

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

VFG SECURITIES, INC. (CRD No. 15121),

and

JASON BRYCE VANCLEF (CRD No. 5096529),

Respondents.

DISCIPLINARY PROCEEDING
No. 2013038283001

HEARING OFFICER:

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between September 22, 2009, and January 21, 2013, Respondents Jason Vanclef (“Vanclef”) and VFG Securities, Inc. (“VFG” or the “Firm”) distributed the first edition of *The Wealth Code: How the Rich Stay Rich in Good Times and Bad* (“*The Wealth Code*”), a book Vanclef wrote and published himself, to customers and the general public.¹ *The Wealth Code* has also been available for sale on an online book retailer since September 22, 2009.

2. Vanclef used *The Wealth Code* as sales literature to promote investments in non-traded Direct Participation Programs (“DPPs”) and non-traded Real Estate Investment Trusts (“REITs”), and to lure potential investors to VFG. Approximately 95 percent of VFG’s revenue

¹ On January 22, 2013, Vanclef, through a third-party publisher, published a second edition of *The Wealth Code* entitled *The Wealth Code 2.0*. The allegations herein relate solely to claims made in the first edition of *The Wealth Code*.

was obtained from the sale of non-traded DPPs and non-traded REITs and other alternative investments between approximately November 2010 and June 2012.

3. Vanclef and the Firm distributed *The Wealth Code* at Firm events and Vanclef provided the book to customers when he met with them in person. Vanclef repeatedly claimed in *The Wealth Code* that non-traded DPPs and non-traded REITs offer both high return and capital preservation. This claim was inaccurate and misleading, and contradicted information provided in the prospectuses for the instruments that Vanclef and VFG sold. Non-traded DPPs and non-traded REITs are speculative investments that contain a high degree of risk, including the risk that an investor may lose a substantial portion or all of his or her initial investment.

4. Vanclef also claimed in *The Wealth Code* that by investing in “real” or “tangible” assets and other instruments that he recommended, investors could “reasonably achieve 8-12% results,” on their investments and “get consistent returns” that provided “piece [sic] of mind.” These claims were unwarranted because they were promises of future results and failed to provide the reader a sound basis to evaluate the claim.

5. Notwithstanding Respondents’ use of *The Wealth Code* as a promotional tool, they distributed the book without having a registered principal at VFG review or approve it as sales literature, and did not submit it to FINRA’s Advertising Department as required under NASD rules.

6. As part of Respondents’ pitch to sell non-traded DPPs and non-traded REITs, they also distributed recommendation spreadsheets to four customers that contained false and misleading liquidity timelines for non-traded DPPs and non-traded REITs. The recommendation spreadsheets also misleadingly characterized distributions from non-traded DPPs and non-traded REITs as “income” and improperly projected performance of the

recommended non-traded DPPs and non-traded REITs.

7. VFG's supervisory systems, including its written supervisory procedures ("WSPs"), were inadequate in two respects. First, Respondents provided consolidated investment reports to customers during in-person meetings to discuss their investments, yet the Firm failed to supervise the content of those reports to ensure that customers received the most up-to-date valuations for the non-traded REITs and non-traded DPPs that they had purchased. Second, the Firm failed to reasonably supervise illiquid alternative investments, including non-traded DPPs and non-traded REITs, to ensure that customers following Respondents' recommendations did not become overly concentrated in illiquid securities.

8. As a result of the foregoing conduct, VFG and Vanclef violated NASD Rules 2210(d)(1)(A), (B), and (D) and FINRA Rule 2010, and VFG also violated NASD Rules 2210(b)(1)(A) and (c)(2), and 3010(a) and (b).

RESPONDENTS AND JURISDICTION

A. VFG Securities, Inc.

9. VFG, CRD No. 15121, has been a member of FINRA since August 13, 1985.

10. Vanclef acquired indirect ownership of VFG through the Vanclef Financial Group on September 1, 2009, and changed the Firm's name to VFG Securities, Inc. on September 28, 2009.

11. At all relevant times, VFG maintained its principal place of business in Culver City, California. Approximately 13 registered individuals are currently associated with the Firm in six branch offices.

12. Because VFG is a current FINRA member, FINRA has jurisdiction over it under Article IV of FINRA's By-Laws to file this Complaint.

