

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2008016403302**

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

RE: David E. Niederkrome, Respondent
CRD No. 2220569
Stephen R. Rodgers, Respondent
CRD No. 1870455

Pursuant to Rule 9216 of FINRA's Code of Procedure, David E. Niederkrome ("Niederkrome") and Stephen R. Rodgers ("Rodgers") (collectively, "Respondents") submit 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 Respondents alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondents hereby accept and consent, 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

Niederkrome entered the securities industry in February 1992 as an associated person with a FINRA member in a non-registered capacity. He first became registered with FINRA on March 5, 1997 as a General Securities Representative. In August 2006, Niederkrome founded FINRA member NWT Financial Group, LLC and became registered through the firm as a General Securities Representative, a General Securities Principal, and a Corporate Securities Representative. He has served as Chief Executive Officer of NWT since its founding, and since July 27, 2007, he has served also as the firm's Chief Financial Officer. NWT is headquartered in Issaquah, Washington and conducts a general securities business, including corporate equity and debt, options, mutual funds and private placements. Niederkrome is currently registered through NWT as a General Securities Representative, a General Securities Principal, an Equity

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Trader Limited Representative, an Investment Banking Limited Representative, and a Corporate Securities Representative.

Rodgers entered the securities industry in May 1990, when he became registered with FINRA as a General Securities Representative through an association with a FINRA member. On August 19, 2006, Rodgers joined NWT and assumed responsibilities as the firm's Chief Compliance Officer. On June 1, 2009, he stepped down as CCO but remained with the firm. While associated with NWT, Rodgers was registered with FINRA as an Equity Trader, General Securities Principal, General Securities Representative, and Registered Options Principal. On December 9, 2010, Rodgers voluntarily terminated his association with NWT. He is currently associated with another FINRA member.

Respondents have previously been the subject of one disciplinary action involving supervisory violations:

On August 30, 2010, FINRA accepted a Letter of Acceptance, Waiver and Consent ("AWC") in which Rodgers and Niederkrome consented to the entry of findings that, during the time period from July 2008 through December 2008, they failed to implement supervisory control procedures for NWT Financial Group, LLC, in violation of NASD Conduct Rules 2110, 3012 and 3013. Further, in connection with a mass transfer of approximately 1000 accounts in June and July 2008, Rodgers, individually, approved options transactions in nine accounts without a signed options agreement, in violation of NASD Conduct Rules 2110 and 2860, and permitted day-trading in five accounts that had not been approved for day-trading and without having furnished a day-trading risk disclosure to two customers, in violation of NASD Conduct Rules 2110 and 2360. Niederkrome and Rodgers were each censured and fined \$10,000, jointly and severally, for the Rule 3012/3013 violation. An additional fine of \$5,000 was assessed against Rodgers, jointly with NWT, for his violations of Rules 2860 and 2360. *NWT Financial Group, LLC*, AWC No. 2009016295901 (Aug. 2010).

OVERVIEW

David E. Niederkrome, as Chief Executive Officer of NWT Financial Group, LLC, authorized an associated person's participation in private securities transactions involving the management of three hedge funds and sales of hedge fund interests to investors, but failed to supervise those activities, in violation of NASD Conduct Rules 3040, 3010 and 2110. In addition, Niederkrome and former NWT Chief Compliance Officer Stephen R. Rodgers failed to take appropriate action when there were indicia of possible unsuitable sales of hedge fund interests by the associated person to NWT customers, in violation of NASD Conduct Rules 3010 and 2110.

FACTS AND VIOLATIVE CONDUCT

Introduction

In June 2007, James R. Holdman ("Holdman") became associated with NWT Financial Group, LLC ("NWT") and registered through the firm as a General Securities Principal and a General Securities Representative. Prior to joining NWT, Holdman informed NWT CEO David Niederkrome that he owned and operated a Louisiana-registered investment adviser company, Greenwing Securities, Inc., through which he managed and sold interests in three hedge funds – the Greenwing Fund, LLC, the Silverwing Fund, LLC, and the Bluewing Fund, LLC (hereinafter referred to collectively as "the Funds"). Holdman requested Niederkrome's authorization to continue to engage in the hedge fund business, and to continue to offer and sell interests in the Funds to investors, while associated with NWT. Niederkrome granted the authorization.

