

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013037953501**

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

RE: William Alber Hayes, Respondent
Registered Representative
CRD No. 1398962

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, William Alber Hayes ("Hayes" or "Respondent"), 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 on 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

Hayes first entered the securities industry in 1985. From approximately May 5, 2010 to August 11, 2011, Hayes was associated with former FINRA member Spyglass Securities, LLC ("Spyglass"). Beginning on July 10, 2012 and continuing to the present, Hayes has been associated with other FINRA member firms. While at Spyglass, Hayes maintained the following registrations: General Securities Representative (Series 7) and State Agent (Series 63). Hayes was and is also a registered investment advisor.

RELEVANT DISCIPLINARY HISTORY

Hayes has no relevant disciplinary history.

OVERVIEW

From October 2010 to August 2011 (the “Relevant Period”), while he was associated at Spyglass, Hayes sold 10 promissory notes totaling more than \$500,000 to eight of his investment advisory clients, three of whom were also brokerage customers. Hayes failed to perform adequate due diligence in connection with the promissory notes, and accordingly failed to learn of, or disclose, material adverse facts relating to the notes. In addition, the notes sold to his brokerage customers were unsuitable, principally because Hayes lacked a reasonable basis to recommend the notes. Hayes also guaranteed certain of the notes, violating FINRA’s prohibition against guaranteeing customers against loss in connection with a securities transaction. Hayes also separately failed to disclose that, at the time of the guarantees, he would be unable to honor them given his financial circumstances. Finally, Hayes failed to disclose, in one instance willfully, written complaints received in July 2012 and July 2013 on his Form U4. By reason of the foregoing, Hayes violated FINRA Rules 2010, 2150(b), NASD Rules 2310 and 2330(e), and willfully violated FINRA Rule 1122 and Article V, Section 2(c) of FINRA’s By-Laws.

FACTS AND VIOLATIVE CONDUCT

Hayes Made Material Omissions In Connection With The Sale of Securities

FINRA Rule 2010¹ prohibits unethical conduct, including misrepresentations and omissions to investors in connection with the sale of securities. After joining Spyglass and during the Relevant Period, Hayes began selling alternative investments in the form of promissory notes to his customers. The notes, which were securities under federal law, funded real estate projects, including some in which he and/or his partner RA had an interest. All notes described herein defaulted and as described further below, had material adverse facts that should have been, but were not, disclosed.

Note “A”

Note “A” was issued by the investment advisory firm for which Hayes worked and which he partly owned. Proceeds from the Note were to be used to purchase the office building in Kenilworth, Illinois, in which Hayes had his offices. Beginning in the fall of 2010, Hayes solicited seven of his investment advisory clients, two of whom, RB and BT, were also brokerage customers, to purchase the notes. In total, Hayes raised \$400,000 from these seven investors. Hayes failed to do adequate due diligence in connection with the investment. As a result, he failed to learn and failed to disclose the following material facts: (i) Hayes’s partner RA already owned the building through a corporation he controlled and the building had been foreclosed upon; (ii) RA had a personal judgment entered against him in the amount of \$660,597; (iii) the proposed purchase price exceeded the appraised value of the building; (iv) a \$300,000 mortgage was also being taken against the building, meaning that the total debt level could not be supported by any reasonable estimation of the value of the building; and (v) there was no realistic plan for repayment of principal at the end of the term

¹ FINRA Rule 2010, which replaced NASD Rule 2110, became effective December 15, 2008.

of the notes, making default a likely scenario.

Note "B"

Note "B" was issued by a holding company that owned property that was being developed into a shopping mall in Hammond, Indiana. In April and May 2011, Hayes solicited two of his investment advisory clients, one of whom, CJ, was also a brokerage customer, to purchase the notes. In total, Hayes raised \$65,000 from these two investors.² Hayes failed to do adequate due diligence in connection with the investment. As a result, he failed to learn and failed to disclose the following material facts: (i) the maker was likely unable to repay the notes given the existing liabilities and debt associated with the project; (ii) Hayes's partner RA had already invested \$500,000 in the project through separate investment vehicles. RA's investment had not been repaid, and hundreds of thousands of dollars in accrued interest was also due and owing to RA.

Note "C"

Note "C" was issued by a holding company that intended to purchase real property in Midlothian, Illinois. In June 2011, Hayes solicited his investment advisory client RB, who was also a brokerage customer, to purchase the note in the amount of \$50,000. Hayes failed to do adequate due diligence in connection with the investment. As a result, he failed to learn and failed to disclose the following material facts: (i) the maker of the note was likely unable to honor the terms of the note; and (2) Hayes and his partner RA would be paid a 25% fee (i.e., \$12,500 fee on a \$50,000 investment) if the deal closed. The size of the fee was material because it represented a conflict of interest that would bear on the objectivity of Hayes's recommendation.

By reason of the foregoing, Hayes violated FINRA Rule 2010.

Hayes Made Unsuitable Recommendations

NASD Conduct Rule 2310³ provides that in making a recommendation to a customer, an associated person must have reasonable grounds for believing the security is suitable for the customer on the basis of the facts, if any, disclosed by the customer as to his other securities holdings and as to his financial situation and needs. The duty of fair dealing requires that a broker have an adequate or reasonable basis, formed through investigation, for recommending an investment to a customer.

