

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

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REGISTRATION & REGULATION

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

**EARNEST FLOWERS III
(CRD No. 2547561),**

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2009016956601

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between February 2008 and December 2008, while registered with FINRA through a member firm, Respondent Earnest Flowers ("Flowers") collected at least \$92,000 from seven individuals in connection with investments purportedly made in the film production company, 51MM Films LLC ("51MM"). In connection with these sales of securities, he made a series of fraudulent misrepresentations and omissions, in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), SEC Rule 10b-5 and NASD Conduct Rules 2120 and 2110.
2. In April 2008 and June 2008, while registered with FINRA through a member firm, Flowers made unauthorized use of investor funds, totaling at least \$30,498, in violation of NASD Conduct Rule 2110.

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3. Between March 2004 and October 2004, while registered with a FINRA member firm, Flowers sold interests in a private placement in AllforChrist Ministries, Inc. ("AllforChrist") and interests in the Gillette Group LLC ("Gillette Group") to ICC customer SP. The investments in AllforChrist and Gillette Group made for customer SP were unsuitable based on SP's stated investment objective and financial needs and risk tolerance, in violation of NASD Conduct Rules 2310 and 2110.
4. In November 2006 and in or around January 2009, while registered with FINRA through a member firm, Flowers attempted to settle away the complaints of SP and 51MM investor KJ without the knowledge or consent of his employer during this period, in violation of NASD Conduct Rule 2110.
5. From at least October 2004 through November 2006, while registered with FINRA through two separate member firms, Flowers communicated with SP and other customers via outside Yahoo e-mail accounts, not affiliated with either member firm and without the knowledge or consent of the firms and, thus, prevented them from reviewing his correspondence, pursuant to NASD Conduct Rule 3010(d), in violation of NASD Conduct Rule 2110.
6. Between February 2008 and December 2008, while registered with a FINRA member firm, Flowers induced individuals to purchase promissory notes in 51MM. Further, between March 2004 and October 2004, while registered with another member firm, Flowers sold interests in a private placement in AllforChrist to two customers, SP and ML, and interests in the Gillette Group to at least four customers, SP, ML, DW, MW.

He engaged in these private securities transactions without providing prior written notice and receiving prior written approval from his employer firms, in violation of NASD Conduct Rules 3040 and 2110.

7. In connection with Flowers' outside business activities with AllforChrist, Gillette Group and 51MM, he failed to provide written or oral notice to his employer member firms, in violation of NASD Conduct Rules 3030 and 2110.

RESPONDENT AND JURISDICTION

8. Flowers first became registered with FINRA as a Corporate Securities Representative on or about April 15, 1996 through a prior FINRA member firm. Prior to that, he was an associated person of a former FINRA member firm from September 26, 1994 through April 27, 1995.
9. Flowers first became registered with FINRA as a General Securities Representative (GSR) on or about January 7, 1999 through another member firm.
10. From March 9, 2004 through December 31, 2005, Flowers was registered with FINRA member firm, Investors Capital Corp. ("Firm 1"). From January 19, 2006 through February 11, 2009, Flowers was registered with former FINRA member firm, Aura Financial Services, Inc. ("Firm 2"). On February 11, 2009, Firm 2 filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") on behalf of Flowers.
11. Flowers is not currently associated with a FINRA member firm. However, FINRA retains jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

FIRST CAUSE OF ACTION

FRAUDULENT MISREPRESENTATIONS AND OMISSIONS (SECTION 10(B) OF THE SECURITIES EXCHANGE ACT OF 1934, SEC RULE 10B-5 THEREUNDER, NASD CONDUCT RULES 2120 AND 2110)

12. The Department re-alleges and incorporates by reference paragraphs 1 through 11 above.
13. Between February 2008 and December 2008, Flowers recommended investments in a film production company, 51MM, to at least seven investors, RY, DS, KJ, OH, KM, LG, and AL. Flowers collected at least \$92,000 from these seven investors, with whom he became acquainted through their mutual affiliation with the Seventh-Day Adventist Church, a religious denomination in which Flowers is actively involved.
14. Flowers falsely represented to the investors that 51MM would use their funds to finance its film production business. He failed to tell the investors that he would use the money to pay his own personal expenses and to repay other investors. Flowers also had no reasonable basis to promise the "guaranteed" returns.
15. In his capacity as "Producer" of 51MM, Flowers issued and signed promissory notes that documented the investments of six of the seven investors. The notes, generally, promised exorbitant returns of 15% over terms less than one year, equating in some cases to per annum returns of 180% or more. For example, investor RY invested \$25,000 on May 1, 2008. His promissory note has a maturity date of May 31, 2008, at which time he was to receive his principal plus 15%, or \$3,750 in interest alone. In another case, investor LG's 51MM note promised a payment of \$16,000 on January 9, 2009, for an investment of \$12,000 on December 29, 2008 - a 33 1/3% profit in twelve days.