B. Jason Bryce Vanclef

13. Vanclef, CRD No. 5096529, first became registered with a FINRA-member firm as a Series 7 General Securities Representative (“GSR”) on February 15, 2006. He was registered with two different FINRA-member firms before purchasing VFG through the Vanclef Financial Group on September 1, 2009.

14. At all relevant times, Vanclef was VFG’s President and CEO. He has been registered with VFG as a GSR since August 14, 2009, and as a Series 24 General Securities Principal since September 17, 2009.

15. Because Vanclef is currently registered with FINRA through VFG, FINRA has jurisdiction over him under Article V of FINRA’s By-Laws to file this Complaint.

FACTS

16. A DPP is a program that allows investors to participate in the cash flow and tax benefits of an underlying investment, such as oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, and others. A REIT is a corporation, trust or association that owns (and might also manage) income-producing real estate, such as office buildings, shopping centers, hotels, and apartments which the typical investor may not otherwise be able to purchase individually. Non-traded DPPs and non-traded REITs are securities that do not trade on any national securities exchange and are illiquid.

A. The Wealth Code

17. Between September 22, 2009, and January 21, 2013, VFG and Vanclef distributed approximately two or three thousand copies of *The Wealth Code* free of charge to clients and potential clients in one-on-one meetings, at seminars, and during golf tournaments. Since September 22, 2009, Vanclef has listed *The Wealth Code* for sale on an online book retailer.

18. Vanclef used *The Wealth Code* as sales literature to tout himself and the Firm. He encouraged readers to contact the Vanclef Financial Group in *The Wealth Code* and provided readers with the Firm's contact information.

19. *The Wealth Code* used misleading statements and omitted material facts to promote investments that were sold by Respondents. Commissions on the sales of non-traded DPPs and non-traded REITs and other alternative investments comprised approximately 95 percent of VFG's revenue between approximately November 2010 and June 2012.

20. *The Wealth Code* made false, exaggerated, unwarranted or misleading statements about non-traded DPPs and non-traded REITs and omitted material facts about these investments, causing the communication to be misleading.

The Wealth Code Violates FINRA Advertising Rules

21. Vanclef repeatedly claimed in *The Wealth Code* that non-traded DPPs and non-traded REITs are "tangible assets" that offer both high return and capital preservation.

22. Vanclef's claim that non-traded DPPs and non-traded REITs offer both high return and capital preservation was false, exaggerated, unwarranted and misleading, and contradicted disclosures contained in the prospectuses for the non-traded DPPs and non-traded REITs Respondents sold to their customers. As the prospectuses warned, non-traded DPPs and non-traded REITs were speculative and contained a high degree of risk, including the loss of an investor's entire investment.

23. To support his claim that non-traded DPPs and non-traded REITs offer high returns and capital preservation, Vanclef made a series of additional false, exaggerated, unwarranted, and misleading claims in *The Wealth Code*.

24. First, Vanclef misleadingly stated in *The Wealth Code* that non-traded REIT and

non-traded DPP distributions provided a stable source of income:

- a. "This type of program [equipment leasing trust] creates income from the lease payments, which is paid out to the investor as dividends." (Page 98)
- b. "One of the appeals of a direct leasing program is that you and other participants collect a steady stream of rental income from the leased equipment. In most cases, you also realize additional income from re-leasing or selling the equipment at the end of the lease term." (Pages 98-99)
- c. "If you're retired or you rely on income investments to supplement your annual earnings, REITs can provide a relatively stable cash flow. Similarly, you can use REIT income to fund college expenses or charitable remainder trusts. And, of course, you can use REIT income to make additional investments." (Page 102)
- d. "REIT income flows to its investors in the form of monthly or quarterly dividends based on rent or mortgage payments from the REIT's investments." (Page 102)
- e. "The nice part of these investments [High Return and Capital Preservation], the tangible investments, is they usually pay monthly dividends that can be reinvested during the years, and once you hit your magic age of fifty-nine and one-half, you can turn on the income streams and leave the principal alone. Isn't that what retirement accounts were designed to be, slow income payers?" (Pages 115-116)

25. Vanclef's claim that distributions from non-traded DPPs and non-traded REITs are "income" was misleading because Vanclef failed to disclose that distributions were not

guaranteed, may have exceeded operating cash flow, and may not be income at all. Distributions may be paid from sources other than income, including an investor's own capital, or borrowings.

