

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2012030787301**

**To: Department of Enforcement  
Financial Industry Regulatory Authority (FINRA)**

**Re: Gary Mitchell Spitz  
General Securities Principal, General Securities Representative, Direct  
Participation Program Representative and Operations Professional  
CRD No. 1828144**

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Gary Mitchell Spitz (Spitz) submits this Letter of Acceptance, Waiver and Consent (AWC) for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against Spitz alleging violations based on the same factual findings described herein.

**I. ACCEPTANCE AND CONSENT**

- A. Spitz hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

**Background**

Spitz entered the securities industry on June 9, 1988. Spitz was associated with FINRA broker-dealer Mt. Rushmore Securities, LLC from January 5, 2004 to present. Since January 18, 2012, Spitz has also been registered with MidAmerica Financial Services, Inc. Spitz is registered with FINRA as a general securities principal, general securities representative, direct participation program representative and operations professional.

Mt. Rushmore Securities, LLC (Mt. Rushmore) has been a FINRA member since August 12, 2004. Mt. Rushmore conducted a general securities business from its main office in Fairfield, Iowa. Mt. Rushmore also offered its customers private placements of securities. The firm filed a Form BDW on December 31, 2012.

### **Overview**

As CEO, CCO, and General Securities Principal of Mt. Rushmore Securities, Gary Spitz failed to enforce the firm's written procedures regarding the supervision of private placements offered by the firm. Spitz did not conduct adequate due diligence prior to the firm's sale of a private placement in The Blue Sky Fund, LLC to customers.

Moreover, Spitz failed to conduct an adequate suitability review of each sale of the private placement before it was made, and failed to ensure that a reasonable effort was made to obtain information regarding customers' investment experience and objectives prior to the sale of the private placement.

Finally, Spitz failed to properly develop and implement procedures to review communications from Mt. Rushmore registered representatives. The representatives dually employed by Mt. Rushmore and the manager of The Blue Sky Fund used outside email accounts to communicate with customers about The Blue Sky Fund. Spitz did not review, retain, or approve these communications.

### **Facts and Violative Conduct**

From January 2011 to March 2012 (the "Relevant Period"), while associated with Mt. Rushmore, Spitz failed to conduct adequate initial and ongoing due diligence of The Blue Sky Fund, LLC (TBSF), a Regulation D, Rule 506 private offering of up to \$2,000,000, as required by the firm's written supervisory procedures.<sup>1</sup> Spitz, as the firm's General Securities Principal, failed to conduct the following steps required by Mt. Rushmore's written supervisory procedures regarding due diligence of private placements:

- Review of any financial statements of Blue Sky Capital LLC and TBSF (unaudited or audited).
- Visit to the issuer's office.

---

<sup>1</sup>The investment strategy of TBSF is to invest in residential foreclosure and short sale properties in Southern California, repair the properties, and then "flip" them to maximize profit.

- Review the background and/or qualifications of individual(s) responsible for the management of, and investment decisions for, the issuer.
- Review of any and all formation documents to evidence the formation and existence of the issuer.
- Make an attempt to determine if the projected internal rate of returns made in the offering memorandum were viable projections.

As a result of Spitz's deficient review, he failed to ensure that the offering memorandum contained audited financials of the issuer. Moreover, Spitz did not ensure that audited financials were available to the non-accredited investors prior to the time of sale, which is a requirement of Regulation D.

During the Relevant Period, Spitz also permitted three registered representatives, who associated with Mt. Rushmore in order to sell shares of TBSF, to submit offering documents executed by customers directly to TBSF. As a result, Spitz neither received copies of those documents, nor conducted a suitability review of the transactions prior to their execution. Ten customers (59% of the total TBSF customers) invested in TBSF before Spitz received the subscription documents from the representatives. Moreover, Spitz failed to take steps to ensure that the three Mt. Rushmore representatives selling TBSF made a reasonable effort to obtain information concerning the customers' financial status, investment objectives and risk tolerance.