16. Flowers had no reasonable basis to believe that 51MM could pay any of the notes according to their terms. Flowers made some of the note sales, including those to KJ, OH and LG, after he knew that 51MM had already defaulted on earlier notes sold to RY, KM and DS.
17. None of the six investors, RY, DS, KJ, OH, KM or LG, has been fully paid, as promised pursuant to the promissory notes. At least two, RY and KJ, have been paid back in part.
18. Flowers failed to tell the investors that he solicited them to invest in 51MM, in part, as a means to raise funds to repay a brokerage customer of his, SP, in connection with her failed investments in two private placement offerings.
19. Flowers used the \$5,000 investment made by OH to repay investor KJ and a portion of KM's investment of \$30,000 to repay a loan to SWC. Other investor funds were used by Flowers for his own personal use. At least \$25,873 of KM's investment of \$30,000 was used by Flowers for his own personal use. Flowers failed to inform the investors that their funds would be utilized in these ways.
20. One of the investors, AL, did not receive a promissory note or any type of documentation to evidence his investment. AL believed that he was investing in 51MM. At least a portion of AL's original investment of \$10,000 has been repaid by Flowers.
21. A reasonable investor would consider the information that Flowers misrepresented or omitted in connection with the investments in 51MM, as described above, to be important in determining whether to invest. The information was material. Based upon Flowers' representations and omissions, the investors entered into the

investments with 51MM. Flowers made the misrepresentations, described above, with the intent to deceive, manipulate or defraud or, at the very least, with reckless disregard for their truthfulness and completeness. He also omitted to disclose material information with the intent to deceive, manipulate or defraud or, at a minimum, with reckless disregard.

22. In connection with the offer or sale of the investments in 51MM, Flowers, intentionally and/or recklessly, by the use of means of interstate commerce or the mails: (1) employed devices, schemes, or artifices to defraud; (2) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (3) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon purchasers or prospective purchasers, in violation of Section 10(b) of the Exchange Act and SEC Rule 10b-5 thereunder, and NASD Conduct Rule 2120. Further, such acts, practices and conduct constitute violations of NASD Conduct Rule 2110 by Flowers.

As a result of the foregoing conduct, Flowers violated Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5 thereunder and NASD Conduct Rule 2120. The foregoing conduct also constitutes separate and distinct violations of NASD Conduct Rule 2110 by Flowers.

SECOND CAUSE OF ACTION

MISUSE OF FUNDS (NASD CONDUCT RULE 2110)

23. The Department re-alleges and incorporates by reference paragraphs 1 through 22 above.

24. Flowers solicited KM to invest in 51MM and directed him to deposit \$30,000 into a personal bank account that was in his wife's name. Flowers did not maintain an account in his own name and used his wife's bank account for his own banking needs. The money was wired into this account on April 9, 2008. On that date, the bank account held \$3,199.07. On that same date, April 9, 2008, Flowers wired out \$15,000 to SWC, an individual who had loaned him funds. Over the next two days, Flowers withdrew approximately \$13,500 from the bank account in cash and also utilized the debit feature on the account to pay for charges at, among other places, the Department of Motor Vehicles, McDonalds, and a shopping mall. Flowers' use of the funds was contrary to investor KM's intentions. Flowers took the money even though he knew that KM intended that the entire \$30,000 be invested in 51MM. In total, apart from the existing funds in his account, Flowers misused approximately \$25,873 of KM's investment.
25. On June 25, 2008 and June 27, 2008, Flowers received into the bank account two separate deposits of \$5,000 each. At least one of those deposits was from an investor, DS. Prior to those deposits being received into the bank account, the account held a balance of \$590.05. Between June 25, 2008 and June 30, 2008, Flowers used funds in that bank account to pay for a Vonage phone bill and Verizon bill. Funds in that account were also used to make purchases, at among other places, Payless Shoes, Bath & Body Works, Dominos Pizza and purchases of gasoline and flowers. The purchases totaled approximately \$350. Also, during that period, two checks were written out, one to "cash" in the amount of \$1,100 and the second to "Earnest Flowers" for \$8,300. During that period, there were no other deposits into the

account. In total, apart from the existing funds in his account, Flowers misused approximately \$4,625 of DS's investment.

26. Flowers did not use the funds received as instructed by the investors. Instead, without the investors' knowledge, consent, or authorization, Flowers engaged in the above acts and thereby misused at least \$30,498 in investor funds.

As a result of the foregoing conduct, Flowers violated NASD Conduct Rule 2110.

