

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Howard J. Allen, III (CRD No. 2033586),

and

Joseph Q. McGowan (CRD No. 2233691),

Respondents.

Disciplinary Proceeding
No. 2010022586201

Hearing Officer – MC

**ORDER ACCEPTING OFFER OF
SETTLEMENT FROM
RESPONDENT HOWARD J. ALLEN, III**

Date: November 16, 2013

INTRODUCTION

Disciplinary Proceeding No. 2010022586201 was filed on December 5, 2012, by the Department of Enforcement of the Financial Industry Regulatory Authority ("FINRA") ("Complainant"). Respondent Howard J. Allen, III ("Respondent") submitted an Offer of Settlement ("Offer") to Complainant dated November 1, 2013. 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, as amended by the Offer of Settlement, 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, as amended by the Offer of Settlement, 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

In March 1990, Respondent acquired a Series 7 license. He subsequently acquired Series 24, 63, and 65 licenses. At various times from January 1990 through the present, Respondent has been associated with several FINRA members. On July 19, 2002, FINRA member J.P. Turner filed a Form U4 for Respondent, commencing his association with it as of that day. On June 24, 2008, J.P. Turner filed a Form U5 for Respondent, terminating his association with it as of June 18, 2008. Respondent was registered with J.P. Turner as a General Securities Representative ("GSR") and General Securities Principal ("GSP"). Respondent was next associated with former FINRA member Sierra Equity Group LLC from June 18, 2008 through January 6, 2009. Respondent is currently associated with FINRA member Portfolio Advisors, which filed a Form U4 for him on January 14, 2009, commencing his association with it as of that day. Respondent is currently registered with Portfolio Advisors as a GSR, GSP, and Limited Representative-Investment Banking.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:¹

¹ The findings herein are pursuant to Respondent Allen's Offer of Settlement and are not binding on any other person or entity named as a respondent in this or any other proceeding.

SUMMARY

1. Respondent, acting outside the course and scope of his employment with his employing member firms J.P. Turner & Company, L.L.C. and Portfolio Advisors Alliance, Inc., participated in 12 private securities transactions from which he received selling compensation, without providing prior written notice to his firms of his proposed roles in, or the selling compensation that he may receive from, the transactions. As a result of the foregoing, Respondent violated NASD Conduct Rules 3040 and 2110 and FINRA Rule 2010.

RESPONDENT AND JURISDICTION

2. In March 1990, Respondent acquired a Series 7 license. He subsequently acquired Series 24, 63, and 65 licenses.

3. At various times from January 1990 through the present, Respondent has been associated with several FINRA members.

4. On July 19, 2002, FINRA member J.P. Turner filed a Form U4 for Respondent, commencing his association with it as of that day. On June 24, 2008, J.P. Turner filed a Form U5 for Respondent, terminating his association with it as of June 18, 2008. Respondent was registered with J.P. Turner as a GSR and GSP.

5. Respondent was next associated with former FINRA member Sierra Equity Group LLC from June 18, 2008 through January 6, 2009.

6. Respondent is currently associated with FINRA member Portfolio Advisors, which filed a Form U4 for him on January 14, 2009, commencing his association with it as of that day. Respondent is currently registered with Portfolio Advisors as a GSR, GSP, and Limited Representative-Investment Banking.

7. Under Article V of FINRA's By-Laws, FINRA possesses jurisdiction over Respondent because: (a) he is currently registered and associated with a FINRA member; and (b) the Complaint charges him with misconduct committed while he was registered or associated with a member.

FACTS

Background Information

8. Respondent and two other registered persons worked together at J.P. Turner, Sierra Equity Group, and Portfolio Advisors.

9. Respondent, along with the two other registered persons, also owned and controlled two companies – Allen Partners Capital, LLC (“APC”) and Allen Partners, LLC (“AP”). Respondent was a “Managing Member” of APC and also a “Managing Partner” of AP.

10. At J.P. Turner and Portfolio Advisors, Respondent conducted his branch office operations through AP.

11. While Respondent was associated with J.P. Turner and Portfolio Advisors, he raised money for both APC and AP to expand his existing branch office operations and to purchase his own broker-dealer.

Selling Away at J.P. Turner

12. Between July 2005 and April 2008, while Respondent was associated with J.P. Turner, APC and AP issued ten promissory notes totaling \$1.2 million to seven investors. The identity of the investors and the amounts and dates of the investments are set forth on Exhibit A to the Complaint, which is incorporated herein.

13. The ten promissory notes, all of which have been amended, bore interest at a rate of 7.5% per year for a term of at least one year. Several of the promissory notes also provided

that if the payor were to invest in a private offering of securities as a principal or on behalf of its clients, then the note holder would be entitled to receive a portion of any warrants that the payor were to receive as additional equity or compensation from the private offering.

