

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Anthony G. Manaia
(CRD No.1506665),

Respondent.

DISCIPLINARY PROCEEDING
No. 2009018818101

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Anthony G. Manaia ("Manaia") made intentional and negligent misrepresentations which were material, to approximately fifteen customers in connection with investments in private placements offered by Medical Capital Holdings, Inc. ("MedCap") pursuant to Regulation D. He also negligently omitted to disclose to such investors material information necessary in order for certain affirmative representations not to be misleading.

RESPONDENT AND JURISDICTION

2. Anthony Manaia entered the securities industry in October 1986 when he became registered as a General Securities Representative through a FINRA member firm. Manaia's registration with that firm was terminated in October 1993. He worked for four other broker-dealers before joining Intervest International Equities Corporation ("Intervest") as a

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General Securities Representative and Principal on February 28, 2007. While associated with Intervest, Manaia engaged in non-securities business activity through Manaia Capital Management, Inc., an entity he owned and controlled. Intervest terminated Manaia's securities registrations on July 5, 2010. Manaia has not associated with another member firm since that time. Although Respondent has not been associated with a FINRA member firm since July 5, 2010, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the (1) the Complaint is being filed within two years after the date upon which he ceased to be associated with a FINRA member and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member.

BACKGROUND

3. The Department realleges and incorporates by reference paragraphs 1 and 2 above.
4. MedCap was a medical receivables financing company which provided financing to healthcare providers by purchasing their accounts receivable and making secured loans to them. MedCap sought to profit by acquiring those accounts receivable at a discount to their face value, and collecting on those receivables from insurers at a higher value.
5. MedCap sponsored a series of private placements beginning in October 2001 and continuing into 2009. The private placements involved the sale of debt securities issued by six special purpose corporations, known as Carlmont II and Medical Provider Funding Corporations I through V (MedCap I – MedCap V). Manaia sold MedCap III to approximately 12 customers and MedCap V to approximately 38 customers. The MedCap V transactions occurred during Manaia's association with Intervest; the MedCap III transactions occurred prior to that association.

6. MedCap's final offering was MedCap VI, a special purpose corporation offering up to \$400 million in notes to accredited investors pursuant to an August 5, 2008 private placement memorandum (PPM). The notes had two, three and six-year terms, with interest rates ranging from 9% to 9.5%.
7. MedCap V and VI's PPMs disclosed that an investment in the notes involved significant risk and was suitable only for persons who had substantial financial resources and had no need for liquidity. The PPM further represented that prospective investors should not purchase the notes unless they were prepared to lose their entire investment. Like MedCap IV and V, the PPM for MedCap VI allowed MedCap to use up to 40% of the offering proceeds in assets other than healthcare accounts receivable. This was different from the PPM for MedCap III which allowed MedCap to only use up to 20% of the offering proceeds in assets other than healthcare accounts receivables.
8. Like MedCap II – V, the PPM for MedCap VI allowed for cross funding between affiliates. This meant that MedCap could direct the sale of accounts receivable and other assets or loans from one affiliate to another. In addition, the trustee did not act as a traditional trustee. Under the terms of the PPMs for MedCap II through VI, the trustee was not responsible for making any calculations of principal or interest, or to independently determine any collateral coverage ratios; the trustee had no responsibility as to whether MedCap was in default or had breached any obligations. Therefore, MedCap had sole control over this process. The Trustee's ability to make any such independent calculations would have been compromised in any event because MedCap did not have audited financial statements for any of the special purpose corporations through which it offered debt securities to the public.

9. MedCap made all interest and principal payments on MedCap I through V until July 2008.

At that time, MedCap did not make all required principal payments to investors in MedCap II and III in a timely manner. In or around August 20, 2008, Manaia became aware that MedCap had failed to make these principal payments. Despite these delinquencies, which ultimately became defaults, MedCap continued to offer notes issued by MedCap VI through FINRA member firms, including Intervest. MedCap eventually defaulted on payments due to investors in MedCap II through MedCap V, with the first reported default occurring in MedCap III on or about November 10, 2008, followed by MedCap II on or about November 28, 2008.

