

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ANTHONY DIAZ (CRD No. 4131948),

Respondent.

DISCIPLINARY PROCEEDING
No. 2011030254902

HEARING OFFICER—CC

**ORDER ACCEPTING OFFER
OF SETTLEMENT**

Date: May 27, 2015

INTRODUCTION

Disciplinary Proceeding No. 2011030254902 was filed on August 6, 2014 and amended on November 5, 2014 by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Anthony Diaz submitted an Offer of Settlement (Offer) to Complainant dated May 26, 2015. 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 Amended 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

Diaz entered the securities industry in January 2000. He has been registered with eleven different firms over fourteen years, and has held Series 6 (Investment Company/Variable Contracts), Series 7 (General Securities), Series 9 (General Securities Sales Supervisor — Options), Series 10 (General Securities Sales Supervisor — General), Series 63 (State Law), and Series 65 (Investment Advisor Law) licenses. Diaz was registered with his most recent employer, IBN Financial Services, Inc., from September 2012 until April 23, 2015. He has also been registered with four investment advisors.

FINDINGS AND CONCLUSIONS

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

SUMMARY

1. During the period March 2010 through May 2011, Respondent Anthony Diaz induced approximately eighty customers to enter into variable annuity exchanges, often subject to significant surrender charges, without a reasonable basis for recommending those exchanges. Each customer invested in the same fund, with the same subaccount allocation and the same rider selected. Diaz recommended these exchanges without understanding the features of the new product, and put the same three invalid justifications for almost every one of these exchanges. By so doing, he violated NASD Rules 2310 and 3110 and FINRA Rules 2010 and 2330.

2. Diaz engaged in misconduct in connection with the sale of direct participation partnerships and real estate investment trusts, or REITs, during the period February 2007 through

February 2010. He falsely told seven customers that the investments were either guaranteed or guaranteed to pay certain amounts of interest. By so doing, he violated NASD Rules 2110 and 2120, FINRA Rules 2010 and 2020, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder.

3. During the period March 2007 through April 2011, Diaz falsified or caused the falsification of the liquid net worth, net worth, and/or income information for at least nine customers to make it appear that they were eligible to invest in the products described in the preceding paragraph when they in fact were not. He also altered or caused the alteration of the dates that appeared next to the signatures of customers on authorizations to transfer accounts on at least two occasions in 2010 and 2011, and forged or caused the forgery of a customer's signature on an investor profile form in 2011. He thereby violated NASD Rules 3110 and 2110 and FINRA Rule 2010.

4. During the period 2009 through 2011, Diaz made unauthorized trades in the accounts of at least seven customers, thereby violating FINRA Rule 2010.

5. Diaz was fired by or allowed to resign from more than half of the eleven firms at which he worked over his fourteen years in the securities industry. He violated FINRA Rule 2010 by lying to customers — in 2009, 2010, 2011, and 2012 — about the reason for leaving four of these firms, leading the customers to believe he left voluntarily and for their benefit, when he in fact had been terminated due to complaints of unauthorized trading, excessive customer complaints, or supervisory issues.

RESPONDENT

6. Diaz entered the securities industry in January 2000. He has been registered with eleven different firms over fourteen years, and has held Series 6 (Investment Company/Variable

Contracts), Series 7 (General Securities), Series 9 (General Securities Sales Supervisor — Options), Series 10 (General Securities Sales Supervisor — General), Series 63 (State Law), and Series 65 (Investment Advisor Law) licenses. Diaz was registered with his most recent employer, IBN Financial Services, Inc., from September 2012 until April 23, 2015. He has also been registered with four investment advisors.

7. During all times relevant to this complaint, Diaz was a registered representative and Certified Financial Planner. He ran his own office, under the name Financial Planners Group of America, along with a small number of unregistered and, at times, registered employees. He was the only person in his office who acted as registered representative for customers. All office employees reported to Diaz. Most of Diaz's customers were residents of Pennsylvania.

8. In February 2013, the Certified Financial Planner Board of Standards, Inc. suspended Diaz's certification for three years for unauthorized trading, recommending unsuitable transactions, using blank forms, altering dates on documents, selling annuities prior to being appointed by an annuity company, and failing to update his contact information.

9. Diaz was fired or permitted to resign by six of the eleven member firms with which he was registered for various reasons, as follows:

- a. On or about November 21, 2002, Edward Jones fired Diaz for providing inaccurate information during a supervisory review.
- b. On or about December 6, 2004, Raymond James Financial Services, Inc. fired Diaz because it was "no longer comfortable supervising" him.
- c. On or about April 1, 2009, First Allied Securities, Inc. allowed Diaz to resign because he had a history of customer complaints and administrative infractions.

