

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant

vs.

ROBERT M. BENNING
Registered Representative
(CRD No. 2002792)

Respondent

**Disciplinary Proceeding
No. 2009016709020**

Hearing Officer Matthew Campbell

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: January 10, 2012

INTRODUCTION

Disciplinary Proceeding No. 2009016709020 was filed on May 2, 2011, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Robert M. Benning (Respondent or Benning) submitted an Offer of Settlement (Offer) to Complainant dated December 13, 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.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other

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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 Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Robert M. Benning entered the securities industry as an Investment Company and Variable Contracts Products Representative of a FINRA registered firm on January 1, 1990. On April 14, 1997, Benning became registered in the same capacity with FFP Securities, Inc. (FFP), a former FINRA registered firm. On March 22, 2000, Benning also became registered as a General Securities Representative with FFP. He was registered with FFP in such capacities until March 11, 2002. Benning was registered with FINRA registered firms while the events of this matter were occurring. Benning is not currently registered with another FINRA registered firm.

On July 24, 2004, a Letter of Acceptance, Waiver and Consent that was submitted by Benning was accepted by FINRA, under which Benning was suspended in all capacities for 45 days, and fined \$7,500. The AWC found that Benning had engaged in a private securities transaction, by selling three ETS Payphones, Inc. (ETS) telephone leases to a customer without providing a notice to FFP that he wished to engage in such activity and receiving written permission from FFP prior to engaging in such activities. The conduct was found to have violated NASD Rules 2110 and 3040. The AWC also found that Benning entered into a settlement agreement with a customer of FFP, without the knowledge and consent of FFP, in violation of NASD Rule 2110.

FINDINGS AND CONCLUSIONS

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

1. From May 17, 2000 to November 1, 2001, Robert M. Benning (Benning) sold investment contracts called Universal Lease Programs (ULPs). Issued by Yucatan Resorts, S.A. (Yucatan Resorts), Resort Holdings International, S.A. (Resort Holdings) and World Phantasy Tours, Inc. a/k/a Majesty Travel and (collectively referred to as the Issuers), the ULPs purportedly involved purchases of timeshares in Central America, with an optional arrangement to lease the properties to generate income for the investors. In fact, the Issuers were operating a Ponzi scheme in which returns to investors were paid from the proceeds of sales to other investors. Prior to participating in the sale of the ULPs to 23 investors in 29 transactions, Benning failed to provide written notice to FFP Securities, Inc. (FFP), a former FINRA registered firm, describing the sales in detail, and failed to receive written approval from FFP that he was permitted to sell the ULPs. Such conduct violated NASD Rules 2110 and 3040.

2. In 2003, after FINRA learned of Benning's involvement with the sales of ETS Pay Telephone Leases to one customer, FINRA questioned Benning about his outside business activities, private securities transactions and his compensation earned from 1999 to 2001. In answering FINRA's questions, Benning failed to disclose his sales of ULPs and the compensation that he earned on those sales, and thereby violated NASD Rules 2110 and 8210.

ULPs Were Securities Pursuant to the Securities Exchange Act of 1934.

3. ULPs involved the purchase of timeshares in various Central American hotels along with a contract with a purportedly independent, third party management company to lease the timeshare property to others and to pay investors the rental proceeds. Purchasers of the ULPs were offered three options. They could: 1) occupy the timeshare unit for personal use; 2)

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sublease the unit to others on their own; or 3) engage the designated leasing agent to sublease the unit on behalf of the investors and receive a supposedly guaranteed fixed rate of return. Rather than maintaining a separate, independent management company, the owners of the Issuers conducted the operations of both the Issuers and the purportedly independent leasing agent using common staff for both. All of the investors who dealt with Benning selected the third option mentioned above, as did the vast majority of all of the ULP investors.

4. Investors who chose the third option signed a servicing agreement at the time of purchase. In the servicing agreement, the leasing agent guaranteed the rental of the investors' timeshare, agreed to collect the rent, and also agreed to pay the investors rental income and an additional "premium" in connection with a redemption option that purportedly gave each investor the right to redeem his or her ULP at any time after two years for 100% of the initial purchase price.

