

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2014039856801

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

RE: Jeffrey Howard Auerbach ("Auerbach")
CRD No. 2366401

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 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

Auerbach first entered the securities industry in May 1993 as a sales representative with a FINRA member firm and was approved to be a General Securities Representative (Series 7) in September 1993. After leaving this FINRA member firm in March 1994, Auerbach was not employed in the securities industry until September 1997. Between September 1997 and November 1, 2013, Auerbach was registered consecutively with multiple FINRA member firms.¹ Specifically, during the periods at issue here, Auerbach was registered with FINRA member firm vFinance Investment, Inc. (the "Firm").² Auerbach's most recent employment with a FINRA member firm was terminated on November 1, 2013 and his registration ended on that same day. Since then, Auerbach has not been registered with any FINRA member firm.

On January 23, 2014, the Firm filed an Amended Form U5 Uniform Termination Notice for Securities Industry Registration ("Form U5") with FINRA disclosing that Auerbach received a customer complaint.

¹ He was dually registered with two of those FINRA member firms from March 2012 until December 14, 2012.

² Auerbach was registered with the Firm from April 17, 2003 until December 14, 2012.



Auerbach is not currently associated with a FINRA member firm, but remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

Auerbach has no prior relevant disciplinary history in the securities industry.

OVERVIEW

Auerbach violated NASD Rule 3040 and FINRA Rule 2010 by participating in three private securities transactions without first seeking and receiving written approval from his FINRA-regulated member firm employer.

FACTS AND VIOLATIVE CONDUCT

A. Auerbach's Undisclosed Investments

In late 2008 and 2009, Auerbach invested a total of \$218,000 through private securities transactions without seeking and receiving prior approval from the Firm.

Specifically, in two separate private securities transactions in December 2008 and January 2009, Auerbach invested a total of \$200,000 in ABC, a public shell company. In return for Auerbach's \$200,000 investment, he was given shares in ABC. In September 2009, Auerbach sold his shares in ABC and realized an investment gain of \$320,000.

In addition, in February 2009, Auerbach participated in a private securities transaction by investing \$18,000 in DEF, another shell company, and, in return, received shares in DEF.

The Firm's policies and procedures during the relevant periods prohibited associates from participating in private securities transactions without the prior written approval of the Firm. Auerbach never sought written permission from the Firm prior to investing in the public shell companies nor did he later disclose these investments to the Firm.³

³ Between 2010 and 2012, Auerbach attested on five compliance questionnaires that he did not participate in any private securities transactions outside of the Firm. Specifically, on each Firm compliance questionnaire during this period, the Firm posed the following question: "[h]ave you been involved in any capacity in the purchase or sale of a security not conducted through your Broker Dealer." In response to each question, Auerbach answered "No."

**B. Auerbach Violated NASD Rule 3040 and FINRA Rule 2010
by Engaging in Undisclosed Private Securities Transactions**

NASD Rule 3040 prohibits any person associated with a member firm from "participat[ing] in any manner in a private securities transaction," unless, prior to participating in the transaction, the associated person provides "written notice to the member with which he is associated describing in detail the proposed transaction and the person's proposed role therein and stating whether he has received or may receive selling compensation in connection with the transaction."

Here, Auerbach invested \$218,000 in two public shell companies in exchange for stock without seeking and obtaining prior written approval from his FINRA-regulated employer.

Accordingly, by virtue of his conduct, Auerbach violated NASD Rule 3040 and FINRA Rule 2010.

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

- a 90-day suspension from association with any FINRA member in any capacity; and
- a fine of \$15,000.

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

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

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).

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

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.

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a cursive representation of a name.

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.
- D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I 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.



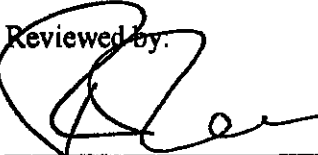
I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

6-15-15

Date


Jeffrey Howard Auerbach, Respondent

Reviewed by:



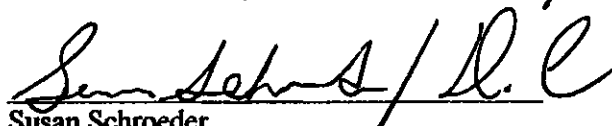
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Accepted by FINRA:

7/15/15

Date

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


Susan Schroeder
Senior Vice President and Counsel
FINRA Department of Enforcement
One World Financial Center
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