

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

Department of Enforcement,

Complainant,

v.

David Walton Matthews, Jr. (CRD No.
323097)

Respondent.

Disciplinary Proceeding
No. 2009017195204

Hearing Officer: Lawrence B. Bernard

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: August 19, 2013

INTRODUCTION

Disciplinary Proceeding No. 2009017195204 was filed on June 28, 2012, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent David Walton Matthews, Jr. (Respondent or Matthews) submitted an Offer of Settlement (Offer) to Complainant dated August 14, 2013. 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, as amended by the Offer of Settlement, Respondent has consented, without admitting or denying the allegations of the Complaint, as amended by the Offer of Settlement, 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, as amended by the Offer of Settlement, 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

Matthews first became registered as a General Securities Representative with a FINRA member firm in April 1992. In January 1994, he became registered as a General Securities Principal. Matthews was associated with several brokerage firms prior to being employed by ABC, where he was associated from May 1998 to October 2004. Matthews became associated with Merrimac in March 2003, when he became the Firm's Chief Compliance Officer (CCO). Matthews became President of the Firm in early 2004. Matthews remained CCO until mid-2008, and remains the Firm's President to date. Throughout his tenure at the Firm, Matthews has reported directly to Stephen Douglas Pizzuti (Pizzuti), the Firm's Chief Executive Officer during the Relevant Period.

During approximately November 2004 to April 2008, Matthews was directly responsible for reviewing and approving outside business activity and private securities transactions at the Firm.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows¹:

During 2006 to April 2009 (the Relevant Period), Matthews failed to reasonably supervise outside business activities and private securities transactions of two registered representatives at Merrimac, including Stephen Pizzuti's brother.

Pizzuti's brother, Richard Pizzuti ("Richard"), along with his partner Daniel Voccia ("Voccia"), operated a company known as WPH LLC ("WPH") and sold investments in WPH away from the Firm. Richard and Voccia solicited approximately 30 individuals to invest in WPH during the Relevant Period. The aggregate amount raised from those investors during that period was over \$4 million. Richard and Voccia arranged for investors, many of whom were Firm customers, to hold their WPH investments away from Merrimac's clearing firm with non-broker-dealer custodians ("Outside Custodians").

Richard also solicited investments in a second outside business, CMC Properties LLC. Richard was an owner of CMC.

Matthews was responsible during most of the Relevant Period for implementing written supervisory procedures for the Firm, but failed to adequately implement the Firm's procedures regarding participation in outside businesses and participation in private securities transactions. Matthews also failed to implement reasonable procedures regarding the use of Outside Custodians.

Through Matthews, the Firm failed to supervise Richard and Voccia, two former registered representatives who have since been barred from association with FINRA firms,

¹ The findings herein are pursuant to Respondent Matthews' Offer of Settlement and are not binding on any other person or entity named as a respondent in this or any other proceeding.

effective December 10, 2009 and September 12, 2011, respectively. *See* Acceptance, Waiver and Consent Nos. 2009017195201 and 2009017195203.

Richard and Voccia were brokerage partners at the Firm and shared clients and commissions. Richard was employed with the Firm from November 5, 2004 to April 23, 2009. From July 2008 to April 2009, Richard was a producing branch office manager in the Firm's Longwood, Florida branch. Richard was supervised by Matthews. Voccia was employed with the Firm from November 5, 2004 to March 28, 2008. Richard and Voccia worked together out of the Firm's main office until Voccia's employment with the Firm ended.

Richard and Voccia formed WPH in May 2006. WPH was incorporated as a limited liability company in Florida. Richard and his wife were WPH's controlling shareholders. Richard and Voccia each held the title of "co-manager" of WPH. Voccia assisted Richard in running WPH's operations until November 2007, when he resigned from WPH's management. Richard retained control over WPH and managed the company until he and his wife filed for bankruptcy in July 2010.

