

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

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

MERRIMAC CORPORATE SECURITIES, INC.
(CRD No. 35463),
STEPHEN D. PIZZUTI (CRD No. 1461660),
ROBERT G. NASH (CRD No. 718820),
DAVID W. MATTHEWS, JR. (CRD No. 323097),
JOHN W. DuBRULE (CRD No. 1223724), AND
KEVIN A. TUTTLE (CRD No. 2414158),

RESPONDENTS.

Disciplinary Proceeding
No. 2011027666902

Hearing Officer MAD

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: May 9, 2014

INTRODUCTION

Disciplinary Proceeding No. 2011027666902 was filed on July 3, 2013, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent John W. DuBrule submitted an Offer of Settlement (Offer) to Complainant dated May 9, 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 Merrimac Corporate Securities, Inc. ("Merrimac" or the "Firm") is a FINRA registered broker-dealer with its principal place of business in Altamont Springs, Florida. Merrimac became registered with both FINRA and the United States Securities and Exchange Commission ("SEC") in 1993, which registrations remain in effect.

Respondent John DuBrule became registered with a FINRA member firm as a General Securities Representative in 1984. DuBrule became registered with Merrimac as a General Securities Representative, General Securities Principal, and Options Principal on or about September 9, 2008, which positions he held through September 6, 2013, when his registration with Merrimac was terminated.

From about September 2008 through January 2010, DuBrule engaged in securities fraud by knowingly inflating valuations of illiquid investments owned by hedge funds entitled the Dellinger Fund, LLC ("Dellinger Fund") and the TAM Dynamic Allocation Fund, LLC ("TAM Funds"). After obtaining permission from Merrimac to manage these hedge funds as an outside business activity, DuBrule sent investors of the Dellinger Fund quarterly reports with inflated account values. These fictitious values were based on illusory unrealized gains from promissory notes and other agreements that had little, if any, value. Notwithstanding the fact that the promissory notes were in default or cancelled, DuBrule willfully valued them at their face value

with purportedly accrued interest. The account values for the customers' quarterly account statements were falsely inflated by 52% to several hundred percent. Moreover, DuBrule materially misrepresented or omitted facts related to the value of two customers' investments in the Dellinger Fund to entice them to reinvest approximately \$3.8 million into the fund during February 2009 that they had previously withdrawn. As a result, DuBrule willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, NASD Rules 2210(d), 2120 and 2110, and FINRA Rules 2020 and 2010.

During 2008 and 2009, DuBrule also used inflated assessments of the Dellinger Fund's account value to calculate management fees that were withdrawn from the Dellinger and TAM Funds. By calculating these management fees based on inflated valuations, including the value of promissory notes that were in default, and interests in companies that had no market value, DuBrule and one of his colleagues, misappropriated over \$141,000 of investors' funds. As a result, DuBrule violated NASD Rule 2110 and FINRA Rule 2010.

In or about September 2010, DuBrule failed to adequately supervise support staff activities in connection with the deposit and liquidation of penny stocks in violation of NASD Rule 3010 and FINRA Rule 2010.

Although DuBrule is no longer registered or associated with a FINRA firm, he remains subject to FINRA's jurisdiction pursuant to Article V of FINRA's By-Laws because this Complaint was filed within two years after the effective date of termination of DuBrule's registration with Merrimac, and the Complaint charges DuBrule with misconduct committed while he was registered or associated with a FINRA member.

FINDINGS AND CONCLUSIONS

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

Section 10(b) of the Exchange Act and Rule 10b-5 thereunder make it unlawful for any person, by the use of any means or instrumentality of interstate commerce, or of the mails, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in connection with the purchase or sale of a security.

NASD Rule 2120, which was renumbered FINRA Rule 2020 as of December 15, 2008, likewise provides that: “No member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.”

NASD Rule 2211(a)(1)(A) defines “correspondence” as any written letter or electronic mail message distributed by a member to one or more existing retail customers.

NASD Rule 2210(d)(1)(A) provides that all member communications with the public must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service, and that no member may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communication to be misleading.

