

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2012033877801**

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Craig L. Josephberg, Respondent
Former General Securities Representative
CRD No. 2709288

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I submit 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 me alleging violations based upon the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. I hereby accept and consent, 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

Craig L. Josephberg ("Josephberg") entered the securities industry in December 1995 as a registered representative with a FINRA member firm. He was associated with approximately six FINRA member firms before joining Halcyon Cabot Partners, Ltd. ("Halcyon" or the "Firm"), in November 2010 as a General Securities Representative. On October 24, 2013, Halcyon filed a Uniform Termination Notice for Securities Industry Registration terminating Josephberg's registration with the Firm. Josephberg then became associated as a General Securities Representative with another FINRA member firm. On August 22, 2014, this firm filed a Uniform Termination Notice for Securities Industry Registration. Josephberg has not been employed by any other FINRA member firm.

Although Josephberg is no longer registered or associated with a FINRA member, pursuant to Article V, Section 4 of FINRA's By-Laws, he remains subject to FINRA's jurisdiction until at least August 19, 2016.

RELEVANT DISCIPLINARY HISTORY

Josephberg has no relevant disciplinary history.

OVERVIEW

Between December 2010 and May 2013 (the "Relevant Period"), while associated with Halcyon, Josephberg introduced Halcyon to an institutional investor in a company, which caused Halcyon to serve as a bogus placement agent that concealed a kickback of a private placement fee, thereby defrauding the company's investors; made unauthorized transactions in customers' accounts without disclosing that one of Halcyon's principals had loaned money to the issuer, purchased the issuer's stock at a deep discount and was selling the issuer's discounted stock; falsified the Firm's books and records by submitting documents that concealed his sales of securities in states where he was not registered; and engaged in unauthorized and excessive trading in customers' accounts.

As a result, Josephberg violated Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rules 10b-5(a), (b) and (c) thereunder; FINRA Rules 4511, 2310, 2111, 2020, and 2010; and NASD Rules 3110 and 2310.

FACTS AND VIOLATIVE CONDUCT

I. JOSEPHBERG PARTICIPATED IN A SCHEME TO DEFRAUD BY ARRANGING TO HAVE HALCYON SERVE AS A FAKE PLACEMENT AGENT

Section 10(b) of the Exchange Act provides that "[i]t shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national security exchange...to use or employ, in connection with the purchase or sale of any security...any manipulative or deceptive device or contrivance."

Section 10b-5, promulgated thereunder, provides that in connection with the purchase or sale of any security, "[i]t shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange:

- (a) to employ any device, scheme or artifice to defraud,
- (b) 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, or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

FINRA Rule 2010 provides that a member firm "in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."

In late May 2012, Josephberg introduced Halcyon and two of its principals RH and MM, to SC, an institutional investor, to be the placement agent for SC's investment in CT. The parties entered into a fraudulent scheme with SC, a private investor to secretly kick back nearly five percent of SC's investment in CT, and misrepresent to investors the actual price SC paid for the shares.

Specifically, on or about May 28, 2012, Halcyon and CT agreed that Halcyon would serve as a placement agent for a \$40,000,000 private placement of CT's stock. Under the agreement, Halcyon would receive a five percent placement fee from CT for successfully finding investors for the shares. However, prior to May 28, 2012, SC and CT had already agreed that SC would purchase up to \$40,000,000 of stock and warrants in CT. As a result, Halcyon did not perform duties typically associated with being a placement agent and did not take any steps to find investors and place the CT shares.

In furtherance of the scheme, on May 28, 2012, Halcyon entered into a sham consulting agreement with OC, an affiliate of SC, in which OC agreed to provide purported consulting services to Halcyon in exchange for the kick back of the placement fee. On or about May 29, 2012, although Halcyon did not perform any placement services, CT paid Halcyon \$1,000,000 for "placing" the first tranche totaling \$20,000,000 in CT shares and warrants SC previously agreed to purchase from CT. To kick back most of the "private placement fee," Halcyon received a \$1,000,000 payment from CT and wired \$965,000 to OC, SC's affiliate.

