

NASD
OFFICE OF HEARING OFFICERS

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REGISTRATION & DISCLOSURE

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

INVESTPRIVATE, INC. (BD No. 103737),

SCOTT MATHIS (CRD No. 1362203),

RONALD ROBBINS (CRD No. 400704), and

DONALD GERAGHTY (CRD No. 1659545),

RESPONDENTS.

Disciplinary Proceeding
No. C10040052

Hearing Officer - SNB

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: May 23, 2007

INTRODUCTION

Disciplinary Proceeding No. C10040052 was filed on June 14, 2004, by the Department of Enforcement of NASD ("Complainant"). Complainant filed two amended complaints, the latest being the Second Amended Complaint filed on February 4, 2005 (the "Complaint"). InvestPrivate, Inc. ("InvestPrivate" or the "Firm"), Scott Mathis ("Mathis"), Ronald Robbins ("Robbins") and Donald Geraghty ("Geraghty") (collectively "Respondents") submitted an Offer of Settlement ("Offer") to Complainant on May 10, 2007. Pursuant to Code of Procedure Rule 9270(e), the Complainant and the National Adjudicatory Council ("NAC") Review Subcommittee or the Office of Disciplinary Affairs ("ODA") have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to Code of Procedure Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

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Under the terms of the Offer, Respondents have consented, without admitting or denying
the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, to (a) the severance of, and a full hearing concerning, the Fifth, Six and Seventh Causes asserted in the Complaint, (b) the entry of findings and violations consistent with the remaining allegations of the Complaint,¹ and (c) the imposition of the sanctions set forth below. Respondents fully understand that this Order will become part of their permanent disciplinary record and may be considered in any future actions brought by NASD.

¹ In connection with the Offer, the following allegations in the Complaint will be withdrawn with prejudice:

- the allegations in the First and Second Causes of Complaint
 - (i) that InvestPrivate and Mathis' misconduct violated Section 10(b) and Rule 10b-5 thereunder of the Securities Exchange Act, Section 17(a)(1) and 17(a)(3) of the Securities Act and NASD Conduct Rule 2120; and
 - (ii) that the omissions described in paragraphs 33(b), (c), and (e) – (j) and paragraphs 36(a)(i), 36(a)(iii), and 36(b) – (f) violated Section 10(b) and Rule 10b-5 thereunder of the Securities Exchange Act, Section 17(a) of the Securities Act and NASD Conduct Rules 2120 and 2110;
- the allegations in paragraphs 46(c), (d) and (e) of the Third Cause of the Complaint;
- the entire Fourth and Ninth Causes of Complaint (paragraphs 51 – 57 and 84 – 87 of the Complaint);
- the allegations against Mathis and Geraghty that they violated Securities Exchange Act Section 15(c)(2) and Rule 15c2-4 in the Eleventh Cause of Complaint;
- the allegations against Mathis that he violated Securities Exchange Act Rule 15c3-1 in the Twelfth Cause of Complaint;
- the allegations against Geraghty that he violated NASD Conduct Rule 3110 in the Thirteenth Cause of Complaint;
- the allegations in paragraph 117(c) of the Fourteenth Cause of the Complaint; and
- the allegations against Geraghty in paragraphs 117(b), (d), (e) and (f) of the Fourteenth Cause of the Complaint.

The remainder of the First, Second, Third, Eighth, Tenth, Eleventh, Twelfth, Thirteenth and Fourteenth Causes of Complaint still stand.

BACKGROUND

InvestPrivate

InvestPrivate has been an NASD member since June 8, 2000. InvestPrivate is a wholly owned subsidiary of Diversified Biotech Holdings Corporation, formerly known as InvestPrivate Holdings Corporation (“Holdings”), which was incorporated in or around November of 2000. Holdings is also the majority shareholder of InvestBio, Inc., formerly known as Diversified Biotech Group, Inc. (“InvestBio”), which was incorporated in or around March of 2001. Holdings is primarily a holding company for InvestPrivate and InvestBio, and does not independently generate revenues or conduct any substantial business. Prior to the commencement of this proceeding, the combined revenues for Holdings, InvestBio and InvestPrivate have been generated virtually entirely by InvestPrivate. InvestPrivate has no relevant disciplinary history.