THIRD CAUSE OF ACTION

SUITABILITY (NASD CONDUCT RULES 2310 AND 2110)

27. The Department re-alleges and incorporates by reference paragraphs 1 through 26 above.

28. While registered with Firm 1, Flowers handled the account of customer SP.

Customer SP met Flowers through her cousin who was affiliated with Flowers' church. SP opened an account with Firm 1 in June 2004. At the time, SP was a 45 year old, single woman, residing in New York City and working in an administrative assistant capacity at the United Nations. Her investment objective was growth and income.

29. In March 2004, while registered with FINRA through Firm 1, Flowers recommended that SP invest in the private placement offering of AllForChrist Ministries, Inc. ("AllForChrist"), a purported Christian-centered communications company. The offering was intended to raise funds for the fledging company which had conducted no business up until that point and, subsequently, would not conduct any business before shutting down. Based on Flowers' representations and his association with the church, SP invested \$10,000 in AllForChrist.

30. In October 2004, while registered with FINRA through Firm 1, Flowers recommended that SP invest in the private placement offering of the Gillette Group LLC, a company purportedly opening up a chain of health food eateries. The offering was intended to raise funds for the fledgling company which had conducted no business up until that point and, subsequently, would not conduct any business before shutting down. Based on Flowers' representations and his association with the church, SP invested \$4,000 in the Gillette Group.

31. In exchange for her investment in the Gillette Group, SP was provided with a promissory note, documenting her investment and guaranteeing her the return of her principal at the end of six months at an 18% interest rate.

32. Flowers did not adequately assess the suitability of SP's investments in AllForChrist or the Gillette Group and did not have reasonable grounds for believing that these transactions were suitable for SP based on her financial situation, investment objectives and financial needs. The Investor Questionnaire associated with the AllForChrist private placement indicated that SP did not meet the requirements of an accredited investor. The investments were not suitable for SP.

As a result of the foregoing conduct, Flowers violated NASD Conduct Rules 2310 and 2110.

FOURTH CAUSE OF ACTION

ATTEMPTED SETTling AWAY (NASD CONDUCT RULE 2110)

33. The Department re-alleges and incorporates by reference paragraphs 1 through 32 above.

34. In or around November 2006, SP complained to Flowers about the losses she suffered in connection with the AllForChrist and Gillette Group private placements and

threatened to file an arbitration claim. At that time, Flowers was registered with FINRA through Firm 2.

35. In two e-mails to SP, dated November 15, 2006 and November 20, 2006, Flowers relayed his efforts to generate funds to reimburse SP for her investment losses, including a written pledge to refund SP.
36. Flowers did not notify anyone at Firm 2 about the complaints from SP or his attempts to settle her complaints.
37. Firm 2 did not become aware of SP's complaints until she initiated an arbitration proceeding against Flowers in or around April 2008.
38. Flowers' attempts at settling with SP were made without the knowledge or approval of Firm 2.
39. KJ had invested \$5,000 through a promissory note entered into with 51MM. The note had a payable date of November 13, 2008. After the note became overdue in November 2008, KJ complained to Firm 2, where Flowers was registered at the time. During the course of Firm 2's inquiries into the matter with Flowers, he paid KJ her principal of \$5,000.
40. Flowers did not notify anyone at Firm 2 that he had paid KJ \$5,000.
41. Firm 2 did not become aware of Flowers settling away KJ's complaint until after he had paid KJ. Upon learning of Flowers' attempt to settle KJ's complaint without providing notification to Firm 2, the firm terminated Flowers.

As a result of the foregoing conduct, Flowers violated NASD Conduct Rule 2110.

FIFTH CAUSE OF ACTION

UNAPPROVED USE OF OUTSIDE E-MAIL ACCOUNT (NASD CONDUCT RULE 2110)

42. The Department re-alleges and incorporates by reference paragraphs 1 through 41 above.
43. From at least October 2004 through November 2006, while Flowers was registered with Firm 1 and Firm 2, the firms maintained procedures that prohibited the use of outside e-mail accounts to conduct business. This policy was reiterated in an attestation form that Firm 1 circulated which employees were required to sign acknowledging that “any and all” e-mail communications with the public must be sent through the firm’s e-mail address and copied to the compliance department. Flowers signed such an attestation form, dated April 7, 2004 and was aware of the restriction.
44. On several occasions, including July 10, 2004; October 1, 2004; October 7, 2004; November 15, 2006; and, November 20, 2006, Flowers sent electronic mail from personal, unapproved Yahoo e-mail accounts to Firm 1 customers DW and SP and sent e-mails to other entities in connection with his sale of the AllforChrist and Gillette Group private placements.
45. Flowers neither sought nor obtained the permission of Firm 1’s or Firm 2’s compliance departments regarding his use of his private Yahoo e-mail accounts to communicate with firm customers.
46. Both Firm 1 and Firm 2 were unaware of Flowers’ private Yahoo e-mail accounts and unable to review his e-mails to firm customers, as required pursuant to NASD Conduct Rule 3010(d).

