

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

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

GREGORY JEROME PTASIENSKI OSBORN
(CRD No. 1716402),

RESPONDENT.

Disciplinary Proceeding
No. 2011025438901

Hearing Officer-DRS

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: April 8, 2014

INTRODUCTION

Disciplinary Proceeding No. 2011025438901 was filed on August 8, 2013, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Gregory Jerome Ptasienski Osborn submitted an Offer of Settlement (Offer) to Complainant dated March 31, 2014. 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

Respondent first became registered with FINRA as a General Securities Representative on August 18, 1987. He was first registered in that same capacity through member firm Middlebury Securities, LLC (BD No.122602) (the "Firm") from January 2, 2003 through January 12, 2009. He subsequently re-registered through the Firm in that same capacity on April 22, 2009. On December 14, 2009, Respondent also became registered as an Investment Banking Representative through the Firm. He remained registered with the Firm in those capacities through July 2, 2012.

While registered with the Firm, Respondent worked in the Firm's branch office in Ridgewood, New Jersey ("Ridgewood Branch") and was the investment banker and primary salesman for all of the Firm's private offerings, which accounted for the majority of the Firm's revenues. Respondent identified himself as a "Managing Partner" and "co-founder" of the Firm, although he did not have an ownership interest and was not registered as a general securities principal.

On July 2, 2012, the Firm filed a Uniform Termination Notice for Securities Industry Registration (Form U5) voluntarily terminating Respondent. The Form U5 indicated that Respondent's last date of employment was June 25, 2012.

Respondent is not currently associated with a member firm. His most recent registration ended when the firm with which he was associated filed a Form U5 on September 11, 2013.

FINDINGS AND CONCLUSIONS

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

SUMMARY

1. From in or about December 2009 through in or about December 2011, Respondent made fraudulent misrepresentations and omissions of material facts in connection with the sale of approximately \$5 million of securities in two private offerings conducted on behalf of two issuers – NVG and NVL. At the time of the fraudulent sales, Respondent was registered with the Firm.
2. In the NVG offering, investors received both secured convertible promissory notes (hereinafter the “NVG Notes”) and common stock warrants (the “NVG Warrants”). The NVG Warrants gave investors the right to purchase for up to a seven-year period an undefined amount of common stock at an exercise price of \$1.33 per share.
3. Similarly, in the NVL offering, investors received both secured convertible promissory notes (hereinafter the “NVL Notes”) and common stock warrants (the “NVL Warrants”). The NVG Warrants gave investors the right to purchase common stock based on a formula that assumed a later public offering.
4. Among other things, in connection with the sale of the NVG and NVL offerings, Respondent failed to disclose material facts concerning the financial condition of the two issuers, including:
 - a. that NVG (and its CEO) were the subject of pending federal and state tax liens totaling over \$3 million during the offering;

- b. that NVL had no revenues and was operating at a loss; and
 - c. that both issuers had defaulted on their promises to repay Note investors, yet Respondent continued to sell the Notes to new investors while failing to disclose the earlier defaults.
- 5. Respondent also failed to disclose his substantial financial and ownership interest in NVL.
- 6. By this conduct, Respondent willfully violated Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 promulgated thereunder, and violated FINRA Rules 2020 and 2010.
- 7. From in or about December 2009 through in or about April 2012 (the "Relevant Period"), Respondent and others established two escrow accounts to hold investor monies from nine private offerings in which the Firm participated as the selling broker-dealer, including the NVG and NVL offerings. The accounts were maintained by a law firm. The offering funds that the Firm and Respondent raised through the private offerings were commingled in a non-segregated manner in the escrow accounts.
- 8. Respondent misused approximately \$200,000 of the escrowed investor monies from two of the offerings to make payments to, or on behalf of (e.g., legal fees and commission payments), a third issuer. By this conduct, Respondent violated FINRA Rules 2150 and 2010.