Unless indicated otherwise, the relevant period for the findings set forth herein against InvestPrivate is from June 8, 2000 to February 4, 2005.

Mathis

Mathis is the Chief Executive Officer, Chairman, Secretary, and Treasurer of InvestPrivate, Holdings, and InvestBio. The PPMs for the “InvestPrivate Offering” disclosed that he “will be able to significantly control all of the company’s decisions and operations, including the election of directors and significant corporate transactions.”

Mathis first became registered with NASD as a General Securities Representative (“GSR”) through a member firm on or about May 23, 1985. Mathis first became registered as a General Securities Principal (“GSP”) through former member firm The Boston Group LP (BD No. 37652) (“the Boston Group”) on November 27, 1995, and was registered as a GSP through that firm until July 24, 1998. He was also registered as a GSR through the Boston Group from September 5, 1995

until July 24, 1998. Mathis was registered as a GSP and GSR through member firm National Securities Corporation (BD No. 7569) ("National") from July 24, 1998 until September 18, 2000. He has been registered as a GSR and a GSP through InvestPrivate since June 8, 2000. Mathis has no relevant disciplinary history.

Unless indicated otherwise, the relevant period for the findings set forth herein against Mathis is from August 16, 1996 to February 4, 2005.

Robbins

Robbins is Executive Vice President and Chief Operating Officer of Holdings. He first became registered with a former member firm as a GSR on or about November 29, 1973. He was most recently registered with NASD as an Investment Company Representative through a member firm from September 22, 1992 until July 5, 1999. Robbins has been associated with InvestPrivate since September 10, 2001 by virtue of his involvement in the management of InvestPrivate's securities and investment banking businesses, through his employment by Holdings. However, he has never been registered with NASD through InvestPrivate in any capacity. Robbins has no disciplinary history.

Unless indicated otherwise, the relevant period for the findings set forth herein against Robbins is from September 10, 2001 to February 4, 2005.

Geraghty

Geraghty is InvestPrivate's Director of Compliance. He first became registered with NASD as a GSR through a member firm on May 21, 1987. He first became registered as a GSP through a former member firm on June 25, 1999. He has been registered as a GSR and a GSP through InvestPrivate since June 28, 2000. Geraghty has no disciplinary history.

Unless indicated otherwise, the relevant period for the findings set forth herein against Geraghty is from June 28, 2000 through February 4, 2005.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

1. Since their inception, InvestPrivate and its affiliates have lost substantial amounts of money, and have relied on funds raised from investors in private placement offerings to remain in operation.
2. InvestPrivate has raised money for itself and its affiliates through two offerings: (i) the "InvestPrivate Offering" raised approximately \$10,242,765 for InvestPrivate or Holdings through seven virtually continuous offering "rounds" between June of 2000 through February of 2003; and (ii) the "InvestBio Offering" raised approximately \$7,307,165 for InvestBio through three virtually continuous offering "rounds" from August of 2001 through August of 2002.
3. There have been two types of offering "rounds": (i) "PPM" offerings conducted in reliance upon Rule 506 of Regulation D under the Securities Act and Section 4(2) of the Securities Act ("Section 4(2)"), for which PPMs were issued and disseminated to prospective investors; and (ii) "Subscription" offerings conducted in reliance upon Section 4(2), for which no disclosure documents were issued.

The InvestPrivate Offering

4. Since becoming an NASD member on June 8, 2000, InvestPrivate has disseminated, or caused to be disseminated, three PPMs, dated June 6, 2000 (the "2000 InvestPrivate PPM"), June 12, 2001 (the "2001 InvestPrivate PPM"), and November 4, 2002 (the "2002 InvestPrivate PPM"), to prospective investors in connection with the InvestPrivate Offering.

5. InvestPrivate was the issuer for the offering “round” conducted pursuant to the 2000

InvestPrivate PPM, and was the placement agent for the offering “rounds” conducted pursuant to the 2001 and 2002 InvestPrivate PPMs. Although Holdings was the issuer for the latter two offerings, a substantial portion of the proceeds of those offerings was used by InvestPrivate.

