

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Tom D. English (CRD No. 2459450),

[REDACTED]

and

[REDACTED]

Respondents.

DISCIPLINARY PROCEEDING
No. 2010022598501

COMPLAINT

The Department of Enforcement alleges:

I. SUMMARY

1. From August 2005 through October 2008, former WFP Securities Corporation (“WFP” or “Firm”) representative Tom David English made multiple unsuitable recommendations for the purchase of speculative and illiquid private placements and non-traded REITs to seven households.

2. His Firm approved these investments after English submitted Direct Purchase Application Forms and Subscription Documents which he knew contained inaccurate information about the customers’ income, assets, net worth and accredited investor status.

3. In April 2010, English recommended that a customer purchase a convertible bond in a secondary transaction. But he failed to provide the customer with the Private Placement Memorandum's Third through Ninth Supplements that disclosed material information about the issuer's precarious financial status, and he also failed to disclose that information to the customer.

4. WFP's former Chief Compliance Officer, [REDACTED], was responsible for maintaining and updating the Firm's Written Supervisory Procedures. The WSPs were deficient because: (i) they failed to memorialize the Firm's guidelines regarding concentration in speculative and illiquid securities and failed to include procedures to implement the guidelines; (ii) there were no procedures addressing liquefying home equity to make investments; and (iii) there were no procedures addressing the review and approval of secondary transactions.

5. WFP's former Senior Vice President of Due Diligence, [REDACTED], was, among other things, responsible for reviewing and approving the suitability of private placement and REIT recommendations by the Firm's representatives. The Firm maintained a computerized database of each customer's prior transactions and had an informal guideline suggesting that no more than 25 to 30 percent of a customer's assets be allocated to illiquid and speculative investments. But [REDACTED] never used the database in assessing the suitability of any particular recommendation. Moreover, although many WFP representatives were associated with the Firm's affiliate, WFPC, an entity which marketed and sold purported general partnership interests in raw land, [REDACTED] never considered and/or inquired about whether the representative had recommended and/or the customer had acquired any such interests when he was assessing the suitability of a securities recommendation. [REDACTED] also failed to respond to red flags

suggesting that recommendations for the purchase of alternative investments were qualitatively unsuitable. Despite indications suggesting that certain customers were unsophisticated, inexperienced, had limited income, and that their accredited status was doubtful, [REDACTED] failed to undertake any meaningful inquiry.

6. Tom D. English violated:

- NASD Conduct Rule 2310 and 2110 by making unsuitable recommendations to seven customers. Some of the customers were elderly, some had no liquid assets other than the proceeds from their home equity refinance, and all had limited incomes. Nevertheless, without reasonable basis, he recommended and concentrated their portfolios in speculative and illiquid securities.
- NASD Conduct Rules 3110(a) and 2110 by knowingly submitting investment applications that inaccurately described customers' income, net worth, investment experience and status as accredited investors.
- Section 10(b) of the Exchange Act of 1934, Exchange Act Rule 10b-5 and FINRA Rules 2020 and 2010 by recommending the purchase of a bond yet failing to provide the customer with the Private Placement Memorandum's Third through Ninth Supplements and failing to provide the material information contained in those supplements.

7. [REDACTED] violated NASD Conduct Rules 3010(a) and (b) and 2110 by failing to establish, maintain and enforce a supervisory system and procedures reasonably designed to achieve compliance with applicable securities laws, regulations and rules.

8. [REDACTED] violated NASD Conduct Rules 3010(a) and 2110 and FINRA Rule 2010 by failing to supervise in a manner reasonably designed to achieve compliance with applicable securities laws, regulations and rules.

II. RESPONDENTS AND JURISDICTION

9. Tom D. English entered the securities on February 18, 1994, when he associated with the newly formed WFP Securities Corporation. At all times relevant to this Complaint, English was associated with WFP as an Investment Company Products/Variable Contracts Representative (Series 6), Investment Company Products/Variable Contracts Limited Principal (Series 26), General Securities Representative (Series 7) and General Securities Principal (Series 24). English was also associated with WFP affiliate, WFPC, where he sold purported general partnership interests in undeveloped land. English's association with WFP terminated on February 1, 2011. Although he 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 date of Form U5 Amendments, filed June 15, 2011, disclosing possible misconduct by English, and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

10. [REDACTED] entered the securities industry on May 9, 1994. [REDACTED] associated with WFP from June 1, 2005 through July 27, 2011 and was registered as an Investment Company Products/Variable Contracts Representative (Series 6), General Securities Representative (Series 7), Municipal Securities Representative (Series 53), Limited Representative Investment Banking (Series 79), General Securities Supervisor (Series 10), General Securities Principal (Series 24), and Financial and Operations Principal (Series 27).

Although [REDACTED] 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 his registration with WFP, namely July 27, 2011, and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

11. [REDACTED] entered the securities industry on December 9, 1992. [REDACTED] was associated with WFP from July 8, 1994 through July 29, 2011 where he was licensed as a General Securities Representative (Series 7), General Securities Principal (24), Registered Options Principal (Series 4), and Limited Representative Investment Banking (Series 79). Although [REDACTED] 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 his registration with WFP, namely July 29, 2011, and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

III. FACTUAL BACKGROUND

A. The Firm

12. WFP, based in San Diego County, California, was formed as a result of Lewis Schooler's ("Lewis") desire to sell securities to WFPC customers. Lewis had formed WFPC in 1978 and through that entity, sold term insurance and purported general partnership interests in undeveloped land.

13. WFP became an NASD member in 1994 and was initially based in the same building that housed WFPC. It is a wholly owned subsidiary of WFP Holdings, Inc. (“Holdings”). WFP Holdings is, in turn, jointly owned by Lewis Schooler and his brother John Schooler. John Schooler was also WFP’s Chief Executive Officer. WFP filed a Form BDW on May 31, 2011. Its FINRA registration was cancelled on August 2, 2011.