14. The ten promissory notes are securities.

15. Respondent, acting outside the course and scope of his employment with J.P. Turner, participated in the ten private securities transactions involving the notes.

16. Respondent participated in the ten transactions by raising money for his companies, APC and AP.

17. Respondent also participated in the transactions with NV, DH, RS (October 17, 2006 note), ST (October 18, 2006 note), RAG, and RIG (April 8, 2008 note) by executing the promissory notes issued to the investors on behalf of APC or AP.

18. In addition, Respondent received selling compensation from the ten transactions by virtue of his use of the proceeds generated from the issuance of the notes, including his use of the proceeds to pay the expenses of his branch office operations.

19. Prior to participating in the ten private securities transactions, Respondent failed to provide J.P. Turner with written or oral notice of his proposed roles in, or the selling compensation that he may receive from, the transactions.

Selling Away at Portfolio Advisors

20. On or about May 29, 2009, while Respondent was associated with Portfolio Advisors, APC issued a promissory note in the amount of \$200,000 to TW.

21. The note issued to TW bore interest at a rate of 10% per year for three years. The note further provided that if APC were to invest in a private offering of securities as a principal

or on behalf of its clients, then TW would be entitled to receive a portion of any warrants that APC were to receive as additional equity or compensation from the private offering.

22. On or about June 11, 2010, while Respondent was associated with Portfolio Advisors, AP issued a promissory note in the amount of \$250,000 to MP and JP.

23. The note issued to MP and JP bore interest at a rate of 7.5% per year for two years.

24. The promissory notes issued to TW and MP/JP are securities.

25. Respondent, acting outside the course and scope of his employment with Portfolio Advisors, participated in the two private securities transactions involving the notes.

26. Respondent participated in the two transactions by raising money for his companies, APC and AP.

27. Respondent also participated in the transaction with TW by executing the promissory note issued to TW on behalf of APC.

28. In addition, Respondent received selling compensation from both transactions by virtue of his use of the proceeds generated from the issuance of the notes, including his use of the proceeds to pay the expenses of his branch office operations.

29. Prior to participating in the private securities transactions with TW and MP/JP, Respondent failed to provide Portfolio Advisors with written notice of his proposed roles in, or the selling compensation that he may receive from, the transactions.

Status of the Promissory Notes

30. As of April 13, 2012, the notes issued to NV, NH, ST, and MP/JP had been extinguished and replaced with new notes; the promissory note issued to RS was being renegotiated; payments totaling \$80,000 had been made to DH on the note issued to him; a

payment of \$100,000 had been made to RAG on the note issued to him; and payments totaling \$291,000 had been made to RIG on the notes issued to him; and the repayment status of the note issued to TW was, and still is, unclear to FINRA staff.

**FIRST CAUSE OF ACTION
(Selling Away at J.P. Turner)
(Violations of NASD Rules 3040 and 2110)**

31. NASD Conduct Rule 3040(b) provides that:

Prior to participating in any private securities transaction, an associated person shall provide written notice to the member with which he is associated describing in detail the proposed transaction and the person's proposed role therein and stating whether he has received or may receive selling compensation in connection with the transaction; provided however that, in the case of a series of related transactions in which no selling compensation has been or will be received, an associated person may provide a single written notice.

32. FINRA Rule 2010 (f/k/a NASD Conduct Rule 2110) requires associated persons, in the conduct of their business, to "observe high standards of commercial honor and just and equitable principles of trade."

33. Respondent, acting outside the course and scope of his employment with his employing member firm J.P. Turner, participated in ten private securities transactions with NV, DH, RIG, NH, RS, ST, and RAG from which he received selling compensation, without providing prior written or oral notice to J.P. Turner of his proposed roles in, or the selling compensation that he may receive from, the transactions.

34. As a result of the foregoing, Respondent violated NASD Conduct Rules 3040 and 2110.

**SECOND CAUSE OF ACTION
(Selling Away at Portfolio Advisors)
(Violations of NASD Rule 3040 and FINRA Rule 2010)**

35. Respondent, acting outside the course and scope of his employment with his employing member firm Portfolio Advisors, participated in two private securities transactions with TW and MP/JP from which he received selling compensation, without providing prior written notice to Portfolio Advisors of his proposed roles in, or the selling compensation that he may receive from, the transactions.

36. As a result of the foregoing, Respondent violated NASD Conduct Rule 3040 and FINRA Rule 2010.

Based on the foregoing, Respondent violated NASD Conduct Rules 3040 and 2110 and 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 fined \$10,000 and be suspended from association with any FINRA member in all capacities for eight months.

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

The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to FINRA Rule 8313(e), a bar or expulsion shall become effective upon approval or acceptance of this Order.

SO ORDERED.

FINRA

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



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