The InvestBio Offering

6. InvestBio is a combination of an investment vehicle that invested in biotechnology companies and an operating company whose primary businesses have included managing a mutual fund (the InvestBio Opportunity Fund) and publishing research and a newsletter (InvestBio PRO) devoted to biotechnology investing. Both the mutual fund and the InvestBio PRO newsletter were terminated in or around January of 2004.
7. InvestPrivate disseminated two PPMs, dated October 1, 2001 (the “2001 InvestBio PPM”) and February 15, 2002 (the “2002 InvestBio PPM”) to prospective investors in connection with the InvestBio Offering. In addition, the 2002 InvestPrivate PPM, which represented that an unspecified portion of the proceeds of the 2002 InvestPrivate Offering would be used by InvestBio, discussed InvestBio in detail.
8. InvestBio invested \$1,050,000 in private placement investments. However, Mathis transferred the bulk of the proceeds of the InvestBio Offering to an InvestPrivate securities account that he controlled. At its peak in late 2001 and early 2002, this account held over \$3.5 million in securities. Mathis used this account both to trade publicly traded biotechnology stocks and to pay expenses of InvestBio and its affiliates.
9. Mathis’s trading of the InvestBio Offering proceeds generated approximately \$180,000 in commissions to InvestPrivate (half of which were paid out to Mathis personally).

The MILS Offering

10. The “MILS Offering” raised \$2,790,968.29 on behalf of MILS Technology PLC (“MILS”), from approximately ninety investors between April 17, 2001 and August 31, 2001.

InvestPrivate was the placement agent for the offering. Although MILS is not an affiliate of InvestPrivate, MILS’ Chief Executive Officer, PL, is a director of InvestPrivate, InvestBio, and Holdings. The MILS Offering was not registered with the Securities and Exchange Commission pursuant to Section 5 of the Securities Act, but was purportedly conducted in reliance on exemptions from registration thereunder.

First Cause

11. During the period of on or around June 8, 2000 through on or around February 27, 2003, in connection with the sale and/or offer of securities issued by InvestPrivate or Holdings, InvestPrivate, acting through Mathis, directly or indirectly, by the use of means or instrumentalities of interstate commerce, or of the mails, negligently made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading by (i) distributing, or causing to be distributed, to investors or potential investors the 2000, 2001 and 2002 InvestPrivate PPMs (collectively, the “InvestPrivate PPMs”) that contained material misrepresentations and omissions; and (ii) failing to supplement or amend the InvestPrivate PPMs during the periods in which each remained in effect (June 6, 2000 through October 18, 2000, June 12, 2001 through December 5, 2001, and November 4, 2002 through February 27, 2003, respectively) so that these PPMs did not contain material misrepresentations or omissions concerning facts or events that occurred after the PPMs were issued.
12. The misrepresentations and omissions concerned the following two areas:

Mathis's Regulatory History

13. The InvestPrivate PPMs, although they described Mathis's background, failed to disclose information concerning his regulatory history. This information was as follows: (i) the 2002 InvestPrivate PPM failed to disclose a Missouri regulatory proceeding involving alleged supervisory violations that was resolved by a November 9, 1999 Consent Order whereby Mathis agreed to pay \$2,500.00 to the state and to withdraw his registration and not reapply for two years; (ii) the InvestPrivate PPMs failed to disclose a Kansas regulatory proceeding involving alleged supervisory violations that was resolved with a May 4, 1999 agreement whereby Mathis agreed to pay \$250.00 to the state, and to withdraw his registration and not reapply for two years; (iii) the 2001 and 2002 InvestPrivate PPMs failed to disclose a January 22, 2001 Massachusetts consent order that contained findings of fact that "the disciplinary history of Mathis and his current position as Chairman of InvestPrivate raise concerns that necessitate that the Division place conditions on the broker-dealer registration of InvestPrivate," and that, among other things, restricted InvestPrivate's business in the state to accredited investors; and (iv) the 2001 and 2002 InvestPrivate PPMs failed to disclose consent orders or restriction agreements in Indiana, Maryland, Oregon, Washington, and Utah whereby the activities of InvestPrivate and/or Mathis were limited and/or subjected to heightened scrutiny, as a result of Mathis's regulatory and/or customer complaint history.

