

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2010022679801**

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

RE: Institutional Capital Management, Inc., Respondent
[CRD No. 41055]
and
Daniel L. Ritz, Jr., Respondent
[CRD No. 1977521]

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Institutional Capital Management, Inc. and Daniel L. Ritz, Jr. (hereinafter, "Respondents") submit 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 Respondents alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondents hereby accept and consent, 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

Institutional Capital Management, Inc. ("ICM"), headquartered in Houston, Texas, became a FINRA member on February 3, 1997. The firm engages in a general securities business as well as in the sale of private placements. It currently employs 15 registered individuals.

Daniel L. Ritz, Jr. became registered with FINRA on July 31, 1989, as a General Securities Representative. In February 1997, Ritz founded ICM, and he has served continuously as Chief Executive Officer of the firm since its founding. At all times relevant herein, Ritz was associated with ICM and was registered with FINRA as, among other things, a General

Securities Principal. Ritz remains registered with ICM.

RELEVANT DISCIPLINARY HISTORY

On August 26, 1998, the Texas State Securities Board fined Ritz and ICM \$10,000 and \$20,000, respectively, and suspended each for 10 business days, for having allowed ICM agents to sell securities in the State of Texas without proper registration. SSB Docket No. 98-048.

On December 3, 2003, FINRA fined Ritz \$3,500 for having served in a principal capacity during an eleven-day period when his registration was deemed to be inactive for failure to complete regulatory continuing education. AWC No. C06030027.

OVERVIEW

During the period from November 2008 through August 2010, Respondent ICM violated SEC, NASD, and FINRA rules relating to preservation and supervisory review of email communications of registered persons, and the collection and maintenance of requisite information concerning customer accounts. In addition, during the period from November 2008 through June 2010, Respondent Ritz failed to supervise the investment-advisory activities of a registered representative of ICM, in violation of NASD and FINRA rules.

FACTS AND VIOLATIVE CONDUCT

Preservation and Supervision of Electronic Correspondence

From November 10, 2008 to August 6, 2010, ICM permitted registered persons assigned to its Nashville, Tennessee branch office to utilize outside email accounts in the conduct of ICM business, though the firm had no system or procedure in place to capture, preserve, and monitor those email communications. Consequently, during the stated period, ICM failed to preserve all firm-related email communications of registered persons assigned to the Nashville branch, as required under SEC Rule 17a-4 and NASD Conduct Rule 3110. Similarly, during the stated period, ICM failed to perform any supervisory review of the email communications of registered persons assigned to its Nashville branch office, as required under NASD Conduct Rule 3010(d)(2).

Such acts, practices, and conduct constitute violations of SEC Rule 17a-4; NASD Conduct Rules 3110, 3010(a) and (b), 3010 (d)(2), and 2110

(effective through December 14, 2008); and FINRA Rule 2010 (effective December 15, 2008) by Respondent ICM.

Supervision of Investment-Advisory Activities of Registered Persons

From November 10, 2008 to June 11, 2010, Respondent Ritz permitted an ICM registered representative to engage in investment-advisory activity through his state-registered RIA and failed to supervise that activity.

NASD Conduct Rule 3040 provides: "If [a] member approves [an associated] person's participation in a [private securities transaction for which the associated person has or may receive selling compensation], the transaction shall be recorded on the books and records of the member and the member shall supervise the person's participation in the transaction as if the transaction were executed on behalf of the member."

Rule 3040 applies to the securities activities of individuals who are both registered with a FINRA member firm and registered as an investment adviser ("RR/IA"). See Notice to Members ("NtM") 94-44, issued by FINRA in May 1994. FINRA indicated in NtM 94-44 that when an RR/IA, in the context of his or her advisory relationship, participates in the execution of securities transactions by entering orders on behalf of customers with a brokerage firm away from the FINRA member firm with which he or she is currently registered, or with a mutual fund, and receives compensation for those services, such activities are subject to the Rule 3040 requirements. Notice to Members 94-44 further clarified issues relating to the application of Rule 3040 to investment advisory activities of registered representatives by noting that "participation" contemplates actual participation in the execution of a particular trade or securities transaction and that "selling compensation" includes asset-based management fees, wrap fees, and any other fees paid to a dually-registered person in connection with investment advisory services.

In May 1996, FINRA issued Notice to Members 96-33 to provide guidance on the types of records that might be used, and the recordkeeping systems that might be established, by a FINRA member to ensure that investment advisory transactions of dually-registered persons are properly recorded and supervised in accordance with Rule 3040. Among several measures suggested, FINRA recommended that member firms implement procedures for the retention and review of written correspondence of dually-registered persons with investment advisory clients, and that firms record and monitor all securities transactions executed for investment advisory clients. FINRA cautioned in the Notice that recordkeeping alone is not a substitute for adequate supervision, and that "the records created and the recordkeeping system used, together

with relevant supervisory procedures, must enable the member to properly supervise the [dually-registered person] ... and the suitability of the transactions.”

