

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013038612301**

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

RE: Halen Capital Management, Inc., Respondent
Member Firm
CRD No. 135966

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent 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 Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent 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

Halen Capital Management, Inc. ("Halen" or the "Firm") is a registered broker-dealer and has been a FINRA member since 2006. The Firm conducts a general securities business and has approximately 14 registered representatives operating out of four branch offices.

RELEVANT DISCIPLINARY HISTORY

Halen has no relevant disciplinary history.

OVERVIEW

From June 2010 through December 2013 (the "Relevant Period"), Halen participated in the sale of unregistered common stock offered by Atlas Federal Holdings Corp., now known as AtlasBanc Holding Corp. ("Atlas"), in contravention of FINRA rules pertaining to a member firm's participation in such

offerings, communications with the public, and supervisory obligations. In particular, Halen distributed Atlas private placement memoranda ("PPMs") that did not comply with FINRA rules governing member firm communications with the public, failed to ensure that certain sales to non-accredited investors complied with applicable SEC rules, and failed to file Atlas offering documents with FINRA before providing them to prospective investors after Atlas acquired and became a "control entity" of Halen in October 2012. Halen also maintained inadequate supervisory systems relating to the Firm's participation in private placements and communications with the public, and failed to obtain required annual compliance certifications from its CEO throughout the relevant period.

By reason of the foregoing, Halen violated NASD Rules 2210(d)(1)(A) and (B) and 3010, and FINRA Rules 5122(b)(2), 3130, and 2010. Halen separately violated FINRA Rule 2010 by selling securities to non-accredited investors in contravention of Section 5 of the Securities Act of 1933.

FACTS AND VIOLATIVE CONDUCT

Halen's Distribution of Confusing and Misleading Atlas Offering Documents

During the Relevant Period, Atlas described itself as an aspiring financial services company. Several of the company's executive officers – including its Chairman/CEO – were also senior executives of Halen and/or its affiliates. Atlas conducted its unregistered stock offering by means of a June 2010 PPM followed by a series of subsequent PPMs and related offering documents, each of which superseded or amended its predecessor(s).

Halen distributed these Atlas PPMs and related offering documents to investors in connection with the firm's sales of Atlas stock and – after being acquired by Atlas in October 2012 – Halen eventually became placement agent for the Atlas offering beginning in January 2013. The Atlas offering documents contained typographical and other word-usage errors, and in certain respects they were internally contradictory, confusing, or inconsistent with other contemporaneous documents available to Halen. As a result, these documents created a substantial risk that investors could be confused or misled, and in any event they were not fair and balanced and did not provide a sound basis for evaluating the facts relevant to the Atlas securities being offered. For example:

- In its June 2010 PPM, Atlas used internally inconsistent and confusing language in explaining the duration of the offering and the maximum number of days by which its board of directors had discretion to extend the termination date of the offering. In different sections, the PPM variously stated that the nominal December 31, 2010 termination date either "was subject to a 90 day extension," could be extended "an additional term of 180 days," and could be extended either for "up to an additional 90 days *or* at the discretion of our board of directors [emphasis

added].” This lack of clarity was significant because the closing of the offering was contingent on Atlas raising a certain minimum amount from investors by the termination date of the offering.¹

- In a January 2012 report which amended the prior PPMs, Atlas confusingly alternated between the past, present, and future tense in describing the company’s contemplated acquisition of a broker-dealer firm (“Firm A”). For example, in some places the report made clear that the acquisition was in the future through use of the phrase “once this transaction takes place,” but elsewhere referred to “[t]he completed acquisition” of Firm A immediately stating that “[w]e are now a very strong Company.”

- The report also stated that the combined entity would have “assets under management of close to One Billion Dollars,” elsewhere claiming that Firm A alone held “nearly one billion dollars in client assets.” However, an accompanying pro forma consolidated balance sheet for the combined entity showed only \$724 million in “client assets under management,” and a contemporaneous valuation report (not included in the shareholder report but made available to shareholders upon request) estimated Firm A’s assets under management at only \$500 million. The contemporaneous valuation report also included a financial analysis section that described both positive and negative information concerning Firm A’s financial condition, but the shareholder report failed to incorporate much of that negative information.