Mathis's Tax Liens

14. The InvestPrivate PPMs, although describing Mathis's background and qualifications, failed to disclose that the IRS has filed five tax liens totaling \$634,436.28 against Mathis for the years 1993, 1994, 1996, 1997, 1999, and 2000, most of which were in effect during his employment with InvestPrivate, and two of which related to the period of his employment by InvestPrivate.

By reason of the foregoing, in each and every instance, InvestPrivate, acting through Mathis, violated Section 17(a)(2) of the Securities Act and NASD Conduct Rule 2110.

Second Cause

15. During the period of on or around October 1, 2001 through on or around July 24, 2002, in connection with the sale and/or offer of securities issued by InvestBio, InvestPrivate, acting through Mathis, directly or indirectly, by the use of means or instrumentalities of interstate commerce, or of the mails, negligently made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading by (i) distributing, or causing to be distributed, to investors or potential investors, through means of interstate commerce or the mails, two PPMs, the 2001 InvestBio PPM and the 2002 InvestBio PPM (together, with any amendments or supplements thereto, the "InvestBio PPMs"), that contained material misrepresentations and omissions; and (ii) failing to supplement or amend the InvestBio PPMs during the periods in which each remained in effect (October 1, 2001 through January 30, 2002, and February 15, 2002 through July 24, 2002, respectively) so that these PPMs did not contain material misrepresentations or omissions concerning facts or events that occurred after the PPMs were issued.

16. The misrepresentations and omissions in the InvestBio PPMs concerned the following area:

Related Party Transactions

17. The InvestBio PPMs and the 2002 InvestPrivate PPM: failed to disclose that InvestBio entered into "related party" transactions involving conflicts of interest, whereby InvestBio, acting through Mathis, used the offering proceeds to pay commissions to InvestPrivate (half of which were paid out to Mathis) for trading activity directed by Mathis.

By reason of the foregoing, in each and every instance, InvestPrivate, acting through Mathis, violated Section 17(a)(2) of the Securities Act and NASD Conduct Rule 2110.

Third Cause

The InvestPrivate Offering

18. In connection with the InvestPrivate Offering, during the period from November 11, 2000 through February 27, 2003, InvestPrivate, acting through Mathis, offered and sold securities through the mails and in interstate commerce, without registration statements having been filed with the Securities and Exchange Commission, or in effect, as to any of such securities.
19. The following summarizes the “rounds” of the InvestPrivate Offering that have been conducted since November 11, 2000:

Round	Dates	Amount Raised
2(b)	November 11, 2000 - December 5, 2000	\$647,000
3	January 2, 2001–March 22, 2001	\$1,091,000
4	March 30, 2001 – June 11, 2001	\$1,181,934
5	June 12, 2001 – December 5, 2001	\$1,950,000
6	November 30, 2001 – July 30, 2002	\$1,084,000
7	September 18, 2002 – November 4, 2002	\$386,168
8	November 4, 2002 February 27, 2003	\$2,854,432

20. Each offer and sale of securities in each “round” of the InvestPrivate Offering, as set forth herein, was part of an “offering” of securities. The various “rounds” of the InvestPrivate Offering, as set forth herein, together constituted a single integrated offering of securities.

The InvestBio Offering

21. In connection with the InvestBio Offering, during the period from August 31, 2001 through July 24, 2002, InvestPrivate, acting through Mathis, offered and sold securities through the mails and in interstate commerce without registration statements having been filed with the Securities and Exchange Commission, or in effect, as to any of such securities.

22. The following summarizes the various “rounds” of the InvestBio Offering:

Round	Dates	Amount Raised
1	August 31, 2001 – September 30, 2001	\$1,044,000
2	October 1, 2001 – January 30, 2002	\$4,439,625
3	February 15, 2002-July 24, 2002	\$2,018,140

23. Each offer and sale of securities in each of the three “rounds” of the InvestBio Offering, as set forth herein, was part of an “offering” of securities. The various “rounds” of the InvestBio Offering, as set forth herein, together constituted a single integrated offering of securities.