10. On July 16, 2009, the U. S. Securities and Exchange Commission (SEC) sued Med Cap, MedCap VI, and an affiliated operating company known as Medical Capital Corporation (MCC) that administered MedCap's businesses, as well as two individuals, the chief executive officer and the president of each of the MedCap companies. The SEC alleged that the defendants committed fraud in the offer and sale of MedCap VI securities. In particular, the SEC alleged that the defendants misappropriated MedCap VI offering proceeds to pay administrative fees to MCC, in contravention of representations in MedCap VI's PPM, and misrepresented in the PPM that MedCap VI's affiliates had never defaulted on payment obligations or been late in making interest payments. The U.S. District Court for the Central District of California granted the SEC's motion for a temporary restraining order to halt the MedCap VI offering and placed the defendant MedCap entities in Receivership.

Manaia's MedCap VI Transactions

11. Between approximately August 2008 and February 2009, Manaia recommended the purchase of MedCap VI to customers of Intervest. Approximately 31 Intervest customers completed subscription agreements to invest in MedCap VI during that period. The purchases, however, were not effected at the time the subscription agreements were completed because Intervest suspended all sales of MedCap VI on August 25, 2008, upon discovery of MedCap's delinquent principal payments, as described in paragraph 9 above. Investor funds were held at the clearing firm during the period that sales were suspended.
12. In or about December 2008, Intervest decided that customers who wanted to invest in MedCap VI would have to sign a letter prepared by the firm's Chief Compliance Officer attesting that the purchaser was "aware of the current defaults regarding Medical Provider Funding Corporation II and III" and would "hold Intervest International Equities Corporation, Anthony Manaia and Manaia Capital Mgt., Inc. harmless for any loss that [they] may incur in regards to the investment in Medical Provider Funding Corporation VI" ("the hold harmless letter"). As more fully described below, Manaia had his assistant, MM, mail the hold harmless letters to the individuals who were interested in purchasing MedCap VI, such as those who had signed subscription agreements. Thirteen customers returned a signed hold harmless agreement – approximately eighteen did not.
13. On or about April 1, 2009, after it had received the thirteen signed hold harmless agreements; Intervest lifted the suspension and permitted customers to purchase MedCap VI notes. Intervest's Chief Compliance Officer lifted the suspension in part because Manaia was anxious to complete the sales and because the CCO was being pressured by clients whose funds were not invested, but instead were held with the clearing firm.

14. As noted above, thirteen customers completed hold harmless agreements. These customers purchased a total of approximately \$1,580,000 worth of MedCap VI, which were effected between approximately April 1, 2009, and May 6, 2009. The purchasing customers were DV, CC, RD, SM, FS, MW, GF, J&AM, CM, M&PA, J&KK, T&CM and D&LB. All of the customers except D&LB, who purchased \$60,000 worth of MedCap VI, were customers of Manaia. D&LB were customers of Manaia's assistant, MM.

15. Intervest management delegated to Manaia responsibility for disseminating the Hold Harmless letter. On or about December 22, 2008, Manaia instructed his assistant, MM, to mail the Hold Harmless letter to Intervest customers who had expressed an interest in purchasing notes in MedCap VI and/or who had invested in previous MedCap offerings. At Manaia's direction MM attached to the Hold Harmless letter a cover letter, written by Manaia. MM mailed this cover letter to at least each customer identified in paragraph 14 above and the other 17 individuals who had signed subscription agreements.

16. In the cover letter, Manaia stated that the Intervest Compliance Department required a customer signature on the Hold Harmless letter to proceed with investments in MedCap VI. Although certain of the customers who received Manaia's cover letter had already completed a subscription agreement for the purchase of MedCap VI notes, the Hold Harmless letter clearly provided that notes could not be purchased through Intervest unless the investors signed and returned the Hold Harmless letter. As a result, the customers were required to reaffirm their investment decision or decline to invest, in light of the disclosure in the hold harmless letter that MedCap II and III were in default. By attaching the cover letter to the Hold Harmless letter, Manaia demonstrated his intention that the customers

consider the content of the cover letter in connection with their decisions to proceed with or cancel their subscriptions.