- d. On or about March 3, 2010, SII Investments, Inc. fired Diaz for unauthorized trading.
- e. On or about August 12, 2011, Kovack Securities, Inc. fired Diaz because of complaints alleging unauthorized trades.
- f. On or about September 19, 2012, Sandlapper Securities, LLC fired Diaz for soliciting sales of variable annuities without being properly appointed by the issuing company.

FIRST CAUSE OF ACTION

Unsuitable Variable Annuity Exchanges

**(Violation of NASD Rule 2310 and
FINRA Rules 2010 and 2330)**

10. The Department of Enforcement realleges and incorporates by reference paragraphs 1–9 above.

11. During the one-year period that Diaz was at Matrix Capital Group, Inc. (March 2010–April 2011), he recommended that customers surrender their existing fixed or variable annuities and replace them with other variable annuities. He generated 105 exchange transactions during that period, 80 of which were exchanges into the same product, the Allianz Vision Variable Annuity. These 80 exchanges into the Allianz Vision annuity involved 69 different customers with widely divergent ages and financial circumstances.

12. Notwithstanding the significant differences in their ages and financial circumstances, Diaz recommended that the 69 customers who purchased the Allianz Vision annuity select the exact same subaccount allocation and the same Income Protector rider. In addition, all but two of the 80 exchanges by these customers included the purchase of a 6% bonus option.

13. The 80 exchanges into the Allianz Vision annuity totaled nearly \$6.2 million and generated more than \$317,000 in commissions to Diaz in approximately one year. At least 49 of

these exchanges into the Allianz Vision annuity resulted in surrender charges totaling more than \$106,000, with 21 customers paying surrender charges of more than \$1,000.

14. For 78 of these 80 exchanges, Diaz created (or caused the creation of) annuity switch disclosure forms that stated the exact same three reasons for the exchange: guaranteed minimum income benefit, lock in gains daily versus annually, and maintain tax deferral. The remaining two exchanges into the Allianz Vision annuity listed no reasons on the forms.

15. None of the three reasons cited on the switch disclosure forms were applicable to these transactions. First, the Allianz Vision annuity did not offer the guaranteed income benefit cited by Diaz as a reason for the exchange; it offered a guaranteed withdrawal benefit, which is a different type of living benefit. Second, the Allianz Vision annuity locked in gains on a quarterly, not daily, basis. Third, tax deferral automatically applies to all variable annuities held in non-qualified accounts, so that reason cannot justify an exchange between variable annuities. Moreover, approximately half of the variable annuities exchanged were held in accounts that were already tax deferred.

16. Diaz did not conduct any quantitative analysis of the financial benefit or detriment of the exchanges to his customers.

17. Pursuant to FINRA Rule 2310 and FINRA Rule 2330, a registered representative is required to have a reasonable basis to believe that a recommended variable annuity purchase, sale or exchange is suitable for the customer to whom the recommendation is made. This requirement includes, among other things, an adequate assessment of the impact of surrender charges, the loss of existing benefits, and the benefits of product enhancements and improvements.

18. Diaz failed to make an individualized assessment of the advantages and disadvantages of the 80 recommended exchanges described above. He instead treated a large number of customers with widely disparate investment objectives, ages, and financial conditions the same, inducing all of them to exchange their variable annuities into the identical product with the exact same subaccount allocation and exact same rider.

19. Diaz also failed to understand the features of the Allianz Vision product. As a result, Diaz was unable to make an individualized assessment of the product for each customer. He failed to recognize that the product offered a guaranteed minimum withdrawal benefit, not a guaranteed minimum income benefit, and that gains were locked in on a quarterly, not daily, basis.

20. For the reasons described above, Diaz did not have a reasonable basis for his recommendations that customers enter into the exchanges. Diaz therefore violated NASD Rule 2310 and FINRA Rule 2330 by recommending the 80 exchanges into the Allianz Vision variable annuity without a reasonable basis. By so doing, he also violated FINRA Rule 2010.

SECOND CAUSE OF ACTION

Deceptive Use of Falsified Financial Information and Dates

(Violation of NASD Rule 2110 and FINRA Rule 2010)

21. The Department of Enforcement realleges and incorporates by reference paragraphs 1–20 above.

22. Diaz falsified or caused the falsification of the reported net worth of customers in order to make it appear that they satisfied the minimum net worth requirements for certain “alternative investments” described below or issuer- and state-imposed prohibitions against investing more than 10% of a customer’s assets into a single illiquid product. Diaz misled or

attempted to mislead his employing firms and the issuers of the products into allowing these customers to purchase investments for which they were ineligible under the terms established by the issuers and by the State of Pennsylvania, in which all of the customers reside.

The Alternative Investments Sold by Diaz

23. During 2006 through 2011, Diaz made more than \$800,000 in commissions from the sale of illiquid “alternative investment” products, specifically equipment leasing programs offered by ICON Capital Corp., and two REITS. The purpose of these investments was to generate monthly payments to investors at interest rates determined by the management of the programs.