9. Respondent willfully failed to amend his Uniform Application for Securities Industry Registration or Transfer (Form U4) to disclose the existence of an unsatisfied federal tax lien in the amount of approximately \$265,000. By this conduct, Respondent violated Article V, Section 2 of FINRA's By-Laws and FINRA Rules 1122 and 2010.

**RESPONDENT'S INVOLVEMENT IN THE NVG
AND NVL PRIVATE OFFERINGS**

10. The violations alleged herein stem from the Firm's private offering activity led by Respondent that originated at the Ridgewood Branch.
11. From in or about December 2009 through in or about April 2012, the Firm, acting through Respondent, sold approximately \$60 million of securities through 11 private offerings to approximately 208 accredited investors on a "best efforts" basis.
12. Respondent misused investor monies in connection with two of these private offerings: NVG and NVL. Through these offerings, approximately \$5 million was raised from approximately 46 investors:

	Offering Period	Approximate Amount Raised	Number of Investors
<i>NVG Offering (Note + Warrants)</i>	December 2009- April 2011	\$2.63 million	23
<i>NVL Offering (Note + Warrants)</i>	February 2010 – December 2011	\$2.46 million	23

13. Respondent earned approximately \$100,000 in commissions and fees from these offerings.

14. The NVG and NVL Notes had similar structures. Each had a six-month maturity and paid 12% interest a quarter. The maturity dates could be extended, once, for up to sixty days, provided that, if such an extension occurred, the quarterly interest rate would increase to 15% effective from the commencement date of the note. In fact, both NVG and NVL did extend all of the Notes throughout their respective offering periods, based on date of investment. Pursuant to the terms of the Notes, investors should have received a return of their principal eight months from their investment, along with interest of 15% payable quarterly.
15. In connection with both offerings, Respondent asked some investors (on behalf of the issuers) to sign waivers of default extending the maturity dates of the Notes for four months (in the case of NVL) or sixty days (in the case of NVG) beyond the one-time sixty-day extension allowed under the terms of the offering. These requests to sign waivers, however, were only made after the investors had already purchased the Notes. Further, only three of the 23 NVG offering investors and 19 of the 23 NVL offering investors signed such waivers.
16. In any event, with the exception of notes belonging to three NVG Note investors and one NVL investor, all of the NVG and NVL Notes defaulted, even those with extended maturities as noted above. During the Relevant Period, investors never received any return of their principal and were never paid any interest.
17. Respondent provided NVG and NVL offering investors with standard investor packages of offering materials that included, *inter alia*, the following documents for each issuer:
 - a. Secured Convertible Promissory Note;

- b. Accredited Investor Questionnaire;
 - c. Common Stock Purchase Warrant; and
 - d. Note Subscription Agreement, which was the primary disclosure document.
18. Respondent had multiple important functions in connection with the NVG and NVL offerings. He was the primary salesman to retail investors. He also managed these offerings on behalf of the Firm. In that capacity, he negotiated and signed the Placement Agent Agreements with the issuers outlining the Firm's compensation arrangement, assisted in the review of the offering materials, performed due diligence, was the primary contact with the issuers and their counsel, and established the escrow accounts for each offering, among other functions.
19. Notably, Respondent was on NVL's board of directors and held approximately a 14% ownership interest in the company. He was also one of NVL's co-founders.

THE ESCROW ACCOUNTS

20. During the Relevant Period, Respondent maintained control over customer investment funds from nine of the Firm's private offerings by depositing them in escrow accounts.
21. The Escrow Agent for the escrow accounts was MCM, a New York State-based law firm.
22. Respondent and others selected MCM and established the escrow account structure.

