

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

AYRE INVESTMENTS, INC.,
CRD No. 44499,

AND

TIMOTHY TILTON AYRE,
CRD No. 2091556,

Respondents.

Disciplinary Proceeding
No. 2009016252601

Hearing Officer: AP

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: July 15, 2011

INTRODUCTION

Disciplinary Proceeding No. 2009016252601 was filed on January 6, 2011, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondents Ayre Investments, Inc. (AI) and Timothy Tilton Ayre (Ayre) submitted an Offer of Settlement (Offer) to Complainant dated July 11, 2011. 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.

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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, and to the imposition of the sanctions set forth below, and fully understand that this Order will become part of Respondents' permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

1. In January 1999, Respondent AI became a FINRA member. AI is a small full-service broker-dealer located in Agawam, Massachusetts. During the relevant period, AI employed approximately ten registered representatives.¹ The firm is 100% owned by Ayretrade Financial, Inc., which is in turn owned by Timothy Tilton Ayre and his father, AI President AA.

2. In October 1990, Respondent Ayre first became registered with FINRA as a General Securities Representative. Ayre has been registered with FINRA through AI since the firm's inception in January 1999. Throughout the relevant period herein, Ayre was AI's Chief Compliance Officer and was registered as a General Securities Representative, General Securities Principal, Financial and Operations Principal and Municipal Securities Principal. Ayre is currently registered in those same capacities through AI.

3. As further detailed below, on January 5, 2009, FINRA accepted a Letter of Acceptance, Waiver and Consent (AWC) submitted and executed by AI and Ayre.

FINDINGS AND CONCLUSIONS

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

SUMMARY

1. From at least March 17, 2007 through at least October 25, 2009, AI, acting through its Chief Compliance Officer Ayre, failed to establish and maintain a supervisory system and establish, maintain and enforce Written Supervisory Procedures (WSPs) reasonably designed to achieve compliance with applicable securities laws and regulations. During this same period, AI also failed to develop and implement a written program providing for the supervision of all options transactions by a Registered Options Principal. From April 2009 to the present, AI and Ayre have also violated the terms of a Letter of Acceptance, Waiver and Consent by failing to file an ordered certification with FINRA regarding AI's WSPs. Moreover, from at least September 22, 2009 through at least August 15, 2010, AI also failed to retain all business-related electronic communications. AI's conduct violated NASD Conduct Rules 3010, 3110, 2860 and 2110, FINRA Rules 2360 and 2010 and Rule 17a-4 of the Securities Exchange Act of 1934 (Exchange Act). Ayre's conduct violated NASD Conduct Rules 3010 and 2110 and FINRA Rule 2010.

FAILURE TO ESTABLISH, MAINTAIN AND ENFORCE A REASONABLE SUPERVISORY SYSTEM AND WRITTEN SUPERVISORY PROCEDURES

RESPONDENTS AI AND AYRE

(NASD Conduct Rules 3010(a) and (b) and 2110 and FINRA Rule 2010)

2. During the entire period relevant to the Complaint and this Order, Ayre was AI's Chief Compliance Officer and was responsible for establishing, maintaining and enforcing AI's supervisory system and WSPs.

3. From at least March 17, 2007 through at least October 25, 2009, AI, acting through Ayre, failed to establish and maintain a supervisory system and establish, maintain and

enforce WSPs to supervise the activities of each registered person that were reasonably designed to achieve compliance with the applicable rules and regulations in the following areas:

- CRD Pre-Registration Checks
- Exception Report Maintenance and Review
- Supervisory Branch Office Inspections
- Approval of Transactions by a Registered Securities Principal
- Annual Compliance Meeting
- FINOP Review of Checks Received and Disbursements Blotter
- Rule 3012 Annual Report to Senior Management
- Review and Retention of Correspondence
- Regulation S-P
- Outsourcing Arrangements

4. AI's WSPs were purchased from a third-party vendor and were intended to meet the needs of any broker-dealer, regardless of the firm's size or business. AI, acting through Ayre, failed to tailor the template WSPs to address the particular business activities of the firm. With respect to the areas identified above, the firm's WSPs failed to describe with reasonable specificity the identity of the person who would perform the relevant supervisory reviews and how and when those reviews would be conducted.

5. Further, with respect to the maintenance of electronic communications, AI completely failed to establish, maintain and enforce any supervisory system and/or WSPs that were reasonably designed to ensure that all business-related e-mails were retained.

6. By failing to establish and maintain a supervisory system and failing to establish, maintain and enforce WSPs reasonably designed to ensure compliance with the rules and

regulations concerning the areas above, AI and Ayre violated NASD Conduct Rules 2110 (for conduct before December 15, 2008) and 3010 and FINRA Rule 2010 (for conduct after December 14, 2008).

**FAILURE TO COMPLY WITH TERMS OF AWC
RESPONDENTS AI AND AYRE
(FINRA Rule 2010)**

7. On January 5, 2009, FINRA accepted a Letter of Acceptance, Waiver and Consent (AWC) submitted and executed by AI and Ayre in which they accepted findings of, *inter alia*, failing to establish, maintain and enforce a supervisory system and/or WSPs to supervise the activities of each registered person that were reasonably designed to achieve compliance with applicable securities rules and regulations (see executed AWC, dated January 5, 2009, attached hereto as Exhibit A).

8. In the AWC, Respondents consented to the imposition of sanctions including an undertaking requiring AI to review its supervisory systems and written supervisory procedures for compliance with NASD rules and the federal securities laws and regulations. An officer of AI was then required, within 90 days of the issuance of the AWC, to certify to FINRA in writing that the firm had completed its review and that it had established systems and procedures reasonably designed to achieve compliance with NASD rules and the federal securities laws and regulations.

