

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20150436563 01**

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

RE: Foresight Investments, LLC ("Foresight Investments"), Respondent
CRD No. 132644

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Foresight Investments 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. Foresight Investments 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

Foresight Investments has been a FINRA registered broker-dealer since 2005. It currently has fourteen registered representatives operating out of a main office located in Northbrook, Illinois and a branch office in Chicago, Illinois.

RELEVANT DISCIPLINARY HISTORY

Foresight Investments has no relevant disciplinary history.

OVERVIEW

Between April 2013 and February 2015 (the "relevant period"), Foresight Investments effected transactions involving restricted shares of microcap securities that should have raised red flags for unregistered distributions of securities or other potentially suspicious activity. The Firm, however, did not adequately investigate or analyze whether the transactions involved potentially suspicious activity, or whether they were exempt from registration requirements. Through this conduct, Foresight Investments violated FINRA Rules 3310(a) and 2010, and NASD Rule 3010(a).

FACTS AND VIOLATIVE CONDUCT

Supervisory Failures

NASD Rule 3010¹ requires every FINRA broker-dealer to establish a supervisory system and corresponding written procedures to supervise its businesses and associated persons' activities. During the relevant period, Foresight Investments' business included the receipt and liquidation of restricted microcap securities.

Section 5 of the Securities Act of 1933 prohibits the sale of securities unless the sale either is made pursuant to an effective registration statement or falls within an available exemption from registration. An adequate supervisory system must guard against the illegal sale of unregistered securities, and as stated in Regulatory Notice 09-05:

Before selling securities in reliance on an exemption, a firm must take reasonable steps to ensure that the transaction qualifies for the exemption. This includes taking whatever steps are necessary to ensure that the sale does not involve an issuer, a person in a control relationship with an issuer, or an underwriter with a view to offer or sell the securities in connection with an unregistered distribution.²

Regulatory Notice 09-05 also advised member firms that they could not rely on third parties to discharge their supervisory obligations under Section 5. FINRA stated specifically that:

. . . firms cannot rely on outside counsel, clearing firms, transfer agents, issuers, or issuer's counsel to discharge their obligations to undertake an inquiry. Moreover, the fact that securities have been issued by a transfer agent without a restrictive legend, or have been put into trading status by a clearing firm does not mean that those securities can be resold immediately and without limitation under the Securities Act.³

During the relevant period, Foresight Investments affected numerous transactions involving restricted shares of microcap securities in the account of a long-standing customer of the Firm (the "microcap transactions"). The Firm liquidated 7.8 million shares that were deposited in certificated form into one of this customer's accounts, and the value of these transactions was approximately \$4.3 million.

¹ NASD Conduct Rule 3010 was in effect until December 1, 2015, when it was superseded by FINRA Rule 3110.

² FINRA Reg. Notice 09-05, "Unregistered Resales of Restricted Securities" (Jan. 2009).

³ See Regulatory Notice 09-05, at 9.

In connection with the microcap transactions, the Firm failed to adequately investigate the facts surrounding those transactions, missed numerous red flags, and otherwise failed to conduct the review required by its own Written Supervisory Procedures ("WSPs") and its obligations with respect to its AML Compliance Program. For example:

- The Firm requested certain information from the customer with respect to the microcap transactions, but did not review this information to determine the accuracy of the representations provided by the customer.
- The Firm did not adequately review documents provided by the customer with respect to the microcap transactions and, as a result, failed to recognize numerous red flags, including inconsistencies between these documents and other information that the customer provided regarding the microcap transactions.
- The Firm did not conduct a reasonable searching inquiry into whether the certificated, unregistered securities could be freely traded based on applicable exemptions, in that the Firm relied exclusively on representations by the issuer's counsel, rather than conducting a review based on independent sources.
- The Firm relied upon third parties, including opinion letters from seller's counsel and/or issuer's counsel regarding whether shares could be traded, rather than conducting its own independent analysis.

Through its above-noted failures, Foresight Investments failed to establish and implement an adequate supervisory system to detect and prevent violations of Section 5 related to transactions of microcap securities, thereby violating NASD Rule 3010(a) and FINRA Rule 2010.

Anti-Money Laundering Deficiencies

FINRA Rule 3310 requires every FINRA broker-dealer to develop and implement a written anti-money laundering ("AML") program that is tailored to fit the broker-dealer's business and is "reasonably designed to achieve and monitor the member's compliance with the requirements of the Bank Secrecy act (31 U.S.C. 5311, *et seq.*), and the implementing regulations promulgated thereunder by the Department of the Treasury."⁴ This program must include procedures for monitoring transactions to identify potentially suspicious activity, investigating potentially suspicious activity, and reporting activity that the broker-dealer has reason to suspect is unlawful or lacks an apparent lawful purpose.⁵

⁴ FINRA Rule 3310.

⁵ 31 C.F.R. § 1023.320(a)

Although Foresight Investments' written AML Compliance Program required it to monitor for potentially suspicious activity, the firm did not adequately investigate the concerns noted above to assess whether filing a suspicious activity report was warranted. Additionally, the Firm failed to report potential red flags as required by its AML Compliance Program. Through this conduct, Foresight Investments violated FINRA Rules 3310(a) and 2010.

B. Foresight Investments also consents to the imposition of the following sanctions:

- Censure
- A fine in the amount of \$20,000.⁶

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

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

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

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against it;
- 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.

⁶ Pursuant to the General Principles applicable to all Sanction Determinations contained in the Sanction Guidelines, FINRA imposed a lower fine in this case after considering, among other things, the Firm's revenues and financial resources. See FINRA Notice to Members 06-55 (Sep. 2006).

Further, Foresight Investments 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.

Foresight Investments 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

Foresight Investments 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 Foresight Investments; and
- C. If accepted:
 - 1. this AWC will become part of Foresight Investments' 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. Foresight Investments 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. Foresight Investments 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 Foresight Investments': (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. Foresight Investments may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Foresight Investments 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 understood all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that the Respondent 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.

5/13/2016
Date (mm/dd/yyyy)

David B. Keefe
Respondent
Foresight Investments, LLC

By: DAVID B. KEEFE

Reviewed by:

[Signature]
Steven B. Nagler, Esq.
Steven B. Nagler, Ltd.
601 Skokie Blvd., Suite 504
Northbrook, IL 60062

Accepted by FINRA:

June 27, 2016
Date

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

[Signature]
Christopher M. Burky
Senior Regional Counsel
FINRA Department of Enforcement
55 W. Monroe Street, Suite 2700
Chicago, IL 60603