The ICON Equipment Leasing Direct Participation Programs

24. ICON Capital Corp., through its affiliate ICON Securities Corp., offered limited partnership interests in leasing programs that purchase and lease out business equipment, such as marine vessels, aircraft, power plants, and production facilities. According to their prospectuses, an investment in any of these funds was speculative and highly risky. In addition, there was no public market for the sale of the ICON Funds, and investors had to be prepared to hold their partnership interests for at least nine years, until the “liquidation phase” of the partnership begins.

25. During the period relevant to this Complaint, ICON offered three programs: ICON Leasing Fund Eleven, LLC (ICON 11), ICON Leasing Fund Twelve, LLC (ICON 12), and ICON Equipment and Corporate Infrastructure Fund Fourteen, LLC (ICON 14). Investors in ICON 11 and ICON 12 were initially required by the terms of the prospectuses to have either net worth and annual income of \$60,000 each, or net worth of \$225,000. This was increased to either net worth and annual income of \$70,000 each, or net worth of \$250,000 for ICON 12 as of

May 7, 2008. This higher requirement remained in effect for the ICON 14 offering. In addition, investments by residents of Pennsylvania could not exceed 10% of their net worth.

26. Diaz sold interests in ICON 11, ICON 12, and ICON 14 to his customers, most of whom lived in Pennsylvania, during the initial offerings of the programs. Since the offerings, the value of investments in the ICON funds has decreased significantly. The value of the initial \$1,000 per unit prices paid by Diaz's customers declined to under \$150 for ICON 11, under \$550 for ICON 12, and under \$725 for ICON 14 by the end of 2013. ICON 11 reduced its annual distribution rate from 9.1% to 4% from January 2011 through April 2012, and ceased making any distributions thereafter. The annual distribution rate for ICON 12 dropped from approximately 9% to approximately 7% as of the end of 2013. ICON 14 was paying an annual distribution of approximately 8% as of the end of 2013.

27. Diaz induced 187 purchases of the ICON funds to customers at First Allied during the one year period April 2006–April 2007, which generated nearly \$287,000 in commissions to Diaz. Between October 2010 and April 2011, while at Matrix, Diaz recommended 53 sales of the ICON funds to customers, and the customers entered into those transactions. The transactions generated more than \$77,800 in commissions to him. ICON Securities Corp. paid an 8% commission for the sale of these funds.

The Grubb & Ellis Apartment REIT

28. The Grubb & Ellis Apartment REIT (Grubb & Ellis) owns and operates a portfolio of apartment communities in metropolitan areas in the United States. The REIT was not publicly traded, although the prospectus stated that it intended to seek a public listing of its shares “if and when” its board of directors determined that it would be in the best interests of its shareholders to do so.

29. The Grubb & Ellis prospectus warned that the investment was highly risky, that distributions to shareholders might include a return of capital, and that investors might not be able to sell their shares, which were subject to significant restrictions on transfer and redemption. The prospectus set out suitability standards of either at least \$45,000 annual income and \$45,000 in net worth, or a minimum net worth of at least \$150,000. For residents of Pennsylvania, however, the prospectus applied the state-mandated standard of either income of at least \$70,000 and net worth of \$70,000, or a net worth (exclusive of home, furnishings, and automobiles) of at least \$250,000. It also incorporated Pennsylvania's cap on investing more than 10% of the customer's net worth in the security.

30. Grubb & Ellis became Apartment Trust of America in 2010, and became Landmark Apartment Trust of America in 2012. The value per share declined from its initial \$10 offering price to \$8.15 (as of March 2014). It reduced its dividend from 6% to 3% in March 2011, based upon the \$10 purchase price.

31. Grubb & Ellis had limited liquidity. It initially offered a limited share repurchase plan, but terminated the plan in February 2011. There is no public market for its shares.

32. Diaz induced 44 purchases of Grubb & Ellis by his customers at Matrix (October 2010 through April 2011). These transactions generated commissions of more than \$59,000 to himself.

Inland American Real Estate Trust

33. Inland American Real Estate Trust, Inc. (Inland) is a non-traded REIT that owns and manages commercial real estate. According to its prospectus, an investment in Inland involved a high degree of investment risk. The securities were highly illiquid, and could only be redeemed in limited, periodic, discretionary redemption programs. The REIT required purchasers to have

either at least \$70,000 annual income and \$70,000 in net worth, or a minimum net worth of at least \$250,000. It also incorporated Pennsylvania's cap on investing more than 10% of the customer's net worth in the security.

34. Inland was offered at \$10 per share. As of the end of 2013, its value per share had fallen to \$6.94, and it paid a 5% dividend.

35. Diaz induced 302 purchases of Inland by his to customers at First Allied Securities between October 2007 and April 2009. These transactions generated almost \$400,000 in commissions to Diaz. Between October 2010 and April 2011, while at Matrix, he induced about another 10 purchases of Inland by his customers. These transactions generated commissions to Diaz of more than \$12,000. Inland paid a 7.5% commission.