NASD Rule 2210(d)(1)(B) provides that: “No member may make any false, exaggerated, unwarranted or misleading statement or claim in any communication with the public.”

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

NASD Rule 2110, which was renumbered as FINRA Rule 2010 as of December 15, 2008, requires members and associated persons, in the conduct of their business, to “observe high standards of commercial honor and just and equitable principles of trade.”

**DuBrule Helps Establish and Operate
The Dellinger Fund and The TAM Fund**

The Dellinger Fund was a private investment fund that was sold as an unregistered private offering exempt from registration under Rule 506 of Regulation D of the Securities Act of 1933 (“Regulation D”). According to the Dellinger Fund’s Offering Memorandum, its investment strategy was to use hedging and arbitrage techniques in equity and fixed income markets and invest in real estate and other alternative investments.

Starting on or about August 1, 2004, DuBrule began offering interests of the Dellinger Fund to members of the public. Tuttle Asset Management, LLC (“TAM”) was the investment manager for the Dellinger Fund. DuBrule owned 38% of TAM, with the remaining amount owned by three other individuals.

According to the Dellinger Fund’s Offering Memorandum, TAM was entitled to receive a management fee no greater than two percent per annum from each investor’s capital accounts, on a quarterly basis.

In addition, the Offering Memorandum represented that the Dellinger Fund would engage an accounting firm to serve as an independent auditor for the fund. However, the Dellinger Fund was never audited by an independent accounting firm. The investors in the Dellinger fund were not informed that an audit had never been performed.

From September 2004 to November 2004, DuBrule and one of his colleagues raised approximately \$18.9 million from 22 investors for the Dellinger Fund. DuBrule was a co-manager of the Dellinger Fund, and he primarily was involved in managing the Dellinger Fund’s

alternative asset portfolio. DuBrule and his colleague were responsible for valuing the assets in the fund.

In or about January 2007, DuBrule began offering interests in the TAM Fund. The TAM Fund was also sold as an unregistered private offering, which was exempt from registration under Rule 506 of Regulation D. The TAM Fund was created to allow more funds to be invested in the Dellinger Fund, which had closed to new investors in December 2005. Like the Dellinger Fund, the TAM Fund's investment strategy was to use hedging and arbitrage techniques in equity and fixed income markets and invest in real estate and other alternative investments. TAM also acted as the manager for the TAM Fund. On or about January 5, 2007, the Dellinger Fund invested \$1,500,000 into the TAM Fund and was the largest investor in the TAM Fund.

DuBrule Invested in Illiquid Securities Related to the BMG

Starting on or about April 8, 2006, DuBrule, on behalf of the Dellinger Fund and TAM Fund, began entering into agreements with several entities controlled by or affiliated with an individual named SM. DuBrule contributed money from each of the funds to SM-controlled entities in order to indirectly invest in a business called the BMG, which purported to operate medical clinics throughout the world.

On or about April 8, 2006, DuBrule, on behalf of the Dellinger Fund, entered into an agreement entitled "Purchase and Operating Agreement for RLV" ("RLV Purchase Agreement"). RLV, was a Florida Limited Liability Company that owned a Regional Territory License Agreement ("NE Contract"). DuBrule entered into the RLV Purchase Agreement to indirectly invest in the BMG's operations in foreign countries in the Middle East. Pursuant to the RLV Purchase Agreement, DuBrule, wired \$3,250,000 from the Dellinger Fund to RLV for the purchase of a 45% ownership stake in RLV. The RLV Purchase Agreement required RLV to

buy back the Dellinger Fund's ownership interest for \$4,000,000, if RLV was able to sell the NE Contract to an outside third party within 90 days.

On or about June 12, 2006, RLV paid \$1,000,000 to the Dellinger Fund. RLV was purported to have paid the remaining \$3,000,000 due under the RLV Purchase Agreement to IA, a Florida Limited Liability Company. In turn, IA provided the Dellinger Fund a promissory note dated June 12, 2006 ("June 2006 Promissory Note"), under which IA agreed to pay the Dellinger Fund \$3,000,000 plus 20% interest on or before June 12, 2007. However, IA failed to pay any funds to the Dellinger Fund by June 12, 2007, and thereafter, the June 2006 Promissory Note was in default.