14. WFP initially conducted a general securities business. But it became a broker-dealer that primarily sold private placements and non-traded REITS (collectively “Alternative Investments”). By August 31, 2007, there were 39 Alternative Investments on its approved product list. Its sale of these products coincided with a dramatic increase in revenue. English was among the Firm’s most productive representatives.

B. Tom English Background Information

15. English joined WFPC immediately upon his 1986 graduation from San Diego State University. Eight years later, in 1994, he was part of the original team that established WFP. In 1999, English obtained a Series 24 license and ultimately supervised seven representatives in WFP’s Carroll Canyon branch office. [REDACTED] based several miles away in the Firm’s Main Office, was responsible for reviewing and approving transactions that English recommended.

16. English surfed virtually every day and was well-known in the local surfer community. He was an avid photographer and had an outside business dedicated to surfing-related photography and a related website. He branded his photography business to attract people who were looking for wealth management assistance. He specifically marketed his financial services to surfers.

17. While associated with WFP, English maintained a website (www.alohawealthmanagement.com) whose opening page featured a Hawaiian sunset with the caption, “Your money works hard, so you don’t have to.” The site continued, “*This is the philosophy of Aloha Wealth Management. Tom English has developed an Investment strategy to help his clients become ‘Men and Women of Leisure.’ They can spend time chasing waves, sunsets and dreams, instead of a paycheck, while their investments grow.*”

18. English’s website referenced a “team of experts” including mortgage broker EU. English referred at least 11 customers to EU and then recommended that the ensuing home refinance proceeds be invested in a variety of Alternative Investments. As described below, English recommended speculative and illiquid investments to unsophisticated and inexperienced investors and then submitted investment forms that inaccurately described the customers’ financial situations.

C. Tom English’s Unsuitable Recommendations

i. Customers DH and TH

19. DH and TH, a married couple in their mid-40’s, reside in Fallbrook, California with their three dependent children. Since 1999, DH has been employed as an Inspector with a Municipal Water District earning about \$55,000 per year. TH earns between \$3,500 and \$6,000 per year as a pet-sitter. Before meeting with English, DH’s and TH’s investment experience was limited to DH’s 401(k) account through his employer.

20. In June 2007, DH and TH were struggling to pay their home mortgage and were introduced to EU and English. DH and TH, through EU, refinanced their home and “took out” \$50,000 in cash. Thereafter, English recommended two investments.

21. In September 2007, English recommended that DH and TH invest in the Provident Shale Royalties 5 Private Placement. English told DH and TH that Provident involved “mineral rights” and paid annual interest of 18 percent. But he neglected to discuss the risks.

22. The Provident Shale Royalties 5 Offering was made pursuant to Regulation D and available only to accredited investors. It involved a sale of preferred shares by a corporation with no prior operating history, assets or cash flow, which purportedly intended to acquire sub-surface mineral interests. Although dividends accrued at a rate of 1.5 percent per month (18 percent per annum), there was no assurance that the Issuer would have adequate cash flow to make the payments. Moreover, the investment was illiquid, involved a high degree of risk and, as the private placement memorandum (“PPM”) explained, “suitable only for persons of substantial financial means who [had] no need for liquidity in their investment and who [could] afford the entire loss of their investment in the Preferred Stock.” The PPM further disclosed that “a prospective investor should not purchase the Preferred Stock to provide current income payments or to meet current income requirements.”

23. At a meeting just prior to their investment, English presented DH and TH with a Direct Purchase Application Form (“DPA”) and the Shale Royalties 5, Inc. Purchaser Suitability Questionnaire (“PSQ”) that, with the exception of DH’s and TH’s signatures, had been filled out. The DPA was an internal WFP form executed prior to the sale of each direct participation program. It had a Financial Questionnaire section that required, among other things, disclosure of a customer/account holder’s age, number of dependents, occupation, financial situation, investment experience and objectives. It required signatures from the investor, the responsible WFP representative, and a WFP Principal who was approving the transaction. The PSQ required similar information.

24. The DPA correctly identified DH's and TH's Investment Knowledge as "limited" and their Investment Experience as consisting of only "mutual funds." But DH and TH did not notice that significant information on the pre-completed forms was inaccurate. The DPA inaccurately described their net worth as "1,000,000 – 5,000,000" when it was actually less than \$200,000 (two cars, an \$8,000 retirement account, minimal home equity, and the \$50,000 cash from the refinance); their income was inaccurately described as "100,000+" when it was approximately \$60,000; and their liquid net worth was inaccurately described as "100-500,000" when it was, in fact, limited to the \$50,000 from the refinance. Similarly, the PSQ inaccurately stated that DH and TH had invested in excess of \$100,000 over the past five years, including \$25,000 in non-publicly traded securities, when in fact their investments had been limited to contributions to the mutual funds in DH's 401(k) plan. The PSQ also incorrectly stated that DH's and TH's net worth exceeded "\$1 million."

25. On or about October 2, 2007, DH and TH invested \$25,000 in Provident Shale Royalties 5. One year later, DH and TH invested an additional \$10,000 in a partnership interest in undeveloped land through WFPC.

26. Provident Shale Royalties 5 ceased paying dividends in January 2009. Six months later, the U.S. Securities and Exchange Commission filed a lawsuit against Provident Royalties LLC, its related entities (including Provident Shale Royalties 5, Inc.) and principals alleging that investor funds were commingled and misused and that material misrepresentations had been made to induce individuals to purchase interests in the private offerings. DH and TH have not received any return of their Provident Shale Royalties 5 investment principal.

ii. Customer MC

27. MC resides in San Diego, California. In June 2007, PG, a surfer who had known English for many years, introduced MC to English. At the time, MC owned a hair salon and earned less than \$70,000 per year. She had limited assets and minimal financial experience. Although she had a brokerage account, she had always depended on her representative's advice. Her net worth was about \$100,000.

