

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2009018628401**

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

RE: HKC Securities, Inc., n.k.a. ACGM, Inc., Respondent
CRD No. 29705

Harold K. Cohen, Respondent
CRD No. 49888

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, HKC Securities, Inc., n.k.a. ACGM, Inc. ("Firm"), and Harold K. Cohen ("Cohen") (collectively "Respondents") 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 Respondents alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondents 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

The Firm is a broker/dealer that has been a member of FINRA since April 1992. The Firm is based in New York, NY and had one branch office during the relevant period. The Firm was engaged as a third-party marketer for several hedge funds and funds of hedge funds. Approximately three registered individuals were involved with the marketing of hedge funds during the relevant period.¹

¹ After the relevant period, the Firm was sold through a stock purchase agreement effective June 2, 2011, and on July 18, 2011, the Firm changed its name from HKC Securities, Inc. to ACGM, Inc.

Cohen entered the securities industry in May 1967. In December 1967, Cohen became registered as a General Securities Representative (Series 1).¹ Additionally, Cohen passed the Registered Principal examination (Series 40)² in 1977 and the Interest Rate Options Qualification examination (Series 5) in 1981. Cohen was the President and Chief Compliance Officer of the Firm from 1991 through June 2, 2011. Cohen is no longer registered with the Firm but remains subject to FINRA jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

None of the Respondents has any prior relevant disciplinary history.

OVERVIEW

Between January 2008 and February 2010, the Firm distributed sales material to potential institutional investors regarding third-party hedge funds, funds of hedge funds, and hedge fund families that the Firm was engaged to market. Many of these communications, which generally consisted of a cover e-mail drafted by the Firm and attachments prepared by the funds themselves, violated the content standards for institutional sales material, in violation of NASD Rule 2211(d), NASD Rule 2210(d), NASD Rule 2110, and FINRA Rule 2010, by, among other things, failing to include risk disclosures specific to hedge funds and by not presenting a fair representation of the risks and potential disadvantages of the investments being marketed.

Between January 2008 and June 2011, the Firm's procedures for the review and approval of hedge fund institutional sales material were not reasonably designed or implemented to achieve compliance with FINRA's content standards for institutional sales material and were not appropriate for a business actively engaged in the third-party marketing of hedge funds. Cohen, as the Firm's Chief Compliance Officer and the principal responsible for the review and approval of institutional sales material, did not engage in adequate supervision to achieve compliance with FINRA's content standards for institutional sales material. Accordingly, the Firm and Cohen violated NASD Rule 2211(b)(1)(B), NASD Rule 3010, NASD Rule 2110, and FINRA Rule 2010.

The Firm, through Cohen, also failed to maintain a file of institutional sales material in accordance with the requirements of NASD Rule 2211(b)(2)(A), also violating NASD Rule 2110 and FINRA Rule 2010.

¹ The Series 1 examination was replaced by both the Series 6 (investment company products/variable contracts representative examination) and the Series 7 (general securities representative examination) in the 1970s.

² The Series 40 qualification examination was revised in 1979 into the Series 24 qualification examination.

FACTS AND VIOLATIVE CONDUCT

During the relevant period, the Firm marketed hedge funds to large institutional investors, primarily educational and other endowment funds. The Firm's institutional sales material primarily consisted of a summary document prepared by the Firm to promote a hedge fund, fund of funds, or fund family. These summary documents were sent by individual emails to a large number of prospective investors. At times, the Firm attached documents to these emails; the attachments generally were documents drafted by the hedge fund family itself, not by the Firm or Cohen, and included performance summaries, PowerPoint decks, and other brochures. The Firm's general practice was to update information in the summary document, such as performance information, on a monthly basis. The summary document was sent to prospective institutional investors based on the judgment of the registered representative(s) who had been communicating with them. The purpose of the Firm's sales material was to introduce the hedge fund to the potential investor, and the institutional investor was intended to be the end-user of the sales material. If the investor expressed interest in the hedge fund, the Firm arranged for further discussion between the investor and the hedge fund itself.

