

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2018057457101**

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

RE: CFD Investments, Inc.
Member Firm
CRD No. 25427

Matthew Bahrenburg
General Securities Principal
CRD No. 5295661

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondents CFD Investments, Inc. and Matthew Bahrenburg 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 Respondents alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondents 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

CFD Investments Inc. ("CFD") has been a FINRA member firm since 1990. CFD is an introducing broker-dealer with its main office in Kokomo, Indiana. CFD employs 166 registered representatives, operating from 122 branch office locations.

Matthew Bahrenburg entered the securities industry in 2007 when he associated with CFD and was registered as a General Securities Principal and General Securities Representative. Bahrenburg has served as CFD's chief compliance officer from 2012 to the present.

RELEVANT DISCIPLINARY HISTORY

CFD and Bahrenburg do not have any relevant disciplinary history with the Securities and Exchange Commission, any state securities regulators, FINRA, or any other self-regulatory organization.

OVERVIEW

In November 2014, CFD, through Bahrenburg, approved an oil and gas private placement offering for sale to its customers. The issuer, Payson Petroleum, Inc. was the subject of an April 2014 jury verdict in excess of \$9 million and was in financial distress. From March 2015 to February 2016, CFD sold interests in Payson to 31 of its retail customers, without conducting reasonable due diligence into the Payson offering. By failing to conduct reasonable due diligence into the Payson offering, CFD and Bahrenburg violated NASD Rule 3010, and FINRA Rules 3110 and 2010.

In addition, CFD sold interests in Payson to its customers without having a reasonable basis for making recommendations to purchase this private placement. CFD customers who invested in Payson lost their investments when Payson filed for bankruptcy in 2016. Through this conduct, CFD violated FINRA Rules 2111 and 2010.

CFD also failed to disclose to its customers that it received additional compensation from Payson beyond the disclosed sales compensation. This conduct violated FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

FINRA Rule 3110, and its predecessor NASD Rule 3010,¹ require that a member firm establish, maintain, and enforce a supervisory system and written procedures that are reasonably designed to supervise the activities of each associated person and achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.

Broker-dealers are obligated to conduct a reasonable investigation of private placement investments before offering and recommending them to their customers. FINRA Notice to Members 10-22 reminded firms of their obligations to conduct a reasonable investigation of the issuer and the securities they recommend. Specifically, this Notice advised firms that they should conduct a reasonable investigation concerning: (1) the issuer and its management; (2) the business prospects of the issuer; (3) the assets held by or to be acquired by the issuer; (4) the claims being made by the issuer; and (5) the intended use of the proceeds of the offering.² A more thorough investigation is required for smaller companies of recent origin, and the presence of red flags should “alert the broker to the need for further inquiry.”³ Generally, a firm “‘may not rely blindly upon the issuer for information concerning a company,’ nor may it rely on the information provided by the issuer and its counsel in lieu of conducting its own reasonable investigation.”⁴ To demonstrate that it has completed a reasonable investigation, a

¹ FINRA Rule 3110 superseded NASD Rule 3010, effective December 1, 2014.

² FINRA Regulatory Notice 10-22, *Regulation D Offerings, Obligation of Broker-Dealers to Conduct Reasonable Investigations in Regulation D Offerings* (April 2010).

³ *Id.* at 3.

⁴ *Id.* at 4.

broker-dealer should retain records documenting both the process and results of its investigation.⁵

FINRA Rule 2111 requires member firms and their associated persons to have a reasonable basis to believe that a recommended securities transaction is suitable for the customer. A reasonable due diligence process is essential to ensuring that firms and their associated persons have a reasonable basis to make recommendations in private placement investments. Specifically, the reasonable-basis suitability obligation under FINRA Rule 2111 requires:

a member or associated person to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least some investors. In general, what constitutes reasonable diligence will vary depending on, among other things, the complexity of and risks associated with the security or investment strategy and the member's or associated person's familiarity with the security or investment strategy. A member's or associated person's reasonable diligence must provide the member or associated person with an understanding of the potential risks and rewards associated with the recommended security or strategy. The lack of such an understanding when recommending a security or strategy violates the suitability rule.⁶

A firm that has failed to conduct reasonable due diligence of a private placement may thus lack a reasonable basis to make the recommendation in that security to any customer, regardless of the customer's wealth, willingness to bear risk, age, or other individual characteristics.