Diaz's Use of Falsified Information

Customer E.R.

36. In February 2007, customer E.R. was 67-year-old retiree residing in East Stroudsburg, Pennsylvania. He had an annual income of approximately \$30,000, liquid net worth of approximately \$115,000, and net worth of approximately \$200,000.

37. In or about February 2007, Diaz induced E.R. to invest \$16,000 in ICON 11.

38. In or about early March 2007, Diaz created or caused the creation of a First Allied Securities Account Information Reference Sheet for customer E.R. which correctly stated his income as \$30,000 and his liquid net worth as \$115,000, but which overstated his net worth, which was less than \$200,000, as being \$350,000.

39. In April 2007, Diaz created or caused the creation of a revised First Allied Securities Account Information Reference Sheet for customer E.R. that falsely stated his net worth as \$550,000, and his liquid net worth as \$215,000.

40. In April 2007, at Diaz's recommendation, E.R. invested another \$34,000 in ICON 11. This was more than 10% of his actual net worth, although it was less than 10% of the inflated net worth on the falsified Account Information Reference Sheet. E.R.'s investment thus falsely appeared to be within the cap on investing more than 10% of the customer's net worth in the security.

Customers B.K., G.K., and T.K.

41. B.K. and G.K. were a married couple living in Scotrun, Pennsylvania. As of June 2007, B.K. was 58 years old, and G.K. was 53 years old.

42. B.K. and G.K. had a net worth, excluding their home, furnishings, and vehicles, of approximately \$1 million in 2007 and 2008.

43. In June 2007, Diaz created or caused the creation of entries on the First Allied Securities internal account management system falsely indicating that B.K.'s net worth was \$1.8 million and that G.K.'s net worth was \$300,000.

44. In or about July 2007, Diaz induced B.K. and G.K. to invest \$11,450 in ICON 11.

45. On February 28, 2008, a staff person in Diaz's office changed B.K.'s net worth from \$1.8 million to \$2.5 million on the First Allied Securities internal system, and then changed it to \$3.5 million on March 7, 2008. On March 7, 2008, the same person also changed G.K.'s net worth to \$1.3 million. Diaz certified these entries on March 7, 2008. This information was false. The actual combined net worth of B.K. and G.K. was still approximately \$1 million.

46. On or about March 26, 2008, at Diaz's recommendation, B.K. and G.K. invested \$127,500 in Inland and \$127,500 in ICON 12. Each of these investments was more than the 10% of net worth that could be invested by residents of Pennsylvania pursuant to the terms of the

offerings, but less than 10% of the falsified net worth entered in the First Allied Securities internal system.

47. B.K. holds a financial power of attorney over the account of his mother, T.K., who resides in an assisted living facility in East Stroudsburg, Pennsylvania. As of January 2009, T.K. was 87 years old. Her annual income, including Social Security and pension income, was approximately \$41,000, and she had approximately \$22,000 per year in medical expenses. Her net worth was approximately \$141,000, all held in accounts with Diaz.

48. In late January 2009, at Diaz's recommendation, B.K. invested \$11,790 of his mother's money in ICON 12 and \$11,780 in Inland. Diaz structured T.K.'s investment in ICON 12 and Inland to include dividend reinvestment, so that the 87-year-old customer was not even receiving the proceeds of the illiquid investment that Diaz sold to her. T.K. did not satisfy either the minimum net worth or combined minimum net worth/minimum income standards for investing in ICON 12 or Inland.

49. During 2009, Diaz created or caused the creation of new account documents for T.K. falsely reporting that her net worth was between \$200,000 and \$500,000.

Customers N.M. and L.W.

50. During the time period addressed in this complaint, N.M. and L.W. were a married couple living in Bangor, Pennsylvania. L.W. is a dentist, and N.M. works in his office. In August 2007, L.W. was 63 years old, and N.M. was 49 years old. Their combined annual income was approximately \$100,000, and their combined assets, excluding their home and business, were worth less than \$250,000.

51. N.M. invested \$5,000 in ICON 12 in August 2007 at Diaz's recommendation.

52. In December 2007, Diaz created or caused the creation of an account information report for N.M. and L.W. falsely indicating that they had net worth of \$4 million and liquid net worth of \$500,000, that L.W. had an income of \$100,000, and that N.M. had an income of \$75,000. Diaz certified this form through an electronic entry on his firm's account management system.

53. At Diaz's recommendation, N.M. and L.W. invested \$26,473 in ICON 12 and \$30,000 in Inland in or about April 2008. Each of these investments exceeded the 10% cap described above based on their actual net worth, although the amounts were less than 10% of the falsified net worth amounts on the account information reports identified in the preceding paragraph. In addition, their actual liquid net worth was less than the minimum required for investors in Inland, but the falsified liquid net worth appear to meet that criterion.