The Firm's Hedge Fund Marketing Materials Violated FINRA's Content Standards for Institutional Sales Material

NASD Rule 2211(d) requires that "[a]ll institutional sales material and correspondence are subject to the content standards of Rule 2210(d)(1)[.]" NASD Rule 2210(d)(1), in turn, sets forth the content standards applicable to all communications with the public, including those with institutional investors. Rule 2210(d)(1) requires, among other things, that all communications "be based on principles of fair dealing and good faith," "be fair and balanced," and "must provide a sound basis for evaluating the facts in regard to any particular security." Rule 2210(d)(1)(B) further requires that "[n]o member may make any false, exaggerated, unwarranted or misleading statement of claim in any communication with the public." A violation of NASD Rules 2211 and 2210 is also a violation of NASD Rule 2110 and FINRA Rule 2010.

Based on a sample of sales material used by the Firm during the time period January 2008 through February 2010, the Firm's materials violated the content standards in NASD Rules 2211(d) and 2210(d) in a variety of ways. For example:

- All of the summary documents in the sample failed to present fairly the risks and potential disadvantages of the investment, highlighting only the fund's positive features and not providing a sound basis for evaluating the investment;
- Many of the summary documents also included exaggerated language, such as referring to a fund as having "significantly outperformed its benchmarks" or a fund's performance as "remarkable";
- One of the summary documents referred to aggregated performance of the underlying fund managers for a fund of funds over 1-year, 3-year, and 5-year time horizons, even though the fund of funds had only been in operation for approximately three months at the time of the document;
- Some of the summary documents failed to identify the basis for factual statements made, such as describing one fund as the "#1 hedge fund in Israel" and describing another fund as the "#1 performing equity market-neutral fund in the world in 2005"; and
- Some of the summary documents contained an inadequate discussion of the performance of the funds, failing to state whether performance cited was net of all incentive allocations, management fees, and expenses.

The sales material also failed to present fairly the risks and potential disadvantages of hedge fund investing. Notice to Members 03-07 specifically addresses hedge fund sales material, counseling that such material should include a full disclosure of specified risks, including the fact that hedge funds can engage in leveraging, can be highly illiquid, are unregulated, and often charge high fees.

By reason of the foregoing conduct, the Firm violated NASD Rules 2211(d), 2210(d) and 2110, and FINRA Rule 2010.

The Firm and Cohen Failed to Establish Sufficient Supervisory Procedures Relating to Institutional Sales Material and Failed to Adequately Review Institutional Sales Material for Compliance with FINRA Standards

NASD Rule 2211(b)(1)(B) requires each member to "establish written procedures that are appropriate to its business, size, structure, and customers for the review by a registered principal of institutional sales material used by the member and its registered representatives." More generally, NASD Rule 3010(a) requires that "[e]ach member shall 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 applicable securities laws

and regulations, and with applicable NASD rules." NASD Rule 3010(b)(1) requires each member to "establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of NASD." A violation of NASD Rules 2211 and 3010 is also a violation of NASD Rule 2110 and FINRA Rule 2010.

From January 2008 through June 2011, while the Firm was engaged, among other things, in marketing hedge funds, the Firm's Written Supervisory Procedures provided insufficient guidance with respect to FINRA's content standards for hedge fund advertising and did not discuss required risk disclosures specific to hedge fund investing. Cohen, as the Firm's Chief Compliance Officer, was responsible for the establishment of such procedures.

In addition to the insufficient procedures, the Firm failed to adequately supervise the use of institutional sales material by its registered representatives. Cohen was the supervisor responsible for reviewing and approving communications with the public. Cohen did not follow the Firm's written procedures, which required post-hoc review of institutional sales material and a written notation of approval. Cohen's practice at the time was to pre-approve the summary documents prior to use, rather than reviewing after use, and he did not make any written notation of approval of documents. Cohen also did not routinely review updates to summary documents either before or after their use with potential institutional investors.