28. In February 2008, English recommended that MC invest in the Maluhia One, LLC Private Placement which offered debt securities paying 12% interest annually with a return of principal due January 31, 2012.

29. The Maluhia Private Placement involved a sale of notes by an entity that was formed to develop a single home site in a residential resort development on the island of Maui. The Offering involved a sale of up to \$3,850,000 of debt securities that would bear interest at the rate of 12 percent per annum. The notes were offered on a "best efforts" basis with no minimum offering amount. This offering, made pursuant to Rule 506 of Regulation D, was available only to accredited investors. The PPM disclosed that the investment was "highly speculative" and that the notes were illiquid; there was no secondary market and no such market was anticipated.

30. When MC signed the DPA and PSQ she did not observe that they contained materially inaccurate information. The DPA incorrectly represented that: Cook's annual income was "100,000+"; her net worth was "1,000,000 -5,000,000"; she was an "accredited investor" and her Liquid Net Worth was "100-500,000." Similarly, the PSQ incorrectly reported that MC's net worth was "\$1.2 million" and her income exceeded "\$200,000."

31. At the same time that MC invested \$25,000 in Maluhia One, English also recommended that she invest \$60,000 in two raw land partnerships through WFPC. Because she had insufficient liquidity to pay for the land investments, she paid \$20,000 (\$10,000 for each parcel) and borrowed the remaining \$40,000 from WFPC. English told MC that the Maluhia One interest payments would cover the monthly finance payments for the land investments.

32. In February 2008, based on English's recommendation, MC invested \$25,000 in the Maluhia Private Placement and \$60,000 in the raw land partnerships.

33. In August 2009, MC ceased receiving dividends from Maluhia. Several months later, Maluhia filed bankruptcy. MC has never received the return of any of her principal.

34. After Maluhia ceased paying dividends, MC could no longer afford the monthly payments on the notes she had signed to finance the raw land investment that English recommended. MC then transferred her interest in one land partnership to English and transferred her interest in the other land partnership back to WFPC.

iii. Customer RE

35. RE, who is in his mid-60s, resides in Encinitas, California. From 1977 through 2008, RE taught 4th, 5th, and 6th grade in the San Diego School District. In 2007, he earned \$33,000 as a part-time teacher. He retired in 2008 with a pension that paid \$3,200 per month,

36. In 2007, RE's net worth was about \$621,000, consisting of \$500,000 of equity in his home, a variable annuity worth about \$28,000, a fixed annuity worth about \$91,000, and \$2,000 in a bank savings account.

37. RE and English surfed at the same beach and had known each other since 1993. Prior to a 2007 meeting with English to discuss his annuities, RE had almost no investing

experience; he had never purchased a stock, bond or mutual fund. RE met with English because he intended on retiring in the near future and wanted more income to help fund his retirement and to pay his mortgage. English recommended that RE sell his annuities and purchase investment interests totaling \$119,000 in the Striker Petroleum B-2 and MedCap III Private Placements.

38. Striker Petroleum was an energy company involved in the acquisition, drilling, development and operation of oil and gas properties. The Striker B-2 offering involved the sale of debentures that would accrue interest at the rate of 13% per annum. The Offering proceeds were supposed to fund acquiring, developing and maintaining properties and for general working capital purposes. The Offering was made pursuant to Regulation D and was only available to accredited investors. The investment was illiquid, highly speculative, and involved a high degree of risk. The PPM disclosed that Striker B-2 debentures should not be purchased by any person who could not afford the loss of his entire investment.

39. Medical Provider Financial Corporation III was formed in February 2005 primarily to acquire healthcare accounts receivable and other assets related to the healthcare industry. It then attempted to collect the full face amount of the receivable and retain any profit resulting from the difference. The MedCap III Offering involved the sale of one and two-year notes that were general obligations of the Company with an annual interest rate of 8.25% for the one-year notes and 8.50% for the two-year notes. The Offering relied on a Regulation D registration exemption and was available only to accredited investors. The PPM explicitly stated that an investment in the notes involved a high risk of loss and lack of liquidity that made it suitable only for those persons who had a continuing high annual income and/or substantial net

worth, who had no need for liquidity or current income from the investment and who could afford loss of the entire investment.

40. In February 2007, in connection with his Striker B-2 and MedCap III investments, RE met English at the beach and signed DPAs and Subscription Documents that were pre-completed except for RE's signature. Although the Striker DPA accurately characterized RE's investment objectives as "income" and "growth," it inaccurately stated that his annual income was "100,000", his net worth was "1,000,000 – 5,000,000", his liquid net worth was "100-500,000" and his investment experience included "mutual funds." The MedCap III DPA also inaccurately characterized RE's annual income as "100,000+", his net worth (exclusive of residence) as "500,000+", his liquid net worth as "100-500,000", and his investment experience to include mutual funds. The Striker B-2 Subscription Documents inaccurately reported that RE's net worth was "\$1,150,000"; the MedCap III Subscription Documents inaccurately reported that RE's net worth "exceeds \$1,000,000." RE funded his \$62,000 Striker debenture investment and his \$57,000 MedCap III note investment by using the proceeds from the liquidation of his annuities.

41. In March 2007, based on English's recommendation, RE invested \$62,000 in the Striker Petroleum offering. In April 2007, based on English's recommendation RE invested \$57,000 in the MedCap III offering. RE funded his \$62,000 Striker debenture investment and his \$57,000 MedCap III investment by using the proceeds from the liquidation of his annuities.

42. In August 2008, about a year and a half after English recommended the Striker and MedCap III investments, English recommended that RE invest in a third Regulation D offering, NNN Opportunity Fund VIII, LLC ("NNN"). This transaction involved a sale of an interest that English had originally recommended to EU's father-in-law. English arranged the

secondary sale because EU's father-in-law had a "liquidity crunch" when other investments that English had previously recommended ceased paying distributions.