54. In late March 2010, shortly after Diaz was fired by SII Investments and began his employment with Matrix, N.M. and L.W. met with Diaz in his office. L.W. signed a form authorizing the issuer of his variable annuity to transfer the annuity from SII's custody to Matrix's so that Diaz could replace it with another product in May at the end of the surrender charge period.

55. N.M. and L.W. decided not to move their account to Matrix, and sent a fax to the variable annuity issuer on April 19, 2010, revoking the authorization to transfer the policy to Diaz, and instead had the variable annuity sent to their new broker at another firm.

56. Sometime between April 19 and May 6, 2010, Diaz or someone acting at his behest changed the signature date on the transfer authorization signed by L.W. in March to May 6, 2010, making it appear that the authorization was signed after, not before, the April 19 fax was sent. Diaz submitted or caused the submission of this falsified authorization to the variable

annuity issuer to try to have the annuity transferred to his control at Matrix. The issuer refused to accept the transfer request because N.M. had notified it not to accept any orders from Diaz.

Customers S.J. and L.J.

57. During the time period addressed in this complaint, S.J. and L.J. were a married couple living in Stroudsburg, Pennsylvania. They became Diaz's clients in late 2009, when L.J. was 59 years old and S.J. was 52 years old. L.J. worked as a bartender and bar manager at a hotel, and S.J. was a customer service representative. Their combined income was approximately \$53,000 in 2009, and under \$50,000 in 2010. They had net worth, excluding their home, of under \$270,000, liquid assets of approximately \$82,000, and liquid net worth of approximately \$30,000. Approximately \$253,000 of their net worth belonged to S.J. They in fact had low risk tolerance as their investment objective.

58. On or about February 10, 2010, Diaz induced S.J. to invest \$27,000 in ICON, and induced S.J. and L.J. to jointly invest \$22,500 in Grubb & Ellis.

59. On or about February 10, 2010, Diaz had S.J. sign a Direct Participation Programs Suitability Checklist in connection with her ICON investment. The version of the checklist she signed did not have any information regarding her income, liquid net worth, total net worth, or total amount invested in direct participation programs. After S.J. signed the checklist, Diaz or someone acting at his direction completed the missing information, and Diaz signed the checklist and submitted it to his firm. The checklist, as submitted by Diaz, falsely represented that S.J. had net worth of \$1.5 million and liquid net worth of \$1 million. It also indicated that S.J. had income of \$25,000. This made it appear that the ICON investment did not exceed 10% of her net worth, and thus complied with the investment restriction for Pennsylvania residents. The checklist also falsely stated that S.J. had received a prospectus for ICON, when she had not.

60. Also on February 10, 2010, Diaz had S.J. and L.J. sign a blank Direct Participation Programs Suitability Checklist, which Diaz or someone acting at his direction completed, and which Diaz signed and submitted to his firm. The checklist falsely represented that S.J. and L.J. had a net worth of \$1.5 million and a liquid net worth of \$1 million.

Customer L.B.

61. During the time period addressed in this complaint, L.B. was a resident of Scotrun, Pennsylvania. When she became Diaz's client, in approximately December 2007, she was 62 years old and retired. She had a liquid net worth of approximately \$243,000, and a home worth approximately \$125,000. Her income was approximately \$50,000 per year.

62. On or about February 4, 2008, at Diaz's recommendation, L.B. invested \$11,000 in ICON 12. She invested an additional \$23,000 in ICON 12 on March 6, 2008, and \$10,000 in Inland on February 4, 2008, also on Diaz's recommendation.

63. Diaz created or caused the creation of new account documents that misrepresented L.B.'s net worth as \$900,000 and liquid net worth as \$450,000. This made it appear, falsely, that L.B.'s total ICON purchase of \$34,000 did not exceed 10% of her net worth.

64. As alleged above, Diaz falsified or caused the falsification of the reported net worth of customers E.R., B.K., G.K., T.K., N.M., L.W., S.J., L.J, and L.B., making it appear that they satisfied the minimum net worth requirements for the alternative investments or the prohibitions against investing more than 10% of a customer's assets into a single illiquid product. By doing this, Diaz misled or attempted to mislead his employing firms and the alternative investment product issuers to believe that these customers were eligible to purchase the investments under the terms established by the issuers and by the State of Pennsylvania, when in fact they were ineligible.

65. In addition, as alleged in paragraphs 54–56 above, Diaz attempted to induce an insurance company to transfer customer L.W.’s variable annuity to Diaz’s control by altering or causing the alteration of the signature date on a transfer authorization form, thereby creating the appearance that the document was signed after, and not before, the date on which the customer revoked the transfer authorization.

66. The conduct described above was inconsistent with just and equitable principles of trade and high standards of commercial honor, and thereby violative of NASD Rule 2110 (for conduct prior to December 15, 2008) and FINRA Rule 2010 (for conduct on or after December 15, 2008).