WPH's apparent purpose was to raise capital for and develop several businesses. During 2006 to 2009, WPH held ownership interests in coffee shop franchises ("Subsidiary JD"), companies involved in the marketing and manufacture of home and business security systems and cooling devices for construction helmets, and truck wash franchises.

In 2006, Voccia and/or Richard informed Matthews that they had established WPH to invest in and develop Subsidiary JD and other enterprises. Matthews, on behalf of the Firm, orally approved Richard and Voccia to engage in outside business activity relating to WPH. Voccia and/or Richard also informed Matthews that PB, a Merrimac customer, was an investor or prospective investor in WPH. Matthews approved their solicitation of PB to invest in WPH,

but did not approve Richard and Voccia to solicit other investors. Matthews also did not approve Richard and Voccia to receive compensation for their WPH activities.

PB controlled a company called G Inc. Around June 2006, G Inc. loaned \$900,000 to WPH. WPH issued a promissory note describing the terms of the loan, stating that the loan was convertible to WPH stock at the election of the noteholder. According to the note, G Inc. would receive 9.75% interest annually from WPH, and WPH would repay the principal amount in 18 months.

In addition to PB, Richard and Voccia solicited approximately 30 individuals to invest in WPH between 2006 and April 2009. The aggregate amount raised from those investors during that period was over \$4 million.

The securities sold by Richard and Voccia consisted of interest-bearing WPH promissory notes, as described above. The terms of the WPH notes provided that WPH would return the principal loan amount to the noteholder upon the maturity of the loan, if the noteholder did not elect to convert the loan to equity in WPH.

In addition to offering these notes, WPH conducted an equity offering of Class A membership units to raise up to \$2.5 million. According to a Private Placement Memorandum (the "Memorandum") dated May 11, 2007 for the WPH equity offering, previously-issued WPH promissory notes represented approximately \$2.3 million in outstanding loans convertible to equity.

The WPH Memorandum also stated that Richard and Voccia were each entitled to salaries of \$5,000 per month as business managers of WPH. Richard and Voccia received these salaries for a period of time.

The amounts invested by individual investors in WPH during 2006 to April 2009 ranged from a few thousand dollars to over \$1 million. Certain individuals, including PB, made more than one investment in WPH. Most WPH investors were Merrimac customers at the time they invested at the recommendation of Richard and Voccia.

In early 2009, WPH began having problems making timely interest payments to the holders of its promissory notes.

Richard declared bankruptcy in July 2010. His creditors included investors in WPH who lost their principal investments.

On or about August 18, 2009, the Firm received a complaint from JR, the wife of WPH investor NR. JR complained about irregular interest payments from WPH. JR's husband NR had invested \$235,000 in a WPH promissory note after Voccia solicited his investment in January 2007. NR and JR were not customers of the Firm. However, NR had received a statement from the Outside Custodian where he held his WPH investment, which contained Richard's name and the Firm's name.

Other investors, including Firm customers, subsequently made complaints to the Firm relating to the sale of WPH investments by Richard and Voccia.

WPH was not Richard's only outside business activity. In October 2008, Richard notified the Firm in writing that he had been asked to serve as Vice President of CMC Properties LLC ("CMC"), which he described as a real estate development company. In a follow-up letter to Matthews, Richard disclosed that CMC would be issuing "secured interest-bearing notes" to a small number of investors to finance the purchase of a commercial building in Florida. Richard indicated that he intended to solicit two or three Firm customers with whom he had existing relationships. He did not identify those customers in the letter. Richard further stated that he

would not receive commissions, but would be reimbursed for expenses incurred in seeking investors for CMC. The expense reimbursements constituted selling compensation under NASD Rule 3040.

In a letter dated November 10, 2008, Matthews approved Richard's participation in a private placement offering of up to \$1 million of CMC promissory notes. The annual interest payable on the notes was 7% and the maturity date of the notes was March 2019. The letter stated that Matthews was granting approval based on his review of Richard's written request concerning CMC and other information he had received about CMC. In the letter, Matthews informed Richard that he was not permitted to receive commissions for sales of CMC investments. Furthermore, Matthews stated that the Firm must be provided with "all records" related to CMC investment sales, and the Firm would review such transactions as if they were "undertaken" through the Firm, as required by NASD Rule 3040. Matthews, however, did not document the identities of the customers for whom he was approving Richard to sell CMC.