During the Relevant Period, Spitz further failed to review or retain email correspondence for the three representatives who associated with Mt. Rushmore to sell TBSF. These representatives were also employees of Blue Sky Capital, LLC (BSC) – the manager of TBSF. Spitz permitted representatives G.I, DR and AT to use a BSC email address to communicate with prospects and customers. These emails were not captured on Mt. Rushmore's server and, as a result, Mt. Rushmore failed to conduct any review of the representatives' email correspondence or to retain email communications from a non-firm email address used for securities business by the representatives. There were no procedures in

place to ensure that the dually employed reps forwarded email correspondence from outside email accounts to Spitz for review and retention. As a result, the representatives made exaggerated, unwarranted and potentially misleading statements to customers and prospects.

Spitz's conduct violated NASD Rule 3010 and FINRA Rule 2010.

B. Spitz also consents to the imposition of the following sanctions:

1. a fine of \$5,000; and
2. a one-year suspension from association with any FINRA broker-dealer in any principal capacity.

Spitz agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Spitz has submitted an Election of Payment form showing the method by which he proposes to pay the fine imposed.

Spitz specifically and voluntarily waives any right to claim that he is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

Spitz understands that if he is barred or suspended from associating with any FINRA member in a principal capacity, he becomes subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, he may not be associated with any FINRA member in a principal capacity, during the period of the bar or suspension (*see* FINRA Rules 8310 and 8311). Furthermore, because he is subject to a statutory disqualification during the principal suspension, if he remains associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

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

## **II. WAIVER OF PROCEDURAL RIGHTS**

Spitz specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

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

Further, Spitz specifically and voluntarily waives any right to claim bias or prejudice of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

Spitz further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

### **III. OTHER MATTERS**

Spitz understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against him; and
- C. If accepted:

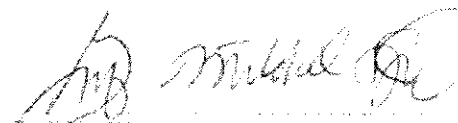
Letter of Acceptance, Waiver and Consent No. 2012030787001  
Gary Mitchell Spitz  
Page 6

2. This AWC will be made available through FINRA's public disclosure program in response to public inquiries about Spitz's disciplinary record.
  3. FINRA may make a public announcement regarding this agreement and the subject matter thereof in accordance with FINRA's Rule 833, and
  4. Spitz may not take any action or make or permit to be made any public statement including in regulatory filings or otherwise, creating directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Spitz may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects any professional obligations, or our right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
11. Spitz may attach a Comprehensive Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Spitz understands that he may not deny the charges or make any statement that is inconsistent with the AWC or this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

Spitz certifies that he has read and understood all of the provisions of this AWC, and has been given a full opportunity to ask questions about it; that he has agreed to its provisions voluntarily, and that no office, agent, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce him to submit it.

Date

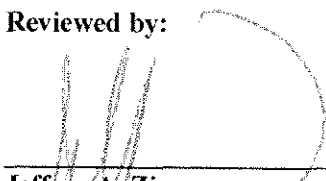
4/24/2012

  
GARY MITCHELL SPITZ

Reviewed by:

Letter of Acceptance, Waiver and Consent No. 2012030787301  
Gary Mitchell Spitz  
Page 7

Reviewed by:



---

Jeffrey A. Ziesman  
Counsel for Gary Mitchell Spitz  
Bryan Cave LLP  
1200 Main Street, Suite 3500  
Kansas City, MO 64105-2100  
Telephone: (816) 374-3225

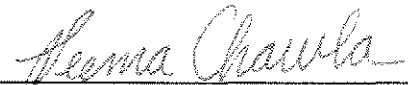
Accepted by FINRA:

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

05/14/13

---

Date



---

Seema Chawla, Principal Regional Counsel  
FINRA Department of Enforcement  
120 West 12<sup>th</sup> Street, Suite 800  
Kansas City, MO 64105  
Telephone: (816) 802-4712  
Facsimile: (816) 421-4519  
Email: [seema.chawla@finra.org](mailto:seema.chawla@finra.org)