

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

Department of Enforcement,

Complainant,

v.

Birkelbach Investment Securities, Inc.
(CRD No. 11490)

and

Carl Birkelbach,
(CRD No. 1177843),

Respondents.

Disciplinary Proceeding
No. 2009016354101

Hearing Officer MC

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: Aug. 15, 2011

INTRODUCTION

Disciplinary Proceeding No. 2009016354101 was filed on about December 20, 2010 and amended on April 27, 2011 (Amended Complaint), by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA or Complainant). Respondents Birkelbach Investment Services, Inc. (BIS) and Carl Birkelbach submitted an Offer of Settlement (Offer) to Complainant on August 8, 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 understands that this Order will become part of Respondents' permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Carl Birkelbach entered the securities industry as a General Securities Representative (Series 7) in 1978 and from 1978 to the present has worked as a Registered Options Principal, a General Securities Principal and a Financial and Operations Principal at BIS, a FINRA member.

Birkelbach has not been the subject to a final formal action for the last five years.

BIS has been a member of FINRA since July 22, 1983, and became registered with the Securities and Exchange Commission on July 10, 1978 as a broker-dealer. BIS's membership with FINRA and registration with the Securities and Exchange Commission remain currently in effect.

FINDINGS AND CONCLUSIONS

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

1. Between 2007 and 2009 (the Relevant Period), Birkelbach Investment Securities, Inc. (BIS), through its owner and CEO, Carl Birkelbach (Birkelbach), failed to have adequate procedures and systems to ensure the timely reporting of information pursuant to FINRA and NASD Rules. During the Relevant Period, BIS and Birkelbach failed to timely report

settlements with customers in Rule 3070 filings, Forms BD and U4. One of the untimely filings was to update Birkelbach's own Form U4.

RESPONDENTS AND JURISDICTION

2. BIS has been a member of FINRA since July 22, 1983, and became registered with the Securities and Exchange Commission on July 10, 1978 as a broker-dealer. BIS's membership with FINRA and registration with the SEC remain currently in effect.

3. Birkelbach entered the securities industry in 1978 as a General Securities Representative. Birkelbach is also a Registered Options Principal, a General Securities Principal, and a Financial and Operations Principal. From 1978 to the present, he has been registered in these capacities with BIS.

FIRST CAUSE OF ACTION

Failure to Implement an Adequate Supervisory System to Prevent Rule Violations by BIS and Birkelbach (NASD Conduct Rules 3010(a) and (b) and 2110 and FINRA Rule 2010)

4. The Department realleges and incorporates by reference paragraphs 1-3 above.

5. During the Relevant Period, BIS's written supervisory procedures specified that the firm's chief compliance officer was to timely file disclosable events.

6. Between the dates of April 17, 2007 and March 30, 2009, BIS did not designate anyone as the firm's Chief Compliance Officer (CCO). During the Relevant Period, Birkelbach was the firm's owner and Chief Executive Officer (CEO).

7. On March 30, 2009, Birkelbach designated himself the firm's CCO. Birkelbach also continued to be designated as the firm's CEO.

8. Birkelbach continued to act in the dual capacities of CCO and CEO until January 26, 2010.

9. During the Relevant Period, Birkelbach relied upon an unregistered outside consultant to process Rule 3070 filings and amendments to Forms BD and U4.

10. Birkelbach gave the consultant incomplete instructions and inadequate guidance and did not otherwise ensure that timely and complete filings and amendments were made.

11. In April 2009, FINRA staff discovered that reportable events described in the Second and Third Causes were not disclosed and advised Birkelbach to make the disclosures.

12. Nevertheless, Birkelbach neglected to instruct the consultant to process the disclosures or to otherwise take action to correct the deficiencies until December 2009.

13. BIS, acting through Birkelbach, failed to adequately supervise to ensure the timely reporting of settlements with two customers, described in the Second and Third Causes, as required by NASD Conduct Rule 3070 and FINRA By-Laws.

14. The acts, practice and conduct described above constitute separate and distinct violations of NASD Conduct Rules 2110 and 3010 and FINRA Rule 2010 by BIS and Birkelbach.