A. The Payson Offerings

Payson was an oil and gas issuer incorporated in Texas in 2008, which began operating in 2011 with its affiliate Payson Operating, LLC. Payson raised millions of dollars through various limited partnership offerings. One of the key selling features of Payson's offerings was that Payson committed to investing a significant portion – usually between 10% and 20% – of the required capital for the project. Payson referred to this commitment as having “skin in the game,” and represented that by putting its own money at risk, Payson was aligning its interests with those of its investors.

In June 2012, an investor sued Payson, alleging misrepresentations and misuse of investment proceeds. In April 2014, a jury found that Payson and its principal had committed (among other violations) securities fraud, real estate fraud, and common law fraud, and entered a verdict in favor of the plaintiff investor. The jury specifically found that Payson and Griffin misrepresented their experience in the oil and gas industry and their financial ability to drill and complete an oil well in an effort to secure investor

⁵ *Id.* at 7.

⁶ FINRA Rule 2111.05(a) (Supplementary Material to Rule 2111).

funds. The investor was awarded damages in excess of \$9 million. Payson appealed the verdict, and settled in October 2015 by agreeing to pay the plaintiff \$3.3 million.

In June 2016, four months after CFD's last sale of offering, Payson filed for bankruptcy, which was subsequently converted to a Chapter 7 liquidation. On November 23, 2016, the SEC filed a complaint against the principals of Payson, alleging fraud, including misrepresentations and omissions to investors in connection with various Payson offerings sold between November 2013 and July 2014. The principals thereafter consented to the facts as alleged in the complaint and were ordered to pay approximately \$7.7 million in fines, disgorgement, and interest.

B. CFD and Bahrenburg failed to conduct reasonable due diligence on the Payson offerings in violation of NASD Rule 3010, and FINRA Rules 3110 and 2010.

In 2014, CFD's CEO met executives from Payson at an industry conference, and discussed Payson's new series of private offerings for the drilling and completion of four wells in Grayson County, Texas. He asked Bahrenburg to investigate this investment and determine whether it would be suitable to offer to the firm's accredited investors.

CFD's written supervisory procedures provided that the firm would not approve a private placement until Bahrenburg, or his designee, conducted initial due diligence. The procedures required that the approval process be documented, and included a non-exhaustive list of information and documents that should be reviewed. This list included review of the issuer's financial records, the prospectus and related marketing materials, analysis of the issuer's offerings from the prior five years and the backgrounds of the parties associated with the issuer, and review of any available third-party opinions about the offering. Additionally, the firm's procedures stated that CFD will engage in ongoing due diligence for as long as the offering is approved by the firm, which is to include a review of updated offering documents and financial statements.

Per the firm's written procedures, Bahrenburg was responsible for conducting due diligence on Payson, and was ultimately responsible for approving the Payson offerings for sale by CFD representatives. Bahrenburg, however, did not comply with the firm's written procedures pertaining to due diligence. Instead, in November 2014, he approved the Payson offerings for sale to the firm's accredited investors, based only on a review of documents provided by Payson and interviews of Payson personnel. This due diligence process was not reasonable for the following reasons:

First, CFD, through Bahrenburg, did not reasonably assess Payson's financial condition. The financial documents that Payson provided to CFD painted a bleak picture, and showed that the company had substantial liabilities and negative net income of more than \$1.5 million in 2013.

In connection with Payson's audited financial statements for 2013, Payson's independent auditor advised that Payson "has suffered recurring losses from operations from inception

and pending litigation that raise substantial doubt about its ability to continue as a going concern,” and included a “going concern” note that detailed these financial difficulties. U.S auditing standards require this disclosure when there are conditions or events that raise substantial doubts about the company’s continued financial viability. Despite these significant red flags about Payson’s ability to continue business operations, Bahrenburg failed to request additional financial information from the firm, or to verify its ability to make its promised capital contribution of between 10% and 20% of the offering, or up to \$6,650,000.