Richard solicited at least two Firm customers to invest in CMC prior to the termination of his employment with the Firm on April 23, 2009. One customer invested approximately \$51,000 in December 2008 and the other invested \$28,000 in February 2009. Those customers' CMC investments were not held with Merrimac's clearing firm, but were held with an Outside Custodian. Matthews did not document the customers for whom he approved Richard to solicit to invest in CMC. Despite Matthew's statements in his November 10, 2008 letter, the Firm did not review the sales of CMC notes to Firm customers.

Richard continued to sell investments in CMC after his employment with the Firm terminated.

The Firm had written supervisory procedures during the Relevant Period relating to activity governed by NASD Rules 3030 and 3040. Matthews (and through Matthews, the Firm) failed to adequately enforce the Firm's Rule 3030 and Rule 3040 procedures.

During the Relevant Period, the Firm's Compliance Manual contained procedures that referenced Rule 3030 and Rule 3040 activities, though not in detail. The procedures in effect in 2006 when Matthews initially approved Richard and Voccia to participate in WPH activities prohibited brokers from engaging in private security transactions without first requesting permission in writing from the Firm and obtaining its approval to do so, but did not specifically address Rule 3030 outside business activity.

A version of the Compliance Questionnaire filled out by Richard and Voccia in September 2005, prior to their formation of WPH, contained an attached form that addressed the Rule 3040 requirements more specifically than the Compliance Manual in effect at the time. That form, titled "Private Securities Transactions -- Selling Away," stated that a broker was required to provide the details of a proposed private securities transaction to the Firm, whether or not he was going to receive compensation. It further stated that the Firm had the right to disapprove the transaction and if the Firm approved a transaction involving compensation, it was responsible for supervising the transaction and recording it on its books and records. The form also stated that if there was no compensation to the broker, the Firm was obligated to acknowledge the broker's notification of the proposed transaction and had the right to impose specific conditions upon the conduct of the transaction.

In August 2007, the Firm issued a revised version of the Compliance Manual with written supervisory procedures providing that, in addition to private securities transactions, employees were prohibited from engaging in any other activity outside the scope of their association with

the Firm (other than charity work) without making a written request for, and receiving, Firm approval prior to engaging in the activity. Those procedures further provided that the Firm would maintain a file of all written requests to engage in such activities and the Firm's approval, if given.

The 2007 version of the Firm's Compliance Questionnaire, which did not include the form described above, contained the questions "are you engaged in any other business or employed by any other firms or serve as an officer or director of another corporation or charity . . .?" and "do you understand the sale of any securities product investment or any insurance product except health insurance that has not been approved by Merrimac Corporate Securities, Inc. is prohibited?"

Contrary to the Compliance Manual procedures and Compliance Questionnaires described above, Matthews did not require Richard and Voccia to submit written notice to the Firm with the details of their managerial activities in WPH, which was an outside business activity, or their solicitation of Customer PB's investment, which was a private securities transaction. He did not acknowledge or approve in writing Richard's and Voccia's participation in the July 2006 sale of a WPH promissory note to G Inc., PB's company. He failed to document the conditions imposed by the Firm for approval of Richard's and Voccia's WPH activities limiting them to soliciting investments only from PB and prohibiting them from receiving selling compensation.

Matthews failed to make appropriate and reasonable inquiries prior to approving the brokers' involvement in WPH. He failed to determine Richard's and Voccia's specific roles in WPH, the company's financial condition and its business plan. He did not ask how much capital Richard and Voccia were seeking to raise for WPH, or whether they were soliciting investors

other than Customer PB. Although he approved a \$900,000 investment in WPH by G Inc., the company owned by PB, Matthews either did not review or failed to carefully review the promissory note evidencing that investment. Matthews, therefore, approved Richard's and Voccia's activities relating to WPH without obtaining an adequate understanding about the nature of the activities he was approving.