² Hayes solicited a third investor for this note at a time when Hayes was no longer associated with Spyglass or any other FINRA member.

³ NASD Rule 2310 was in effect through February 3, 2013. FINRA's new suitability rule, FINRA Rule 2111 became effective as of February 4, 2013, after the Relevant Period herein.

As discussed above, Hayes did not adequately investigate Notes “A,” “B,” or “C” and had no reasonable basis to recommend the notes to his three brokerage customers, RB, CJ, and BT. In addition, customer BT was borrowing money to make the investment and had liquidity needs, facts that Hayes knew or should have known. Accordingly, the recommendation of an illiquid, promissory note for which there was no secondary market was further not suitable for BT.

By reason of the foregoing, Hayes violated NASD Rule 2310 and FINRA Rule 2010.

Hayes Guaranteed Brokerage Customers Against Loss

NASD Rule 2330(e) and its successor FINRA Rule 2150(b)⁴ provide in relevant part that no member or person associated with a member shall guarantee a customer against loss in connection with any securities transaction.

Hayes personally guaranteed Note “A” to the investors in the note, including to brokerage customer RB in a written guarantee dated December 1, 2010, and to brokerage customer BT in a written guarantee dated August 1, 2011.

By reason of the foregoing, Hayes violated NASD Rule 2330(e) and FINRA Rules 2150(b) and 2010.

Hayes Failed To Disclose His Financial Condition At The Time of the Guarantees

At the time Hayes made the guarantees described above, he had limited net worth and was unable to satisfy the guarantees if they came due. In these circumstances, Hayes’s financial condition was a material fact that should have been, but was not, disclosed to the investors he solicited.

By reason of the foregoing, Hayes violated FINRA Rule 2010.

Hayes Willfully Failed to Amend His Form U4 and Filed An Inaccurate Form U4

FINRA Rule 1122⁵ prohibits associated persons from filing incomplete or inaccurate registration information, and requires the correction of such information. Article V, Section 2 of FINRA’s By-Laws requires that every application for registration be kept current at all times by supplementary amendments. Whenever an event occurs that would make registration information on file inaccurate or incomplete, the registrant must update their Form U4.

⁴ NASD Rule 2330(e) was in effect until December 14, 2010. FINRA Rule 2150(b), which replaced NASD Rule 2330(e), became effective December 15, 2010. Both rules are charged because the guarantees at issue here occurred before and after the rule change.

⁵ FINRA Rule 1122 became effective August 17, 2009.

Form U4 requires, in response to Question 14I(3), the disclosure of any investment-related, consumer-initiated, written complaint that alleges a sales practice violation in the past 24 months. Hayes received, via email, written complaints alleging sales practice violations from BT and from CL on July 20, 2012 and July 30, 2013 respectively arising out of the sale of the promissory notes discussed above.

Hayes recognized that the BT email was a complaint but willfully failed to amend his Form U4 within 30 days and failed to accurately answer this question on a Form U4 filing he made dated May 31, 2013. In addition, Hayes failed to amend his Form U4 to reflect the CL complaint within 30 days as required.

Based on the foregoing, Hayes willfully violated FINRA Rule 1122, FINRA Rule 2010, and Article V, Section 2(c) of FINRA's By-Laws.

* * *

In summary, Hayes violated FINRA Rules 2010, 2150(b), NASD Rules 2310 and 2330(e), and willfully violated FINRA Rule 1122, Article V, Section 2(c) of FINRA's By-Laws.

B. I also consent to the imposition of the following sanctions:

A bar from associating 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 omitted to state a material fact on a Form U4, and that under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 and Article III, Section 4 of FINRA's By-Laws, this omission makes me subject to a statutory disqualification with respect to association with a member.

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 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 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.

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:

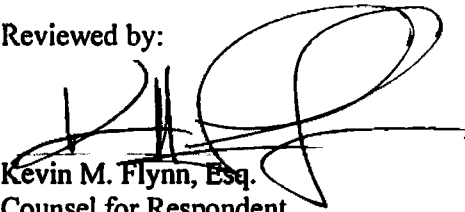
1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my disciplinary record;
3. 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.

4/16/14
Date (mm/dd/yyyy)

William Alber Hayes
William Alber Hayes, Respondent

Reviewed by:

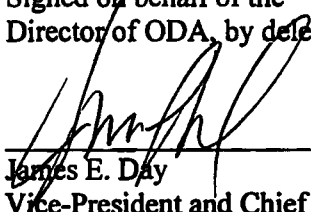


Kevin M. Flynn, Esq.
Counsel for Respondent
Kevin M. Flynn & Associates
77 West Wacker Drive, Suite 4800
Chicago, Illinois 60601
Phone: (312) 456-0240

Accepted by FINRA:

5/6/14
Date

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



James E. Day
Vice-President and Chief Counsel
FINRA Department of Enforcement
15200 Omega Drive, Third Floor
Rockville, MD 20850
Phone: (301) 258-8520
Fax: (202) 208-8090