Second, CFD, through Bahrenburg, did not reasonably investigate the circumstances of the 2012 investor lawsuit, which Bahrenburg knew had resulted in a \$9 million jury verdict in July 2014. Bahrenburg did not review the complaint or any other substantive pleadings from the litigation. As a result, Bahrenburg was not familiar with the allegations made or the specifics of the verdict entered, which included factual determinations that the principals of Payson made misrepresentations to investors about their experience in the oil and gas industry, and Payson’s ability to afford the costs associated with drilling an oil well. He was also unaware that Payson’s principal had submitted an affidavit in connection with the appeal advising that Payson’s net worth was only \$1,089,853, and that Payson had posted 50% of that amount as an appellate bond. When representatives of CFD discovered the lawsuit through their own due diligence, Bahrenburg and CFD reassured the representatives that they were aware of the lawsuit, had evaluated the merits of the lawsuit, and still approved selling the offering to customers.

Third, CFD, through Bahrenburg, did not review Payson’s prior offerings, notwithstanding that CFD’s written procedures mandate such a review. As noted above, a hallmark of Payson offerings was its promise to invest its own capital. Payson, however, lacked the financial ability to make the capital contributions in its prior offerings. A review of those offerings would have alerted CFD to this issue.

Fourth, CFD, through Bahrenburg, failed to conduct any independent review or assessment of the project generally, and instead simply accepted the information and representations provided by the issuer. For example, CFD did not take any steps to verify that the fees and costs Payson intended to pay for drilling the subject wells were fair and reasonable. Payson was utilizing an affiliated entity to conduct this work, so it was particularly important to ensure that Payson was not overpaying for these costs. Further, when Payson advised CFD in October 2015 that it had begun the process of drilling the subject wells, CFD did not attempt to verify the accuracy of that representation. CFD representatives were still selling the offering to customers at that time. The drilling of the subject wells, in fact, never began.

Fifth, Bahrenburg and CFD failed to conduct any ongoing due diligence, despite that it was required by CFD’s written procedures. For instance, CFD did not request, obtain or review Payson’s 2014 audited financial information. CFD continued to sell the offering until February 2016.

Finally, Bahrenburg did not document his due diligence process or his analysis of the Payson offerings.

By virtue of the foregoing, the due diligence conducted by CFD and Bahrenburg between September 2014 and February 2016 was not reasonable. Moreover, CFD and Bahrenburg failed to document the limited due diligence that they did conduct. By virtue of the foregoing, CFD and Bahrenburg violated NASD Rule 3010 and FINRA Rules 3110 and 2010.

C. CFD lacked a reasonable basis to recommend the Payson offerings to customers in violation of FINRA Rule 2111 and 2010.

CFD approved the first Payson private offering for sale by its representatives in November 2014. Payson did not raise sufficient capital from this offering, and thus offered two subsequent private placements that were identical to the first. In each of these offerings, Payson represented that it would invest its own capital despite lacking the financial ability to meet these commitments. Between March 2015 and February 2016, CFD recommended and sold Payson offerings to 31 accredited investors who invested approximately \$2.2 million. Payson paid CFD and its representatives \$198,100 in commissions for these sales. These 31 customers lost all or substantially all of their investments as a result of Payson's bankruptcy in 2016.

As set forth above, CFD failed to conduct reasonable due diligence on the Payson offerings despite the presence of multiple red flags. As a result, CFD was not aware of Payson's precarious financial position, which was exacerbated by the \$9 million jury verdict in July 2014. CFD was also not aware that Payson lacked the financial ability to meet its commitment to invest its own funds in the offerings.

Because of its failure to conduct reasonable due diligence of the Payson offerings, CFD failed to make a reasonable determination as to whether Payson was suitable for any class of investor. Therefore, CFD had no reasonable basis to recommend the Payson offerings to its customers, even accredited investors, and thereby violated FINRA Rules 2111 and 2010 by recommending and selling these offerings to 31 customers.