5. The payments to ULP investors were based on a pooling of all investors' funds, rather than profits from the rental of each investor's specific unit. From the commencement of the sales of ULPs in 1999, until at least March 2004, the payments of purported rental income came almost exclusively from the ULP investors' own investments, which were commingled in the same U.S. bank accounts and not from any rental income.

6. The ULPs were "securities" as such term is defined in the Securities Exchange Act of 1934.

**Benning Sold ULPs to 23 Investors in 29
Transactions Without Providing Written Notice to FFP.**

7. From in or about May 2000 to in or about November 2001, Benning participated in the sale of ULPs in the total amount of \$468,590.01 to customers EB, GM, MR, JR, JD, WR,

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MC Trust, KH, DB, RO, NB, WL, MC, OH, JAR, MIR, AR, SH, ED, RK, SB, DH and MB, as shown on Schedule A, attached hereto and incorporated by reference. Prior to participating in these sales, Benning failed to provide his employer firm, FFP, with written notice describing his proposed participation in the transactions, and failed to obtain written approval from FFP to sell the ULPs.

8. Benning received at least \$38,460 in commissions from his sales of the ULPs described above.

9. The acts, practices and conduct set forth above constitute separate and distinct violations of NASD Rules 2110 and 3040 by Benning.

10. On or about April 3, 2003, FINRA received notice that Benning had been named in an investment-related, customer-initiated arbitration alleging that Benning had made unsuitable sales of three ETS Pay Telephone Lease contracts to a single customer.

11. On or about November 25, 2003, FINRA staff sent Benning a letter, pursuant to and in accordance with NASD Rule 8210. The letter requested that Benning obtain and provide copies of all W-2s, 1099 forms and tax returns for the years from 1999 to 2001.

12. On December 15, 2003, FINRA staff received copies of Benning's tax return for the year 2000 and certain 1099 Forms. The tax return did not identify the Issuers, and Benning did not submit to FINRA any 1099 forms from the Issuers even though he had received compensation from the Issuers in 2000 and 2001 for his sales of ULPs.

13. On December 16, 2003, FINRA staff sent Benning another letter, pursuant to and in accordance with NASD Rule 8210, which asked Benning if he sold any additional ETS Pay Phone Lease investment contracts to other customers or if he had sold any other products. The letter then stated that if such sales occurred, he should state to whom he sold the product, when

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the sales occurred and the amount of the compensation that he received from each sale. The letter also requested legible copies of the contracts or policies for these sales. In addition, Benning was requested to provide a full accounting of the income that he reported on his income tax for tax year 2000. The staff also noted a \$13,544.04 discrepancy in the amount of funds Benning listed as Business Income on his 2000 tax returns, and the 1099 reports that he provided. In the letter, the staff requested that Benning explain the discrepancy.

14. On December 30, 2003, Benning provided a response to FINRA staff which stated that the compensation that he received was from the sale of either insurance or annuity commissions, along with the sale of three ETS payphone leases. This was not accurate because Benning had received compensation from the Issuers in 2000 and 2001 for his sales of ULPs. Benning stated in his response that he could not provide a complete breakdown of the commissions that he earned because he did not have commissions runs, the company was no longer in business, he no longer had contact with the clients, and he had previously purged some of his clients' files in 2001. Regarding the noted discrepancy in income from the 1099 form, he stated that the 1099 forms were lost due to his refinancing activities.

15. Benning later admitted to FINRA that he earned income from his sales of ULPs in 2000 and 2001, and that he declared the income that he received on his tax return. He also stated that the discrepancy which FINRA noted between his declared income for 2000 and the total income shown on the 1099 forms that he provided to the staff was partially attributable to his ULP sales.

16. Benning's responses to FINRA's questions and statements were inaccurate and he failed to fully and accurately respond to requests by FINRA, in violation of NASD Rules 2110 and 8210.

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Based on the foregoing, Respondent violated NASD Rules 2110, 3040, and 8210. The allegations contained in the Second Cause for Complaint, are dismissed.

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 Respondent be barred from associating with any FINRA registered firm in any capacity.

The sanctions 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 Order.

SO ORDERED.

FINRA

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



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