By reason of the foregoing, Flowers violated NASD Conduct Rule 2110.

SIXTH CAUSE OF ACTION

PRIVATE SECURITIES TRANSACTIONS (NASD CONDUCT RULES 3040 AND 2110)

47. The Department re-alleges and incorporates by reference paragraphs 1 through 46 above.
48. In connection with the private placement offerings in AllForChrist and the Gillette Group, conducted in March 2004 and October 2004, respectively, Flowers participated in private securities transactions without providing prior written notification to, and receiving prior written approval from Firm 1, the FINRA member with which he was associated at the time.
49. In or about March 2004, SP gave Flowers \$10,000 to invest in the private placement of AllForChrist. Flowers marketed AllForChrist as a private placement offering in a start-up company, even providing a Private Placement Memorandum, Subscription Agreement and Investor Questionnaire for the AllForChrist offering. Flowers also referred a second individual, ML, to invest in AllForChrist. ML is an ex-football star for the New York Jets and became acquainted with Flowers through their mutual affiliation with the Church. SP was motivated to purchase the private placement because Flowers represented it as a low-risk, high return investment. In total, Flowers collected \$35,000 from SP and ML for the AllForChrist private placement offering.
50. In or about October 2004, SP gave Flowers \$4,000 to invest in the Gillette Group and, in return, received a promissory note, guaranteeing the return of her principal in six months along with interest, calculated at 18%. Flowers also referred three additional

individuals to invest in the Gillette Group who were also customers of his at Firm 1. Flowers marketed the Gillette Group as a private placement offering in a start-up health food company. The individuals were motivated to enter into the investment based on the guarantees contained in the promissory note. In total, Flowers collected \$25,250 from the four individuals to invest in the Gillette Group.

51. In connection with the investments in 51MM, conducted between February 2008 and December 2008, Flowers participated in private securities transactions without providing prior written notification to, and receiving prior written approval from Firm 2, the FINRA member with which he was associated at the time.
52. Between February 2008 and December 2008, while registered with FINRA through Firm 2, Flowers solicited at least seven individuals to invest in 51MM. In connection with at least six of these investors, RY, DS, KJ, OH, KM, LG, Flowers sold the *investors promissory notes guaranteeing their investments in 51MM*. Flowers marketed the investments to these individuals as short-term investments in a film production company that would generate returns on their investment of 15%, sometimes in the span of barely a month and, at most, within a couple of months. The investors were motivated by the promise of guaranteed, short-term, high percentage returns. In total, Flowers collected approximately \$92,000 from the seven individuals to invest in 51MM.
53. Prior to participating in the transactions involving AllForChrist and the Gillette Group and 51MM, Flowers failed to provide prior written notice to Firm 1 in accordance with NASD Conduct Rule 3040. Prior to participating in the 51MM transactions, Flowers failed to provide prior written notice to Firm 2 of his intention

to participate in such transactions, pursuant to Rule 3040. He also was required to obtain prior written permission to participate in the transactions from Firm 1 and Firm 2. Flowers neither provided written notice to, nor obtained written permission from either firm. Therefore, Flowers' participation in the AllForChrist, Gillette Group and 51MM transactions constituted a violation of Rule 3040. Further, such conduct was inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of NASD Conduct Rule 2110 by Flowers. As a result of the foregoing conduct, Flowers violated NASD Conduct Rules 3040 and 2110.

SEVENTH CAUSE OF ACTION

**OUTSIDE BUSINESS ACTIVITY
(NASD CONDUCT RULES 3030 AND 2110)**

[PLED IN THE ALTERNATIVE TO THE SIXTH CAUSE OF ACTION]

54. The Department re-alleges and incorporates by reference paragraphs 1 through 46 above. The Department incorporates and re-alleges paragraphs 46 through 53 above, and in the alternative, alleges:
55. In 2004, while associated with member Firm 1, Flowers was employed in a business activity through which he sold private placements in AllForChrist and the Gillette Group to customers outside the member firm with which he was registered. Flowers failed to provide Firm 1 with written notice of this outside business.
56. In 2008, while associated with member Firm 2, Flowers was employed in a business activity through which he raised funds from several investors for 51MM, including in some cases, entering into promissory notes with the investors, outside the scope of his

employment with Firm 2. Flowers failed to provide Firm 2 with written notice of this outside business.

As a result of the foregoing conduct, Flowers violated NASD Conduct Rules 3030 and 2110.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that Flowers be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest.
- B. order that Flowers bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.
- C. make specific findings that Flowers willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Date: January 14, 2010

FINRA DEPARTMENT OF ENFORCEMENT


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