D. CFD failed to disclose to customers that it was receiving additional compensation from Payson as a "sponsor" of CFD, in violation of FINRA Rule 2010.

FINRA Rule 2010 states a broad ethical principle that members "shall observe high standards of commercial honor and just and equitable principles of trade." A violation of FINRA Rules 3110 and 2111 also constitute a violation of FINRA Rule 2010. Moreover, a negligent misstatement or omission of material fact to a customer in connection with the sale of securities is a violation of FINRA Rule 2010. An omitted fact is material if there is a substantial likelihood that a reasonable investor would consider the omitted fact important in making an investment decision.

Since 2002, CFD has maintained a sponsorship program whereby companies (such as Payson) can become a designated “sponsor” by CFD if they make a financial contribution to the firm. Sponsors, depending on their contribution level, have access to firm representatives, and possibly speaking roles at firm conferences. The money raised in the sponsorship program typically pays for firm conferences, which occur approximately three times a year.

Payson made a \$2,500 contribution to CFD’s sponsorship program in 2014, prior to CFD’s approval of its offerings for sale by the firm’s representatives. After this approval, Payson’s sponsorship contribution agreement, according to CFD’s president, required Payson to pay CFD 1% of all gross sales through CFD, in addition to the sales commissions that were otherwise due. In 2015, these contributions totaled approximately \$20,000.

CFD did not disclose Payson’s sponsorship status or the amount of revenue it was entitled to receive under this arrangement to CFD’s investors, and it was not disclosed in Payson’s offering documents. Instead, CFD provided only a generic disclosure that “certain vendors” assisted CFD with financing conferences and training programs, and that CFD would provide further information at the request of the customer. CFD’s failure to disclose the alternate, unconventional compensation arrangement with Payson was a material omission to investors in the Payson offerings, as it would have evidenced a possible conflict of interest.

By virtue of the foregoing, CFD violated FINRA Rule 2010.

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

CFD Investments, Inc. consents to the following sanctions:

- 1) Censure;
- 2) A forty five (45) calendar day suspension of any and all private placement activities; and
- 3) Partial restitution to affected customers in the total amount of \$750,000;⁷

Matthew Bahrenburg consents to the following sanctions:

- 1) A forty-five (45) calendar day suspension from association with any FINRA member firm in a principal capacity; and
- 2) A \$5,000 fine.

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

⁷ FINRA imposed partial restitution and no fine after considering, among other things, the Firm's financial resources. (See FINRA Sanction Guidelines, General Principles Applicable to All Sanction Determinations, No. 1.)

Respondent Bahrenburg understands that if he is barred or suspended from associating with any FINRA member in a principal capacity, he becomes 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, Respondent Bahrenburg may not be associated with any FINRA member in a principal capacity, during the period of the bar or suspension. See FINRA Rules 8310 and 8311. Furthermore, because Respondent Bahrenburg is subject to a statutory disqualification during the suspension, if he remains associated with a Member Firm in a non-suspended capacity, an application to continue that association may be required.

Respondents specifically and voluntarily waive any right to claim an inability to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

Restitution is ordered to be paid by CFD Investments, Inc., to the customers listed on Attachment A hereto in the total amount of \$750,000.

A registered principal on behalf of Respondent Firm shall submit satisfactory proof of payment of restitution (separately specifying the date and amount of each paid to each customer listed on Attachment A) or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted by email to:

EnforcementNotice@FINRA.org from a work-related account of the registered principal of Respondent CFD Investments, Inc. The email must identify the Respondent and the case number and include a copy of the check, money order or other method of payment. This proof shall be provided by email to EnforcementNotice@FINRA.org no later than 120 days after acceptance of the AWC.

If for any reason Respondent CFD Investments, Inc. cannot locate any customer identified in Attachment A after reasonable and documented efforts within 120 days from the date the AWC is accepted, or such additional period agreed to by a FINRA staff member in writing, Respondent CFD Investments, Inc. shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property or abandoned property fund for the state in which the customer is last known to have resided. Respondent CFD Investments, Inc. shall provide satisfactory proof of such action to the FINRA staff member identified above and in the manner described above, within 14 calendar days of forwarding the undistributed restitution to the appropriate state authority.