43. NNN was a limited liability company that used offering proceeds to acquire commercial and residential properties and/or unimproved land. This Regulation D offering was available only to accredited investors. The PPM disclosed that purchase of NNN units involved a high degree of risk and that investor units were not freely transferable.

44. In August 2008, RE invested about \$16,020 in NNN units which he funded with a severance payment that he had recently received from the San Diego School District. RE did not sign or complete a DPA Form because this secondary transaction was never recorded on WFP's books and records.

45. In April 2009, MedCap III stopped making interest payments. Several months later, in August 2009, RE received notice that Medical Capital entered into a court ordered receivership. RE never received any return of his \$57,000 MedCap III investment principal.

46. In December 2009, RE received notice that Striker Petroleum was placed into a receivership. He never received any of the promised dividends from his Striker B-2 investment and never received any return of his \$62,000 investment principal.

47. In February 2010, RE received \$1,979.07 of the \$16,020 principal amount that he invested in NNN (a return of 21% of the amount invested). He never received any interest payments.

iv. Customers BJ and LJ

48. BJ and LJ, a middle-aged married couple, reside in Fallbrook, California with their three children. Since 2004, BJ has owned a piano servicing business. BJ and LJ are the

business' only employees. LJ has also worked as a part-time kindergarten aid. In 2007, BJ and LJ received gross compensation of about \$70,000 from their business. BJ was previously a civilian firefighter employed at the Camp Pendleton Marine Corps base.

49. In June 2007, BJ was introduced to mortgage broker EU and English. Shortly thereafter, BJ and LJ refinanced their home and cashed-out equity of \$140,000. As a result of the refinance, BJ and LJ obtained an interest-only loan with a \$3,000 monthly mortgage payment. BJ discussed the refinance with English who suggested that he invest the proceeds. At the time, BJ had limited investing experience; he had a brokerage account at another firm worth about \$1,500 and had purchased shares in mutual funds through a retirement plan (the employee thrift savings plan offered when he worked at Camp Pendleton).

50. In December 2007, BJ's and LJ's net worth was about \$180,000. Notwithstanding their limited income and net worth, in December 2007, English recommended that BJ and LJ invest \$120,000 (two thirds of their net worth) in four illiquid investments: two private placements (Provident Shale Royalties 6 and Texas Energy Grandview Properties) and two raw land investments through WFPC. English told BJ that Provident, alone, paid 15 to 18% in annual dividends and that BJ and LJ could cover the new mortgage payment with the dividends from the investment.

51. The Provident Shale Royalties 6 Private Placement, like its Provident Shale Royalties 5 predecessor, involved a sale of preferred shares by a newly formed corporation which purportedly intended to acquire sub-surface mineral interests. Although dividends accrued at a rate of 1.25% or 1.5% per month (15 or 18% per annum), there was no assurance that the Issuer would have sufficient cash flow to make payments. Moreover, the investment was illiquid, involved a high degree of risk and was "suitable only for person of substantial

financial means who [had] no need for liquidity in their investment and who [could] afford the entire loss of their investment in the Preferred stock.” The PPM disclosed that “a prospective investor should not purchase the Preferred Stock to provide current income payments or to meet current income requirements.” The Shale Royalties 6 Offering was made pursuant to Regulation D and available only to accredited investors.

52. Texas Energy was a Regulation D oil and gas drilling program in which proceeds would be used to acquire interests in 25 producing wells in the Barnett Shale in Texas. The PPM reminded investors that oil and gas exploration and drilling is a high risk venture and advised that “the nature of such risks requires persons who purchase interests to be able to hold the investment for a substantial number of years, and to absorb the possible loss of the investment.”

53. In early January 2008, BJ and LJ met English, at his home, to fill out paperwork to invest \$50,000 in Provident Shale Royalties 6 and \$50,000 in Texas Energy Grandview Properties. There, BJ and LJ signed blank DPAs and Subscription Agreements. The documents were later inaccurately completed with materially inaccurate and misleading information. At the same time, English recommended that BJ and LJ invest an additional \$20,000 in two undeveloped land partnerships.

54. The Provident Shale Royalties 6 DPA Form listed BJ’s occupation as “Corp. President.” Although it accurately identified his Investment Experience as “limited” and involving only “mutual funds,” it inaccurately listed his annual income as “100,000+,” overstated his net worth as “1,000,000 – 5,000,000,” and incorrectly identified him as an “accredited investor.” The Texas Energy Grandview DPA Form contained the same inaccuracies.

55. BJ's and LJ's Subscription Agreements were similarly inaccurate. The Provident Shale Royalties 6 Purchaser Questionnaire inaccurately stated that BJ and LJ had previously invested in "real estate, private placements," their net worth exceeded "\$1 million," the proposed investment would not exceed 20% of net worth, excluding residence, and loss of the entire investment would not affect their lifestyle.

56. English never discussed the risks of any of the investments with BJ and LJ. Moreover, he did not provide BJ and LJ with the Provident and Texas Energy PPMs until the day they signed the subscription documents. They did not read the PPMs because they trusted English and relied on his representations about the dividends they would receive and the investments' safety.

57. In December 2007, BJ and LJ, based on English's recommendations, invested \$50,000 in the Provident Shale Royalties 6 offering and another \$50,000 in the Texas Energy offering.

58. In January 2009, Provident Shale Royalties 6 stopped paying dividends. Six months later, in June 2009, BJ and LJ received notice of Provident's bankruptcy. BJ and LJ have not received a return of any of their \$50,000 investment principal.