During the relevant period, Ritz was the principal responsible for the supervision of the particular RR/IA at issue. Despite the dictates of Rule 3040, Ritz did not supervise any facet of the RR/IA’s business and, indeed, was generally unaware of what his IA business entailed. As a result of this lack of supervision, the RR/IA was able to engage in extensive selling-away misconduct without detection by the firm. Specifically, from November 10, 2008 through April 27, 2010, the RR/IA offered and sold promissory notes in three companies that he himself owned and controlled. In total, the RR/IA raised more than \$5 million from investors through sales of promissory notes, in violation of Rule 3040, without detection by ICM.¹

Such acts, practices, and conduct constitute violations of NASD Conduct Rules 3040, 3010 (a) and (b), and 2110 (effective through December 14, 2008) and FINRA Rule 2010 (effective December 15, 2008) by Respondent ICM, acting through its Chief Executive Officer, Respondent Daniel L. Ritz, Jr.

Failure to Obtain Required Information for Customer Accounts

SEC Rule 17a-3(17) requires broker-dealers to make and keep current a record for each account with a natural owner that includes, among other things, the customer’s tax status, annual income, net worth, date of birth and investment objectives for the account. Additionally, NASD Conduct Rule 3110(c) requires member firms to maintain for each account the customer’s name and residence, the name and address of the customer’s employer, the signature of the registered representative introducing the account, and the signature of the principal who accepts the account on behalf of the firm.

Between August 19, 2009 and October 25, 2009, ICM failed to obtain all required information for ten customers who purchased securities through ICM in private placement offerings.

Such acts, practices, and conduct constitute violations of SEC Rule 17a-3, NASD Conduct Rule 3110, and FINRA Rule 2010 by Respondent ICM.

¹ On September 15, 2010, the Securities and Exchange Commission permanently barred the subject RR/IA, based on consented findings that he engaged in fraudulent conduct in connection with his sales of the promissory notes. Exchange Act Release No. 62918 (Sep. 15, 2010).

B. Respondents also consent to the imposition of the following sanctions:

- a fine in the amount of \$65,000 to be assessed against Respondent ICM, and
- a four-month suspension of Respondent Ritz from association with any FINRA member in any principal capacity.

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

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

On December 31, 2009, Respondent Ritz filed a Chapter 7 bankruptcy petition pursuant to Title 11, United States Code, and the bankruptcy proceeding remains pending. Accordingly, no monetary sanction is being assessed against Respondent Ritz in this matter.

Respondent Ritz understands that if he is barred or suspended from associating with any FINRA member in a principal, he becomes subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, Respondent Ritz may not be associated with any FINRA member in a principal capacity during the period of the bar or suspension (see FINRA Rules 8310 and 8311). Furthermore, because Respondent Ritz is subject to a statutory disqualification during the suspension, if he remains associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

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

II.

WAIVER OF PROCEDURAL RIGHTS

Respondents specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against them;
- 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.

Respondents specifically and voluntarily waive 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.

Respondents specifically and voluntarily waive 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

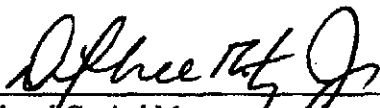
Respondents understand that:

- 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 them; and
- C. If accepted:
1. this AWC will become part of their permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against them;
 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about their 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. they 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. They 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 their right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Respondents may attach a Corrective Action Statement ("Statement") to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that the Statement may not deny any of the charges set forth in the AWC or contain any statement that is inconsistent with the AWC. The Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

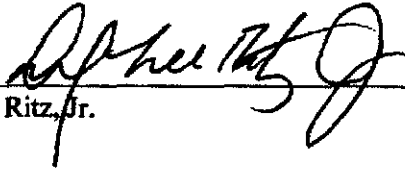
Respondents certify that they understand the provisions of this AWC and have been given a full opportunity to ask questions about it; that they have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce Respondents to submit it.

9/18/2011
Date (mm/dd/yyyy)


Institutional Capital Management, Inc.

By: PRESIDENT

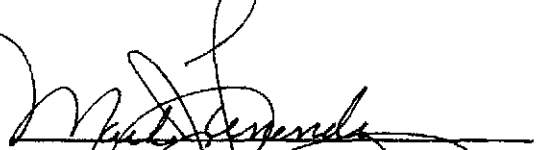
09/28/2011
Date (mm/dd/yyyy)


Daniel L. Ritz, Jr.

Accepted by FINRA:

October 18, 2011
Date

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


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