

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

Department of Enforcement,

Complainant,

v.

HARRY MARTIN LEFKOWITZ,
CRD No. 1454925,

Respondent.

Disciplinary Proceeding
No. 2010021034801

Hearing Officer LOM

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: June 11, 2012

INTRODUCTION

Disciplinary Proceeding No. 2010021034801 was filed on October 14, 2011 (Complaint), by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Harry Martin Lefkowitz (Respondent) submitted an Offer of Settlement (Offer) to Complainant dated May 30, 2012. 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, Respondent has consented, without admitting or denying the allegations of the Complaint, 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, 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

On August 2, 1991, Respondent first became registered with FINRA as a Corporate Securities Representative. Thereafter, on September 20, 1991, he became registered as a General Securities Principal. From October 28, 1991 to May 29, 2012, Respondent was registered in those same capacities through Rushmore Capital, Inc. (Rushmore). On March 25, 2002, Respondent also became registered through Rushmore as a Financial and Operations Principal. From September 2007 to May 2012, Respondent was the President of Rushmore. In addition, from March 30, 2001 to September 23, 2011, Respondent was registered through Domestic Securities, Inc. (Domestic) as a Corporate Securities Representative, a General Securities Principal and Financial and Operations Principal. Although Respondent is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the effective date of termination of Respondent's registration with Rushmore, namely, May 29, 2012; and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

Rushmore has been a member of FINRA since September 30, 1971. It is based in Montvale, New Jersey. During the relevant time period, the firm was a retail brokerage with approximately 75-100 accounts.

From May 6, 1994 to October 14, 2011, Domestic was a FINRA member. The firm was expelled from membership on October 14, 2011 for failure to pay fines and/or costs. Domestic was an affiliate of Rushmore as both firms were under common ownership. Both firms also shared many of the same registered representatives and principals. During the relevant time period, Domestic was a market maker that made markets in thousands of stocks.

FINDINGS AND CONCLUSIONS

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

SUMMARY

1. From in or about September 2009 through in or about September 2010 (the relevant time period), Rushmore, acting through two of its principals, Respondent and Joseph Messina (Messina), sold at least 7.6 billion shares of penny stock in 14 microcap issuers for approximately two million dollars on behalf of and at the direction of a customer (Customer A) and four hedge funds that he controlled. Rushmore sold those shares to Domestic, its affiliated market-maker. The shares, however, were neither registered nor eligible for an exemption from registration. By this conduct, Respondent violated FINRA Rule 2010.

OVERVIEW OF CUSTOMER A'S HEDGE FUND ACTIVITY

2. Customer A is the owner and managing member of NRG, a self-described "alternative investment firm" that owns/controls several different hedge funds. NRG claims to have \$7 billion dollars in investor assets under management.
3. During the relevant time period, NRG made investments in and loaned money to thinly traded and capitalized public companies through private investments in public equities

(PIPE) deals. These companies traded on the Pink Sheets and OTCBB, typically at fractions on the penny. In exchange for its financing, NRG received securities -- convertible notes and debentures that charge interest, warrants and options -- that allowed it to receive millions of shares of discounted common stock from these issuers upon conversion.

4. During the relevant time period, Customer A maintained approximately 19 hedge fund accounts at Rushmore on behalf of NRG. Customer A opened all of the hedge fund accounts at Rushmore. He also directed the trading through these accounts, which primarily entailed the liquidations of billions of shares of unregistered penny stock.
5. Rushmore classified Customer A's hedge fund accounts as "house accounts." Securities commissions from Customer A's stock sales accounted for approximately half of Rushmore's commission revenues.
6. Rushmore acted as the conduit/distributor through which Customer A sold the stock he obtained through the PIPE deals. As Customer A converted the debentures into stock, he sold the shares to Rushmore through one or more designated hedge fund accounts he maintained at the firm. Rushmore sold the Customer A penny stock shares on an agency basis to Domestic, which made markets in those stocks.
7. During the relevant time period, Customer A and NRG were the subjects of several negative stories in the press and on the internet regarding investor lawsuits, criminal investigations and unethical business practices.
8. For example, in July 2009, a national newspaper reported that a U.S. Attorney's Office and investigators from the Federal Bureau of Investigation and the SEC were looking at

whether Customer A and his firm had defrauded investors. The article further stated that federal authorities were also investigating whether Customer A misled investors regarding the investment returns promised by the NRG hedge funds.

9. Additionally, in July 2010, the same newspaper published an on-line article reporting that a former NRG employee had pleaded guilty to securities fraud for making false statements and omitting material information to investors, and conspiracy to use interstate facilities with the intent to carry on commercial bribery. The article reported that one of Customer A's hedge funds was currently refusing redemption requests from investors.

**Sale of Unregistered Securities
(FINRA Rule 2010)**

10. From in or about June 2009 through in or about September 2010, Rushmore, acting through Respondent and Messina, sold at least 7.6 billion shares of stock in the following microcap issuers for approximately two million dollars at Customer A's direction (hereinafter referred to as Customer A Stock):

- MOV T
- SSHS
- SEWC
- PDMI
- ADVSE
- OPGX
- WLSI
- BNYN
- EPGL

- MDIN
- CYSG
- ECMH
- IARO
- AVITR

11. Rushmore sold stock in the above issuers through four of the NRG hedge fund accounts that Customer A maintained at Rushmore Capital, AJWP, NMP, AJWO and AJWQ (collectively, the Customer A Hedge Funds). Each of the Customer A Hedge Funds was managed and controlled by Customer A.
12. The Customer A Hedge Funds acted in concert in connection with these sales. The transactions typically occurred in all four accounts the same day. Customer A determined how the shares would be allocated among the Customer A Hedge Funds and provided Respondent, Messina or other Rushmore employees with the instructions of how many shares would be sold through each of the four accounts.
13. Customer A completed and provided Respondent or Messina the same transaction forms for all of his sales, including a “DWAC Request Form,” “Notice of Conversion,” and a “Rule 144(b)(1) Sellers Representation Letter.”
14. It was the responsibility of Respondent and Messina to ensure that the Customer A Stock was eligible for sale. Both individuals, however, relied on Customer A’s representations regarding, among other things, his affiliation status with the stock issuer, his percentage

of share ownership, the total shares outstanding and his previous trading history involving the stock in question. They failed to independently verify this information.

15. Neither Respondent nor Messina conducted the necessary due diligence on behalf of Rushmore to ensure that the Customer A Stock was eligible for sale.
16. At no time was there a registration statement in effect for the Customer A Stock. Furthermore, these sales were not eligible for exemption from registration.
17. Rushmore sold the Customer A Stock through the use of any means or instruments of transportation or communication in interstate commerce or of the mails.
18. During the relevant time period, Customer A's sales of penny stocks through his various hedge fund accounts at Rushmore generated approximately \$400,000 in commissions for the firm.
19. By selling unregistered securities, Respondent contravened Section 5 of the Securities Act and therefore violated FINRA Rule 2010.

Based on the foregoing, Respondent violated FINRA Rule 2010.

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 two months from association with any FINRA member firm in any principal capacity and fined \$5,000.

The fine shall be due and payable either immediately upon reassociation with a member

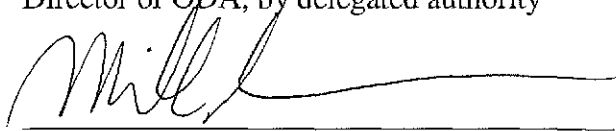
firm or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

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

A handwritten signature in black ink, appearing to read 'Michael J. Newman', written over a horizontal line.

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