17. Manaia made various representations about MedCap and MedCap VI in the cover letter. He made the following representations, which he had received from Med Cap:

- a. "Your investment is safe";
- b. "We believe that this situation [the defaults] is temporary and should be resolved as quickly as possible;"
- c. "Medical Capital has assured me that 100% of these monies will be invested ONLY in medical receivables";

In addition, he made the following representations, which he apparently had originated:

- d. "With a 16 year perfect track record, and all clients receiving monthly interest, I have no reason to doubt them"; and
- e. "[w]ith interest rates very low and going lower, money market accounts hardly paying anything, the medical receivable business growing, MedCap's competitors (the banks) out of business, MedCap looks stronger than ever."

FIRST CAUSE OF ACTION

Fraudulent Misrepresentations or Omissions of Material Facts Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and NASD Conduct Rules 2120 and 2110

18. The Department realleges and incorporates by reference paragraphs 1, 2 and 4 through 17 above.

19. The cover letter described above was sent after MedCap's November 2008 defaults on principal payments in connection with MedCap II and III. Therefore it was misleading of Manaia to state that MedCap had a 16 year perfect track record and to state that MedCap looked stronger than ever, but omit to disclose that, in fact, MedCap was already in default with respect to two previous offerings that were structured like MedCap VI.
20. The misstatements described in paragraph 19 above were material because a reasonable investor would consider the strength of MedCap, its "track record" and its defaults on prior offerings important in determining whether to acquire MedCap VI shares. Manaia knew or was reckless in not knowing that the two misstatements he made in the cover letter to the investors were misleading. Moreover, he knew or recklessly disregarded that by omitting to tell investors that actual defaults had occurred, he caused information he did provide the investors (e.g. that MedCap had a 16 year perfect track record) to be misleading.
21. The misrepresentations and omission set forth above in paragraph 19 were made in connection with the purchase of MedCap VI securities. Moreover, Manaia used the mails, a means of interstate commerce, to facilitate the MedCap VI purchases.
22. The provision of materially misleading information and the omission of material information in connection with securities transactions, as described in paragraph 19 above, constituted separate and distinct violations of Section 10(b) of Securities and Exchange Act of 1934, Rule 10b-5 promulgated thereunder and NASD Conduct Rules 2120 and 2110 by Manaia.

SECOND CAUSE OF ACTION

Negligent Misrepresentations and Omissions (NASD Conduct Rule 2110 and FINRA Rule 2010)

23. The Department realleges and incorporates by reference paragraphs 1, 2, 4 through 17 and 19 through 22 above.
24. In addition to characterizing MedCap's financial problems as "temporary," Manaia also described them in the cover letter as a "short term liquidity issue;" these representations were misleading without also disclosing that the financial problems first affected investors in July 2008, could not be remediated in time to prevent the November 2008 defaults, and were, at the time of the cover letter, still unresolved.
25. Manaia's representation in the cover letter that MedCap was "technically" in default because "a few" MedCap II and III investors were not paid at maturity was misleading without disclosing also that the designated trustees for the two special purpose corporations had, in fact, issued notices of default because MedCap had, in fact, failed to make principal payments required by the notes.
26. In communications with Manaia, MedCap management largely attributed its liquidity issues and the resulting defaults to the fact that it had strayed, in earlier offerings, from its core business of purchasing accounts receivable. Management claimed that MedCap VI proceeds would be invested only in accounts receivable. Manaia believed management's representations and therefore concluded that MedCap VI would not encounter the same problems as MedCap II and III. As noted above, Manaia represented in the cover letter that management assured him that "100% of [MedCap VI offering proceeds] will be invested ONLY in medical receivables.... I have no

reason to doubt them.” This was misleading because Manaia failed to make two significant disclosures that would have communicated to investors that they had only management’s word as assurance that the offering proceeds would be expended as promised. First, the MedCap VI PPM expressly permitted the investment of as much as 40% of the proceeds of the offering in assets other than accounts receivable – more than the percentage specified in the PPMs for MedCap II and III. And, significantly in light of the defaults, the PPM permitted management to “direct the sale of accounts receivable and other assets or loans from one affiliate to another.” This would allow management to transfer funds raised from investors in MedCap VI to the troubled affiliates.

