

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20140423686-01

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

RE: Avi Cohen, Respondent
CRD No. 2410714

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Avi Cohen, ("Cohen" 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 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

Cohen began his association with FINRA as a Proprietary Trader at Kidder, Peabody & Co. Incorporated on July 6, 1993. Cohen was employed at Kidder, Peabody & Co. Incorporated until May 3, 1994, after which Cohen was employed at two other investment related entities until 1999. On May 4, 1999, Cohen obtained FINRA membership for the firm he founded, Avian Securities, LLC ("AVIA" or the "firm"). According to a Form U-5 filed by AVIA on December 13, 2012, Cohen terminated his employment with AVIA on December 7, 2012. AVIA obtained approval to withdraw its membership with FINRA on February 8, 2013. Cohen was employed at AVIA during all times relevant to the violations described below. FINRA retains jurisdiction over Cohen pursuant to Article V, Section 4 of FINRA's By-Laws.

DISCIPLINARY HISTORY

Cohen has no disciplinary history.

SUMMARY

This matter arises out of a review by the Market Quality Team and the Legal Section of FINRA's Department of Market Regulation (the "staff") of the accuracy of AVIA's

advertised trading volume during the period of December 1, 2009 through November 30, 2011. As a result of its investigation, the staff determined that Cohen, the firm's Managing Partner and Compliance Officer, had ultimate supervisory responsibility yet failed to put in place a reasonable supervisory system, including written supervisory procedures, and failed to adequately supervise the firm's activity with respect to the advertising of trade volume.

FACTS AND VIOLATIVE CONDUCT

1. At all times relevant to this matter, Cohen was Managing Partner and Compliance Officer in AVIA's Boston's office. Cohen had ultimate supervisory responsibility at the firm and was responsible for putting in place a reasonable supervisory system, including written supervisory procedures reasonably designed to achieve compliance with all relevant rules and regulations regarding the firm's activities, including, but not limited to, the advertisement of trade volume. As Managing Partner, Cohen also was responsible for the supervision of the firm's Head Trader who was located in New York and who was responsible, among other things, for the firm's securities trading and advertisement of trade volume.
2. During the relevant period, most of AVIA's trade volume was advertised automatically. Traders entered trades into the firm's order management system which then advertised the volume with private service providers such as Bloomberg. However, traders could, and did, manually advertise trade volume directly into Bloomberg as well.
3. During the period of December 1, 2009 through November 30, 2011, the firm's Head Trader engaged in, and directed the traders who reported to him to, manually advertise trade volume in Bloomberg that substantially exceeded AVIA's executed trade volume. The firm's Head Trader directed his subordinate traders to over-advertise the firm's trade volume in approximately 221 instances. The average number of shares over-advertised during the review period by AVIA traders was 122,798 shares. In all, the AVIA traders, at the direction of the firm's Head Trader, over-advertised more than 23 million shares of trade volume during the review period when the firm traded less than 4 million shares.
4. The number of shares manually advertised by the AVIA traders at the direction of the firm's Head Trader had no apparent relationship to the number of shares actually traded.
5. The firm's Head Trader and the AVIA traders manually advertised trade volume that exceeded AVIA's executed trade volume in order to attract order flow to the firm.
6. During the review period, the firm was unaware of the over-advertising of trade volume by the Head Trader and other AVIA traders until contacted by the FINRA staff, after which the firm subsequently took steps to address the conduct described herein.

7. During the review period, Cohen failed to put in place a reasonable supervisory system to ensure that the trade volume the firm advertised was accurate. Cohen also failed to establish, maintain or enforce any written supervisory procedures with respect to the advertisement of trade volume. Lastly, Cohen failed to supervise the firm's Head Trader or the AVIA traders' advertisement of trade volume.
8. Cohen's failure to put in place a reasonable supervisory system or take the supervisory steps identified in paragraph 7 above allowed the firm's Head Trader and other AVIA traders to substantially over-advertise the firm's trade volume during the review period without being detected.
9. As a result of the activity described above, Cohen violated NASD Rule 3010 and FINRA Rule 2010.

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

A suspension from associating with any member of FINRA in a supervisory capacity for a period of 20 business days and a fine of \$10,000.

The fine shall be due and payable either immediately upon reassociation with a member firm following the twenty business day suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

Respondent specifically and voluntarily waives 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 suspended from associating with any FINRA member in a supervisory capacity, 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, as amended. Accordingly, I may not be associated with any FINRA member in a supervisory capacity during the period of the suspension (see FINRA Rules 8310 and 8311). Furthermore, because I am subject to a statutory disqualification during the suspension, if I remain 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

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 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, 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 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. 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 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. Respondent 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 the AWC's 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, have been made to induce me to submit it.

11/16/14
Date

Respondent

By: 
Avi Cohen

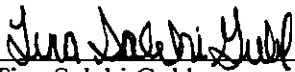
Reviewed by:

Attorney Name
Counsel for Respondent
Firm Name
Address
City/State/Zip
Phone Number

Accepted by FINRA:

11/24/14
Date

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


Tina Salehi Gubb
Chief Counsel
FINRA Department of Market Regulation