THIRD CAUSE OF ACTION

***Fraud in Connection with
the Alternative Investments***

**(Violation of Section 10(b) of the Securities Exchange Act
of 1934 and Rule 10b-5 thereunder, NASD Rules 2110
and 2120, and FINRA Rules 2010 and 2020)**

67. The Department of Enforcement realleges and incorporates by reference paragraphs 1–66 above.

68. In or about February 2007, Diaz induced E.R. to make the \$16,000 investment in ICON 11 alleged in paragraph 37 above by telling E.R. that he would receive a guaranteed income of 9.1% per year from ICON, and that he would receive his original investment back after five years. Diaz described ICON to E.R. as a “no-lose” investment. ICON 11 was not guaranteed to either pay any particular return or to not lose value, and investors could not redeem or sell the investment for at least nine or ten years.

69. In or about July 2007, Diaz induced B.K. and G.K. to make the \$11,450 investment in ICON 11 alleged in paragraph 44 above by falsely telling them that they would receive a guaranteed income of 9.65% from the investment. ICON was not guaranteed to pay any

particular rate, or any return at all. Diaz's false statement was material to the customers' decision to invest in ICON 11.

70. B.K. and G.K. continued to rely upon Diaz's misrepresentation that ICON was guaranteed to return 9.65% in making the additional \$127,500 ICON investment alleged in paragraph 46 above. In addition, B.K. continued to rely upon Diaz's misrepresentation that ICON was guaranteed to return 9.65% in making the \$11,790 ICON investment for his mother. T.K., alleged in paragraph 48 above.

71. Between August 2007 and May 2008, Diaz induced N.M. and L.W. to make investments in ICON and Inland alleged in paragraphs 51 and 53 above by falsely telling them that ICON was guaranteed to pay 8%, and Inland 5%. Diaz's false statements were material to the customers' decision to invest in ICON 11 and Inland.

72. On or about February 16, 2010, Diaz induced T.F. and his mother, C.F.F., to invest \$22,000 in ICON 14 and \$22,000 in Grubb & Ellis by falsely telling them that the investments were guaranteed. Diaz's false statements were material to the customers' decision to make these investments.

73. Diaz intentionally or recklessly made untrue statements of material fact by falsely telling E.R., B.K., G.K., N.M., and L.W. that one or more of the alternative investments were guaranteed to pay a specific rate of return, and by telling T.F. and C.F.F. that the investments were guaranteed.

74. Diaz transmitted applications for the purchase of the alternative investments to his employing firms by mail or other means or instrumentalities of interstate commerce, and the employing firms transmitted the applications to the issuers or selling agents of the alternative investments by mail or other means or instrumentalities of interstate commerce. Diaz also used

mail or other means or instrumentalities of interstate commerce to communicate with the customers at issue regarding their investments in ICON, Inland, and/or Grubb-Ellis.

75. By intentionally or recklessly engaging in this conduct, Diaz, by the use of the means or instrumentality of interstate commerce, or the mails, (1) employed a device, scheme, or artifice, (2) made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and (3) engaged in acts, practices, or course of business which operated as a fraud or deceit, in connection with the purchase or sale of the alternative investment securities, thereby violating Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

76. In addition, by virtue of the conduct set forth above, Diaz induced customers to purchase securities by means of deceptive or fraudulent devices or contrivances, thereby violating NASD Rule 2120 (for conduct before December 15, 2008) and FINRA Rule 2020 (for conduct on or after December 15, 2008).

77. By violating the provisions set forth in the two preceding paragraphs, Diaz violated NASD Rule 2110 (for conduct before December 15, 2008) and FINRA Rule 2010 (for conduct on or after December 15, 2008).

FOURTH CAUSE OF ACTION

Falsification of Books and Records

(Violation of NASD Rule 3110 and FINRA Rule 2010)

78. The Department of Enforcement realleges and incorporates by reference paragraphs 1-77 above.

79. FINRA Rule 3110, in effect at the time of the conduct alleged herein, required that a firm "make and preserve books, accounts, records, memoranda, and correspondence in

conformity with all applicable laws, rules, regulations and statements of policy . . . ” including as required by SEC Rule 17a-3. Such books and records must be accurate. Registered representatives can violate Rule 3110 by, among other things, causing their firm’s books and records to be inaccurate.

80. Securities Exchange Act Rule 17a-3(a)(17) requires firms to maintain records reflecting the annual income, net worth, and investment objectives for the accounts of customers, along with other information.

81. Diaz falsified his firm’s books and records by creating 78 variable annuity switch forms with false reasons for the exchanges during the period March 2010 through April 2011, as alleged under the First Cause of Action above.

82. In addition, Diaz falsified or caused the use of falsification of net worth, income, assets, and/or risk tolerance information for customers E.R., B.K., G.K., T.K., N.M., L.W., S.J., L.J, and L.B., as alleged under the Second Cause of Action above.