23. The Escrow Agreements were signed by the issuers and a Firm representative. Respondent signed five of the nine agreements on behalf of the Firm. All nine Escrow Agreements listed Respondent as the contact person for the Firm.
24. The Firm paid MCM an escrow fee of \$10,000 for each offering.
25. Because the offerings overlapped, at any given point in time during the Relevant Period the escrow accounts included commingled offering proceeds from two or more of the nine offerings.
26. The first escrow account was maintained at CB Bank (the "CB Bank Escrow Account"). From in or about December 2009 through at least March 2012, the CB Bank Escrow Account was used to hold investor funds from the following five private offerings:

Issuer	Offering Period	Total Deposits between December 2009 and March 2012
BCT	December 2009 - June 2010	\$4.12 M
NVG	December 2009 - April 2011	\$2.96 M
NVL	March 2010 - December 2011	\$1.9 M
VSE	April 2010 - July 2010	\$690,000
CAS	December 2010 - Feb 2011	\$250,000

27. The second escrow account that was used to hold offering funds was maintained at HV Bank (the "HV Bank Escrow Account").
28. Beginning in or about March 2011 and continuing through at least April 2012, the HV Bank Escrow Account was used to hold investor funds from the following five private offerings:

Issuer	Offering Period	Total Deposits between March 2011 and April 2012
MV II	March 2011- April 2012	\$13.59 M
MV III	March 2011- April 2012	\$6.13 M
VSE	April 2011- June 2011	\$502,000
RYM	September 2011- April 2012	\$1.72M
ABT	March 2012 – April 2012	\$6.55 M

**OFFERING FRAUD: MISREPRESENTATIONS /OMISSIONS IN CONNECTION WITH THE NVG
OFFERING (VIOLATIONS OF SECTION 10(B) OF THE EXCHANGE ACT AND RULE 10B-5
THEREUNDER, AND FINRA RULES 2020 AND 2010)**

29. NVG is a provider of software products for financial service organizations that was formed in 1995. GR is the owner and Chief Executive Officer of NVG.
30. From in or about December 2009 through in or about April 2011 (hereafter the "NVG Offering Period"), Respondent raised approximately \$2.63 million from 23 investors through the sale of the NVG offering. Respondent was personally responsible for selling approximately \$2.3 million of the offering to 20 of the 23 investors. Further, Respondent was actively involved in the sale of the NVG offering to the remaining three investors, although he was not listed as the registered representative of record for the transactions. Respondent primarily utilized e-mails and telephone calls to communicate with prospective NVG offering investors.
31. Respondent performed due diligence for the NVG offering on behalf of the Firm. He also reviewed the NVG investor package provided to investors, including the Note Subscription Agreement, for accuracy prior to its use. The NVG investor package, including the Note Subscription Agreement, was revised four times

during the offering period (September 2010, November 2010, January 2011 and March 2011).

32. Throughout the NVG Offering Period, Respondent provided investors with a Firm-prepared "Executive Summary" as part of the investor package, describing, *inter alia*, NVG's products, management (including a description of GR), financial condition and business operations. The Executive Summary failed to disclose information about NVG and GR's outstanding federal and state tax liens.

NVG Was Falsely Depicted as a Secure Investment

33. As collateral for the Notes, NVG provided investors with a secured (preferential) interest and lien upon the assets and property of the company. In the Subscription Agreement, NVG expressly represented that there were no other liens upon the company's assets.
34. The NVG investor package that Respondent provided to investors included a document that provided an additional inducement. In the document, a "Personal Guaranty," GR guaranteed repayment to the NVG offering investors in the event NVG lacked sufficient funds or assets to make repayment. In, *inter alia*, emails to prospective investors, Respondent touted this Guaranty as a selling feature in soliciting prospective NVG investors.

35. To further bolster GR's Guaranty, commencing in April 2010, the NVG investor package included a personal financial statement from GR, dated April 20, 2010, listing assets and a net worth of \$12 million, with no liabilities or contingent liabilities reported. Further, GR's financial statement indicated that GR owed "0" dollars in state and federal taxes.

The NVG and GR Liens

36. Unbeknownst to the NVG offering investors, before and during the NVG Offering Period (December 2009 through in or about April 2011), NVG and GR were subject to the following 21 federal and state tax liens totaling approximately \$3.35 million.