On or about January 5, 2007, DuBrule paid \$1,500,000 from the TAM Fund to IA, for a promissory note dated January 5, 2007 ("January 2007 Promissory Note"). Pursuant to the January 2007 Promissory Note, IA agreed to pay the TAM Fund \$1,500,000 plus 20% interest on or before January 5, 2008. Yet IA failed to pay any funds to the TAM Fund by January 8, 2008, and, thereafter, the January 2007 Promissory Note was in default.

On or about April 11, 2007, DuBrule paid \$300,000 from the Dellinger Fund to IA, for a promissory note dated April 11, 2007 ("April 2007 Promissory Note"). Pursuant to the April 2007 Promissory Note, IA agreed to pay the Dellinger Fund \$300,000 plus 20% interest on or before April 11, 2008. However, IA failed to pay any funds to the Dellinger Fund by April 11, 2008, and, thereafter, the April 2007 Promissory Note was in default.

On or about November 6, 2007, DuBrule paid \$1,000,000 from the TAM Fund to IA, for a promissory note dated November 6, 2007 ("November 2007 Promissory Note"). Pursuant to the November 2007 Promissory Note, IA agreed to pay the TAM Fund \$1,000,000 plus 10%

interest on or before November 6, 2008. But the funds were not repaid and the November 2007 Promissory Note was cancelled on or about July 21, 2008.

On or about January 8, 2008, DuBrule paid \$2,000,000 from the TAM Fund to BMG II for a promissory note dated January 8, 2008 ("January 2008 Promissory Note"). Pursuant to the January 2008 Promissory Note, BMG II agreed to pay the TAM Fund \$2,000,000, plus up to 20% interest on or before January 8, 2009. However, the funds were not repaid, and the January 2008 Promissory Note was cancelled on or about July 21, 2008.

On or about July 21, 2008, DuBrule entered into an agreement entitled "Consolidation of All Agreements" (the "First Consolidation Agreement") between TAM, the Dellinger Fund, their subsidiaries and affiliates, and DuBrule (collectively the "DuBrule Group") and ET, IA, BMG II, RLV and their subsidiaries and affiliates (collectively the "RLV Group"). Pursuant to the First Consolidation Agreement, all promissory notes that members of the DuBrule Group held with members of the RLV Group were terminated. In exchange for terminating the promissory notes, the RG assigned to the DuBrule Group a portion of an interest in a license agreement owned by ET. ET was not publicly traded, and DuBrule made no independent valuation of ET or its interest in the license agreement before entering into the First Consolidation Agreement.

On or about December 7, 2009, DuBrule entered into an agreement entitled "Consolidation of All Agreements II" (the "Second Consolidation Agreement"). The Second Consolidation Agreement superseded the First Consolidation Agreement. The parties to the Second Consolidation Agreement were identical to the parties to the First Consolidation Agreement, except that four entities in the RLV Group had "dissolved" after the First Consolidation Agreement and before the Second Consolidation Agreement. Pursuant to the Second Consolidation Agreement, the RLV Group assigned from ET to the DuBrule Group, a

12% ownership in WM's membership interest in a newly formed entity called MH and IP.

Neither WM, nor MH and IP, was publically traded. DuBrule made no independent valuation of WM, or its membership interest in MH and IP.

As of March 6, 2012, the primary assets that remained in the Dellinger Fund or TAM Fund that related to DuBrule's indirect investments in the BMG were approximately 5.8 million shares of EMH. On July 11, 2012, EMH became known as LM. According to public filings dated August 14, 2012, LM generated no historical revenues and incurred historical operating losses of \$759,764. As of June 30, 2012, LM had \$20,401 cash on hand, and acknowledged that it expected to incur operating losses in the future and could offer no assurances that it would operate profitably in the future.

DuBrule Fraudulently Misrepresented the Value Of Customers' Interests in the Dellinger Fund

From in or about September 2008 to in or about January 2010, DuBrule assigned values to assets of the Dellinger Fund, which were reflected in quarterly account statements ("Quarterly Statements"). The Quarterly Statements purported to show the total value of the assets owned by the Dellinger Fund, along with any realized and unrealized gains or losses.