59. In August 2009, BJ told English that he needed liquidity and wanted to sell all of the investments he had purchased. In September 2009, English arranged a secondary transaction in which another investor purchased BJ's and TJ's Texas Energy Grandview investment.

v. Customer MM

60. MM is a 91 year old widow who resides in an apartment in Oceanside, California. MM previously resided in Jamaica, New York, with her late husband, a former truck driver, who died in 2005.

61. In 2007, MM received proceeds of about \$190,000 from the sale of her New York home. In 2007, her net worth was about \$212,000 and consisted of the proceeds from the sale of her home and an annuity that her deceased husband had purchased. Her \$1,752 monthly income consisted of Social Security benefits and a small payment from her late husband's pension.

62. MM never worked outside of her home and never attended college. Prior to the purchase of the Medical Capital Financial Corp. III, Series II note described below, her investing experience was limited to bank certificates of deposit.

63. MM's son, JM, had been acquainted with English for several years because both were surfers. In 2004, English recommended that JM invest in a Medical Capital note and JM received the promised interest payments as well as the return of his principal.

64. English never asked JM about his mother's financial status. He nonetheless provided JM with a blank DPA and a blank Subscription Agreement which JM, in turn, provided to MM. JM told his mother that his broker, English, said that Medical Capital was a good and safe investment that would pay her more than \$400 per month in interest. MM signed the blank documents, which JM, in turn, delivered to English, together with a \$50,000 check drawn on MM's account. Although English never met with or spoke to MM, on May 30, 2007, he signed MM's DPA and Subscription Agreement and submitted them to his Firm.

65. MM's DPA and Subscription Agreement were replete with inaccurate information. The DPA inaccurately listed her occupation as "retired" and correctly identified the year of her date of birth as 1921, it inaccurately listed her annual income as "100,000+", misstated her net worth as "1,000,000 – 5,000,000", wrongly characterized her as an "accredited investor", and mischaracterized her investment experience to include "stocks" and "mutual funds." Similarly, the Subscription Agreement mischaracterized her as an "individual whose net worth . . . currently exceeds \$1,000,000."

66. In May 2007, based on English's recommendation, MM invested \$50,000 in the aforementioned Medical Capital offering.

67. In December 2008, MM stopped receiving interest payments on her investment. MM has not received the return of any of her \$50,000 investment principal.

vi. HR

68. HR is an 84 year old widow and homemaker who resides in Capistrano Beach, California. Most of her \$550,000 net worth consists of the approximately \$450,000 equity in her house. Her monthly income consists of a \$1,000 social security payment and a \$216.50 check from her late husband's pension.

69. In 2008, when HR met English at his WFP office and told him that she wanted investments to help pay her living expenses. English advised that she could receive income of \$1,200 per month by investing in Shale Royalties 9, Maluhia One and United Development Funding. In May 2008, based on English's recommendations, HR used all of her liquid assets to invest in those three private placements: \$50,000 in Provident Shale Royalties 9; \$25,000 in Maluhia One; and \$25,000 in United Development Funding.

70. The Provident Shale Royalties 9 Private Placement, like the other Shale Royalties offerings, involved a sale of preferred shares in an entity that intended to acquire subsurface mineral interests. Although dividends accrued at 1.5% per month, there was no assurance that the Issuer would have adequate cash flow to make payments. Moreover, the investment involved a high degree of risk, was illiquid, and was a Regulation D Offering available only to accredited investors – which HR was not.

71. As described above, the Maluhia One Private Placement involved a sale of notes by an entity that was formed to develop a single home site in a residential resort development on the island of Maui. The Offering involved a sale of up to \$3,850,000 of debt securities that would bear interest at the rate of 12 percent per annum. This offering, made pursuant to Rule 506 of Regulation D, was available only to accredited investors. The PPM disclosed that the investment was “highly speculative” and that the notes were illiquid.

72. United Development Funding, III was a Blind Pool Offering by an entity that intended to invest in mortgage loans and other real estate assets. The Prospectus stated that the limited partnership units investment involved significant risk, and were suitable only for persons who have adequate financial means, desire a long-term investment and will not need immediate liquidity from their investments.

73. English provided, and HR signed, blank DPAs and Subscription Agreements for each of her three investments. None of the forms disclosed that HR used virtually all of her liquid net worth to make the investments. The DPAs that English submitted to WFP inaccurately reported that HR’s net worth was “1,000,000 – 5,000,000” and her annual income was “50,000 – 100,000” and mischaracterized her as an “accredited” investor. Her Subscription Documents were similarly inaccurate. The Shale Royalties 9, Inc. Purchaser Suitability Questionnaire

falsely reported that HR had a net worth of \$1.1 million and had invested more than \$50,000 in non-publicly traded securities during the previous five years.

74. HR received a \$750 monthly dividend from the Shale Royalties 9 investment for several months before Provident suspended its dividend payments and filed a bankruptcy. She has never received the return of her \$50,000 investment principal.

75. HR received \$250 monthly dividends from Maluhia through August 2009. In early 2010, she received notice of Maluhia's bankruptcy. She has never received any return of her \$25,000 investment principal.

76. On December 16, 2011, HR was able to sell her interest in United Development Funding III, LP for \$14,392.30, to a third party investor, for a loss of \$10,607.70.

vii. Customer EB

77. EB is a 71 year old widow who resides in San Diego, California. From 1976 through her retirement in 2008, EB was employed as a part-time substitute teacher. In 2005, EB earned about \$11,000 from teaching and received an additional \$1,700 per month from social security and a benefit plan from her late husband's military service. EB also received income from her three rental properties, however, nearly all of the rental income was used to pay the mortgages and other expenses on the properties.

78. In June 2005, EB's son-in-law introduced her to EU and English. EU assisted EB in refinancing her three rental properties, obtaining \$700,000 in cash from the refinancing, and obtaining three interest-only adjustable rate loans totaling about \$1 million. EU advised that EB that she would be able to invest the proceeds and use the dividends to pay her elevated mortgage payments. English, in turn, promised EB that that he would recommend "safe" investments. He

knew that her investment knowledge was “limited,” she did not desire speculative investments, and would require investment income to pay the additional expenses for her refinanced properties.