	I.R.S.		State (NY or NJ)	
	(Pre-commencement of offering) Unsatisfied or Outstanding Liens as of December 2009 (dollar value)	(Post-commencement of offering) Additional Unsatisfied or Outstanding Liens Between January 2010 and April 2011 (dollar value)	(Pre-commencement of offering) Unsatisfied or Outstanding Liens as of December 2009 (dollar value)	(Post-commencement of offering) Additional Unsatisfied or Outstanding Liens Between January 2010 and April 2011 (dollar value)
NVG	4 Liens (\$1.51 M)	3 Liens (\$452,688)	2 Liens (\$122,974)	6 Liens (\$123,880)
GR		3 Liens (\$943,702)	3 Liens (\$197,379)	

37. During the NVG Offering Period, the outstanding state and federal liens against NVG reached a threshold of approximately \$2.13 million in March 2010, and never went below approximately \$2 million. During the same period, the outstanding state and federal liens against GR reached a threshold of approximately \$1.14 million in November 2010 and never went below approximately \$748,000.
38. Respondent assisted in the review of the offering materials, performed due diligence on NVG, and was the primary contact with NVG, GR, and their counsel.
39. Respondent discovered through his involvement in the due diligence for the offering that NVG and GR were the subject of significant federal and state tax liens. Specifically, in January 2010 and again in April 2010, Respondent received a background report on GR that showed he was the subject of approximately \$197,000 in state tax liens. Further, the report that Respondent received in April 2010 showed that GR had an outstanding IRS tax lien of approximately \$23,000. In April 2010, Respondent received the results of a lien search on NVG indicating that the company had approximately \$1.8 million in federal tax liens and additional state liens. Respondent even discussed the liens against NVG with GR.
40. Respondent knew, or was reckless in not knowing, about the approximately \$1.35 million in additional federal and state tax liens that were imposed against NVG and GR after April 2010, but during the offering period.
41. Notwithstanding the existence of NVG's and GR's tax liens, Respondent never disclosed this material information to NVG offering investors.

42. Further, the NVG investor package which Respondent gave to investors never disclosed the liens against NVG or GR. Notably, although the NVG investor package was revised four times throughout the NVG Offering Period, there was no disclosure added regarding NVG's and GR's liens. When Respondent distributed the NVG investor packages, he knew, or should have known, that it contained material omissions.
43. Moreover, Respondent knew, or was reckless in not knowing, that GR's Personal Guaranty, which was communicated to prospective investors from at least December 2009, lacked worth given his financial condition. Indeed, he knew, or was reckless in not knowing, that GR's personal financial statement, which prospective investors started receiving in April 2010, was false as it indicated that GR owed "0" dollars in state and federal taxes.
44. As alleged above, in January 2010 and again in April 2010, Respondent received a background report on GR that showed GR was the subject of approximately \$197,000 in state tax liens. The report that Respondent received in April 2010 also showed that GR had an outstanding IRS tax lien of approximately \$23,000. Further, GR's personal financial statement was not updated throughout the offering period to reflect the additional \$943,702 in liens filed against him by the IRS.
45. As of April 2010, Respondent also knew that GR had outstanding credit card debt of approximately \$50,000 based on information that he received from GR's background check.

46. Nevertheless, Respondent provided investors with NVG's investor package, which included as one of the standard documents GR's Personal Guaranty. Additionally, in communications with prospective NVG investors, Respondent repeatedly touted GR's valueless "Personal Guaranty" as one of the key features of the NVG investment, while failing to disclose to NVG investors the material information concerning GR's tax liability and personal debt.

