

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2009020642101**

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

**RE: Haley Securities, Inc., Respondent
(CRD No. 104124)**

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Haley Securities, Inc. ("Haley Securities," "Firm" or "Respondent") submits 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 Haley Securities alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent hereby accepts and consents, 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

Haley Securities became registered with the Securities and Exchange Commission ("SEC") and with FINRA on January 2, 2001. The Firm sells only limited partnerships and private placements. Haley Securities employs 11 registered representatives, and is headquartered in Omaha, Nebraska. The Firm's registrations with FINRA and the SEC remain in effect. Haley Securities does not have any disciplinary history.

OVERVIEW

From November 7, 2005 to December 3, 2008, Haley Securities failed to establish, maintain and enforce adequate supervisory systems and written procedures to ensure that there was no general solicitation in connection with its sales of private offerings, pursuant to Regulation D of the Securities Act of 1933

Securities Act of 1933 ("Regulation D"). Such conduct violated NASD Rules 3010 and 2110. In addition, from November 7, 2005 to April 16, 2008, the Firm failed to obtain required customer background information, in violation of SEC Rules 17a-3 and NASD Rules 2310, 3110 and 2110. From July 21, 2005 to September 14, 2005, Haley Securities also permitted its president and supervising principal to engage in securities related activities when he had failed to successfully complete the Regulatory Element of FINRA's Continuing Education ("CE") requirements, in violation of NASD Rules 1120 and 2110.

FACTS AND VIOLATIVE CONDUCT

Failure to Maintain Adequate Supervisory Systems and Written Procedures for Sales of Private Offerings Pursuant to Regulation D

1. Rule 3010(a) requires FINRA firms to establish, maintain and enforce a system to supervise the activities of each registered representative. Rule 3010(b) requires that FINRA firms establish, maintain and enforce written procedures to supervise the activities of registered representatives, registered principals and other associated persons that are reasonably designed to achieve compliance with securities laws and regulations, and NASD and FINRA Rules.
2. From November 7, 2005 to December 3, 2008, Haley Securities was solely engaged in the sale of private offerings of securities designed to raise equity for an affiliate, Haley Associates Limited Partnership ("HALP"). In selling private offerings, HALP relied on the Rule 506 exemption from registration under Regulation D.¹ To qualify for this exemption as in effect at that time, neither the issuer nor any agent of the issuer may sell the offering by using any general solicitation or general advertising.² Haley Securities sold some interests in the HALP offerings by soliciting potential investors at the suggestion of existing customers of the Firm or at meetings convened by third parties.
3. From November 7, 2005 to December 3, 2008, Haley Securities failed to establish, maintain and enforce adequate supervisory systems and written supervisory procedures to appropriately monitor sales of private offerings of HALP, with a view towards complying with the SEC staff's interpretations of the general

¹ Reg. §230.506.

² See, Reg. §230.506(b)(1), and Reg. §230.502(c).

solicitation and advertising restrictions under Rule 502(c) of Regulation D, as follows:

- a. In determining whether direct contact by a firm constitutes general solicitation, the SEC staff has emphasized the need to establish “the existence and substance of prior relationships between the issuer or its agents and those being solicited.”³ The SEC has stated that “[i]t is important (i) that substantive relationships be created with offerees, and (ii) that the relationships be pre-existing.”⁴ A relationship can be shown to be pre-existing if there is a sufficient time period (“Waiting Period”) between the initial contact when a determination is made that a prospective investor is a suitable accredited investor and the offer to purchase the security is made. From November 7, 2005 to December 3, 2008, Haley Securities did not monitor or document a Waiting Period for offers and sales to approximately 17 HALP purchasers who the Firm contacted at the request of existing customers.⁵ These 17 new customers purchased their interest in a HALP offering soon after they first met with a Haley Securities representative. Haley Securities representatives solicited these purchases of HALP offerings before the Firm had pre-screened the customers and the Firm failed to document the creation of a substantial pre-existing relationship prior to the offer, as contemplated in SEC staff guidance.
- b. Haley Securities also failed to establish, maintain and enforce a supervisory system or written procedures to document that investment advisors and other third parties who introduced potential investors to Haley Securities representatives, did not themselves conduct general solicitations prohibited by Rule 502(c) of Regulation D. In addition, Haley Securities failed to ensure that the third parties had pre-existing relationships with the potential investors who were offered interests in the HALP offerings.

