker-dealer have reason to suspect that a transaction or series of transactions involve unlawful activity or lack an apparent lawful purpose. The Treasury also has advised broker-dealers to determine whether activity raises suspicions by monitoring for various red flags. *NIM 02-21* and *NIM 02-47* emphasize members' duties to detect red flags and, if detected, to perform additional due diligence before proceeding with a suspicious transaction.

B. Dube Failed To Implement Peak's AML Procedures Allowing Red Flag Activity To Go Undetected And Unreported

1. Peak's AML Procedures

During the review period, Dube was the President and AML Compliance Officer of Peak. In these capacities, and pursuant to the Firm's AML Procedures, Dube was responsible for reasonably ensuring Peak's compliance with all of its AML requirements.

Peak's AML Procedures required Respondent to monitor customer accounts annually and daily to identify suspicious transactions or patterns of suspicious activity. Towards that end, the Firm's AML Procedures identified approximately 25 potential anti-money laundering red flags that, upon detection, required Dube to initiate an investigation and document how the investigation was conducted. Further, at the conclusion of the investigation, Dube was required to determine whether it was necessary to file a SAR-SF with FINCEN and, if so, to file it.

² FINRA Rule 3011; see also *FINRA Notice to Members ("NIM") 02-21*, at 5.

³ See *The SAR Activity Review*, Issue 10 (May 2006).

⁴ 67 Fed. Reg. 44048 (July 1, 2002). See also, 31 C.F.R. §103.19(a)(1) (2002).

2. Dube's Failure To Implement Peak's AML Procedures

During the review period, Dube's *annual review of accounts* to capture unusual activity consisted entirely of relying on Peak's clearing firm to alert him of any unusual activity that may have occurred during the year. Otherwise, Dube did nothing else at the Firm on an annual basis, as required by Peak's AML Procedures, to review for suspicious activity. Dube also failed to monitor transactions and customer accounts for suspicious activity on a *daily* basis. As a result of Dube's failures to implement Peak's AML Procedures, Dube never detected, investigated, or reported any suspicious transactions or activity that occurred at Peak during the review period. As described below, there were numerous suspicious transactions in approximately ten of Dube's customer accounts where more than one of Peak's specific red flags existed. These transactions were largely purchases and sales of large blocks of penny stocks. Yet, during the review period, Dube failed to identify any suspicious activity and therefore did not conduct any investigations or report the suspicious activity as required.

1. Suspicious Activity In Account Of Customer AR

Dube was the broker of record for customer AR, a former registered representative who was terminated from his former firm for cause, had disciplinary history, and was ultimately barred by FINRA for, among other things, unauthorized trading. AR opened a personal account at Peak in May 2006 and a corporate account in July 2006. AR primarily engaged in penny stock transactions in these accounts. He deposited large blocks of penny stock in his accounts, journaled stocks among these accounts and other unrelated accounts for no apparent business purpose, liquidated and directed the trading of blocks of penny stocks, and, through Dube, directed the trading of these penny stocks in unrelated accounts at the Firm.

On June 2, 2006, Peak's clearing firm notified Dube that it had concerns regarding AR's penny stock activity. Despite this alert, Dube allowed AR to continue to trade in penny stocks and direct the trading of these same penny stocks in the accounts of unrelated customers, without conducting an investigation into the activity and/or filing a SAR-SF. Furthermore, after being alerted by the clearing firm, between July 2006 and November 2007, AR made 12 third party transfers of penny stocks to unrelated accounts at Peak. During the same time period, AR received three third party transfers of penny stocks from an unrelated account at Peak and sent six DTC transfers of penny stocks to unknown recipients. All told, AR journaled thousands of shares to numerous third parties.

AR's account activity described above included red flags that were indicative of suspicious activity. Among the specific red flags from the Firm's AML Procedures that should have prompted Dube to investigate AR's transactions further were: (1) customers with a possible history of criminal, civil, or regulatory violations; (2) customers with multiple accounts and a large number of inter-account or third party transfers; (3) customers engaging in excessive journal entries between unrelated accounts with no apparent business purpose; and (4) customers who engage in penny stock transactions.

Yet, Dube failed to identify any of the red flags and therefore conducted no due diligence with respect to AR's account activity, and failed to file any SAR-SFs.

ii. Suspicious Activity In Account Of Customer MS

Dube also was the broker of record for customer MS, who was referred to Peak by AR. MS previously was convicted of wire fraud, for which he served a 14 month prison sentence. MS opened his account in May 2006.

On May 31, 2006, approximately two weeks after MS opened his account with Dube, MS put in an order for Dube to purchase 64,000 shares of a penny stock for his account. MS specifically instructed Dube to direct the trade to a particular market maker by telling him to have Peak's trading desk get on the other side of the offer and "clean up the stock." The request by MS should have raised concerns with Dube of potentially manipulative conduct. Dube, however, followed MS's instructions and bought the shares at the specific price from the particular market maker. Dube failed to identify the directed trade as suspicious and consequently failed to conduct an investigation and file a SAR-SF. During the review period, MS also effected various journal and DTC transactions that did not make business sense. In addition, there were numerous transfers of penny stocks among MS's account, AR's accounts, and another account at Peak. All three accounts were unrelated.