Furthermore, Matthews failed to take appropriate and reasonable steps to follow up after approving the two brokers to engage in WPH-related activities. For example, Matthews never asked how WPH intended to pay back G Inc. after WPH loaned \$300,000 to an unrelated entity owned by Pizzuti in August 2006.

Matthews was aware that Richard and Voccia established WPH to develop several different types of businesses, as described above. He was also aware that Richard and Voccia hosted a program on a local radio station on financial topics and that some customers had opened accounts with Merrimac because they listened to that program. Matthews, therefore, knew or should have known that Richard and Voccia were likely to solicit investors for WPH besides PB. Yet Matthews never asked whether Richard and Voccia had done so or intended to do so.

On August 31, 2007, Matthews informed the Firm's brokers in writing that he was revoking all approvals previously granted for any outside business activity, and instructed the brokers to submit new written requests for approval. Matthews asked the brokers to provide details of their proposed outside business activities and relevant corporate documents. Matthews failed to follow up after Richard and Voccia did not comply with the August 31, 2007 request.

Matthews also failed to document which customers he had approved Richard to solicit to invest in CMC. Furthermore, because Richard received selling compensation, as defined in NASD Rule 3040, for his sales of CMC notes, the Firm was required to record those sales on its

books and records and supervise Richards's participation in those transactions as if they were being executed on behalf of the Firm. The Firm failed to adequately review Richard's CMC sales to customers.

Many WPH investors during the Relevant Period were Firm customers. The Firm, however, did not receive copies of statements or confirmations for WPH transactions. This occurred because those investments were not held with Merrimac's clearing firm. Instead, WPH investments were held with two Outside Custodians, ST Company and FIS, Inc. CMC investments sold by Richard during the Relevant Period also were held with an Outside Custodian.

Although the Firm permitted brokers to arrange for customers to hold Firm-approved illiquid investments with Outside Custodians, the Firm did not have a system in place reasonably designed to prevent brokers from using Outside Custodians to engage in selling away from the Firm during the Relevant Period.

Unlike Merrimac's clearing firm, ST and FIS were not broker-dealers and were not regulated by FINRA. Merrimac did not have a written services agreement with ST or FIS. In fact, the Firm had no direct business relationship with the Outside Custodians. Individual investors were able to authorize Merrimac brokers to act as their agents with ST and FS, so that the brokers could receive account statements and communicate with the Outside Custodians about customer investments held at those firms. However, WPH investors, including Firm customers, did not give express authorization for the Firm to receive duplicate statements and confirmations. The Firm did not have written supervisory procedures requiring brokers to provide it with account statements and other documentation for customer assets held with the Outside Custodians, in the event that the Firm did not otherwise obtain them in the routine

course of business. Richard and Voccia did not provide the Firm with duplicate statements or confirmations for WPH transactions during the Relevant Period.

Matthews was responsible for drafting and implementing supervisory practices and procedures at the Firm until approximately June 2008. He did not formulate written supervisory procedures for the use of the Outside Custodians when he had that responsibility. Overall, the Firm had an inadequate supervisory system for monitoring its brokers' use of Outside Custodians.

Based on the foregoing, Respondent Matthews violated NASD Rules 3010 and 2110 (Inadequate Supervision) during the Relevant Period. Respondent also violated NASD Rules 3010 and 2110 during 2006 through December 15, 2008 and FINRA Rule 2010 December 15, 2008 to April 2009 (Deficient Written Supervisory Procedures).

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 suspended for three months from acting in a principal capacity with any FINRA registrant and be fined \$10,000.

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



Susan Light
Chief Counsel & Senior Vice President
FINRA Department of Enforcement
One World Financial Center
200 Liberty Street
New York, NY 10281-1003
Tel. No. (646) 315-7417
Email: susan.light@finra.org