79. By February 2007, EB, based on English’s recommendations, had invested virtually all of her liquid assets in six Alternative Investments (and a raw land partnership through the Firm’s affiliate) as follows:

- In August 2005, EB invested \$100,000 in Medical Capital II, Series I three year notes paying annual interest of 9.75%;
- In September 2005, EB invested \$100,000 in the Reef Oil and Gas Income and Development Fund, L.P.;
- In September 2005, EB invested \$100,000 in Argus Preferred Notes, LLC;
- In November 2005, EB invested \$100,000 in a Medical Capital III, Series I one-year note;
- In November 2005, EB invested \$100,000 in DBSI Denton Court LLC;
- In December 2005, EB invested \$75,000 in Spruce Heights Partners, a raw land investment, through Western Financial Planning; and
- In February 2007, EB invested \$50,000 in Striker Petroleum, Series B-2.

80. Medical Provider Corporation II was formed in October 2003 to acquire healthcare receivables and other financial assets related to the healthcare industry. It then attempted to collect the full face amount of the receivable and retain any profit resulting from the difference. The MedCap II Offering involved the sale of three, five and seven year notes that were general obligations of the Company with a minimum annual interest rate of 9.75% for the three year notes, 10.00% for the five year notes, and 10.25% for the seven year notes. The Offering relied on a Regulation D registration exemption and was available only to accredited

investors. The PPM explicitly stated that an investment in the notes involved a high risk of loss and lack of liquidity that made it suitable only for persons who had a continuing high annual income and/or substantial net worth, who had no need for liquidity or current income from the investment and who could afford loss of the entire investment.

81. Reef Oil & Gas Income and Development Fund, L.P. was a limited partnership formed to acquire and own interests in oil and natural gas properties. The proceeds of its Regulation D Offering were intended to fund the acquisition of properties containing existing, producing oil and natural gas wells as well as proved non-producing properties and/or proved undeveloped properties on which the partnership would conduct oil and gas developmental drilling activities. The PPM disclosed that investment in the partnership involved a high degree of risk and was suitable only for investors of substantial means who had no need for liquidity.

82. Argus Preferred Notes, LLC was a Delaware limited liability company that was offering up to \$50 million of notes that paid annual interest of 9.25% in a Regulation D Offering to accredited investors, to enable the issuer to acquire industrial, office, and other commercial properties. The PPM described the investment as highly speculative and warned that the notes should not be purchased by persons who could not afford the loss of their entire investment.

83. As described above, the Medical Capital III, Series I Offering involved the sale of one and two-year notes, to accredited investors, that would be unguaranteed general obligations of the company with an annual interest rate of 8.25% for the one-year notes and 8.50% for the two-year notes. The PPM explicitly stated that an investment in the notes involved a high risk of loss and lack of liquidity that make it suitable only for those persons who have a continuing high annual income and/or substantial net worth, who can afford to bear such risk, and who have no

need for liquidity or current income from such investment and can afford loss of the entire investment.

84. DBSI Denton Court LLC was an Idaho limited liability company that sold, in a Regulation D offering available only to accredited investors, notes that paid 9% interest per annum, purportedly to fund the partial development of a retail center in Denton, Texas. The PPM described the notes as “highly speculative,” involving a “very high risk of loss of capital,” and suitable only for “persons able to bear the risk of and to withstand the total loss of their investment.”

85. As described above, the Striker B-2 offering was available only to accredited investors and involved the sale of debentures that would accrue interest at the rate of 13% per annum. The investment was illiquid and highly speculative. The PPM disclosed that Striker B-2 debentures should not be purchased by any person who could not afford the loss of his entire investment.

86. EB was dependent on the interest and dividend payments from her investments to make the mortgage payments on her properties. She has suffered significant losses which have put her at risk of defaulting. Her losses include the following:

- In December 2008, EB stopped receiving interest payments from Medical Capital. In July 2009, the U.S. Securities and Exchange Commission filed a lawsuit against Medical Capital Corporation, its principals, and others alleging that they had committed fraud in connection with the sale of Medical Capital notes. In August 2009, a Permanent Receiver was appointed to take charge of all assets of Medical Capital Corporation’s (and its subsidiaries’ and

affiliates') assets. EB has not received a return of any of the \$100,000 principal that she invested.

- In March and April 2009, EB did not receive any dividend payments on her Reef Oil and Gas investment. Thereafter, she has received drastically reduced and sporadic payments. She has not received the return of any of her principal.
- In November 2008, DBSI filed a Chapter 11 bankruptcy and in January 2009, the State of Idaho filed a complaint alleging fraudulent conduct by DBSI. EB has not received a return of the \$100,000 principal she invested.
- In December 2008, Striker B-2 ceased making interest payments. In December 2009, the Commission filed a lawsuit against Striker and its principals alleging that they misused offering proceeds, inflated revenues and overstated assets, and lacked an independent third party trustee for the debenture collateral. EB has not received a return of any of the \$50,000 principal she invested.
- In November 2008, Argus ceased making interest payments to its noteholders. In January 2009, EB executed a Consent and Approval of Amendment to Preferred Notes and Indenture that lowered the interest rate on her Argus note from 9.25% to 6% per annum, provided that no interest will be due until the new maturity date, and provided that the new maturity date is December 31, 2014.

D. English's Failure to Disclose Material Information to Customer DB

87. DB is a 61-year old retired chemical engineer who resides in San Diego, California. DB had originally met English in 1990 when he purchased a purported general partnership interest in undeveloped land through WFPC.

88. In April 2010, English, by telephone, solicited DB to purchase an interest in Adageo Energy Partners, L.P. ("Adageo") from a customer, JR, who had previously invested in that private offering but needed liquidity.