27. Consistent with the PPM disclosures, Manaia represented in the cover letter that MedCap was required to secure its obligations under the notes by maintaining receivables with a value equal to at least 100% of the aggregate face amount of the notes plus accrued interest. Manaia stated further that he had been advised by MedCap management that, in fact, the value of the collateral was more than 2 ½ times the required amount. He also represented that the profit margins on the receivables business were 31%. These representations were misleading in view of the failure to also disclose that, with respect to both collateral ratios and profit margins, management’s assertions were neither verified nor subject to verification. While the collateral was held by a trustee, the trustee had no obligation to calculate coverage ratios or verify ratios prepared by MedCap. Further, MedCap’s financials were unaudited; consequently, there was no independent determination that the data in the financial statements was accurate and complete. Thus, while Manaia knew that

management's representations could not be verified, his customers did not.

Consequently, the customers lacked material information necessary to evaluate Manaia's claims and assurances. The cover letter was also misleading as Manaia's statement about collateral coverage ratios was intended to increase investor confidence in MedCap VI. However, he omitted to specify whether the collateral coverage ratios were true of VI to date or pertained to previous offerings.

28. By causing the distribution of materially inaccurate and misleading communications, as described more fully above in paragraphs 24 through 27, Manaia engaged in conduct inconsistent with high standards of commercial honor and just and equitable principles of trade and violated FINRA Rule 2010.

Misrepresentations by Manaia to Certain MedCap Investors

29. During the period from April 2008 through June 2009 Manaia made material misrepresentations and omitted to disclose material information in electronic communications sent to two individuals who invested or were solicited to invest in MedCap private placements offered from April 2008 onwards. Generally, the representations characterized these investments as safe; it is however clear from the language of the PPMs, that an investment in MedCap V or MedCap VI involved "significant risk" and was appropriate only for investors who had no need for liquidity and who were prepared to lose [their] entire investment. Manaia's representations, as set forth below, that MedCap was a safe investment were further rendered misleading by representations that minimized the significance of the defaults related to Med Cap II, III and, in May 2009, IV.

30. Manaia recommended that customer RF invest in MedCap private placements. On April 30, 2008, Manaia emailed customer RF and informed her that "I understand your concerns regarding Medical Capital. Buy, [sic] I believe them to be very safe given the fact that all of their receivables are FULLY collateralized. And, they only advance 60 cents on the dollar so in fact they are OVER collateralized." Given the risk disclosures in the PPM for MedCap V and VI (the only offerings available on or after April 30, 2008), it was misleading to represent that investments in MedCap V or VI were "very safe" without reiterating that the PPMs characterized those same investments as significantly risky, illiquid and appropriate only for investors who could afford a total loss on the investment. It was misleading for Manaia to represent that MedCap's notes were "OVER collateralized" without also disclosing that he was relying solely on claims made by Med Cap management that had not been verified or even reviewed by an independent party.
31. Manaia continued to solicit RF's investment in MedCap offerings in another e-mail sent on or about June 18, 2008. In that e-mail, Manaia advised RF that MedCap "fits you perfect...No costs or fees! A great return, little risk and great income." The representation that MedCap offerings have "little risk" was inaccurate and misleading in light of the PPM disclosures.
32. On or about October 20, 2008, Manaia received an email from customer TM asking "Is med cap still solid as b/4?" TM had invested in both MedCap V and VI. In responding to the e-mail, Manaia represented that "They've had a few issues with the credit crisis but speaking with them, they assured me that that is their problem, not the investors. They are taking steps to insure investors are taken care of." At the