On or about May 31, 2012 CT included the sham placement agent agreement between CT and Halcyon as an exhibit in a Form 8-K filing with the U.S. Securities and Exchange Commission ("SEC"). However, the filing did not disclose the companion sham consulting agreement that effected the kickback scheme. As a result, SC purchased CT's private placement at a discount to the price that was disclosed in the 8-K filing, and the reduced price was concealed from the investing public.

In or about late July 2012, in connection with the second investment tranche of the CT private placement, SC only invested \$15,000,000 instead of the contemplated \$20,000,000. Although Halcyon was also the purported placement agent on this deal, it made no effort to place the remaining \$5,000,000 in shares and warrants and received \$750,000 (its five percent payment) on the \$15,000,000 transaction.

On July 30, 2012, in order to funnel the same percentage (96.5 percent) of the placement agent fee back to SC, Halcyon and OC entered into another sham consulting agreement, with Halcyon agreeing to pay OC \$723,750 — or 96.5 percent of the placement fee — for OC's purported consulting services. Although Halcyon's first consulting agreement with OC was purportedly still in effect for another four months, Halcyon contracted with OC for another six-month term for consulting services, but received illusory services related to either of the sham consulting agreements. On August 9, 2012, Halcyon wired \$723,750 to OC, leaving Halcyon with \$26,250 from the placement agent fee.

Accordingly, Josephberg, Halcyon, RH, MM, and others, engaged in a fraudulent scheme to conceal a kickback of a portion of the private placement fee by pretending to act as a placement agent, accepting fees for services Halcyon did not perform, and agreeing to "purchase" illusory consulting services from OC, SC's affiliate. As a result of the foregoing conduct, Josephberg willfully violated Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) thereunder, and FINRA Rule 2010.

II. JOSEPHBERG COMMITTED FRAUD BY PLACING UNAUTHORIZED TRADES OF A DISTRESSED PENNY STOCK IN CUSTOMER ACCOUNTS

In May 2012, Josephberg made two unauthorized purchases on behalf of Halcyon customers of a penny stock issued by VHGI Holdings, Inc. ("VHGI"). At the time, VHGI was in dire financial straits and MM had made a \$150,000 bridge loan for VHGI's benefit. MM's loan to VHGI, which soon defaulted, was arranged by Josephberg. In addition, MM had recently purchased VHGI at a deep discount to the market and began to liquidate the shares. When Josephberg made these purchases in the customers' accounts, he failed to disclose this material information to the customers.

As a result of the foregoing conduct, Josephberg willfully violated Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder, and FINRA Rule 2010.

III. JOSEPHBERG FALSIFIED HALCYON'S BOOKS AND RECORDS

FINRA Rule 4511 requires members to make and preserve books and records as required under FINRA rules, the Exchange Act and the applicable Exchange Act rules. Inherent in the requirement imposed upon broker-dealers to make and preserve records is the requirement that such records be true and accurate.

From February 2011 to March 2013, Josephberg sold securities, including VHGI, in several states where he was not registered. Josephberg, MM and others at Halcyon covered up Josephberg's involvement in these sales by intentionally falsifying the Firm's books and records. They did so by opening certain customers' accounts using the identification numbers of Firm registered representatives who were registered in those states, including MM, effecting transactions under those

identification numbers, and reconciling the commissions so that Josephberg would get compensated for those transactions.

As a result of the foregoing conduct, Josephberg violated NASD Rule 3110 (for conduct prior to December 5, 2011) and FINRA Rules 4511 (for conduct on or after December 5, 2011) and 2010.

IV. JOSEPHBERG ENGAGED IN EXCESSIVE TRADING IN CUSTOMER ACCOUNTS

FINRA Rule 2111 provides in pertinent part that “[a] member or an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer's investment profile.”