- In the above-referenced report Atlas represented that it had capital and subscription agreements totaling more than \$17 million. At the time of the January 17, 2012 report, however, Atlas had raised about \$2.5 million in capital (not including investments made by the Founders or companies controlled by the Founders) and approximately \$8.3 million in subscription agreements where the cash had not yet been received. Atlas was including in its total numbers pending and/or non-executed subscription agreements.

NASD Rule 2210(d)(1)(A) provided² in relevant part that all member communications with the public must be fair and balanced, must provide a sound basis for evaluating the facts in regard to any particular security, and may not omit any material fact or qualification if the omission would cause the communications to be misleading. NASD Rule 2210(d)(1)(B) provided that no member may make any false, exaggerated, unwarranted or misleading statement or claim in any communication with the public.

¹ Atlas later gave investors the option of having their invested funds returned after the company failed to raise the stated minimum amount; none of the investors exercised that option.

² NASD Rule 2210 was replaced by FINRA Rule 2210 after the Relevant Period herein.

FINRA has advised its members that "sales literature concerning a private placement that a [broker/dealer] distributes will generally be deemed to constitute a communication by that [broker/dealer] with the public, whether or not the [broker/dealer] assisted in its preparation."³

Scienter is not a required element of NASD Rule 2210.

By reason of the conduct described above, Halen violated NASD Rule 2210(d)(1)(A) & (B) and FINRA Rule 2010.

Halen Participated In the Sale of Unregistered and Non-Exempt Securities In Contravention of Section 5

Section 5 of the Securities Act of 1933 makes it unlawful to sell or offer to sell a security for which no registration statement is in effect, unless there is an exemption from registration. Rule 506 of Regulation D of the Securities Act ("Rule 506") provides a safe harbor for private offerings.

Generally, Rule 506 permits the sale of private offerings to (i) an unlimited number of "accredited investors," i.e., persons who have minimum specified levels of net worth or income, and (ii) up to 35 non-accredited investors, provided that such non-accredited investors are sophisticated, i.e., they have sufficient knowledge and experience in financial and business matters to make them capable of evaluating the merits and risks of the prospective investment.

In addition, where sales are made to non-accredited investors, such investors are required to receive additional disclosure documents. And in order to rely on the Rule 506 safe harbor, the issuer of the securities must also file a Form D notice of the offering with the SEC.

As described above, the Atlas offerings at issue herein began in June 2010 and continued through the end of 2013. The Atlas PPMs generally provided that the offerings were part of a "private offering" and were being sold in reliance on the registration exemption under Rule 506.

During the Relevant Period, Halen participated in sales of Atlas Stock to as many as 10 non-accredited investors, not all of whom were sophisticated. Moreover, the non-accredited investors were not provided with all of the written financial disclosures required to satisfy the Rule 506 safe harbor. In addition, sales were made for a portion of the Relevant Period even though Form D notices were not on file with the SEC.

By reason of the foregoing, Halen contravened Section 5 thereby violating FINRA Rule 2010.

³ FINRA Regulatory Notice 10-22 ("Regulation D Offerings") at 5 (April 2010).

Halen Failed to File the January 23, 2013 PPM with FINRA

FINRA Rule 5122 imposes certain requirements on FINRA members who offer to sell, in an unregistered private placement, a security issued by a member or a "control entity." A control entity is any entity that controls or is under common control with a member, or that is controlled by a member or its associated persons. Specifically, FINRA Rule 5122(b)(2) requires the FINRA member to file the private placement memorandum, term sheet, or other offering document with FINRA's Corporate Financing Department at or prior to the first time the document is provided to any prospective investor.

In October 2012, Atlas became the parent company of Halen. At that time, Atlas was a "control entity" of Halen and, accordingly, Halen was required to file any PPM issued by Atlas with FINRA prior to first use.

After January 23, 2013, Halen began providing to investors a copy of a January 23, 2013 Atlas PPM. Halen, however, failed to file with FINRA a copy that PPM prior to first use. By reason of the foregoing, Halen violated FINRA Rules 5122(b)(2) and 2010.

Halen Failed To Have Adequate Supervisory Systems

NASD Rule 3010 required⁴ members to establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with the applicable securities laws and regulations and with applicable NASD rules.

The supervisory system must be tailored specifically to the member's business and must address the activities of all its registered representatives and associated persons.