The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

Restitution payments to customers shall be preceded or accompanied by a letter, not unacceptable to FINRA staff, describing the reason for the payment and the fact that the payment is being made pursuant to a settlement with FINRA and as a term of this AWC.

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

II.

WAIVER OF PROCEDURAL RIGHTS

Respondents specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against them;
- 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, Respondents 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.

Respondents 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

Respondents 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 Respondents; and
- C. If accepted:

1. this AWC will become part of Respondents' permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondents;
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. Respondents 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. Respondents 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 Respondents': (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. Respondents may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they 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.

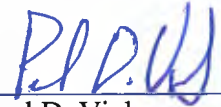
The undersigned, on behalf of Respondent CFD, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce it to submit it.

CFD Investments, Inc.
Respondent

8-14-20
Date

By: Brent Owens
Print Name: Brent Owens
Title: President

Reviewed by:



Paul D. Vink
Counsel for Respondent CFD Investments, Inc.
Bose, McKinney, & Evans, LLP
111 Monument Circle, Suite 2700
Indianapolis, Indiana 46204

Respondent Bahrenburg certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; Respondent Bahrenburg has agreed to the AWC's provisions voluntarily; and 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 him to submit this AWC.

8-14-20
Date



Matthew Bahrenburg
Respondent

Reviewed by:



Paul D. Vink
Counsel for Respondent Matthew Bahrenburg
Bose, McKinney, & Evans, LLP
111 Monument Circle, Suite 2700
Indianapolis, Indiana 46204

Accepted by FINRA:

August 24, 2020
Date

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



Roger J. Kiley
Senior Counsel
FINRA
Department of Enforcement
55 W. Monroe Street, Suite 2700
Chicago, Illinois 60603

Attachment A

Customer Designation	Restitution Amount
1	\$ 8,711.31
2	\$ 8,275.74
3	\$ 33,102.97
4	\$ 82,757.42
5	\$ 12,413.61
6	\$ 17,422.61
7	\$ 8,711.31
8	\$ 82,757.42
9	\$ 16,551.48
10	\$ 8,275.74
11	\$ 8,711.31
12	\$ 10,453.57
13	\$ 8,711.31
14	\$ 8,711.31
15	\$ 8,275.74
16	\$ 17,422.61
17	\$ 33,102.97
18	\$ 16,551.48
19	\$ 34,845.23
20	\$ 33,974.10
21	\$ 16,551.48
22	\$ 34,845.23
23	\$ 16,551.48
24	\$ 32,406.06
25	\$ 104,535.69
26	\$ 34,845.23
27	\$ 8,275.74
28	\$ 16,551.48
29	\$ 8,275.74
30	\$ 17,422.61

Statement of Corrective Action

This Corrective Action Statement is submitted by the Respondent. It does not constitute factual or legal findings by FINRA, nor does it reflect the view of FINRA, or its staff.

In connection with the FINRA AWC relating to CFD Investments, Inc. ("CFD") relating to Matter No. 2018057457101, CFD submits this statement of corrective action.

Since the matter of Payson Petroleum developed, CFD has significantly curtailed its activities relating to private placement investments. Though the firm reserves the right to utilize private placement investments in the future, in the recent history of the firm, the private placement activity has been limited to 1031 tax advantaged exchanges, and then on a case by case basis, and not as a generally approved offering for use by the firm.

CFD has implemented the use of IA Insight, which is a software program that documents that the reviewing principal and all financial professionals selling a particular offering in the REIT, DPP or private placement space be familiar with the general circumstances surrounding the particular investment. We also require training of financial professionals that engage in offerings of packaged products.

The firm has taken steps to provide for better documentation of due diligence reviews, including the issuance of an approval memorandum which identifies in basic terms what reviews were conducted in connection with the completion of due diligence relating to a private placement investment.