

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 200901734667**

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Erin Ackerman, Respondent
(CRD No. 4663913)

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I submit this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. I hereby accept and consent, without admitting or denying the findings, 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, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

Erin Ackerman entered the securities industry in February 2003 when she began working at CM Securities, LLC ("CM") in a registered capacity. Ackerman became registered as a General Securities Representative and as a General Securities Principal on June 20, 2003 and September 10, 2003, respectively.

Ackerman began her employment with CM as the Chief Compliance Officer ("CCO"), Chief Operating Officer ("COO"), as well as the direct supervisor of CM's retail registered representatives. Ackerman was the CCO until 2006, but remained the COO and direct supervisor of the registered representatives until she voluntarily terminated her employment from CM on May 28, 2010. She is not presently associated with a member firm.

OVERVIEW

From July 2004 through February 2008 (the "Relevant Period"), Ackerman failed to reasonably supervise CM's registered representatives in connection with the sale of shares of a real estate investment trust ("REIT") to retail customers. In addition, Ackerman, as CCO, failed to establish, maintain, and enforce an adequate supervisory system to monitor customer accounts for potentially unsuitable levels of concentration in a security or investment sector, or to determine whether a purchase was suitable for a customer based on the customer's investment objectives and risk tolerance.

By virtue of this conduct, Ackerman violated NASD Rules 3010(a) and (b), and 2110.

FACTS AND VIOLATIVE CONDUCT

NASD Rule 3010(a) requires that each member establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with the federal securities laws and NASD and FINRA Rules.

NASD Rule 3010(b) requires that each member establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives and associated persons that are reasonably designed to achieve compliance with the federal securities laws and NASD and FINRA Rules.

Background: CM and Desert Capital REIT

In 2003, TP was the president of a CM affiliated entity (the "Affiliate"). The Affiliate was a small hard money lender that underwrote trust deeds, highly collateralized short-term loans, for investors in development and real estate loans in Las Vegas, Nevada. In or about December 2003, TP resigned from the Affiliate and formed Desert Capital REIT ("DCR") and CM. CM was established to be the dealer-manager for DCR and TP was the primary shareholder and Chief Executive Officer of CM. In November 2004, a wholly-owned subsidiary of DCR entered into an agreement in which it acquired the Affiliate. The transaction was structured as an installment sale pursuant to which DCR's wholly-owned subsidiary acquired the outstanding equity securities of the Affiliate over the course of a year. DCR, through its wholly owned subsidiary, completed the installment acquisition of the Affiliate in October 2005. CM almost exclusively sold DCR to its retail customers.

DCR was a publically registered, non-traded REIT with a portfolio of trusts deeds. All of the trust deeds in DCR's portfolio were originated and serviced through the Affiliate. DCR financed the funding and purchases of the Affiliate's trust deeds, in part, through equity capital raised by CM. The trust deeds were structured to receive monthly interest payments during the life of the loans, which were then distributed to investors as dividends and a balloon payment upon maturity.

CM was the dealer-manager of two offerings of DCR. During the initial public offering ("IPO") of DCR, July 2004 through March 20, 2006, CM sold shares of DCR almost exclusively to retail customers at \$10 per share. During the secondary offering, March 21, 2006 through February 2008, CM sold DCR directly to retail customers and through third-party broker-dealers at \$15 per share.

DCR was a Risky Speculative Investment

DCR was a speculative investment involving a high degree of risk, including the risk of payment default on DCR's investments in balloon mortgage, sub-prime loans and/or non-investment grade loans. In addition, DCR common stock was not publicly traded and there was no assurance that such a market would develop. Accordingly, investors risked that they may never be able to sell their DCR shares. In fact, the DCR prospectuses indicated that DCR shares should only be purchased if the investor could afford a complete loss.

DCR's minimum financial suitability requirements for each customer, as disclosed in the prospectus for each offering, was either \$45,000 in income and \$45,000 total net worth or \$150,000 total net worth. However, the DCR prospectus for the IPO and the secondary offering identified certain states that established higher minimum financial suitability requirements for customers seeking to purchase DCR. The higher minimum financial suitability requirements for each state were described in each DCR prospectus.

On or about February 22, 2008, DCR suspended sales of new DCR shares and reduced the dividend for existing shareholders. In or about October 2008, DCR suspended all shareholder dividends. In December 2008, DCR devalued its shares to \$1.47 a share. A Chapter 11 involuntary petition for bankruptcy was filed against DCR on or about April 29, 2011 and its shares have no current value. On January 11, 2012, CM filed a Form BDW with FINRA to withdraw its registration from the Securities and Exchange Commission ("SEC"). The SEC terminated CM's registration on March 20, 2012.