As described above, Halen, through its associated persons, participated in the sale of the Atlas private placement offerings and, among other things, distributed copies of Atlas PPMs. In addition, after January 23, 2013, Halen used an Atlas PPM after Atlas had become the parent of Halen without filing that PPM with FINRA.

Notwithstanding Halen's involvement in the Atlas private placements, it failed to have adequate supervisory systems in place to ensure compliance with applicable rules and regulations relating to that activity. In particular, no compliance personnel at Halen (i) adequately reviewed and vetted the PPMs to ensure that they satisfied the content standards of FINRA's advertising rules; (ii) conducted adequate due diligence to ensure that all the sales of unregistered stock of Atlas fell squarely within, and met the requirements of, the Rule 506 safe harbor for private offerings; or (iii) ensured, once Atlas became a "control entity" as defined

⁴ NASD Rule 3010 was replaced by FINRA Rule 3110 after the Relevant Period herein.

by FINRA Rule 5122, that subsequent Atlas PPMs were filed with FINRA as required.

By reason of the foregoing, Halen violated NASD Rule 3010 and FINRA Rule 2010.

Halen Failed To Make Annual CEO Certifications

FINRA Rule 3130 provides that each FINRA member shall have its chief executive officer(s) or equivalent officer(s) certify annually that the member has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable FINRA rules, MSRB rules and federal securities laws and regulations, and that the chief executive officer(s) has conducted one or more meetings with the chief compliance officer(s) in the preceding 12 months to discuss such processes.

Halen failed to have its CEO make annual supervisory certifications required by FINRA Rule 3130 for the years 2010, 2011, 2012, and 2013. By virtue of the foregoing, Halen violated FINRA Rules 3130 and 2010.

- B. Respondent also consents to the imposition of the following sanctions:
1. Censure;
 2. A fine of \$100,000;
 3. In addition, Halen shall comply with the following undertakings within the time periods specified (unless otherwise extended by FINRA staff):
 - a. Offer of Refund.
 - i. Within 45 days of the acceptance of the AWC, Halen shall provide a written notice to each investor identified in Attachment A that he or she has the right to surrender his/her shares obtained in the Atlas private offering in return for a refund of his/her original investment. The written notice must explain in plain language how the investor can accept Halen's offer of refund, cannot condition the offer on receipt of a release or other waiver of rights, and must also make clear that the offer is being made pursuant to a settlement with FINRA. The written notice must not be unacceptable to FINRA staff.
 - ii. Each investor identified in Attachment A shall have not less than 30 days from the receipt of Halen's written notice to

accept Halen's offer. In the event any investor identified in Attachment A accepts the offer in the specified time, Halen shall provide the promised refund within 30 days of acceptance of the offer. In the event any investor identified in Attachment A elects not to, or otherwise fails to accept, the offer in the specified time, Halen shall have no further obligation to such investor pursuant to this AWC.

- iii. Promptly after it has fully complied with this undertaking, but in no event later than 120 days after acceptance of this AWC, a registered principal of the Firm shall submit satisfactory proof that the Firm has complied with this undertaking, including by identifying which investors elected to accept the offer, and providing satisfactory proof that it has made the requested refunds. Such proof shall be submitted by letter addressed to Perry C. Hubbard, Esq., FINRA Department of Enforcement, 15200 Omega Drive, 3rd Floor, Rockville, MD 20850.
- iv. Acceptance of the offer of refund as set forth herein does not preclude investors from pursuing their own actions to obtain restitution or other remedies.
- v. Upon written request by Halen showing good cause, FINRA staff may extend any of the procedural dates set forth above.

b. Independent Consultant.

i. Halen shall:

- 1. Retain, within 45 days of the acceptance of this AWC, an Independent Consultant, not unacceptable to FINRA staff, to conduct a comprehensive review of the adequacy of the Firm's policies, systems and procedures (written and otherwise) and training relating to private placements, advertising, annual CEO certifications, member private offerings, and Section 5 of the Securities Act of 1933;
- 2. Exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant;
- 3. Cooperate with the Independent Consultant in all respects, including by providing staff support. Halen shall place no restrictions on the Independent Consultant's communications with FINRA staff and,

upon request, shall make available to FINRA staff any and all communications between the Independent Consultant and the Firm and documents reviewed by the Independent Consultant in connection with his or her engagement. Once retained, Halen shall not terminate the relationship with the Independent Consultant without FINRA staff's written approval; Halen shall not be in and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client privilege or other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports or documents to FINRA;