89. Adageo was a limited partnership organized for the purpose of specializing and investing in the identification, acquisition, drilling, development and operation of oil and gas properties, the acquisition and construction and operation of natural gas pipeline systems and the marketing of gas passing through such pipeline systems. The PPM, dated April 17, 2008, described a Blind-Pool Offering, made pursuant to a Regulation D registration exemption and limited to accredited investors. To acquire investments and/or properties, Adageo was offering bonds bearing interest at the rate of 12% per year, maturing on December 31, 2011, in a contingent offering with a \$1 million minimum and \$50 million maximum. The PPM provided that the Offering Termination Date was December 31, 2008 or until the maximum was sold (whichever was earlier).

90. By check dated April 13, 2010, payable to JR, and based on English's recommendation, DB purchased a \$25,000 interest in Adageo 12% Secured Convertible Bonds Due 2011. English then caused a Certificate of Transfer to be mailed to Adageo notifying it of the transfer of JR's bond to DB. Before DB purchased his Adageo investment, English provided him with the PPM and the First Supplement dated July 15, 2008 (stating that the Program had sold the requisite minimum amount of investments and advising of a personnel change on the

General Partner's Advisory Board) and the Second Supplement dated December 15, 2008 (advising that the General Partner had extended the offering period through March 30, 2009 and providing financial statements through September 30, 2008).

91. English intentionally or, at a minimum, recklessly failed to provide DB with the PPM's Third through Ninth Supplements dated March 16, 2009 through January 25, 2010 and also intentionally or, at minimum, recklessly failed to disclose the foregoing information in the Supplements to DB. The omitted Supplements included financial statements and described an unprofitable entity with a negative net worth that was repeatedly extending the Offering's Termination Date, increasing the size of the offering, making loans to third parties that had a doubtful ability to repay the loans, and that was making interest payments from investment proceeds. This information was material for purposes of evaluating an investment in the Adageo bonds.

92. In September 2010, five months after DB's investment, Adageo ceased making interest payments. In December 2010, DB received notice of Adageo's default. He has never received any return of his \$25,000 investment principal.

E. WFP's Supervisory System

93. [REDACTED] the Firm's Chief Compliance Officer, and [REDACTED] the Firm's Due Diligence Officer, were responsible for the Firm's Supervisory System. [REDACTED] was responsible for maintaining and updating the procedures; [REDACTED] was responsible for reviewing and approving and ensuring that each particular recommendation was suitable.

94. As described above, WFP evolved into a broker-dealer that primarily sold private placements and non-traded REITS. But it had only two written procedures directly addressing

the sales of these Alternative Investments: (i) a procedure entitled “Suitability Standards” which required representatives to have reasonable grounds to believe that a customer could recognize the benefits and have sufficient net worth to sustain the risk before recommending a direct participation program; and (ii) a procedure entitled “Secondary Trading” which required the Firm’s representatives to inform clients that direct participation programs were illiquid and that there was no guarantee the investment could be sold.

95. The Firm’s supervisory system also included unwritten procedures applicable to the sale of Alternative Investments. One unwritten guideline or “rule of thumb” was that a registered representative should not make recommendations that resulted in more than 25 to 30 percent of a customer’s assets ought to be in illiquid investments. The Firm, through Hansen, failed to include this procedure in its WSPs.

96. The Firm was theoretically able to monitor over-concentration in illiquid investments through the use of its WinOps system. WinOps was a computerized database that allowed Firm personnel to view every Alternative Investment that a client had purchased through the Firm. ██████ was supposed to use the WinOps System when he evaluated the suitability of any individual transaction particularly if there was a red flag suggesting possible over-concentration of a customer’s account. As a practical matter, ██████ had access to but never used WinOps. Indeed, the Firm’s WSPs had no provision that required him to use the system to monitor for over-concentration.

97. Although many of WFP’s representatives were associated with the Firm’s affiliate, WFPC, and selling interests in undeveloped land to the same customers to whom they were selling securities through WFP, the Firm had no system or procedure to assess whether a

customer had previously purchased investments through its affiliate. The WinOps system was limited to WFP; it did not capture WFPC transactions.

98. The Firm's unwritten rule with respect to secondary transactions was that any such transaction required written pre-approval. But that unwritten rule was never conveyed to WFP's representatives. English facilitated at least seven secondary transactions on behalf of five customers. None had prior written approval and [REDACTED] and [REDACTED] were unaware of the transactions when they occurred.

FIRST CAUSE OF ACTION
Suitability - Unsuitable Recommendations
(Violations of NASD Conduct Rules 2310 and 2110
by Respondent English)

99. The Department realleges and incorporates by reference paragraphs 1 through 98 above.

100. As detailed above, from August 2005 through October 2008, English made unsuitable recommendations to customers DH and TH, MC, RE, BJ and LJ, MM, HR, and EB. English recommended that they purchase the aforementioned securities without having a reasonable basis to believe these investments were suitable for the customers' financial situations and needs. Some of the customers were elderly, some had no liquid assets other than the proceeds of their home equity refinance, and all had limited incomes and net worth. Nevertheless, without any reasonable basis, English recommended investments which exposed them to an undue risk of loss by concentrating their limited assets in speculative and illiquid securities.

101. By making these unsuitable recommendations, English violated NASD Conduct Rules 2310 and 2110.

SECOND CAUSE OF ACTION
Recordkeeping Violations
(Violations of NASD Conduct Rules 3110 and 2110 by
Respondent English)

102. The Department realleges and incorporates by reference paragraphs 1 through 101 above.

103. NASD Rule 3110(a) requires member firms to “make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations and statements of policy promulgated thereunder and the Rule of this Association and as prescribed by Exchange Act Rule 17a-3 . . .” Entering inaccurate information in a firm’s books and records violates the requirement of NASD Conduct Rule 3110 to keep accurate books and records.