Like AR, MS's account activity described above included red flags that were indicative of suspicious activity. Among the specific red flags from the Firm's AML Procedures that should have prompted Dube to investigate MS's transactions further were: (1) customers with a possible history of criminal, civil, or regulatory violations; (2) customers with a large number of inter-account or third party transfers; (3) customers who engage in excessive journal entries between unrelated accounts with no apparent business purpose; and (4) customers who engage in penny stock transactions.

Yet, Dube failed to identify any of these red flags and therefore conducted no due diligence with respect to MS's account activity, and failed to file any SAR-SFs.

iii. Suspicious Activity In Account Of Customer DF

Dube also was the broker of record for DF. DF had a felony conviction for mail fraud and was named in a civil suit brought by a publicly traded company alleging that DF intended to violate securities laws by artificially manipulating the volume and price of the company's shares.

Between November 30, 2007 and February 27, 2008, DF deposited 16 million shares of a penny stock in four separate transactions after a five month period of account inactivity. During the same time period, he transferred 14.9 million shares of the same penny stock to unrelated accounts at Peak and unrelated accounts at other firms.

DF's account activity described above included red flags that were indicative of suspicious activity. Among the specific red flags from the Firm's AML Procedures that should have prompted Dube to investigate DF's transactions further were: (1) customers with a possible history of criminal, civil, or regulatory violations; (2) customers who engage in excessive journal entries between unrelated accounts with no apparent business purpose; and (3) customers who engage in penny stock transactions.

Yet, Dube failed to identify any of these red flags and therefore conducted no due diligence with respect to DF's account activity, and failed to file any SAR-SFs.

By failing to detect, investigate, and report these and other suspicious transactions and activity, Respondent violated NASD Conduct Rules 3011 and 2110, and FINRA Rule 2010.

C. Conduct Rule 2510(b) Requirements And Respondent's Improper Exercise Of Discretionary Authority

NASD Rule 2510(b) provides in pertinent part:

No member or registered representative shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the member, as evidenced in writing by the member or the partner, officer or manager, duly designated by the member, in accordance with Rule 3010. (emphasis added).

The Rule prohibits a broker from exercising discretion in customer accounts unless the customer has given prior written authorization and the firm has approved of the authorization and the use of discretion in the account in writing.

Between January 1, 2006 and January 1, 2009, Dube exercised discretion in the non-discretionary accounts of two customers, DR and LJB, without written authorization. In each instance, Dube exercised discretion in DR and LJB's accounts as directed by AR, who was not an owner of the account. In so doing, Respondent violated NASD Conduct Rules 2510(b) and 2110, and FINRA Rule 2010.

D. Dube Failed To Enforce Written Supervisory Procedures And Have A Reasonable Basis For Recommending The Offer And Sale Of A Private Placement Offering

NASD Conduct Rule 2310 requires a broker, when making a recommendation to purchase or sell a security, to have "reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs." Accordingly, before a broker can make a customer-specific suitability determination, he or she must have a reasonable basis to believe that the recommendation could be suitable for at least some customers. To make a suitable recommendation, a broker must first have an understanding of "the potential risks and rewards inherent in that recommendation." Thus, a broker may violate the suitability rule if he has no reasonable basis to make the recommendation to any customer, regardless of the customer's wealth, willingness to bear risk, age or other individual characteristics.

NASD Conduct Rule 3010(a) requires member firms to establish, maintain and enforce a supervisory system reasonably designed to achieve compliance with applicable securities laws

and regulations and NASD Rules. Required components of a "reasonable" supervisory system include: establishing, maintaining and enforcing written supervisory procedures designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules. Broader than its counterpart under the Exchange Act, Section 15(b)(4)(E), NASD Conduct Rule 3010 imposes an "affirmative obligation" on NASD member firms to establish supervisory systems.

From August 22, 2008, through December 3, 2008, Dube, as the President and Chief Compliance Officer of Peak, recommended, sold, and approved the sale of approximately \$830,000 of the MPFC VI offering to seven customers. Dube was responsible for completing the firm's due diligence and approving the sale of the MPFC VI offering by the firm's registered representatives. Based on his failure to conduct adequate due diligence, Dube (i) failed to have a reasonable basis for recommending the MPFC VI offering as a suitable product; and (ii) failed to enforce written supervisory procedures related to the sale of the MPFC VI offering.

Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2310, 3010 and 2110 by Dube.

Conclusion

By virtue of the above, during the review periods, Respondent violated NASD Conduct Rules 3011 and 2110, and FINRA Rule 2010 by failing to implement the policies and procedures of Peak that were reasonably designed to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder. Dube also violated NASD Conduct Rules 2510(b) and 2110, and FINRA Rule 2010 by exercising trading discretion in non-discretionary accounts. Finally, Dube violated NASD Conduct Rules 2310, 3010 and 2110 by: (i) failing to have a reasonable basis for recommending the MPFC VI offering as a suitable product; and (ii) failing to enforce written supervisory procedures related to the sale of the MPFC VI offering.

B. I also consent to the imposition of the following sanctions:

- A bar from associating with any FINRA member in any capacity.

The sanction 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 AWC.

Respondent understands that if he is barred or suspended from associating with any FINRA member, he becomes subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, he may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. (See FINRA Rules 8310 and 8311).

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against him;
- 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, Respondent specifically and voluntarily waives 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.

Respondent further specifically and voluntarily waives 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

Respondent 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 the Firm; and
- C. If accepted:

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

Respondent certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that he 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 Respondent to submit it.

16 AUGUST 2010
Date

David W. Dube
Respondent David William Dube

Accepted by FINRA:

November 9, 2010
Date

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



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