Respondent Continued Selling NVG Even After it Began Defaulting on the Notes

47. As noted, Respondent began selling the NVG offering in December 2009. The initial investors should have received two interest payments on the NVG Notes as of August 2010. These interest payments were never made; thus, as of August 2010, NVG had already failed to meet a payment obligation under the Notes.
48. Further, during the Relevant Period only three investors (who were personally selected for repayment by Respondent and GR) received their principal back, a total of approximately \$300,000. The principal invested by the remaining 20 customers who invested in the NVG Notes was never returned, resulting in a total loss of approximately \$2.33 million to those investors. In addition, NVG never made any of the promised interest payments to the NVG Note investors, including the three offering investors whose principal was returned.
49. Notwithstanding NVG's inability to make interest payments to the initial NVG Note investors, a fact known to Respondent, Respondent continued to sell the NVG offering. Specifically, from in or about September 2010 through in or about April 2011, Respondent sold, or assisted with the sale, of approximately \$1.92

million of the NVG offering to approximately 17 additional investors, all of which were made after:

- a. NVG had failed to make any interest payments to the five initial NVG offering investors, who had invested in December 2009 and January 2010; and
- b. NVG defaulted and failed to return the principal to two of the five initial NVG offering investors whose notes had matured following the sixty-day extension (i.e., eight months after their investments) in August and September 2010.

50. From in or about September 2010, Respondent failed to disclose to investors the material information that (a) NVG had failed to make any interest payments due under the notes; and (b) NVG had failed, except in three instances, to return the investors' principal.

Respondent Used Investor Funds For Selective Redemptions

51. Respondent used NVG investor funds to redeem the Notes of the following individuals and entities with whom Respondent or the Firm had a business or personal relationship. These redemptions occurred after NVG had defaulted on the Notes held by those individuals and entities. In each instance, Respondent redeemed the notes using money invested by new NVG investors:
- a. ZIL is an overseas hedge fund and a long-standing client of the Firm. On or about December 3, 2009, ZIL made a \$100,000 investment in the NVG offering through Respondent. ZIL complained repeatedly to Respondent about the status of its NVG investment. On or about October 25, 2010,

Respondent, using new investors' money, repaid ZIL its entire \$100,000 investment through a wire transfer.

- b. CRE was an entity controlled by KD. KD was a business associate and friend of Respondent who had invested in many of the Firm's private offerings through Respondent. Furthermore, between June 2009 and April 2011, KD also personally loaned Respondent approximately \$331,000.

On or about December 8, 2009, CRE invested \$150,000 in NVG.

Respondent was the registered representative who sold this investment.

On or about October 29, 2010, Respondent, using new investors' money, repaid CRE \$120,000 of this investment, and repaid the remaining \$30,000 on or about November 25, 2010.

- c. CB was another long-standing customer of Respondent's. On or about December 15, 2009, CB invested \$50,000 in NVG. After CB sent Respondent several e-mails complaining about his NVG investment, on or about November 26, 2010, Respondent directed a wire to CB in the amount of \$26,250. To repay the remaining amount of CB's NVG investment, on or about November 8, 2010, Respondent facilitated a payment of \$24,000 from KD to CB.

- 52. At the same time that Respondent was facilitating the repayment of principal to these three NVG investors, NVG (through Respondent) also provided them with additional NVG warrants in lieu of interest.
- 53. NVG defaulted on the promissory notes beginning in August 2010. The terms of the NVG offering did not provide for a preferential redemption of Note holders,

unless made at NVG's discretion with all investors included in such action. Due to Respondent's actions, ZIL, CRE and CB were the only NVG investors who received a return of their investment funds during the NVG Offering Period.

54. Respondent failed to disclose the material information to new investors that funds designated for investment in NVG would be used to selectively redeem the investments of earlier NVG investors.
55. As part of the course of conduct described in paragraphs 29 to 54 above, Respondent, in connection with the purchase or sale of securities, directly or indirectly, by the use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of any national securities exchange, knowingly or recklessly: employed devices, schemes or artifices to defraud; made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon any person; or effected transactions in, or induced the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.
56. By misrepresenting and omitting material facts, Respondent willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and violated FINRA Rules 2020 and 2010.

