

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

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

V.

BRIAN SIMMONS (CRD No. 4349344)

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2011028647101

HEARING OFFICER - MAD

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

INTRODUCTION

Disciplinary Proceeding No. 2011028647101 was filed on June 7, 2013, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant) and amended by the Department of Enforcement on September 30, 2013. Respondent Joseph Principe submitted an Offer of Settlement (Offer) to Complainant dated April 2, 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

1. Respondent Brian Simmons (CRD No. 4349344) first became registered in the securities industry as a General Securities Representative with a FINRA member firm in July 2002. From August 2010 until September 14, 2012, Simmons was registered with John Carris Investments as Chief Compliance Officer. Simmons also served as the Firm's Anti-Money Laundering Compliance Officer from August 2010 until September 2012. Simmons voluntarily terminated his association with the Firm on or about September 14, 2012, and his Form U-5 was filed as of September 26, 2012.

2. Although Respondent Simmons is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the effective date of termination of Respondent's registration with John Carris Investments, and (2) the Complaint charges him with misconduct that he engaged in 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

3. As alleged in the Complaint as amended herein, Respondent engaged in the following acts, or failed to act as follows:

SUMMARY

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

4. From August 2010 through May 2011, Brian Simmons failed to establish and maintain supervisory procedures reasonably designed to achieve compliance with Anti-Money Laundering (AML) rules and regulations, and failed to monitor and detect suspicious activity in violation of FINRA Rules 3310 and 2010. (Eighth Cause of Action)

5. Further, from August 2010 through September 2012 Brian Simmons failed to establish, maintain, and enforce an adequate supervisory system in violation of NASD Rule 3010 and FINRA Rule 2010.

**Failure to Establish and Implement Anti-Money Laundering Procedures
Violation of FINRA Rules 3310 and 2010**

6. FINRA Rule 3310(a) provides that member firms must establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder.

7. From August 23, 2010 through May 2011 (the "AML Period"), the Firm and Simmons failed to adequately establish and implement adequate anti-money laundering procedures.

8. From on or about August 23, 2010 through on or about September 14, 2012, Brian Simmons was the Firm's AML compliance officer. During this time, Simmons was responsible for implementing the Firm's AML compliance program, including ensuring compliance with monitoring for suspicious activity.

9. As a FINRA member firm, John Carris Investments was required to implement a risk-based AML program tailored to its lines of business. The Firm's AML policies, procedures, and internal controls for the AML Period were described in the Firm's written Anti Money Laundering Program, dated September 1, 2009 and September 22, 2010, (collectively the "AML

Programs”) and in the Firm’s Written Supervisory Procedures (“WSPs”), dated December 21, 2010 and April 7, 2012.

10. During the AML Period, the Firm’s business was heavily comprised of trading in penny stocks. However, the Firm’s AML policies, procedures, and internal controls were not reasonably designed to achieve compliance with the Bank Secrecy Act and its implementing regulations.

11. The AML Programs and WSPs each identified the “AML Compliance Officer” as the person responsible for detecting potential money laundering activity.

12. The 2009 AML Program and 2010 AML Program each described examples of suspicious activities, including “trading that constitutes a substantial portion of all trading for the day in a particular security; trading or journaling between/among accounts, particularly between related owners; late day trading; heavy trading in low-priced securities; unexplained wire transfers, including those to known tax havens; [and] unusually large deposits of funds or securities.”

13. The AML Programs stated that the Firm would review “[i]nformation or reports provided by the clearing firm for business introduced through the clearing firm” as part of its process for identifying potential suspicious activity.

14. The WSPs stated that the Firm’s AML monitoring consisted of using available exception reports from its clearing firm and reviewing account activity to identify patterns of unusual size, volume, pattern, or type of transactions or other “red flags” identified in its procedures.

15. The WSPs also stated that “[a]mong the information used to determine whether to file a suspicious activity report are exception or transaction reports that include transaction size, location, type, number, and nature of the activity.”

16. The WSPs identified a number of red flags, including:

- a. The customer wishes to engage in transactions that lack business sense or apparent investment strategy, or are inconsistent with the customer’s stated business strategy.
- b. The customer engages in suspicious activity involving the practice of depositing penny stocks, liquidating them, and wiring proceeds.
- c. For no apparent reason, the customer has multiple accounts under a single name or multiple names, with a large number of inter-account or third-party transfers.
- d. The customer maintains multiple accounts, or maintains accounts in the name of family members or corporate entities, for no apparent business purpose or other purpose.