4. By virtue of the foregoing, Haley Securities violated NASD Rules 3010 and 2110.

³ *E.F. Hutton & Co.*, SEC No. Action Letter, 1985 SEC No-Act. LEXIS 2917, *1 (December 3, 1985).

⁴ *Id.*

⁵ During the review period, there were approximately 80 investors who made their first purchase of a HALP offering through Haley Securities.

Failing to Maintain Adequate Books and Records

5. SEC Rule 17a-3(a)(17)(i)(A) requires that FINRA firms make and keep current an account record, which contains among other things the customer's or owner's annual income, net worth (excluding the value of the customer's primary residence) and employment status (including occupation and whether the customer is an associated person of a broker or dealer). NASD Rule 3110(c) requires that FINRA firms maintain the occupation of the customer and name and address of the customer's employer for each non-institutional customer account. NASD Rule 2310(b)(2) requires that prior to the execution of a transaction recommended to non-institutional customers, FINRA firms shall make a reasonable effort to obtain information about a customer's tax status.
6. Haley Securities sold four offerings from November 7, 2005 to April 16, 2008, to about 80 individuals. A purchaser questionnaire ("Questionnaire") was created for each of these individuals. Of these Questionnaires, only 19 contained the annual income information for the customers, and none of them contained the purchaser's net worth (exclusive of their primary residence), the name and address of the purchaser's employer, and the customer's tax status.
7. SEC Rule 17a-3(a)(17)(i)(B)(1) requires that FINRA firms provide customers with a copy of the account record or an alternative document with all of the information required by the Rule, within 30 days after opening an account with the firm. From 2005 to 2008, the customers of Haley Securities were provided with the Questionnaires, but they did not receive other documentation maintained by the Firm which revealed their investment objectives and other background information.
8. By virtue of the foregoing, Haley Securities violated SEC Rules 17a-3 and NASD Rules 2310, 3110 and 2110.

Permitting a CE Inactive Principal to Engage in Securities Related Activities

9. NASD Rule 1120 provides that no FINRA firm shall permit a registered person to continue to perform duties as a registered person when the person is deemed inactive for failure to complete the Regulatory Element of the CE requirement. NASD Rule

1120(a)(2) mandates that any person whose registration is deemed inactive for failing to sit for and complete the regulatory element of the CE requirement must cease all activities as a registered person, and is prohibited from performing any duties and functioning in any capacity requiring registration.

10. Between July 21, 2005 and September 14, 2005, Haley Securities permitted JH, the Firm's president and supervising principal, to engage in securities related activities as a General Securities Principal while JH's registration status with FINRA was inactive due to his failure to timely complete the Regulatory Element of FINRA's CE Requirements. JH's activities included the approval of securities sales by signing and initialing subscription agreements.
11. By virtue of the foregoing, Haley Securities violated NASD Rules 1120 and 2110.

B. Haley Securities also consents to the imposition of the following sanctions:

1. A censure; and
2. a \$20,000 fine.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that the Firm is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against it;
- 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, Respondent specifically and voluntarily waives 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.

Respondent further specifically and voluntarily waives 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

Respondent understands 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 the Firm; and**
- C. If accepted:**
- 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;**
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the Firm's 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. Respondent 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. Respondent 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 Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.**
- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it 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.**

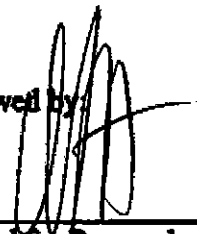
The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that Respondent has agreed to its provisions voluntarily; and that no offer, 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.

Haley Securities, Inc.

1-31-13
Date

Shirley Overly
By Shirley Overly
Its President

Reviewed by


Counsel for Respondent
Mr. Daniel A. Peterson, Esq.
Husch Blackwell Sanders, LLP
190 Carondelet Plaza
Suite 600
St. Louis, MO 63105

Accepted by FINRA:

2/7/13
Date

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


Richard S. Schultz
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(By: Mark Koerner
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