**OFFERING FRAUD: MISREPRESENTATIONS /OMISSIONS IN CONNECTION WITH THE
NVL OFFERING (VIOLATIONS OF SECTION 10(B) OF THE EXCHANGE ACT AND RULE
10B-5 THEREUNDER, AND FINRA RULES 2020 AND 2010)**

57. NVL was incorporated in January 2010 and claimed to have developed an emergency response phone application and a replacement for the Virtual Private Network (VPN). VPN is a recognized means of extending a private computer network across public networks like the internet.
58. From in or about February 2010 through in or about December 2011 (hereafter the "NVL Offering Period"), Respondent raised approximately \$2.46 million from 23 investors through the sale of the NVL offering. Respondent was personally responsible for selling approximately \$2.3 million of the \$2.46 million raised by the NVL offering to 22 investors. Further, Respondent was actively involved in the sale of the NVL offering to another investor, although he was not listed as the registered representative of record for the transaction. Respondent primarily utilized e-mails and the telephone to communicate with prospective NVL investors.
59. As alleged above, the NVL investors received six-month Notes that, *inter alia*, paid 12% interest and common stock warrants that gave them the right to purchase common stock based on a formula that assumed a later public offering.
60. Respondent performed the due diligence for the NVL offering on behalf of the Firm. He also reviewed the NVL investor package provided to investors, including the Note Subscription Agreement, for accuracy prior to their use.

Respondent Failed to Disclose Conflicts of Interest

61. During the NVL Offering Period, Respondent was a Director of NVL and held an approximately 14% ownership interest in the company. He was also one of NVL's co-founders.
62. In addition, Respondent personally invested \$200,000 in the NVL offering and made a personal loan of approximately \$110,000 to the company during the NVL Offering Period.
63. Respondent never disclosed to prospective investors his significant ownership stake in NVL, or his \$310,000 financial investment in the company, both conditions that created potential conflicts of interest. These were material facts that should have been disclosed to investors.

Respondent Failed to Disclose NVL's Weak Financial Condition or That Certain Firm Customers Were Given Terms Superior to the Notes When Lending Money to NVL

64. Throughout the NVL Offering Period, NVL was in poor financial condition. It did not generate any revenues and operated at a loss. NVL relied solely on funds raised by the Firm through the offering and private loans provided by Respondent through Firm customers with whom he had an existing relationship to fund operations. Moreover, Respondent provided terms superior to the Notes when arranging loans on behalf of NVL.
65. Respondent was aware of NVL's dire financial condition throughout the NVL Offering Period. He was a Director of NVL and was (directly or through loans he facilitated) the sole source of funds for the company and a Director of NVL. Nonetheless, Respondent failed to disclose to investors material information

regarding NVL's negative financial condition, or regarding its inability to fund operations without loans from Respondent or his associates.

66. The NVL investor package that Respondent provided to investors, which Respondent reviewed for accuracy prior to selling the NVL Notes, did not provide any disclosures regarding NVL's poor financial condition, including its lack of revenues, or short-term need for substantial loans.
67. To the contrary, the sole financial information that Respondent provided to NVL offering investors was an NVL-prepared PowerPoint "Investor Presentation" that offered a misleading depiction of NVL's financial condition. Respondent used this PowerPoint throughout the NVL Offering Period. Although there were some revisions made to the presentation, the financial information detailed therein remained unchanged throughout the offering period.
68. At the time Respondent provided this presentation to investors, NVL was operating at a loss and had not generated any revenues. Respondent was aware of NVL's poor financial condition at the time he provided this information to investors. The presentation included a page of financial projections described under the heading: "Summary Business Case" that showed projected gross profits for NVL of approximately \$17 million in 2011 and \$70 million in 2012 based on revenues of approximately \$25 million and \$100 million for those two years. There were no disclaimers or other caveats included with the projections. Given NVL's true financial condition at the time of the offering and throughout the NVL Offering Period, there was no reasonable basis for these projections.