17. However, Brian Simmons failed to implement the Firm’s AML Programs and WSPs, as they did not adequately review transactions for suspicious activity, and did not review the reports that the clearing firm provided to them as the AML Programs specified that they would.

18. The clearing firm provided reports that detailed the Firm’s trade activity, fund activity and all securities received and delivered. Instead of reviewing these reports, the Firm conducted manual review of wire transactions and penny stock transactions as they occurred on a

day to day basis. This manual process, as detailed below, failed to reveal red-flags or suspicious trading patterns.

19. In particular, Simmons, JP or one other registered person at the Firm, SY, were tasked with reviewing wire and trading activity as each transaction occurred in various customer accounts. Customer accounts were not assigned to any one of these three individuals in particular, so that a single customer's trading activity might be reviewed by one individual on day one, the same customer's trading activity might be reviewed by a different individual on day two, and the same customer's wire activity might be reviewed by a third individual on day three. Thus, the Firm was not able to observe patterns of potentially suspicious activity or behavior.

20. In connection with the AML Programs, Simmons only reviewed penny-stock transactions to ensure that the securities were properly cleared. He failed to review the transactions for suspicious activity or patterns.

21. This procedure was not sufficient to detect and investigate suspicious activity relating to penny stock transactions. In several instances, as described in detail below, 1) within a short period of time, customer accounts received shares of penny stocks, quickly sold their positions, and immediately wired out the funds, 2) other customer accounts had frequent large incoming and outgoing wire transfers, and 3) still other customer accounts had numerous cancelled buy transactions. Neither Simmons nor any other Firm employee took steps to inquire about these transactions in order to determine whether they constituted suspicious activity.

22. From May 11, 2010 through February 1, 2011, customer SS controlled two distinctly named accounts at John Carris Investments. Throughout the above time period, SS purchased, sold and transferred between these accounts several million shares of low-priced securities (penny stocks). On at least ten occasions, SS canceled a sell or buy order after the

order was initially placed. Throughout the same period, SS wired over \$105,000 in sale proceeds from a Firm account to an outside account shortly after receiving sale proceeds. Simmons was the responsible AMLCO from August 23, 2010 through the end of the above period.

23. From May 12, 2010 through May 10, 2011, customers and family members PB and DB controlled three accounts at John Carris Investments. Throughout the above time period, PB and DB purchased and sold millions of shares of low-priced securities, including Fibrocell. On June 8, 2010, PB and DB purchased 130,000 shares of Fibrocell in five transactions in an individually named account, and on the same day sold 130,000 shares of Fibrocell in five transactions through one of these accounts in the name of an entity. On June 9, 2010, PB and DB wired \$64,500 from a Firm account to an outside account. Throughout the above time period, PB and DB canceled at least 14 buy or sell transactions involving Fibrocell. Simmons was the responsible AMLCO from August 23, 2010 through the end of the above period.

24. From May 11, 2010 through March 28, 2011, customer SF controlled an account at John Carris Investments. Throughout the same time period, SF deposited and sold over three million shares of five low-priced securities. Throughout the same time period, SF wired over \$250,000 from a Firm account to an outside account. Throughout the same period, SF entered approximately ten buy-side orders, eight of which were canceled. Simmons was the responsible AMLCO from August 23, 2010 through the end of the above period.

25. From October 15, 2010 through March 31, 2011, customer JF controlled two accounts at John Carris Investments. During the same time period, JF sold and transferred between these accounts several million shares of low-priced securities. During the same time period, JF wired from a Firm account to an outside account or received payment by check

totaling \$14,749.10. During the same time period, JF entered seven buy-side orders, all of which were canceled.

26. From November 9, 2010 through May 4, 2011, customer ES controlled an account at John Carris Investments. During the same time period, ES deposited, purchased and sold several million shares of low-priced securities, including Fibrocell. During the same time period, ES wired from a Firm account to an outside account approximately \$450,000.