Moreover, Cohen's review was limited; he, for example, looked to see whether the Firm's summary document was consistent with his own understanding of the funds being marketed. Cohen's review was not focused on compliance with FINRA's content standards, such as whether the documents contained exaggerated statements, had sufficient risk disclosures, or identified the factual basis for statements made. Cohen's review was also limited to the summary document prepared by the Firm and did not extend to the materials sent by the Firm that were prepared by the funds themselves. The failure to review documents prepared by the funds resulted in documents being sent to potential investors that were labeled "not to be distributed to clients," among other things.

By reason of the foregoing conduct, the Firm and Cohen violated NASD Rules 2211(b)(1), 3010 and 2110, and FINRA Rule 2010.

The Firm and Cohen Did Not Keep Adequate Records of Institutional Sales Material

NASD Rule 2211(b)(2)(A) requires that members "must maintain all institutional sales material in a file for a period of three years from the date of last use. That file must include the name of the person who prepared each item of institutional sales material." A violation of NASD Rule 2211 is also a violation of NASD Rule 2110 and FINRA Rule 2010.

The Firm did not maintain a file in accordance with these requirements during the time period January 2008 through June 2011. The Firm did not maintain a complete file of institutional sales material used and did not notate the sales material with the name of the person who prepared the document and the date that the document was first circulated. Cohen was responsible for ensure the Firm's compliance with these recordkeeping requirements.

By reason of the foregoing conduct, the Firm and Cohen violated NASD Rules 2211(b)(2) and 2110, and FINRA Rule 2010.

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

HKC Securities, Inc.

- A censure; and
- A \$50,000 fine.

Harold K. Cohen

- A censure; and
- A \$10,000 fine.

Respondents agree to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. Respondents have submitted Election of Payment forms showing the method by which they propose to pay the fines imposed.

Respondents specifically and voluntarily waive any right to claim that they are unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against Respondents;
- 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, Respondents 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.

Respondents 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

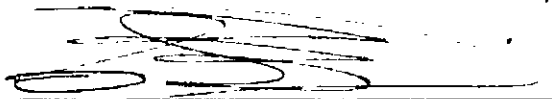
Respondents understand that:

- 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 ("ODA"), 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 Respondents; and
- C. If accepted:
 - 1. this AWC will become part of Respondents' permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Respondents;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondents' 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. Respondents 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. Respondents 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 Respondents': (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Respondents may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they 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.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understand all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that the Firm has 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 the Firm to submit it.

Respondent Cohen certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that he has 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 him to submit it.

03/22/13
Date (mm/dd/yyyy)



HKC Securities, Inc., n.k.a ACGM, Inc.

By: CARLOS A. ABEL
PRESIDENT

Reviewed by:



Robert J. A. Zito
Counsel for Respondent ACGM, Inc.
Carter Ledyard & Milburn LLP
2 Wall Street
New York, NY 10005-2072
212-238-8768

05/27/13
Date (mm/dd/yyyy)

Harold K. Cohen

Reviewed by:

Jonathan L. Goldstein
Counsel for Respondent Cohen
Hellring Lindeman Goldstein & Siegal LLP
One Gateway Center
Newark, NJ 07102
973-621-9020

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understand all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that the Firm has 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 the Firm to submit it.

Respondent Cohen certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that he has 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 him to submit it.

Date (mm/dd/yyyy)

HKC Securities, Inc., n.k.a ACGM, Inc.

By: _____

Reviewed by:

Robert J. A. Zito
Counsel for Respondent ACGM, Inc.
Carter Ledyard & Milburn LLP
2 Wall Street
New York, NY 10005-2072
212-238-8768

3/26/13

Date (mm/dd/yyyy)

Harold K. Cohen

Harold K. Cohen

Reviewed by:

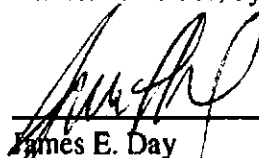
Jonathan L. Goldstein

Jonathan L. Goldstein
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Newark, NJ 07102
973-621-9020

Accepted by FINRA:

4/18/13
Date

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



James E. Day
Chief Counsel

FINRA Department of Enforcement
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