69. In or about July 2010, Respondent also sent prospective NVL investors an e-mail attaching the misleading "Investor Presentation" and other sales materials. In those e-mails Respondent misrepresented that NVL had "no other debt" and a "pre-money valuation of \$6 million." Respondent knew, or should have known, these were false statements at the time.
70. At the time he sent the e-mails, Respondent had already obtained a \$100,000 loan for NVL from KD. In addition, NVL had not obtained an independent valuation, had no revenues, and was operating at a loss.
71. Respondent made "side" agreements with customers to obtain loans for NVL including, among other things, providing personal guarantees of repayment, and offering prospective NVL lenders interest and terms more favorable than those offered by NVL to the promissory note investors.
72. In one instance, in December 2010 Respondent obtained a two-month \$175,000 loan for NVL from Firm customer DR in return for 1% of NVL common stock and monthly interest of \$10,000 (a 68% annual interest rate). The loan was secured by Respondent's ownership interest in NVL. The note securing the loan had a maturity date of January 21, 2011. In the event payment was one day late, Respondent was required to immediately issue 2% of NVL common stock and an additional \$10,000 in interest. A default would be secured by a 15% ownership interest in NVL.
73. Respondent and NVL never repaid DR's loan.

74. Between April 2010 and July 2011, Respondent also obtained \$230,000 in personal loans from KD. As alleged below, KD was the only NVL offering investor who received a return of his principal investment.

Respondent Continued Selling NVL Notes After NVL Defaulted on Some of the NVL Notes

75. Respondent sold approximately \$2.3 million of the NVL Notes to 22 investors.
76. Respondent began selling the NVL Notes in February 2010. Two investors purchased NVL Notes that month. These were the initial NVL investors and they should have received two interest payments on the Notes as of October 2010. These interest payments were never made; thus, as of October 2010, NVL had already failed to meet a payment obligation under the Notes. Respondent first learned of the defaults in October 2010.
77. During the NVL Offering Period, one of the investors, KD, received his principal back. The other investor did not receive any return of principal. In addition, NVL never made any of the promised interest payments to the Note holders.
78. Notwithstanding NVL's inability to make interest payments to the initial offering investors, Respondent continued to sell NVL Notes in the private offering.
79. Specifically, following NVL's defaults in October 2010, from in or about November 2010 through in or about December 2011, Respondent sold approximately \$1.46 million in NVL Notes to approximately 12 additional investors. All of these sales were made after Respondent knew:
- a. NVL had failed to make any interest payments to the two initial Firm NVL investors; and

- b. NVL had defaulted and failed to return the principal of one of the two initial Firm NVL investors who invested in March 2010 and whose Notes had matured following the sixty day extension (i.e., eight months after their investments) in October 2010.
- 80. From in or about November 2010, Respondent failed to disclose to investors the material information that: (a) NVL had failed to make any interest payments due under the notes; and (b) NVL had failed, except in one instance, to return the principal of one of the two initial investors.

Respondent Used Investor Funds to Make Selective Redemptions

- 81. On or about February 4, 2010, KD invested \$100,000 in NVL. Over the subsequent months, KD requested that Respondent return his investment. To ensure that KD received a return on his principal, Respondent directed that money invested by other Firm customers in NVL be used, not for investments in NVL as the investors had been promised, but rather to reimburse KD. Specifically, Respondent directed that the following amounts be paid to KD from the escrow account holding money that was supposed to be invested in NVL:
 - a. \$49,972, which was transferred to KD on August 2, 2010; and
 - b. \$50,000, which was transferred to KD on February 28, 2011.
- 82. In both instances, the sources of funds that Respondent used to make these payments were investments made by new NVL investors.
- 83. The NVL offering did not allow for preferential redemption of Note holders, unless made at NVL's discretion with all Note investors included in such action.

84. KD was the only NVL investor who received a return of his principal during the Relevant Period.
85. Respondent failed to disclose to new investors the material information that NVG offering funds would be used to selectively redeem KD's investment.
86. As part of the course of conduct described in paragraphs 57 to 85 above, Respondent, in connection with the purchase or sale of securities, directly or indirectly, by the use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of any national securities exchange, knowingly or recklessly: employed devices, schemes or artifices to defraud; made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon any person; or effected transactions in, or induced the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.
87. By misrepresenting and omitting material facts, Respondent willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and violated FINRA Rules 2020 and 2010.