27. From November 17, 2010 through April 15, 2011, customer HG controlled an account at John Carris Investments. During the same time period, HG purchased and sold hundreds of thousands of shares of low-priced securities. During the same time period, HG wired from a Firm account to an outside account approximately \$79,500 in nine separate transactions.

28. From May 19, 2010 through May 13, 2011, customers and family members AM and LM controlled four accounts at John Carris Investments. Throughout the same time period, AM and LM deposited, purchased and sold several million shares of low-priced securities, including Fibrocell. Throughout the same time period, AM and LM wired from their Firm accounts to an outside account approximately \$480,000 in 27 separate transactions. Simmons was the responsible AMLCO from August 23, 2010 through the end of the above period.

29. From November 12, 2010 through April 26, 2011, customer IV controlled two accounts at John Carris Investments. During the same time period, IV deposited, purchased, sold and transferred between accounts hundreds of thousands of shares of low-priced securities, including Fibrocell. During the same time period, IV wired from a Firm account to an outside account approximately \$85,000.

30. Moreover, from on or about May 1, 2010 through May 31, 2011, suspicious trading activity in Fibrocell Science Inc. occurred in numerous customer accounts. Simmons was the responsible AMLCO from August 23, 2010 through the end of the above period.

31. Neither Simmons, nor any other Firm employee took steps to inquire about these transactions in order to determine whether they constituted suspicious activity that should have been reported transactions under 31 U.S.C. 5318(g).

32. Further, although the Firm's clearing firm notified it about high-risk transactions, the Firm failed to record whether or how it engaged in any follow-up activity after it was notified, and had no system in place that directed compliance personnel how to respond to such notifications.

33. By means of the foregoing conduct, between August 2010 and May 2011, Respondent Brian Simmons failed to establish and implement anti-money laundering procedures and violated FINRA Rules 3310(a) and 2010.

**Failure to Establish, Maintain, and Enforce a System to Supervise
in Violation of NASD Rule 3010 and FINRA Rule 2010**

34. NASD Rule 3010(a) requires that a firm adopt a comprehensive system of supervision that is "reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable [FINRA and NASD] Rules."

35. Simmons was the Chief Compliance Officer from August 2010 until September 2012, responsible for enforcing and maintaining the Firm's Written Supervisory Procedures and responsible for regulatory compliance. Simmons was responsible for directly supervising accreditation and suitability determinations in connection with private placements, including placements of Invictus Capital securities.

36. From August 2010 until September 2012, Simmons failed to establish a system to adequately supervise the activities of registered representatives, registered principals, and other associated persons in a manner reasonably designed to achieve compliance and to prevent and detect the following misconduct at the Firm: from on or about May 1, 2010 through September 30, 2010, manipulative stock trading of Fibrocell Science, Inc. occurred at the Firm; from approximately October 2010 through at least September 2012, customers were defrauded in connection with the sale of stock and notes in the Firm's parent company, Invictus Capital, Inc.; from approximately October 2010 through at least September 2012, John Carris Investments customers received recommendations to purchase Invictus Capital, Inc. stock and notes absent a reasonable basis determination that the investments were suitable for any customer; from January 1, 2010 through December 31, 2011, personal expenses of a Firm principal were inaccurately booked as business expenses; for several periods between November 1, 2011 and August 6, 2012, the Firm operated without sufficient net capital, in violation of FINRA Rule 2010; from May 2010 through at least December 2012, hundreds of thousands of dollars in employee payroll taxes were not remitted to the United States Treasury by the Firm.

37. By failing to establish, maintain and enforce a system to supervise the foregoing activity between August 2010 and September 2012, Respondent Brian Simmons, violated NASD Rule 3010 and FINRA Rule 2010.

38. Based on the foregoing, Respondent violated NASD Rule 3010 and FINRA Rules 3310(a) 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:

Suspended for nine months suspension in all capacities and subsequently suspended for 15 months in all principal capacities.

Respondent has submitted a sworn financial statement and demonstrated an inability to pay. In light of the financial status of Respondent, no monetary sanctions have been imposed.

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

SO ORDERED.

FINRA

April 17, 2014
Date

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

Susan Light
Susan Light, Senior Vice President
& Chief Counsel
FINRA Department of Enforcement
200 Liberty Street, 11th Floor
New York, New York 10281
Tel: 646-315-7313