REIT Sales by SF and JM

During the Relevant Period, CM registered representatives, SF and JM, recommended the purchase of DCR shares to seven customers (the "Customers") and then executed the DCR purchases in the Customers' accounts. SF and JM, like other CM registered representatives, were dually employed as salespeople at the Affiliate and sold both trust deeds and DCR.

At the time of the Customers' initial DCR purchase, six were existing customers of the Affiliate and owned trust deeds issued by the Affiliate. The seventh customer inherited trust deeds purchased by his deceased mother through the Affiliate. As the Customers' trust deeds matured, SF and JM recommended the purchase of DCR to the Customers.

SF and JM recommended the purchase of DCR to each of the Customers, although none of the Customers' new account documents ("NADs") and subscription agreements ("Agreements") listed "Speculation" as his/her investment objective or listed "Aggressive Risk" as his/her risk tolerance. In fact, all of the Customers' NADs and Agreements listed the Customers' risk tolerance "Moderate Risk." Moreover, SF's and JM's recommendations and the subsequent transactions resulted in high concentration levels of DCR in the Customers' accounts or high concentration levels of real estate-based investment products consisting of DCR and the Affiliate's trust deeds in their portfolios.

The percentage of the Customers' investable assets concentrated in DCR ranged from approximately 42% to 95% for six of the Customers. For the remaining customer, the DCR purchases resulted in approximately 89% of his investable assets being concentrated solely in real estate-based investments, specifically, DCR shares purchased from CM and trust deeds purchased from the Affiliate.

These unsuitable concentration levels exposed the Customers to a risk of loss that was inconsistent with their stated risk tolerance of Moderate Risk and investment objectives of "Growth and Income (Return Emphasis)" or "Income (Return Emphasis)." CM defined the investment objective of "Growth and Income (Return Emphasis)" on its NADs as: "Seeks a combination of income and capital appreciation at or above current market levels through a broad range of investments and strategies that may involve an above average level of risk." CM defined the investment objective of "Income (Return Emphasis)" on the bottom of its NADs as: "Seeks income at or above current market levels through a broad range of investments and strategies that may involve an above average degree of risk."

Customer CRM is an example of the unsuitable concentration levels of DCR in the Customers' accounts:

Customer CRM was 49 years old, retired, and disabled in September 2004 when he opened an account at CM. CM's NAD for customer CRM listed his risk tolerance as "Moderate Risk," and his investment objective as "Income (Return Emphasis)." On or about September 2, 2004, SF recommended and effected a \$200,000 purchase of DCR in CRM's account. This represented 100% of CRM's investable assets at the time, with the exception of a \$10,000 investment at another broker-dealer. Based on SF's recommendation, CRM invested approximately 95% of his investable assets in DCR. SF's recommendation to purchase DCR was contrary to CRM's investment objective and risk tolerance. CRM lost his entire principal investment in DCR.

Based on SF's and JM's unsuitable recommendations, the Customers purchased a total of \$1,679,304¹ of DCR during the Relevant Period. However, since DCR shares were de-valued to \$1.47 and DCR subsequently filed for involuntary bankruptcy, the Customers' lost their entire principal investment in DCR.

Ackerman's Supervisory Violations

Ackerman Failed to Reasonably Supervise SF and JM

During the Relevant Period, Ackerman was the direct supervisor of the Firm's retail registered representatives and was responsible for conducting suitability reviews for all retail customer transactions. She also served as the Firm's CCO from 2003 through 2006 and was responsible for establishing, maintaining and enforcing the Firm's supervisory system and procedures, as well as conducting suitability reviews for all customer transactions. Ackerman was also the Director of Stockholder Relations at DCR during the Relevant Period.

During the Relevant Period, Ackerman was responsible for supervising SF and JM. Ackerman, however, failed to take appropriate action to reasonably supervise SF and JM to detect and prevent the unsuitable sales of DCR to the Customers and to achieve compliance with the applicable rules. As indicated below, Ackerman, among other things, failed to take reasonable steps to follow up on certain indications of potential misconduct that should have alerted her to their violations:

¹ Some customers received cash dividends and others reinvested their dividends in DCR.