**MISUSE OF CUSTOMER FUNDS
(VIOLATION OF FINRA RULES 2150 AND 2010)**

88. As a result of the commingling of funds in the CB Bank Escrow Account, Respondent misused \$200,000 in customer funds from the BCT and NVL offerings to make payments to, or on behalf of, NVG, as follows:

- a. On or about March 4, 2010, Respondent directed that three wires totaling \$50,000 be sent from the CB Bank Escrow Account. The monies were sent to NVG (\$36,000) or were payments to the Firm (\$4,000) and outside counsel (\$10,000) for purported commissions and fees associated with the NVG offering. The Release Notices were signed on behalf of the Firm by Respondent and by GR on behalf of NVG. The only offering funds in the CB Bank Escrow Account at the time of this transfer were on deposit from the NVL and BCT offerings. The terms of the NVL and BCT offerings did not provide for the use of investor funds by other issuers. On or about March 30, 2010, Respondent directed that \$50,000 be wired from the CB Bank Escrow to NVG. The Release Notice was signed by Respondent and by GR on behalf of NVG. The only offering funds in the CB Bank Escrow Account at the time of this transfer were on deposit from the NVL and BCT offerings.
- b. On or about April 5, 2010, Respondent directed that four wires totaling \$50,000 be wired from the CB Bank Escrow Account using funds on deposit from the NVL and BCT offerings. The monies were sent to NVG (\$2,500) or were payments to third parties on behalf of NVG (\$47,500), including \$11,000 to the Firm, purportedly for offering commissions in connection with the NVG offering when there were no NVG monies on deposit. The Release Notices were signed by Respondent on behalf of the Firm and by GR on behalf of NVG.

- c. On or about April 13, 2010, Respondent directed that three wires totaling \$50,000 be wired from the CB Bank Escrow Account. The monies were sent to NVG (\$44,000) or were payments to third parties on behalf of NVG, including \$2,000 to the Firm. The only offering funds in the CB Bank Escrow Account at the time of this transfer were on deposit from the NVL and BCT offerings.
89. NVG had no authority to receive funds from BCT or NVL under the terms of each of these offerings.
90. By improperly using customer funds as described above, Respondent violated FINRA Rules 2150 and 2010.
- WILLFUL FAILURE TO DISCLOSE MATERIAL INFORMATION ON FORM U4
(ARTICLE V, SECTION 2 OF FINRA'S BY-LAWS AND FINRA RULES 1122 AND 2010)**
91. Pursuant to Article V, Section 2 of FINRA's By-Laws, the information provided on a Form U4 must be kept current by means of amendments made no later than 30 days after a registered representative learns of the "facts and circumstances giving rise to the amendment." This requirement was in effect in 2011.
92. On April 22, 2009, Respondent submitted or caused to be submitted an initial Form U4 with the Firm that included a question as to whether he was the subject of any unsatisfied judgments or liens. Respondent answered "No" to that question.
93. On or about January 5, 2011, a federal tax lien was filed against Respondent in the amount of \$265,755.

94. Respondent did not satisfy this lien until on or about May 9, 2011, approximately four months after the date on which it was imposed.
95. Respondent, however, willfully failed to amend his Form U4 through the Firm to disclose the material fact that he had an unsatisfied lien against him in the amount of \$265,755. Respondent never amended his Form U4 to disclose this information.
96. By willfully failing to amend his Form U4 to disclose material information, Respondent violated Article V, Section 2 of FINRA's By-Laws and FINRA Rules 1122 and 2010.

Based on the foregoing, Respondent willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and violated FINRA Rules 2020, 2150 and 2010, and willfully violated Article V, Section 2 of FINRA's By-Laws and FINRA Rules 1122 and 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 barred from association with any FINRA member in any capacity.

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

A handwritten signature in black ink, appearing to read "Mike Newman", written over a horizontal line.

Michael J. Newman, Senior Regional Counsel
FINRA Department of Enforcement
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