The MILS Offering

24. During the period from April 17, 2001 and August 31, 2001, InvestPrivate, acting through Mathis, offered and sold securities through the mails and in interstate commerce in connection with its placement of securities offered in the MILS Offering, without registration statements having been filed with the Securities and Exchange Commission, or in effect, as to any of such securities.

General Solicitation and Exemption Requirements

25. InvestPrivate was the placement agent for each “round” of the InvestPrivate, InvestBio and MILS Offerings set forth in this cause of complaint. InvestPrivate purportedly conducted these offerings in reliance upon one or more exemptions from registration pursuant to the Securities Act.
26. InvestPrivate engaged in a “general solicitation” of investors in connection with each of the InvestPrivate, InvestBio and MILS Offerings, by:
- offering investments in these offering by “cold-calling” prospects obtained from purchased leads or from a “lead database” of persons who had responded to Internet solicitations (InvestPrivate, InvestBio and MILS Offering);

- b. offering and selling these offerings to persons with whom InvestPrivate had no pre-existing substantive relationship as of the date when the offering at issue was first anticipated or commenced or, alternatively, as of the date when the “round” of the offering at issue was first anticipated or was commenced (InvestPrivate, InvestBio and MILS Offerings); and
- c. conducting “road shows” designed to solicit investments in the offerings (InvestBio Offering).
27. In addition, InvestPrivate failed to comply with the requirements of the registration exemptions upon which it purportedly relied with respect to the InvestPrivate, InvestBio, and MILS Offerings by virtue of the size and manner of the offerings, by:
- a. soliciting investments in the offerings to investors without first establishing that each investor had sufficient knowledge and experience in business matters to be capable of evaluating the merits and risks of investing in the offering.
28. By engaging in a general solicitation of prospective investors and by failing to otherwise comply with the requirements for an exemption from registration, none of the registration exemptions on which InvestPrivate relied with respect to the InvestPrivate, InvestBio and MILS Offerings were applicable.
29. As a result, InvestPrivate, acting through Mathis, participated in the public offerings and sales of unregistered securities in connection with the InvestPrivate, InvestBio and MILS Offerings.

By reason of the foregoing, in each and every instance, InvestPrivate and Mathis engaged in conduct prohibited by Sections 5(a) and 5(c) of the Securities Act and thereby violated NASD Conduct Rule 2110.

Eighth Cause

30. NASD Conduct Rule 3070(c) requires member firms to report to NASD on a quarterly basis statistical and summary information regarding any written grievance by a customer involving the member firm or a person associated with a member, by the fifteenth day of the month following the end of the calendar quarter in which the written grievance is received.
31. NASD Conduct Rules 3070(a)(7) and 3070(b) requires member firms to report to NASD within ten business days the settlement of any claim for damages against the member by a customer, broker or dealer for an amount exceeding \$25,000.
32. InvestPrivate, acting through Geraghty: (a) failed to report a written customer complaint concerning the InvestPrivate and InvestBio Offerings made by InvestPrivate customer DS; (b) failed to timely report a written customer complaint concerning the InvestPrivate and InvestBio Offerings made by InvestPrivate customers OB and MB (spouses) (the complaint was reported only after InvestPrivate received a written request for information from NASD concerning InvestPrivate's failure to report the complaint), and (c) failed to report the settlement of two customer complaints (DS and InvestPrivate customer EW) concerning the InvestPrivate, InvestBio and/or MILS Offerings that involved payments in excess of \$25,000.

By reason of the foregoing, in each and every instance, InvestPrivate and Geraghty violated NASD Conduct Rules 3070 and 2110.

Tenth Cause

33. During the period of September 10, 2001 to February 4, 2005, Robbins was associated with InvestPrivate through his employment by Holdings, InvestPrivate's parent corporation.
34. Robbins was hired as Holdings' Executive Vice President on September 10, 2001, and became Chief Operating Officer on July 10, 2002.