83. Diaz also altered or caused the alteration of the date L.W. signed a transfer authorization, as alleged in paragraph 56 above.

84. After engaging in the falsification of information alleged in paragraphs 57–60 above, Diaz continued to falsify records regarding the accounts of S.J. and L.J. In March 2010, Diaz switched firms, joining Matrix Capital Group. He arranged for S.J. and L.J. to sign new account applications for a joint account, IRA accounts, and Roth IRA accounts. There was no information entered for risk tolerance on the forms they signed. After they signed the forms, Diaz or someone acting at his direction falsified each form to state that the customers had “high risk” tolerance without the knowledge or authorization of S.J. and L.J., who had low risk

tolerance, and added a date for their signatures. Diaz signed these forms as registered representative.

85. In addition, there was no entry for total net worth on the new account application for the joint account for S.J. and L.J. when they signed the form. After they signed it, Diaz or someone acting at his direction indicated that they had a total net worth of more than \$500,000, which was false, and forged L.J.'s signature on the form.

86. On April 22, 2011, shortly after Diaz joined Kovack Securities, S.J. went to his office to sign new account documents, authorization to move her holdings to Kovack, and an authorization for the issuer of a variable annuity she owned to allow the withdrawal of quarterly fees to compensate Diaz. S.J. never met with Diaz after April 22, 2011. Diaz signed the documents on May 22, 2011, and he or someone acting at his direction changed the date of S.J.'s signature to May 22, 2011. Diaz then had the documents sent to Kovack Securities.

87. When S.J. signed the Kovack Securities new account application, there were no entries for tax bracket or risk tolerance. Diaz or someone acting at his direction falsely indicated that her tax bracket was over 28% and that her risk tolerance was moderate, when her tax bracket was actually 15%, and her risk tolerance was conservative.

88. In addition, Diaz or someone working at his direction created a Kovack Securities Investor Profile Questionnaire for S.J. without her participation, forged her signature on the last page of it, and dated it May 22, 2011. The questionnaire falsely stated that S.J. owned investment real estate worth \$200,000. In fact, that amount was more than twice the actual value of the real estate.

89. By engaging in this conduct, Diaz caused his firms to have inaccurate books and records, and thereby violated FINRA Rule 3110. By so doing, he also violated NASD Rule 2110

(for conduct before December 15, 2008) and FINRA Rule 2010 (for conduct on or after December 15, 2008).

FIFTH CAUSE OF ACTION
Unauthorized Trading
(Violation of FINRA Rule 2010)

90. The Department of Enforcement realleges and incorporates by reference paragraphs 1-89 above.

Customer J.P.

91. On September 2, 2009, Diaz purchased 129.87 shares of the Hartford Balanced Allocation Fund Class A for \$1,304 in the IRA account of customer J.P. without authorization.

Customers D.O. and R.O.

92. In October 2009, Diaz became the broker for customers D.O. and R.O. when he purchased their accounts from another registered representative. In November 2009, Diaz tried to persuade D.O. and R.O. to change their investments. They declined to do so and, on December 24, 2009, they told Diaz that they were going to move their account elsewhere. Unbeknownst to D.O. and R.O., Diaz had sold their Fidelity Advisor International Small Cap Fund, Fidelity Advisor Financial Services Fund, Ivy Global Natural Resources Fund, Ivy Pacific Opportunities Fund, and Oppenheimer Pennsylvania Municipal Bond Fund. He used \$43,277 of the \$107,000 proceeds to purchase a BellSouth Capital Funding debt security, a Russell Balanced Strategy fund, and a Hartford Floating Rate fund on December 22, 2009, without their authorization. The rest of the proceeds from the unauthorized transactions were put into a money market account.

Customer R.D.

93. In or about December 2010, Diaz sold or caused the sale of 200 shares of MVO Oil Trust from R.D.'s account without authorization.

94. In or about early March 2011, Diaz sold 1,795 shares of First Trust Diversified Income & Growth Fund, Winter 2010 (which had been purchased in December 2010 at \$10.03 per share) at \$9.92 per share from the account of customer R.D. without authorization. Diaz then purchased 1,599 shares of the same fund at \$10.00 per share on the same day in the same account, again without authorization.

Customer J.S.

95. On January 19, 2011, Diaz purchased 1,332.737 shares of Russell Investments LifePoints Balanced Fund for the account of customer J.S. without authorization.

Customer M.C.

96. On or about July 12, 2011, Diaz repeatedly called customer M.C. to try to persuade him to use the cash in his account — approximately \$12,000 — to invest in a mutual fund. M.C. told Diaz that he was going out of town, and would not make a decision about any such investment until after his trip.

97. M.C. and Diaz did not discuss specific securities, types of investments, or amount to invest before M.C. went on his trip, and M.C. did not authorize Diaz to make any investments.