26. Second, Vanclef repeatedly and misleadingly claimed in *The Wealth Code* that non-traded DPPs and non-traded REITs provided safe havens from market volatility:

- a. "Public non-traded REITs typically require a longer time commitment, but are not correlated to the stock market like their publicly traded counterparts. They may provide the investor an opportunity to invest in a type of REIT that is not subject to the volatility of the stock market. As a result, they may potentially be more stable than a Publicly Traded REIT." (Page 101)
- b. "Equipment Leasing programs offer an alternative that is not prone to the volatility of the stock market. They are typically an illiquid investment that requires a longer time commitment, but that commitment may potentially provide a platform for greater stability." (Page 98)
- c. "Investing in hard assets, such as oil and gas, is important to avoid the potential volatility of the traditional markets and investments today." (Page 91)

27. Vanclef's statement that non-traded DPPs and non-traded REITs are less volatile than their publicly-traded counterparts was misleading because it implied that stability in share price equates to stability in investment value. This is not true for non-traded DPPs and non-traded REITs. Vanclef failed to disclose that the share price of a non-traded DPP or non-traded REIT does not necessarily correlate to the value of the investment. In fact, the value of the underlying assets purchased by a non-traded DPP or non-traded REIT may fluctuate and be worth less than the program initially paid, a fact that may not be incorporated into the share price

of the non-traded DPP or non-traded REIT.

28. Third, Vanclef repeatedly and misleadingly claimed in *The Wealth Code* that the owner of a non-traded DPP or non-traded REIT has an ownership interest in the underlying assets:

- a. “If Fed Ex were to go out of business, the stock and bond holders would get nothing,” while the DPP that owns the former Fed Ex plane would “simply take back the plane, paint it brown, call it UPS and re-lease it.” (Page 58)
- b. “The bottom line is that there is more than a promise and a stock certificate backing the investment.” (Page 58)
- c. “Investing through a DPP gives you partial ownership of actual physical assets.” (Page 70)
- d. “When you have a direct investment in tangible or real assets, such as real estate, leased equipment, and energy resources, you own a share of the actual assets of an operating company and may benefit from the assets’ value, typically the income they produce.” (Page 70)

29. Vanclef’s statements were false and misleading because an investor’s participation in a non-traded DPP or non-traded REIT is not a direct investment in the real estate or any other assets owned by the program.

30. Finally, to summarize his claim that real or tangible assets such as non-traded DPPs and non-traded REITS provide high returns and capital preservation, Vanclef claimed in *The Wealth Code* that investors who followed his advice of investing in real or tangible assets “can reasonably achieve 8-12% results, never 50%, never doubling their money in a year, but they can get consistent total return, and it provides piece [sic] of mind.”

31. Vanclef’s claims were promises of future results that were unwarranted, and Vanclef provided the reader no sound basis to evaluate these claims.

32. Separate from Vanclef’s claim that non-traded DPPs and non-traded REITs provide high returns and capital preservation, Vanclef also misleadingly claimed in *The Wealth Code* that an investor may surrender or liquidate an interest in a non-traded REIT before its liquidation date by paying surrender charges:

- a. “Most non-traded REITs follow the following surrender charge schedule . . . [providing a schedule of surrender fees such as, for example, a 7.5% surrender fee for years 1-2]” (Page 104)
- b. “Even an investor who had an unforeseen event in their life needing money and did not have sufficient liquid reserves to meet the immediate need, if they redeem their shares in a non-traded REIT, depending on how long they have been in the REIT, they still may come out ahead of a typical CD or bond.” (Page 105)

33. Vanclef’s statements were misleading without an accompanying disclosure that certain non-traded REITs did not allow surrender prior to liquidation, and contradicted prospectuses for the non-traded REITs sold by Respondents.

B. Failure to Review *The Wealth Code* and Submit it to FINRA

34. VFG failed to have a registered principal review and approve *The Wealth Code* for compliance with FINRA’s rules for communications with the public prior to first use or publication.

35. VFG was required to submit *The Wealth Code* to FINRA’s Advertising Department within 10 days of first use because it was sales literature that discussed DPPs,

variable annuities, and mutual funds. VFG failed to submit *The Wealth Code* to FINRA's Advertising Department for review.