Background of the Hedge Funds

Holdman established the Funds in 2003, while he was associated with another FINRA member firm. He established Greenwing Capital Management, LLC ("GCM") – a Louisiana Limited Liability Company wholly owned by him – to serve as Managing Member for each hedge fund, and Greenwing Securities, Inc. ("GSI") – a Louisiana-registered investment adviser company – to serve as investment advisor to GCM.

Prior to and during his association with NWT, Holdman actively solicited new investors for the Funds. Interests in the Funds were offered and sold to investors in a private-placement offering, pursuant to the exemption from registration found in Regulation D, Rule 506 of the Securities Act of 1933. The private-placement offering materials for the Funds described the investment strategy of the Funds as utilizing a proprietary, computerized "swing trading" system to pursue gains through short sales of stock and short-term trading in derivatives. During the period of Holdman's association with NWT, that investment strategy entailed predominantly sales of put options with no loss-limiting hedge positions. Following their initial investment, investors in the Funds were allowed to add to and draw on the "balance" of their investment interest, just as they might with a conventional checking account. The Funds often relied on margin to accommodate withdrawals.

Each month, Holdman sent hedge fund investors an individualized performance statement reporting the dollar amount of any contributions and withdrawals made by the investor during the preceding one-month period, the current market value of the investor's interest in the applicable hedge fund(s), and the overall gain or loss (expressed as a percentage) of the applicable hedge fund(s) since the date of the last statement. NWT did not obtain copies of or review any of the monthly performance statements sent to hedge funds investors.

In December 2008, FINRA initiated an investigation of Holdman's sales of interests in the Funds. Holdman refused to cooperate in that investigation, and on April 7, 2009, FINRA accepted a Letter of Acceptance, Waiver, and Consent in which Holdman consented to a permanent bar from association with any FINRA member, based on his refusal to cooperate in FINRA's investigation.

Failure to Supervise Holdman's Approved Participation in Private Securities Transactions Involving Selling Compensation

Despite having authorized Holdman to offer and sell interests in the Funds to investors, NWT did not supervise the sales for suitability. This was due to Niederkrome's belief that NWT had no obligation to supervise the investment advisory activities of a registered representative of the firm.

NASD Conduct Rule 3040 provides: "If [a] member approves [an associated] person's participation in a [private securities transaction for which the associated person has or may receive selling compensation], the transaction shall be recorded on the books and records of the member and the member shall supervise the person's participation in the transaction as if the transaction were executed on behalf of the member."

Rule 3040 applies to the securities activities of individuals who are both registered with a FINRA member firm and registered as an investment adviser ("RR/IA"). See Notice to Members ("NtM") 94-44, issued by FINRA in May 1994.¹ FINRA indicated in NtM 94-44 that when an RR/IA, in the context of its advisory relationship, participates in the execution of securities transactions by entering orders on behalf of customers with a brokerage firm away from the FINRA member firm with which he or she is currently registered, or with a mutual fund, and receives compensation for those services, such activities are subject to the Rule 3040 requirements. Notice to Members 94-44 further clarified issues relating to the application of Rule 3040 to investment advisory activities of registered representatives by noting that "participation" contemplates actual participation in the execution of a particular trade or securities transaction and that "selling compensation" includes asset-based management fees, wrap fees, and any other fees paid to a dually-registered person in connection with investment advisory services.

In May 1996, FINRA issued Notice to Members 96-33 to provide guidance on the types of records that might be used, and the recordkeeping systems that might be established, by a FINRA member to ensure that investment advisory transactions of dually-registered persons are properly recorded and supervised in accordance with Rule 3040. Among several measures suggested, FINRA recommended that member firms implement procedures for the retention and review of written correspondence of dually-registered persons with investment advisory clients, and

¹ At the time, Rule 3040 was known as Article III, Section 40.

that firms record and monitor all securities transactions executed for investment advisory clients. FINRA cautioned in the Notice that recordkeeping alone is not a substitute for adequate supervision, and that “the records created and the recordkeeping system used, together with relevant supervisory procedures, must enable the member to properly supervise the [dually-registered person] ... and the suitability of the transactions.”