98. Diaz purchased \$13,213 of the Russell LifePoints Conservative Strategy Fund A in M.C.'s account on or about July 12, 2011 without M.C.'s authorization.

Customer C.F.

99. On or about August 2, 2011, Diaz used money from customer C.F.'s account to purchase 429.338 shares of Russell LifePoints Balanced Strategy A for approximately \$4,800 without her authorization.

100. By making unauthorized trades in the accounts of J.P., D.O. and R.O., R.D., J.S., M.C., and C.F., Diaz engaged in conduct inconsistent with just and equitable principles of trade and high standards of commercial honor, and thereby FINRA Rule 2010.

SIXTH CAUSE OF ACTION
False Statements to Customers
Regarding Firings from Firms
(Violation of FINRA Rule 2010)

101. The Department of Enforcement realleges and incorporates by reference paragraphs 1–100 above.

102. Diaz was fired from four firms between 2009 and 2012. He routinely engaged in efforts to mislead his customers into believing that he had left those firms voluntarily, both through affirmative statements and through his responses to questions about the circumstances under which he left these the firms.

Firing by First Allied Securities

103. Diaz was fired by First Allied on or about March 31, 2009 due to excessive customer complaints. He joined SII Investments immediately thereafter.

104. Shortly thereafter, Diaz told customers E.H., L.H, and B.K. that he was switching from First Allied to SII Investments because the forms or statements that would be used by SII Investments would be easier to read.

105. Diaz told customers N.M. and L.W. that he was switching from First Allied to SII Investments because SII offered better bank interest rates.

106. Diaz told customer R.E. that he had initiated his switch from First Allied to SII Investments.

Firing by SII Investments

107. Diaz was fired by SII Investments on or about March 3, 2010 for unauthorized trading. He became registered with Matrix Capital Group the following day.

108. As part of that transition, Diaz instructed his office staff to tell clients that he was leaving SII Investments because the fees charged by the clearing firm used by SII were increasing. He also told his office staff not to tell clients he was fired and to tell clients that he was leaving SII because he wanted to find a smaller, more local firm.

109. Diaz told customer B.K. that he was leaving SII Investments because the clearing firm used by SII was raising its rates by 40%.

110. Diaz told customers N.M. and L.W. that he was switching from SII Investments because Matrix was a better company and the investments it offered paid a better interest rate.

111. Diaz told numerous other customers in or about March 2010 that he was leaving SII because its charges were too high, and the customers' costs would be lower if he changed firms.

Firing by Kovack Securities

112. Diaz was next fired from Kovack Securities on August 12, 2011 as a result of unauthorized trading complaints. He joined International Financial Solutions less than two weeks later. On August 21, 2011 he sent a letter to all of his clients creating the false impression that he had made a decision to switch firms in order to obtain better clearing services.

Firing by Sandlapper Securities

113. On or about September 19, 2012, Sandlapper Securities fired Diaz for soliciting sales of variable annuities without being properly appointed by the annuity companies.

114. Diaz wrote a letter to his clients which created the impression that he had chosen to leave Sandlapper on his own, referring to his departure as "a difficult decision for us."

115. Customer C.K. asked Diaz to confirm that the move from Sandlapper was not for compliance reasons, and to provide the name of the compliance officer at Diaz's prior firm for C.K. to contact. In response, Diaz provided contact information for the compliance officer and president of his new firm without telling C.K. that they worked for the new firm, not the prior firm. Diaz also wrote that "you will see their [sic] are and were no problems."

116. Another client, M.S., sent an email to the operations manager in Diaz's office when Diaz switched firms, asking "what really happened." Following instructions given by Diaz, the operations manager responded by claiming that Diaz was leaving Sandlapper because Sandlapper's performance had deteriorated and that Sandlapper would not be able to support their office in the long run.

117. Diaz told other customers that he was switching firms because of problems with the clearing firm, not because he had been fired by Sandlapper.

118. The reasons provided by Diaz or others at Diaz's instruction for his departure from various firms, as described in paragraphs 101–117 above, were false. By repeatedly providing false reasons for changing firms to his customers and directing others to do so, Diaz engaged in conduct inconsistent with just and equitable principles of trade and high standards of commercial honor, thereby violating FINRA Rule 2010.

Based on the foregoing, Respondent violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, NASD Rules 2110, 2120, 2310, and 3110 and FINRA Rules 2010, 2020, and 2330.

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

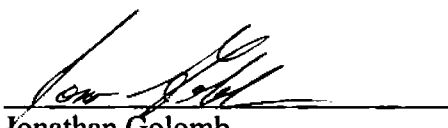
It is ordered that Respondent be barred from association with any FINRA member firm in any capacity.

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


Jonathan Golomb
Senior Special Counsel
FINRA Department of Enforcement
15200 Omega Drive
Rockville, MD 20850
(301) 258-8532