C. Distribution of Misleading Recommendation Spreadsheets

36. Between June 2010 and June 2012, Respondents provided personalized portfolio recommendation spreadsheets to four customers, MZ, JT, VA, and AM, as part of Vanclef's pitch to solicit investors to buy non-traded DPPs and non-traded REITs.

37. Each spreadsheet identified specific investments recommended by Respondents, the amount they recommended that customers invest, the asset class of each investment, and a liquidity timeline—the period of time, in years, that each investment must be held prior to liquidation by company management. In spreadsheets for MZ, JT, and VA, Respondents also included an investment analysis section that projected a total return goal, distribution goal, and monthly and yearly expected income for each proposed investment.

38. Respondents' inclusion of specific liquidity timelines for each non-traded DPP and non-traded REIT was misleading since the customer might not be able to liquidate his or her investment at the end of the projected time period, or at all.

39. Respondents also provided information concerning the liquidity timelines in the spreadsheets that contradicted the prospectuses for certain non-traded REITs and non-traded DPPs recommended by Respondents:

- a. The spreadsheets for MZ, AM and VA identified a four-year liquidity timeline for the Corporate Property Associates 17 – Global Incorporated REIT. The prospectuses for this investment dated April 7, 2011, and April 30, 2012, identified a timeline of between 8 and 12 years for liquidation.
- b. The spreadsheets for AM and VA identified a five-year liquidity timeline for

the CNL Corporate Capital Trust, Inc. The prospectus for this investment was dated April 4, 2011. The prospectus stated that the “board of directors must consider, but is not required to recommend, a liquidity event” by December 31, 2018. That date was more than five years after the date of the prospectus.

- c. The spreadsheets for AM and JT identified a three-year liquidity timeline for the Cole III REIT. The prospectus stated that “although we have targeted an investment horizon in excess of five years, there is no fixed liquidation date for your investment.”

40. In addition, Respondents’ projections of “income” through distributions provided to MZ, JT, and VA for non-traded DPPs and non-traded REITs were misleading and unwarranted and constituted an improper projection of investment performance. Distributions may be taken from sources other than income, including a return of the investor’s own capital or borrowings.

D. Supervision of Illiquid Alternative Investments

41. Between November 14, 2009, and June 15, 2013, the Firm failed to have any supervisory system, including written procedures, to review for high concentration levels in customer portfolios of alternative investments, including non-traded DPPs and non-traded REITs, that the Firm recommended to customers.

42. High levels of concentration in one or a limited number of illiquid, alternative securities may be unsuitable given a customer’s financial situation and needs.

43. VFG, through Vanclef, recommended investments that resulted in certain customers becoming highly concentrated in one or a limited number of high risk and illiquid securities. For example, customers JT and TT had 90% of their total net worth concentrated in

five non-traded DPP and non-traded REIT investments.

E. Supervision of Consolidated Investment Reports

44. Between May 2011 and May 2013, Vanclef provided consolidated investment reports to his customers during in-person meetings. Vanclef instructed his assistants to create these reports.

45. VFG's WSPs required that consolidated investment reports prepared by a registered representative be provided to a designated supervisor for review. Between May 2011 and May 2013, the two chief compliance officers of the Firm were designated to review such reports. Neither did, contrary to the provisions of the WSPs.

FIRST CAUSE OF ACTION
Misleading Communications with the Public
(NASD Rule 2210(d)(1)(A), (B) and (D) and FINRA Rule 2010)
(VFG and Vanclef)

46. The Department realleges and incorporates by reference paragraphs 1 through 45 above.

47. NASD Rule 2210(d)(1)(A)² prohibited any communication with the public from omitting any material fact or qualification if the omission, in the light of the context of the material presented, would cause the communication to be misleading, and required that covered communications be fair and balanced and provide a sound basis for evaluating facts, among other things.

48. NASD Rule 2210(d)(1)(B)³ prohibited members from making false, exaggerated, unwarranted or misleading statement or claim in any communication with the public.

² NASD Rule 2210(d)(1)(A) (effective 2.5.09 - 2.3.13).

³ NASD Rule 2210(d)(1)(B) (effective 2.5.09 - 2.3.13).