Each investor received, through the United States Postal Service, a two-page summary of the Quarterly Statements ("Summary Quarterly Statements"), which purported to show the current value of a customer's investment in the Dellinger Fund, based on valuations supplied by DuBrule. The Summary Quarterly Statements contained only generalized descriptions of the investor's account balance and activity, and did not include a description of the assets owned by the Dellinger Fund, or the realized and unrealized gains or losses attributable to the individual assets owned by the fund.

All of the Summary Quarterly Statements contain the statement that the Dellinger Fund “utilizes the services of an independent firm to provide monthly statements and annual tax reports to its members.” The documents also contained a statement that the “reports are prepared in accordance with Generally Accepted Accounting Principles reasonably applied, and contain all information, including accruals, necessary for a fair, accurate and objective presentation of the financial condition of the Fund.” In fact, the valuations contained in the Quarterly Statements and the Summary Quarterly Statements were not provided by an independent company, and were not prepared in accordance with Generally Accepted Accounting Principles.

From in or about September 2007 to in or about July 2008, DuBrule knowingly inflated the value of the Dellinger Fund’s assets on its Quarterly Statements by, among other things, including the face value and promised interest of defaulted promissory notes as assets of Dellinger Fund. From September 2007 through June 2008, the Quarterly Statements falsely inflated the value of investors’ interests in the Dellinger Fund by 52% to several hundred percent.

In addition, from in or about September 2008 to in or about January 2010, DuBrule knowingly inflated the value of the Dellinger Fund’s assets on its Quarterly Statements by, among other things, including the face value and promised interest of defaulted promissory notes as assets of the Dellinger Fund, when on or about July 21, 2008, the promissory notes were terminated pursuant to the First Consolidation Agreement and the Second Consolidation Agreement. From September 2008 through January 2010, the Summary Quarterly Reports falsely inflated the value of investors’ interests in the Dellinger Fund by several hundred percent.

**DuBrule Made Material Misrepresentations
And Material Omissions of Facts to Solicit Investments**

In or about January 2009, DuBrule and his colleague sent Summary Quarterly Statements to two fund investors, which showed that as of December 31, 2008, the value of their investment in the Dellinger Fund was \$4,787,341, and \$1,850,681, respectively. Moreover, the Summary Quarterly Statements showed that these two investors made profits from their initial investments of \$917,024 and \$335,868, respectively. In fact, the total value of all investors' interests in the Dellinger Fund on December 31, 2008 was approximately \$1,248,051. Further, the actual values of these two investors' interests with the Dellinger Fund as of December 31, 2008 were approximately \$563,994 and approximately \$218,034, respectively. Contrary to the asset values contained in the Summary Quarterly Statements, GDT and DFP had suffered losses of approximately \$3,306,322 and approximately \$1,296,778, respectively.

In February 2009, DuBrule and his colleague solicited these two investors to reinvest monies that they had previously withdrawn of \$1,850,000 and \$2,000,000, respectively, in the Dellinger Fund. DuBrule made materially false and misleading statements and omissions to them to entice them to re-invest the additional funds. By sending the Summary Quarterly Statements to them, DuBrule falsely represented that their investments in the Dellinger Fund had increased in value. DuBrule also failed to disclose that the valuation of the Dellinger Fund was based on defaulted promissory notes and promissory notes that had been cancelled by the First Consolidation Agreement.

**DuBrule Made Excessive Withdrawals When He Knew
There were Substantial Losses in the Value of the Dellinger Fund**

From September 2004 through January 2005, DuBrule and his wife invested a total of \$88,554 in the Dellinger Fund.

From on or about March 1, 2009, to on or about November 1, 2009, DuBrule withdrew a total of \$92,405 from the Dellinger Fund relying on the inflated value of DuBrule and his wife's investments in the Dellinger Fund. DuBrule misappropriated investor funds by withdrawing the funds despite knowing that the Promissory Notes had been cancelled and the value of the Dellinger Fund's assets had decreased substantially since January 2005.