104. As detailed above, from August 2005 through October 2008, English knowingly submitted investment documents that he knew inaccurately described customers’ financial status including their income, net worth, investment experience and status as accredited investors.

105. As a result of the foregoing, English violated NASD Conduct Rules 3110 and 2110.

THIRD CAUSE OF ACTION
Material Omissions of Fact
(Violation of Section 10(b) of the Exchange Act of 1934, Exchange Act Rule 10b-5, and FINRA
Rules 2020 and 2010 by Respondent English)

106. The Department realleges and incorporates by reference paragraphs 1 through 105 above.

107. By intentionally or, at minimum, recklessly omitting to disclose material information in connection with DB’s purchase of an Adageo bond, English willfully violated

Section 10(b) of the Exchange Act of 1934, Exchange Act Rule 10b-5, and also violated FINRA Rules 2020 and 2010.

FOURTH CAUSE OF ACTION
Deficient Written Supervisory Procedures
(Violation of NASD Rules 3010(a) and (b) and 2110 and FINRA Rule 2010 by Respondent
██████████

108. The Department realleges and incorporates by reference paragraphs 1 through 107 above.

109. Assuring proper supervision is a critical component of broker-dealer operations. Conduct Rule 3010(a) obligates FINRA members to “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 the Rules of [FINRA].” A Firm’s supervisory system must be tailored specifically to its business and address the activities of all its registered representatives and associated person

110. The Firm’s supervisory system must in turn, be memorialized in writing and the Firm must implement and enforce the written procedures. Conduct Rule 3010(b) requires a 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 [and FINRA].”

111. WFP Chief Compliance Officer [REDACTED] failed to discharge his responsibilities adequately because WFP's procedures were not reasonably designed to achieve compliance with applicable securities laws and rules.

112. By 2007, the majority of WFP's business involved the sale of private placements and non-traded REITS, yet it had no written procedure governing the extent to which a customer's investments could be concentrated in these illiquid and speculative investments.

113. Although the Firm had a computerized database which captured all of a customer's prior Alternative Investments through WFP, there was no procedure directing [REDACTED] the supervisor responsible for approving each transaction, to use the system to monitor the suitability of any individual transaction.

114. Although WFP representatives were selling illiquid partnership interests in raw land through the Firm's affiliate, there was no procedure to review the extent to which a customer had purchased these land interests when reviewing the suitability of a securities recommendation.

115. WFP had no written procedures for reviewing and/or approving recommendations involving secondary transactions.

116. Although certain WFP representatives were partnering with a mortgage broker and although at least four WFP representatives had recommended the purchase of securities with the proceeds of liquefied home equity, the Firm had no procedures addressing the use of home equity, no process or procedure for identifying investments purchased with home equity proceeds, and no procedure for ensuring these risky transactions were suitable.

117. By failing to establish, maintain, and enforce written procedures that were reasonably designed to achieve compliance with applicable securities laws and regulations, [REDACTED] violated NASD Rules 3010(a) and (b), NASD Rule 2110 and FINRA Rule 2010.

FIFTH CAUSE OF ACTION

Failure to Supervise

(Violation of NASD Rules 3010 and 2110 and FINRA Rule 2010 by Respondent [REDACTED])

118. The Department realleges and incorporates by reference paragraphs 1 through 117 above.

119. During the entirety of the conduct described in this Complaint, [REDACTED] WFP's Senior Vice President of Due Diligence, was responsible for reviewing and approving the suitability of Alternative Investment recommendations by the Firm's representatives. But he failed to exercise that authority reasonably. By systematically neglecting to use the Firm's WinOps system, he failed to use the Firm's only automated system for preventing and detecting overconcentration of customer accounts in illiquid investments. Moreover, he failed to investigate red flags suggesting that English was over-concentrating customer accounts, making unsuitable recommendations and submitting falsified Direct Purchase Applications and Subscriptions Agreements.

120. The red flags included the following:

- English was associated with WFPC and offering and selling raw land investments to the same customers to whom he was selling Direct Participation Programs and non-traded REITs;
- English was responsible for the sale of a large volume of Alternative Investments often to the same customer. From 2007 through 2009,

English sold 64 different DPPs and REITs, valued at \$14.7 million, to 119 customers. Sixty of the 119 customers purchased two or more products – not including land purchases offered by WFPC;

- None of the customers described above in Paragraphs 19 through 86 were sophisticated. Their Direct Purchase Applications described their investment knowledge as “limited” and their investment experience consisted of “mutual funds.” Moreover, none identified his/her investment objective as “speculation.”
- Three of the customers (EB, MM, and HR) listed “retired” as their occupation and two of the three (MM and HR) were over 80 years old; and
- The customers described above reported income on their DPAs (typically “\$100,000+”) that was atypical of their reported occupations, *e.g.* “utility worker” and “pet sitter” (DH and TH), “teacher” (RE) and “retired” (MM, HR and EB).

121. Notwithstanding these red flags, ██████ took no action. He never contacted any of the customers, never inquired about any particular transaction, never attempted to determine if these investors had also purchased land through WFPC, and did not use WinOps to check whether English had recommended any other Alternative Investments to these customers. His review was limited to reviewing documents for each transaction, in isolation.

122. By failing to supervise adequately, ██████ violated NASD Rules 3010 and 2110 and FINRA Rule 2010.

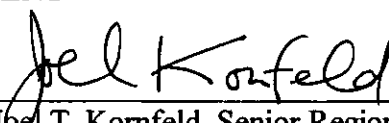
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondents committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed including that Respondent English is required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- C. order that Respondents bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and
- D. makes specific findings that Respondent English willfully violated Section 10(b) of the Exchange Act of 1934 and Exchange Act Rule 10b-5.

FINRA DEPARTMENT OF ENFORCEMENT

Date: April 2, 2013


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