9. AI, acting through Ayre, failed to file this certification with FINRA within 90 days of the acceptance of the AWC.

10. During FINRA's 2009 routine examination of AI, FINRA staff reminded Ayre of AI's obligation to file the certification. Indeed, during the course of the examination, FINRA staff provided Ayre and AI with multiple reminders and opportunities to file the certification.

11. Despite being given these reminders and opportunities to file the certification regarding the firm's WSPs, AI and Ayre have yet to file the certification required by the AWC.

12. By failing to file the ordered certification, AI and Ayre violated FINRA Rule 2010.

**FAILURE TO DEVELOP AND IMPLEMENT A WRITTEN OPTIONS SUPERVISION PROGRAM
RESPONDENT AI
(NASD CONDUCT RULES 2860 AND 2110 AND FINRA Rules 2360 and 2010)**

13. NASD Conduct Rule 2860(b)(20) required every member firm to develop and implement a written program for the diligent supervision of its customer accounts and orders involving options contracts by an officer who is a Registered Options Principal. FINRA Rule 2360, which replaced NASD Conduct Rule 2860 on February 17, 2009, requires each firm that conducts an options business with customers to ensure that its supervisory system and WSPs adequately address the member's public customer options business. Rule 2360 also requires, like its predecessor Rule 2860, that each options account and transaction be supervised by a Registered Options Principal.

14. From March 2007 through October 2009, AI had only one Registered Options Principal, AA, who was required to review and approve all of AI's options trades. For more than half of the year, however, AA resided in Florida and did not work in the firm's Agawam, Massachusetts office.

15. AI's WSPs did not address or explain how AA, given his remote location, was to accomplish and document the contemporaneous review and approval of all options trades placed by AI customers.

16. From March 2007 through October 2009, AI executed approximately 450 options transactions, none of which was approved by AA, the firm's Registered Options Principal.

17. By failing to develop and implement a written program for the diligent supervision of all options transactions, AI violated NASD Conduct Rules 2860 (for conduct before February 17, 2009) and 2110 (for conduct before December 15, 2008) and FINRA Rules 2360 (for conduct after February 16, 2009) and 2010 (for conduct after December 14, 2008).

**FAILURE TO RETAIN ELECTRONIC COMMUNICATIONS
RESPONDENT AI
(EXCHANGE ACT RULE 17A-4, NASD CONDUCT RULE 3110 AND FINRA RULE 2010)**

18. From at least September 22, 2009 through at least August 15, 2010, AI failed to maintain and preserve all of its business-related electronic communications.

19. During this period, AI permitted its registered representatives to use e-mail to conduct business. The firm, however, did not have a system for e-mail surveillance or archiving.

20. Each AI representative maintained electronic communications on his or her personal computer or arranged for the retention of electronic communications in some other fashion. Throughout the relevant time period, AI relied on representatives to forward or copy their business-related e-mails to the firm's home office for retention.

21. Not all of the representatives' business-related e-mails, however, were forwarded to the home office. Those electronic communications that were not forwarded or copied to AI's home office were not retained by AI. As a result, from September 22, 2009 through August 15, 2010, AI failed to maintain and preserve at least 10,000 business-related electronic communications sent to or received by AI registered representatives JT and AC.

22. By failing to maintain and preserve all of its business-related electronic communications, AI willfully violated Rule 17a-4 of the Exchange Act and violated NASD Conduct Rule 3110 and FINRA Rule 2010.

Based on the foregoing, Respondent AI violated NASD Conduct Rules 3010, 3110, 2860 and 2110, FINRA Rules 2360 and 2010 and willfully violated Rule 17a-4 of the Exchange Act; and Respondent Ayre violated NASD Conduct Rules 3010 and 2110 and FINRA Rule 2010.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondents from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Exchange Act.

SANCTIONS

It is ordered that Respondent AI be censured and fined \$10,000 and Respondent Ayre be suspended from association with any FINRA member in any principal capacity for two months and fined \$10,000.

In addition, Respondent AI shall comply with the following undertaking within the time period specified (unless otherwise extended by FINRA staff following a written request by the firm):

AI shall undertake to review its supervisory systems and written supervisory procedures for compliance with FINRA/NASD rules and the federal securities laws and regulations, including those laws, regulations, and rules concerning the preservation of electronic mail communications. Within 90 calendar days of the issuance of this AWC, an officer of AI will certify to FINRA in writing that the firm currently has in place systems and procedures reasonably designed to achieve compliance with FINRA/NASD rules and the federal securities laws and regulations. The certification, along with the current procedures, must be submitted to Department of Enforcement staff at FINRA's Boston District Office. Although FINRA staff may review the revised procedures, said review

shall in no way constitute an approval of the revised procedures. The failure of FINRA staff to alert AI to any deficiencies in the revised procedures shall not preclude FINRA from instituting a subsequent disciplinary action as a result of deficiencies in the revised procedures.

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

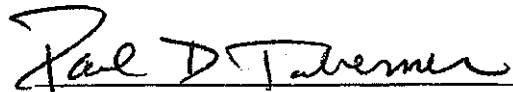
Pursuant to the General Principles Applicable to all Sanction Determinations contained in the Sanction Guidelines, FINRA imposed a lower fine against AI in this case after it considered, among other things, the firm's revenues and financial resources (see Notice to Members 06-55).

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



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