

FINRA

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**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
20100237817-01**

TO: Office of Fraud Detection and Market Intelligence
Financial Industry Regulatory Authority ("FINRA")

RE: Krittibas Ray, Respondent
CRD No. 3039388

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Krittibas Ray, ("Ray" or "Respondent"), 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 me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. I 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

Ray was registered with FINRA member firms from 1998 until September 29, 2010, when his most recent employer firm filed a Form U5 terminating his registration. He is *not currently* associated with a FINRA member firm but remains subject to FINRA's jurisdiction pursuant to Article V, Section 4, of FINRA's By-Laws. Ray has no disciplinary history.

SUMMARY

Beginning in January 2008 and continuing through September 2010, Ray raised approximately \$675,000 from 15 investors through the sale of promissory notes. In soliciting the purchase of the promissory notes, Ray made fraudulent misrepresentations and omissions of material fact concerning the use of proceeds to be received from the promissory notes, and how and where the proceeds were to be invested. Contrary to representations that he would use the proceeds from the sale of the promissory notes to fund and market two hedge funds, Ray used the proceeds for, among other things,

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personal expenses. Ray also failed to disclose to later prospective investors that funds raised through the sale of the promissory notes were being used to make interest payments to earlier investors, and to repay principal amounts owing to these earlier investors. In addition, Ray failed to obtain approval from his firm to sell the promissory notes.

FACTS AND VIOLATIVE CONDUCT

Ray made materially misleading statements and omissions of fact when soliciting promissory notes to customers in violation of NASD Rules 2110 and 2120; FINRA Rules 2010 and 2020; and in willful violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder

1. In approximately January 2008, Ray began soliciting prospective investors to purchase promissory notes. Ray marketed the promissory notes as a vehicle to fund the start up of a hedge fund, and to pay the on-going operations of the hedge fund. In 2009, and continuing through September 2010, Ray began to solicit investors to purchase promissory notes to fund the start-up of a second hedge fund, and to pay for the on-going operations of the second hedge fund. At least 15 investors purchased more than \$675,000 in promissory notes from Ray between January 2008 and September 2010.
2. The promissory notes, which Ray described to many prospective investors as bonds, paid between 7% and 8.5% interest annually. Ray represented to investors that he could pay above-U.S. market interests rates of between 7 and to 8.5 % on the promissory notes, based in part, on the fact that he could obtain these rates by investing the funds in the State Bank of India, which, he represented to prospective investors, paid interest rates of up to nine percent.
3. Contrary to his representations to investors, Ray did not invest any of the proceeds of the promissory notes with the State Bank of India. Moreover, Ray used a portion of the proceeds for his own personal expenses, including paying his divorce attorney more than \$80,000, paying for child care and lawn care services, and paying rent on two residences. Ray also used proceeds from later sales of the promissory notes to pay interest and repay principal amounts due on notes held by earlier purchasers. At least six of the promissory noteholders received interest and/or principal payments from funds raised from later purchasers.
4. From January 2008 through September 2010, Ray, in connection with the purchase or sale of the promissory notes, and by the use of the means or instrumentalities of interstate commerce or of the mails, intentionally or recklessly, made materially misleading statements and omissions of fact, including misrepresenting the use of proceeds from the sale of the promissory notes; misrepresenting how and where the proceeds were to be invested; and failing to disclose that he was using proceeds from the sale of promissory notes to

pay the interest and principal amounts due to earlier noteholders. By engaging in the foregoing conduct, Ray violated NASD Rules 2110 and 2120 (for conduct before December 15, 2008); and FINRA Rules 2010 and 2020 (for conduct on or after December 15, 2008); and willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

Ray participated in private securities transactions through the sale of promissory notes to at least 15 investors without providing written notice to, and obtaining approval from, his firm in violation of NASD Rules 2110, 3040, and FINRA Rule 2010

5. Between January 2008 and September 2010, Ray recommended and sold promissory notes to at least 15 investors. Each of these transactions constituted a "private securities transaction," as that term is defined in NASD Rule 3040. In each such transaction, Ray failed to provide written notice to his employer, a FINRA member, describing in detail the proposed transaction and his role therein, and stating whether he had received or would receive selling compensation in connection with the transaction. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rules 2110 and 3040 (for conduct before December 15, 2008), and NASD Rule 3040 and FINRA Rule 2010 (for conduct on or after December 15, 2008).

B. *I also consent to the imposition of the following sanctions:*

A bar in all capacities from associating with any FINRA member.

I understand that this settlement includes a finding that I willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. Pursuant to Article III, Section 4 of FINRA's By-Laws, this makes me subject to a statutory disqualification with respect to association with a member.

I understand that if I am barred from associating with any FINRA member, I become subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. (See FINRA Rules 8310 and 8311.)

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

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against me;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, I 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.

I further 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

I 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 me; and
- C. If accepted:
1. *this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;*
 2. *this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my 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. *I 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. I 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 my right to take contrary legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.*

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I 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 me to submit it.

8-11-11
Date

K. Ray
Ray Krittibas

Reviewed by:

Alvin F. Fishman, Esq.
Alvin F. Fishman, Esq.
Counsel for Respondent

Accepted by FINRA:

9/12/11
Date

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

Cameron K. Funkhouser
Cameron K. Funkhouser
Executive Vice President
Office of Fraud Detection
and Market Intelligence