4. At the conclusion of the review, which shall be no more than 90 days after the date of the acceptance of this AWC, require the Independent Consultant to submit to the Firm and FINRA staff a Written Report. The Written Report shall address, at a minimum, (i) the adequacy of the Firm's policies, systems, procedures, and training relating to private placements, advertising, annual CEO certifications, member private offerings, and Section 5 of the Securities Act of 1933; (ii) a description of the review performed and the conclusions reached, and (iii) the Independent Consultant's recommendations for modifications and additions to the Firm's policies, systems, procedures and training; and
5. Require the Independent Consultant to enter into a written agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any other employment, consultant, attorney-client, auditing or other professional relationship with Halen, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any firm with which the Independent Consultant is affiliated in performing his or her duties pursuant to this AWC shall not, without prior written consent of FINRA staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Halen or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and

for a period of two years after the engagement.

6. Within 30 days after delivery of the Written Report, Halen shall adopt and implement the recommendations of the Independent Consultant or, if it determines that a recommendation is unduly burdensome or impractical, propose an alternative procedure to the Independent Consultant designed to achieve the same objective. The Firm shall submit such proposed alternatives in writing simultaneously to the Independent Consultant and FINRA staff. Within 30 days of receipt of any proposed alternative procedure, the Independent Consultant shall: (i) reasonably evaluate the alternative procedure and determine whether it will achieve the same objective as the Independent Consultant's original recommendation; and (ii) provide the Firm with a written decision reflecting his or her determination. The Firm will abide by the Independent Consultant's ultimate determination with respect to any proposed alternative procedure and must adopt and implement all recommendations deemed appropriate by the Independent Consultant.
7. Within 30 days after the issuance of the later of the Independent Consultant's Written Report or written determination regarding alternative procedures (if any), Halen shall provide FINRA staff with a written implementation report, certified by an officer of Halen, attesting to, containing documentation of, and setting forth the details of the Firm's implementation of the Independent Consultant's recommendations.
8. Upon written request showing good cause, FINRA staff may extend any of the procedural dates set forth above.

Respondent agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against Respondent;
- 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, Respondent specifically and voluntarily waives 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.

Respondent 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

Respondent 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 Respondent; and

C. If accepted:

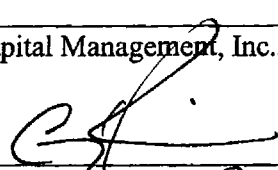
1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
4. Respondent 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. Respondent 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 Respondent's: (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.

D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that the Firm has 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 the Firm to submit it.

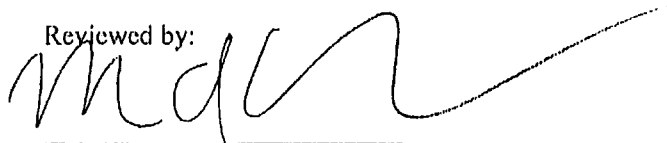
02/27/2016
Date (mm/dd/yyyy)

Halen Capital Management, Inc., Respondent

By: 

Name: CRAG RIDENHOUR
Title: CEO

Reviewed by:



Mark A. Kornfeld, Esq.
Counsel for Respondent
Baker Hostetler LLP
45 Rockefeller Plaza
New York, NY 10111-0100
212-589-4200

2/24/16

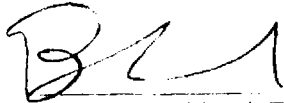
M.A.K.

Accepted by FINRA:

3/2/16

Date

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



Perry C. Hubbard, Esq.

Director

FINRA Department of Enforcement

15200 Omega Drive, 3rd Floor

Rockville, MD 20850

301-258-8543 (phone)

202-721-8391 (fax)

Schedule A

<u>Investor</u>	<u>Amount</u>
LB	\$200,000
SB	\$50,000
FL	\$50,000
MM	\$100,000
JS	\$88,900
KC	\$50,000
AW	\$62,456
JM	\$208,000
SC	\$206,375