From in or about July 2007 to in or about January 2010, DuBrule and his colleague mailed approximately ten Summary Quarterly Statements for the Dellinger Fund to the fund's investors. The amounts listed as the current value of the fund were materially false and misleading because those values included defaulted promissory notes and agreements that had little or no value. DuBrule knew, or was reckless in not knowing, that the Summary Quarterly Statements contained materially false and misleading statements, in that the values of the investors' capital accounts were inflated in excess of 50%. DuBrule failed to inform investors that valuations on the Summary Quarterly Statements contained promissory notes that were in default or were cancelled. These omissions were material because they concerned the true and accurate value of assets in the Dellinger Fund.

In addition, as noted above, the Summary Quarterly Statements contained false and misleading statements that claimed the fund utilized the services of an independent firm to prepare statements and tax reports, and that the statements and tax reports were prepared in accordance with GAAP.

The above referenced Fund investors deposited \$3.8 million into the Dellinger Fund, based, in part on the fraudulent misrepresentations and omissions in the Summary Quarterly Statements.

By virtue of the foregoing, DuBrule knowingly or recklessly caused the distribution of the Summary Quarterly Statements that contained false information about the valuation of the Dellinger Fund, in willful violation of §10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, NASD Rule 2210, and NASD Rules 2120 and 2110 (for misconduct before December 15, 2008), and FINRA Rules 2020 and 2010 (for misconduct on and after December 15, 2008).

Misappropriation of Investor Funds

From in or about April 2008 to in or about January 2010, DuBrule and his colleague withdrew a quarterly management fee from the Dellinger Fund. According to the terms of the Dellinger Fund Private Placement Memorandum, DuBrule and his colleague were permitted to withdraw .5% per quarter of the equity of the fund for a management fee. DuBrule knew or was reckless in not knowing that they inflated the value of the assets of the Dellinger Fund by including defaulted promissory notes and the First Consolidation Agreement and Second Consolidation Agreement, which had no market value. By using the unsupported and inflated value of the fund to calculate their management fees, DuBrule knew or was reckless in not knowing that they were withdrawing significantly more than the .5% maximum quarterly fee, based upon the true and accurate value of assets in the fund. As a result, DuBrule and his colleague withdrew \$141,632 of excess fees from the fund, which came directly from what remained of the capital accounts of the fund's investors.

From in or about March 2009 to in or about November 2009, DuBrule withdrew \$92,405 from the Dellinger Fund. When DuBrule withdrew these amounts he knew or was reckless in not knowing that the value of the Dellinger Fund had decreased from January 2005 to 2009.

By virtue of the foregoing, DuBrule misappropriated investors' funds by withdrawing excessive amounts of management fees and performance allocations from the Dellinger Fund, and DuBrule misused customers' funds by withdrawing excessive amounts as a return on investment, in violation of NASD Rule 2330 for conduct occurring before December 15, 2009, and NASD Rule 2110 for conduct occurring before December 15, 2008, and in violation of FINRA Rule 2150 for conduct occurring after December 14, 2009, and FINRA Rule 2010 for conduct occurring after December 14, 2008.

In light of the foregoing, DuBrule willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, NASD Rules 2120 and 2110 for conduct occurring before December 15, 2008, and FINRA Rules 2020 and 2010 for conduct occurring after December 14, 2008.

Failure to Supervise

Despite knowing as early as September 2010 that a member of Merrimac's staff had forged a significant but unknown number of Deposit Securities Request forms and thus caused numerous unregistered penny stocks to be deposited into Merrimac customer accounts absent supervisory review, DuBrule failed to conduct any investigation to determine the scope of the forgeries and unsupervised penny stock trading.

Based on the foregoing, DuBrule failed to reasonably supervise activity at Merrimac in violation of NASD Rule 3010, and FINRA Rule 2010.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be:

- Barred

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 "Susan Light", is written over a horizontal line.

Susan Light
Senior Vice President & Chief Counsel
One World Financial Center
200 Liberty Street, 11th Floor
New York, NY 10281
646-315-7333
Susan.light@finra.org