During the relevant period, from June 2007 through October 2008, NWT’s written supervisory procedures designated Niederkrome as the principal responsible for the supervision of approved private securities transactions of associated persons, including investment advisory activities.

Despite the dictates of Rule 3040, and the mandates of NWT’s own procedures, Niederkrome did not supervise Holdman’s sales of hedge fund interests to investors, or review and retain monthly performance statements that Holdman sent to hedge fund investors.

Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 3040, 3010 and 2110 by David E. Niederkrome.

Failing to Act on Indicia of Possible Unsuitable Sales of Hedge Fund Interests

Holdman permitted investors to purchase interests in the Funds using either qualified (retirement) funds or non-qualified funds. Individuals using qualified (retirement) funds were required to open a rollover IRA with NWT in order to facilitate a tax-neutral transfer of their retirement funds to the applicable hedge fund account. To establish a rollover IRA with NWT, individuals had to complete a new account application form, providing, among other information, their net worth, annual income, and investment objectives.

During the relevant period, from June 2007, through October 2008, NWT’s written supervisory procedures designated Niederkrome and Rodgers as the principals responsible for review and approval of all new account applications. During that same period, Niederkrome and Rodgers reviewed the account applications of four individuals who opened rollover IRA accounts with NWT for the sole purpose of investing in the Funds. Each of those individual had listed “safety of principal” as his or her investment objective on the account application form. Although that investment objective was inconsistent and incompatible with the investment strategies and risk profiles of the Funds, Niederkrome and Rodgers approved the opening of the accounts without inquiring into whether the intended investment was actually suitable for those customers of NWT.

Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 3010 and 2110 by David E. Niederkrome and Stephen R. Rodgers.

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

- (i) a suspension of David E. Niederkrome from association with any member of FINRA in any principal capacity for a period of six months;**
- (ii) a fine in the amount of \$15,000 to be paid by David E. Niederkrome;**
- (iii) a suspension of Stephen R. Rodgers from association with any member of FINRA in any principal capacity for a period of 60 days; and**
- (iv) a fine in the amount of \$5,000 to be paid by Stephen R. Rodgers.**

Respondents agree to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. Respondents each have submitted an Election of Payment form showing the method by which each proposes to pay the fine imposed on him.

Respondents, individually and collectively, specifically and voluntarily waive any right to claim that they are unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondents, individually and collectively, specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against them;**
- 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.**

Respondents 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.

Respondents specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of NASD Rule 9143 or the separation of functions prohibitions of NASD 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

Respondents understand 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 NASD Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against them; and
- C. If accepted:
 - 1. this AWC will become part of their permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against them;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about our disciplinary records;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and
 - 4. Respondents 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. Respondents may not take any position in any proceeding brought by or on behalf of FINRA, or to which

D. Respondents may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they 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.

12/27/10
Date

Date _____

Diane K. Golbeck 1-3-11
Diane K. Golbeck, Esq.
6947 SE Olalla Valley Road
Port Orchard, WA 98367

FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects their rights to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

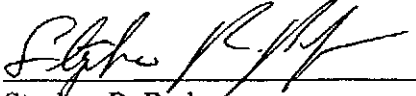
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Respondents certify that they each have read and understand all of the provisions of this AWC and each has been given a full opportunity to ask questions about it; that each have agreed to its provisions voluntarily; and that no offer, threat, inducement, 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 them to submit it.

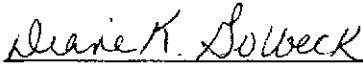
Date

David E. Niederkrome

12/23/10
Date


Stephen R. Rodgers

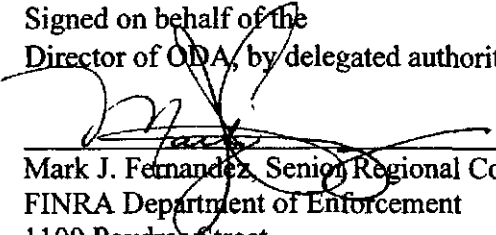
Reviewed by:

 12-11
Diane K. Golbeck, Esq.
6947 SE Olalla Valley Road
Port Orchard, WA 98367

Accepted by FINRA:

January 24, 2011
Date

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



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