35. Throughout the period of September 10, 2001 to February 4, 2005, Robbins was actively engaged in the management of InvestPrivate's securities and investment banking business.
36. Robbins's involvement in the management of InvestPrivate's securities and investment banking business has been focused on the InvestPrivate and InvestBio Offerings, particularly on training InvestPrivate's brokers how to solicit investors for the offerings and in encouraging brokers to solicit investors for these offerings.
37. Robbins's involvement in the management of InvestPrivate's securities and investment banking business has included, *inter alia*, the following:
- a. instructing brokers on sales tactics;
 - b. training brokers how to solicit investments in InvestBio;
 - c. participating in sales meetings devoted to the InvestPrivate and InvestBio Offerings;
 - d. exerting pressure on brokers to raise money for InvestBio, and threatening those who did not;
 - e. monitoring brokers' production;
 - f. consulting on sales contests;
 - g. distributing leads to brokers;
 - h. supervising brokers on problems with trades;
 - i. reprimanding brokers and terminating their employment;
 - j. negotiating employment disputes involving brokers;
 - k. directing InvestPrivate's President not to hire a particular broker;
 - l. reviewing customer complaints;
 - m. participating in drafting of compliance procedures;
 - n. negotiating and renegotiating contracts;
 - o. decision-making concerning InvestPrivate's Financial and Operational Principal;

- p. handling the marketing and distribution of InvestBio's mutual fund; and
- q. organizing and participating in meetings of InvestPrivate's management committee.
38. Robbins thereby engaged in activity requiring registration as a General Securities Principal and as a General Securities Representative without obtaining the required registrations.
39. InvestPrivate, acting through Mathis and Geraghty, permitted Robbins to engage in this activity without the required registration.

By reason of the foregoing, InvestPrivate, Robbins, Mathis, and Geraghty violated NASD Membership and Registration Rules 1021 and 1031, and NASD Conduct Rule 2110.

Eleventh Cause

40. InvestPrivate has acted as placement agent for four "best efforts" contingency offerings that were components of the InvestPrivate and InvestBio Offerings, as follows:

<u>Issuer</u>	<u>Initial Offering Date</u>	<u>Minimum</u>	<u>Amount Raised</u>
Holdings	June 12, 2001	\$450,000	\$1,950,000
InvestBio	October 1, 2001	\$312,500	\$4,439,625
InvestBio	February 12, 2002	\$531,250	\$2,018,140
Holdings	November 4, 2002	\$250,000	\$2,854,432

41. In each case, InvestPrivate was affiliated with the issuer.
42. In connection with the offerings set forth above, InvestPrivate established separate accounts at The Chase Manhattan Bank ("Chase") for Holdings (Account No. [REDACTED]) and for InvestBio (Account No. [REDACTED]). Although the account statements for these accounts were labeled as "Escrow and Client Funds Management Account Statements," these accounts were in reality standard bank accounts.
43. These accounts were governed by two agreements: (i) a "Master Account Application," a standard one-page bank account application form; and (ii) An "Escrow and Client Funds

Management Account Agreement” which specifically stated that “[Chase] is not acting as escrow agent or in any other fiduciary capacity with respect to your Master Account or any related Client Accounts.”

44. Chase did not agree in writing to act in any agency or fiduciary capacity, to hold funds in escrow for the subscribers, or to transmit or return the funds directly to the subscribers when the appropriate events or contingencies occurred.

By reason of the foregoing, in each and every instance, InvestPrivate violated Section 15(c)(2) of the Exchange Act and Rule 15c2-4 thereunder and NASD Conduct Rule 2110.