time Manaia made these representations, MedCap had been delinquent on principal payments for MedCap II and III for over three months. It was misleading for Manaia to characterize the defaults as “a few issues with the credit crisis” without also disclosing that MedCap was delinquent in making required principal payments. The business model for MedCap II and MedCap III was substantially similar to that of MedCap V and VI; therefore, it was misleading to represent that the issues facing MedCap were not the investors’ problem without disclosing that the troubled offerings did not materially differ from the current offering that Manaia was recommending. Further, Manaia should also have disclosed that, pursuant to the MedCap PPMs, management could transfer proceeds from MedCap V and VI to its earlier troubled issues, II and III, thus potentially affecting MedCap V and VI investors, and the fact that the same management team that was responsible for the earlier defaults would be responsible for the management of MedCap V and VI. Finally, all of the representations in this e-mail were misleading absent disclosure by Manaia that Intervest had suspended sales of MedCap VI due to its concerns about the viability of the offering.

33. Mania sent another e-mail to TM on or about December 16, 2008, to which Manaia attached a letter stating the following: “Your investment is safe”; “We (MedCap) currently have collateral of over 250%”; and “to protect your interests, I am continuing to hold off on any new investment in Medical Capital until I learn more about their plans to redeem the few remaining notes.” The representation that TM’s investment was safe was misleading without also disclosing that the PPM for MedCap VI characterized the investment as significantly risky, illiquid and

appropriate only for investors who could afford a total loss on the investment. The representation MedCap investments were over-collateralized was misleading absent the additional disclosure that Manaia was relying solely on claims by MedCap management that were not subject to independent review and verification. Finally, Manaia's statement that he was choosing not to process the customer's investment in MedCap VI was inaccurate because, in fact, Intervest had suspended all sales of the offering at that time.

34. TM sent an e-mail to Manaia on or about June 16, 2009, stating that he had received a PPM supplement for MedCap VI which described the risks of the investment as "High risk of loss and lack of liquidity that make it suitable only for those persons who have a high annual income and/or substantial net worth who can afford to bear such risk...and can afford the loss of the entire investment..." TM asked Manaia in the email "Can I assume that this applies only to this new venture and that my investments...are at much less risk?" Manaia provided the following response, via e-mail:

"All 'private investment vehicles' have to have language in them designed to scare the hell out of investors. The SEC requires it. That's what they do instead of paying attention to guys like Bernie Madoff. Even a mutual fund prospectus, should anyone read them (except me), would also scare the hell out of anyone from investing in them. Our regulators spend more time paying attorneys to waste time and money than they spend watching the real world...Throw that stuff away and get out on the golf course...P.S. Med Cap VI is probably their safest offering."

Manaia's representation that MedCap VI was "probably their safest offering," was misleading without also disclosing that, as of the date of Manaia's responsive e-mail, MedCap had not only failed to cure the November 2008 defaults associated with MedCap II and III, but had defaulted on MedCap IV Series I and II on April 23, 2009, and May 4, 2009, respectively. Further, Manaia acted unethically when he advised TM to ignore important risk disclosures in the supplemental PPM because they resulted from meaningless regulatory requirements.

35. At the time Manaia made the representations set forth in paragraphs 24 through 34 above, he knew or should have known that they were either inaccurate or that they were misleading without the additional disclosures described above. In making such representations, Manaia engaged in conduct that was inconsistent with high standards of commercial honor and just and equitable principles of trade.
36. By engaging in conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, Manaia violated NASD Conduct Rule 2110 with respect to conduct occurring on or before December 14, 2008, and FINRA Rule 2010 with respect to conduct occurring on or after December 15, 2008.

RELIEF REQUESTED

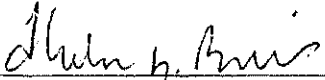
WHEREFORE, the Department respectfully requests that the Panel:

- A. Order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that the Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest.

- B. Order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: June 21, 2011


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