FINRA Rule 2111, supplementary materials section .05(c) states that no single test defines excessive activity, but factors such as the turnover rate and the cost-equity ratio may provide a basis for a finding that a member or associated person has violated the quantitative suitability obligation. An annualized turnover ratio of six and over is presumptive evidence of excessive trading. An annualized cost-to-equity ratio in excess of 20 percent also indicates excessive trading.

FINRA Rule 2020 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.

Between June 2011 and March 2013, Josephberg, with the assistance of principals and agents of Halcyon, engaged in excessive trading in the accounts of customers RV and GL.

A. Customer RV

Between June 2011 and March 2013, Josephberg effectively controlled the trading in the brokerage account of Customer RV, who is over 75 years old and retired. During this period, Josephberg, together with principals and agents of Halcyon, effected 239 transactions in the account.

On June 30, 2011, RV's brokerage account had a value of \$68,206. By March 31, 2013, based in part on the volume of trading and commissions charged to the account, RV's brokerage account declined to \$5,189.

From June 2011 to March 2013, the turnover ratio for RV's brokerage account was 137.10 with an annualized turnover ratio of 74.78. The trading in RV's brokerage account was almost 12 times the excessive trading benchmark.

During the same period, the cost-to-equity ratio for RV's brokerage account was 131.51 percent with an annualized ratio of 71.74 percent. Josephberg's trading in RV's brokerage account was more than three and a half times the cost-to-equity ratio that indicates excessive trading.

B. Customer GL

Between June 2011 and March 2013, Josephberg effectively controlled the trading in the living trust account of Customer GL, an experienced investor with an investment objective of growth for the account. During this period, while exercising effective control over GL's living trust account, Josephberg, together with principals and agents of Halcyon, effected 153 transactions in the account.

On June 30, 2011, GL's living trust account had a value of \$42,121. By March 31, 2013, based in part on the volume of trading and commissions charged to the account, GL's living trust account declined to \$133.

From June 2011 to March 2013, the turnover ratio for GL's living trust account was 122.3 with an annualized turnover ratio of 66.71. GL's living trust account was 11 times the excessive trading benchmark.

During the same period, the cost-to-equity ratio for GL's living trust account was 130.37 percent with an annualized ratio of 71.11 percent. Josephberg's trading in GL's living trust account was more than three-and-a-half times the cost-to-equity ratio that indicates excessive trading.

As a result of the foregoing conduct, Josephberg willfully violated Rule 10b-5 of the Exchange Act, FINRA Rule 2020, NASD Rule 2310 (for conduct prior to July 9, 2012), and FINRA Rules 2111 (for conduct on or after July 9, 2012) and 2010.

V. JOSEPHBERG ENGAGED IN UNAUTHORIZED TRADING

Unauthorized trading in a customer's account is a serious breach of the standards of just and equitable principles of trade and violates Rule 2010. Between February 2011 and November 2012, Josephberg made at least 10 unauthorized trades of stock, in addition to the VHGI trades described above, in the accounts of five customers.

As a result, Josephberg violated FINRA Rule 2010.

- B. I also consent to the imposition of a bar from association with any FINRA member in any capacity.

I understand that if I am barred or suspended from associating with any FINRA member, I become 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, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension (*see* FINRA Rules 8310 and 8311).

I understand that this settlement includes a finding that I willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rules 10b-5(a), (b) and (c) thereunder and that under Article III, Section 4 of FINRA's By-Laws, this makes me subject to a statutory disqualification with respect to association with a member.

A bar or expulsion shall become effective upon approval or acceptance of this AWC.

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against me;
- 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, I specifically and voluntarily waive any right to claim bias or prejudgment of the Chief Legal Officer, 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.

I further specifically and voluntarily waive 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

I understand 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 me; and
- C. If accepted:
 - 1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
 - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. I may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. I 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 my: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its provisions voluntarily; and that no offer, threat, 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 me to submit it.

06/09/2015
Date (mm/dd/yyyy)

CS
Respondent Craig S. Josephberg

Reviewed by:

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Accepted by FINRA:

6-22-15
Date

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

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