- Ackerman knew or should have known that the prospectus labeled DCR as a “Speculative” investment. None of the Customers were considered speculative investors per their NADs. Ackerman, however, did not ensure that the investments purchased by SF and JM for the Customers’ accounts were consistent with their investment objective or “Growth and Income (Return Emphasis)” or “Income (Return Emphasis).”
- Ackerman knew or should have known the prospectus warned potential investors that they should not invest in DCR unless they could “afford a complete loss.” Ackerman failed to make sufficient inquiry to ascertain that the Customers understood the risks associated with the investment strategies being recommended by SF and JM.
- Ackerman knew or should have known that the NADs for two of the customers were inaccurate because the purchases were in excess of the customers’ stated net worth per the NAD;
- The remaining five customers’ financial profile information also reflected that they had high levels of concentration of DCR in their accounts ranging from 42% -100%.
- Ackerman knew or should have known that the Customers’ investments in DCR were unsuitable because such purchases cause unsuitable levels of concentration in DCR/real estate-based investments.
- Ackerman failed to assess whether such concentrations were suitable for the individual customers given their financial circumstances and income needs, especially in light of their stated investment objectives that required diversification of investments to reduce risk.
- Ackerman knew or should have known that five Agreements were inaccurate because the same document indicated that the purchase of DCR was both “solicited” and “unsolicited.” Ackerman, however, failed to conduct a thorough review of the Customers’ Agreements for accuracy and therefore, did not have sufficient information as to whether the transaction was solicited/unsolicited for a reasonable suitability assessment.

Despite these red flags, Ackerman failed to take reasonable steps to ensure the suitability of the registered representatives’ sales of DCR to the Customers. Other than her approval signature on the NADs, there was no indication that Ackerman performed a supervisory review of the suitability of a DCR purchase for a particular customer account, including a review for unsuitable concentration.

As a result of Ackerman's failure to reasonably supervise SF and JM, the Customers lost their entire investments, collectively totaling of \$1,679,304.

Ackerman Failed to Establish, Maintain and Enforce an Adequate Supervisory System and Procedures

Ackerman assisted in creating the Firm's Written Supervisory Procedures ("WSPs") and the related supervisory systems to implement and monitor them. As the CCO, Ackerman was the primary person responsible for ensuring that all sales practice procedures relating to the Firm's business were in the WSPs and were being enforced.

According to the DCR prospectuses, the minimum financial suitability requirements for a customer to purchase shares of DCR was \$45,000 in income and \$45,000 total net worth, or \$150,000 total net worth. Moreover, certain states were identified which had more stringent minimum financial suitability requirements. Indeed, the DCR prospectus for the second offering identifies four states that prohibited residents of such states from investing more than 10% of their net worth, exclusive of home, furnishings and automobiles, in this offering. Another state prohibited its residents from investing more than 20% of their liquid net worth (excluding home, home furnishings and automobiles) in shares of DCR.

Although CM sold shares of DCR almost exclusively, Ackerman failed to tailor the Firm's WSPs to its business model. Specifically, the WSPs failed to adequately address alternative investments such as DCR or REITs. Notwithstanding the financial suitability requirements set for in the DCR prospectuses, including DCR concentration levels, the WSPs did not specifically identify the financial suitability requirements and did not include any guidance regarding a review for unsuitable concentration levels of a security or sector in a customer's account. Moreover, Ackerman was unable to demonstrate that she performed an adequate suitability review or followed up on the red flags set forth above. These supervisory deficiencies contributed to Ackerman's failure to detect SF's and JM's unsuitable recommendations.

By failing to reasonably supervise registered representatives SF and JM, and failing to establish, maintain and enforce a supervisory system, including written procedures, that was reasonably designed to achieve compliance with applicable federal securities laws and with applicable NASD Rules, Ackerman violated NASD Rules 3010 and 2110.

B. I also consent to the imposition of the following sanctions:

- an 18-month suspension from association with any FINRA member firm in any principal capacity; and
- a fine in the amount of \$20,000.

I understand that if I am barred or suspended from associating with any FINRA member, I become subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rules 8310 and 8311).

The fine shall be due and payable either immediately upon re-association with a member firm 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.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against me;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, I specifically and voluntarily waive any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

I further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

I understand that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs, pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and
- C. If accepted:
 - 1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. I may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. I may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects my right to take legal or factual positions in litigation or other legal

proceedings in which FINRA is not a party.

- D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

05/07/2012
Date (mm/dd/2012)

Erin Ackerman
Erin Ackerman,
Respondent

Reviewed by:

Brent Benoit
Brent Benoit
Counsel for Respondent
Locke Lord Bissell & Liddell
800 Travis Street - Suite 3400
Houston, Texas 77002
713-226-1570 - phone

Accepted by FINRA:

5-31-12
Date

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

Richard Best
Richard Best
Chief Counsel
FINRA Department of Enforcement
1 World Financial Center
200 Liberty Street
New York, New York 10281-1003
646-315-7308 - phone
646-315-3424- facsimile