Twelfth Cause

45. On January 4, 2001, January 8, 2001 and June 29, 2001, respectively, InvestPrivate was a broker-dealer conducting a securities business, and as such, was required to comply with the minimum net capital requirements set forth in Exchange Act Rule 15c3-1 (the “Net Capital Rule”). On each of these days, InvestPrivate failed to maintain its minimum net capital.
46. On January 4, 2001, InvestPrivate was a broker-dealer conducting a securities business, and as such, was required to comply with the Net Capital Rule. On that date, InvestPrivate had net capital of negative \$365,949.14. Thus, InvestPrivate had a net capital deficiency of \$465,949.14, based on its \$100,000 net capital requirement on that date.
47. On January 8, 2001, InvestPrivate was a broker-dealer conducting a securities business, and as such, was required to comply with the Net Capital Rule. On that date, InvestPrivate had net capital of negative \$327,949.14. Thus, InvestPrivate had a net capital deficiency of \$427,949.14 on that date, based on its \$100,000 net capital requirement on that date.
48. On June 12, 2001, InvestPrivate commenced a contingency offering on behalf of Holdings. Because Holdings is an affiliate of InvestPrivate, InvestPrivate was required by Exchange Act

Rule 15c2-4 to establish a separate bank escrow account to hold the proceeds of the offering
until the applicable contingency was met, but failed to do so.

49. By failing to establish a qualified separate bank escrow account for this offering, InvestPrivate was deemed to be in receipt of customer funds once it began to receive investor funds in connection with the offering. The Net Capital Rule requires that broker-dealers that are in receipt of customer funds must maintain minimum net capital of \$250,000.
50. InvestPrivate received investor funds in connection with the June 12, 2001 Holdings offering beginning on or around June 26, 2001 through at least June 29, 2001.
51. Therefore, InvestPrivate's net capital requirement during this period was \$250,000.
52. On June 29, 2001, InvestPrivate was a broker-dealer conducting a securities business, and as such, was required to comply with the Net Capital Rule. On that date, InvestPrivate had net capital of \$93,434.85. Thus, InvestPrivate had a net capital deficiency of \$156,565.15 on that date, based on its \$250,000 net capital requirement.

By reason of the foregoing, in each and every instance, InvestPrivate violated Exchange Act Rule 15c3-1 and NASD Conduct Rule 2110.

Thirteenth Cause

53. InvestPrivate failed to preserve complete electronic mail communications relating to its business in accordance with Exchange Act Rule 17a-4(b)(4) for the period from June 8, 2000 through on or about August 1, 2002.
54. Specifically, InvestPrivate routinely deleted the contents of electronic mail folders of all employees who left the Firm during this period.
55. During this period, InvestPrivate also deleted significant portions of the contents of the electronic mail folders of the Firm's current employees. For example, (a) InvestPrivate's

records of Mathis's electronic mail folders did not include any "received" communications for the sixteen-month period of June 8, 2000 through October 21, 2001, or any "sent" communications for the fourteen-month period of June 8, 2000 through August 23, 2001; and (b) InvestPrivate's records of Robbins's e-mail folders from September 10, 2001 through December 8, 2001 contained ninety-six messages, and numerous electronic mail folders for this period were empty.

By reason of the foregoing, InvestPrivate violated Section 17(a) of the Exchange Act and Rule 17a-4 thereunder and NASD Conduct Rules 3110 and 2110.

Fourteenth Cause

56. From the period of June 28, 2000 through February 4, 2005, InvestPrivate, acting through Geraghty, was required, pursuant to NASD Conduct Rule 3010(a) to implement, maintain, and enforce supervisory procedures reasonably designed to achieve compliance with the federal securities laws and NASD's Rules.
57. During the Relevant Period, InvestPrivate, acting through Geraghty, failed to implement, maintain and enforce an effective supervisory system that would have enabled InvestPrivate to comply with the federal securities laws and NASD's Conduct Rules. Specifically, InvestPrivate, acting through Geraghty, failed to implement and maintain reasonable systems and procedures designed to ensure that:
- a. the PPMs for the InvestPrivate and InvestBio Offerings did not contain material misrepresentations and omissions;
 - b. The accounts used for the deposit of contingency offerings conducted by InvestPrivate complied with Rule 15c2-4 of the Exchange Act; and

c. InvestPrivate retained e-mail records related to its business in compliance with Rule 17a-4 of the Exchange Act and NASD Conduct Rule 3110.

By reason of the foregoing, InvestPrivate and Geraghty violated NASD Conduct Rules 3010(a) and 2110.