49. NASD Rule 2210(d)(1)(D)⁴ prohibited any communication with the public that predicted or projected performance, implied that past performance would recur, or made any exaggerated or unwarranted claim, opinion or forecast.

50. *The Wealth Code* was Sales Literature within the meaning of NASD Rule 2210(a)(2).

51. The recommendation spreadsheets provided to customers MZ, AM, VA, and JT were Correspondence within the meaning of NASD Rule 2210(a)(3).

52. Between September 22, 2009 and October 12, 2012, Respondents distributed, and, since September 22, 2009, Respondents have listed for sale online, Vanclef's self-published book, *The Wealth Code*.

53. *The Wealth Code* (i) contained false, exaggerated, unwarranted or misleading statements, and (ii) omitted material facts or qualifications where the omission caused the communication to be misleading.

54. Between June 2010 and May 2012, Respondents provided customers MZ, JT, VA, and AM with misleading personalized recommendation spreadsheets that, as described above, contained false, exaggerated, unwarranted or misleading statements, and included improper projections of investment performance.

55. By virtue of the foregoing, VFG and Vanclef violated NASD Rule 2210(d)(1)(A), (B) and (D), and FINRA Rule 2010.

⁴ NASD Rule 2210(d)(1)(D) (effective 2.5.09 - 2.3.13).

SECOND CAUSE OF ACTION
Failure to Comply with Advertising Rule Standards
(NASD Rules 2210(b)(1)(A) and (c)(2) and FINRA Rule 2010)
(VFG)

56. The Department realleges and incorporates by reference paragraphs 1 through 45 above.

57. NASD Rule 2210(b)(1)(A)⁵ required a registered principal of the member to approve by signature or initial and date each advertisement, item of sales literature and independently prepared reprint before the earlier of its use or filing with NASD's Advertising Regulation Department.

58. NASD Rule 2210(c)(2)⁶ required members to file the following materials with FINRA's Advertising Regulation Department within 10 business days of first use or publication: (A) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts . . .), and (B) Advertisements and sales literature concerning public direct participation programs (as defined in Rule 2810) . . .

59. VFG failed to have a registered principal approve *The Wealth Code* prior to its first use.

60. VFG failed to submit *The Wealth Code* to FINRA's Advertising Regulation Department for review.

61. By virtue of the foregoing, VFG violated NASD Rules 2210(b)(1)(A) and (c)(2) and FINRA Rule 2010.

⁵ NASD Rule 2210(b)(1)(A) (effective 2.5.09 - 2.3.13).

⁶ NASD Rule 2210(c)(2) (effective 2.5.09 - 2.3.13).

THIRD CAUSE OF ACTION
Failure to Supervise and Deficient WSPs
(NASD Rule 3010 and FINRA Rule 2010)
(VFG)

62. The Department realleges and incorporates by reference paragraphs 1 through 45 above.

63. NASD Rule 3010(a)⁷ required each member to establish and maintain a system to supervise the activities of each registered representative that was reasonably designed to achieve compliance with applicable securities laws and regulations and applicable NASD Rules.

64. NASD Rule 3010(b)⁸ required each member to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of NASD.

65. VFG's supervisory systems were deficient in two respects. First, from May 2011 and October 2013, the Firm failed to follow its WSPs that required a designated supervisor to review consolidated investment reports provided to customers. Second, from November 14, 2009, and June 15, 2013, the Firm did not have any supervisory system, including written procedures, to review for high concentration levels in illiquid alternative investments, including non-traded DPPs and non-traded REITs, in customer accounts.

66. By virtue of the foregoing, VFG violated NASD Rules 3010(a) and (b) and FINRA Rule 2010.

⁷ NASD Rule 3010(a) (effective 12.19.07 – 2.3.13).

⁸ NASD Rule 3010(b) (effective 12.19.07 – 2.3.13).

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondents committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and
- C. order that Respondents bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

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Mark Maldonado
Senior Litigation Counsel
FINRA Department of Enforcement
15200 Omega Drive, 3rd Floor
Rockville, MD 20850-3241
Ph: 301-258-8561
mark.maldonado@finra.org

Daniel A. Cantu
Senior Counsel
FINRA Department of Enforcement
15200 Omega Drive, 3rd Floor
Rockville, MD 20850-3241
Ph: 301-258-8512
Fax: 202-721-6550
daniel.cantu@finra.org