**SECOND CAUSE OF ACTION
Failure to Report and Timely Report Information by BIS and Birkelbach
(NASD Conduct Rules 3070(a) and (b) and 2110 and FINRA Rule 2010)**

15. The Department realleges and incorporates by reference paragraphs 1-14 above.

Customer ALP's Settlement

16. On May 4, 2006, public Customer ALP filed an arbitration claim against BIS, Birkelbach and William Murphy (Murphy) (a BIS registered representative).

17. On April 2, 2007, BIS, Birkelbach and Murphy executed a settlement agreement with Customer ALP in the amount of \$150,000. Because the settlement exceeded \$15,000 (for an individual) and \$25,000 (for a firm), it met the reporting requirement of Rule 3070(a) and (b)

and was required to be reported no later than 10 business days from the date of settlement (on or before April 17, 2007).

18. On April 17, 2009, BIS filed a 3070 filing for Murphy disclosing the Customer APL settlement. Murphy's filing was 721 days late.

19. On December 8, 2009, 3070 disclosure filings for BIS and Birkelbach were made (966 days late).

Customer HC's Settlement

20. On January 4, 2008, public customer HC sent a written complaint to BIS, Birkelbach and Jack Stone (Stone)(another BIS registered representative).

21. On February 29, 2008, BIS, Birkelbach and Stone executed a settlement agreement with Customer HC in the amount of \$26,233.93. Because the settlement exceeded \$15,000 (for individuals) and \$25,000 (for the firm), it met the reporting requirement of NASD Rule 3070(a) and (b) and was required to be reported no later than 10 business days (on or before March 14, 2008).

22. On April 7, 2009, a 3070 disclosure filing for Stone regarding Customer HC's settlement was made. This filing was 389 days late.

23. On December 8, 2009, 3070 disclosure filings for BIS and Birkelbach were made. These filings were 634 days late.

24. The acts, practice and conduct described above constitute separate and distinct violations of NASD Conduct Rules 3070(a) and (b) and 2110 and FINRA Rule 2010 by BIS and Birkelbach.

THIRD CAUSE OF ACTION
Failure to Timely File Amendments to Forms BD and U4 by BIS and Birkelbach and
Birkelbach Failed to Timely Disclose Information on his Form U4
(FINRA By-Laws Article IV, § 1 and Article V, § 2 and NASD Conduct Rule 2110
and FINRA Rule 2010 and IM-1000-1)

25. The Department realleges and incorporates by reference paragraphs 1-24 above.

26. On February 29, 2008, BIS, Birkelbach and Stone executed a settlement agreement with Customer HC in the amount of \$26,233.93. This information needed to be disclosed on BIS's Form BD and Birkelbach's and Stone's Form U4 within 30 days, (on or before March 30, 2008).

27. On April 7, 2009, Stone's Form U4 was amended to disclose the settlement with Customer HC. This filing was 373 days late.

28. On December 4, 2009, the Forms BD and U4 for BIS and Birkelbach were amended to disclose the settlement with Customer HC. These filings were 614 days late.

29. Birkelbach failed to timely disclose the settlement with Customer HC on his Form U4.

30. The acts, practice and conduct described above constitute separate and distinct violations of FINRA By-Laws Article IV, § 1 and Article V, § 2 and NASD Conduct Rule 2110 and FINRA Rule 2010 and IM 1000-1 by BIS and Birkelbach.

Based on the foregoing, Respondents violated FINRA By-Laws Article IV, § 1 and Article V, §2 and NASD Conduct Rules 2110, 3010, 3070(a) 3070(b), and IM 1000-1, 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 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 the following sanctions be imposed against both Respondents:

1. Censure;
2. A joint and several fine of \$10,000.

It is ordered that the following sanctions be imposed against Respondent Birkelbach individually:

1. 30-day suspension in all capacities;
2. 90-day suspension in all principal capacities;
3. Requalification by examination as a principal; and
4. A \$15,000 fine.

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

The fine shall be due and payable either immediately upon reassociation with a member firm following the 30-day suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

SO ORDERED.

FINRA

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



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