* * * *

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondents from any future misconduct, and represent a proper discharge by NASD, of its regulatory responsibility under the Securities Exchange Act of 1934.

SEVERANCE AND SANCTIONS

It is ordered that:

1. The Fifth, Six and Seventh Causes asserted in the Complaint against Mathis are severed for a full hearing;
2. InvestPrivate is censured;
3. InvestPrivate is fined \$205,000, of which \$67,500 will be imposed jointly and severally with Mathis; another \$40,000 will be imposed jointly and severally with Mathis and Geraghty; and another \$15,000 will be imposed jointly and severally with Geraghty;
4. Robbins is fined \$10,000;
5. InvestPrivate is suspended for sixty (60) calendar day suspension from seeking or accepting new engagements to conduct or participate in the offer or sale of unregistered securities through any private offering, private placement or private investment in public equity ("PIPE") transactions;
6. Mathis is suspended from associating with any NASD member firm in any principal capacity for thirty (30) calendar days;
7. Geraghty is suspended from associating with any NASD member firm in any principal capacity for thirty (30) calendar days; and

8. Robbins is suspended from associating with any member firm in any and all capacities for ten business days.

9. InvestPrivate shall

- a. Retain, within 60 days of the date of Notice of Acceptance of this Offer of Settlement, an Independent Consultant, not unacceptable to NASD staff, to conduct a comprehensive review of the adequacy of the Firm's policies, systems and procedures (written and otherwise) and training relating to the offer or sale of unregistered securities through any private offering, private placement or PIPE transactions.
- b. Exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant.
- c. Cooperate with the Independent Consultant in all respects, including by providing staff support. InvestPrivate shall place no restrictions on the Independent Consultant's communications with NASD staff and, upon request, shall make available to NASD 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, InvestPrivate shall not terminate the relationship with the Independent Consultant without the NASD staff's written approval; InvestPrivate 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 the NASD.
- d. At the conclusion of the review, which shall be no more than 120 days after the date of Notice of Acceptance of this Offer of Settlement, require the Independent Consultant to submit to the Firm and NASD 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 the offering or sale of unregistered securities through any private offer, private placement or PIPE transaction; (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.
- e. 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 in to any other employment, consultant, attorney-client, auditing or other professional relationship with InvestPrivate, 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 Offer of Settlement shall not, without prior written consent of NASD staff, enter in to any employment, consultant, attorney-client, auditing or other professional relationship with InvestPrivate 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.

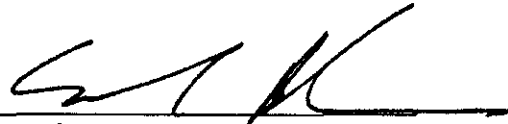
- f. Within 30 days after delivery of the Written Report, InvestPrivate shall adopt and implement the recommendations of the Independent Consultant or, if it determines that a recommendation is unduly burdensome or impractical, propose an alternative procedure to the Independent Consultant designed to achieve the same objective. The Firm shall submit such proposed alternatives in writing simultaneously to the Independent Consultant and NASD 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.
- g. Within 30 days after the issuance of the later of the Independent Consultant's Written Report or written determination regarding alternative procedures (if any), InvestPrivate shall provide NASD staff with a written implementation report, certified by an officer of InvestPrivate, attesting to, containing documentation of, and setting forth the details of the Firm's implementation of the Independent Consultant's recommendations.
- h. Upon written request showing good cause, the NASD staff may extend any of the procedural dates set forth above.

Mathis' suspension shall commence on a date set by NASD staff. Geraghty's suspension
shall commence following the conclusion of Mathis' suspension. InvestPrivate's suspension
shall commence upon its receipt of Notice of Acceptance of the Offer. Robbins' suspension and
the remaining sanctions imposed herein shall be effective upon a date selected by NASD staff.

SO ORDERED.

NASD

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

A handwritten signature in black ink, appearing to read 'S. L. Barkin', written over a horizontal line.

Samuel L. Barkin
Regional Counsel
NASD - Department of Enforcement
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