FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement, Complainant, v. Leigh Garber (CRD No. 2768572), Respondent.	DISCIPLINARY PROCEEDING NO. 2010022046101 Hearing Officer: MAD

ORDER ACCEPTING OFFER OF SETTLEMENT

Date: August 24, 2016

INTRODUCTION

Disciplinary Proceeding No. 2010022046101 was filed on January 12, 2016, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Leigh Garber submitted an Offer of Settlement (Offer) to Complainant dated August 17, 2016. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA 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.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, as amended by the Offer of Settlement, 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, to the entry of findings and violations consistent with the allegations of

the Complaint, as amended by the Offer of Settlement, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Respondent Garber entered the securities industry in April 1998, when she became associated as a registered representative with Firm 1, a FINRA-regulated broker-dealer, which was affiliated with the Respondent Firm during the Relevant Period. From 1998 to the present, she has been employed by six FINRA-regulated broker-dealers.

Garber served as President and Chief Executive Officer of the Respondent Firm during the Relevant Period. At the time the Complaint was filed, she was also the President and Chief Executive Officer for Firm 2, a FINRA-regulated retail broker-dealer, and another affiliate of the Respondent Firm. The Firm recently filed a Uniform Request for Broker-Dealer Withdrawal (Form BDW), and Garber is no longer associated with the Firm or Firm 2. She is currently associated as a registered representative with Firm 3, a FINRA-regulated retail broker-dealer. Firm 1 became a branch of Firm 3 in or about November 2015. Garber holds the following securities industry licenses: General Securities Representative (Series 7), Municipal Securities Representative (Series 52), Uniform Securities Agent (Series 63), Registered Options Principal (Series 4), General Securities Principal (Series 24), and Municipal Securities Principal (Series 53).

In 2005 FINRA accepted an AWC (No. E9B2004013201) in which Garber consented to the imposition of a fine of $5,000 assessed jointly and severally with the Firm, for (1) permitting an individual to maintain his securities license with the Firm although he was not actively involved in its investment banking or securities business, in violation of NASD Membership and

Registration Rule 1031 and NASD Conduct Rule 2110 and (2) permitting an individual to act as the Firm's Financial Operations Principal, although she possessed an inactive registration status with NASD, in violation of NASD Membership and Registration Rule 1021 and NASD Conduct Rule 2110.

Because she is currently registered with Firm 3, Garber remains subject to FINRA jurisdiction pursuant to Article V, Section 2 of FINRA's By Laws.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:[1]

SUMMARY

From June through August 2010 (the Relevant Period), Respondents Kenley Brisard, Philip Brisard and Ridgeway & Conger sold an unregistered security that consisted of interest-only strips from loans issued by the United States Small Business Association meant only for Qualified Institutional Buyers (QIBs) to individual retail investors at undisclosed markups of 14–33% using general solicitation emails that fraudulently misrepresented the product and the Respondents' role in its development.

Garber gave her written approval for the sale of the unregistered securities to five individual customers despite the fact that three months earlier she had provided a written representation to the placement agent that the Firm would only sell the product, a Rule 144A security, to QIBs. Garber was the designated supervisor for markups, and she approved the excessive markups and signed the internal trade tickets. Garber was the designated supervisor for private placements, yet she approved the sales of unregistered securities despite the fact that they violated Section 5 of the Securities Act of 1933.

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[1] The findings herein are pursuant to Respondent Garber's Offer of Settlement and are not binding on any other person or entity named as a respondent in this or any other proceeding.

By failing to properly supervise markup and Section 5 activities related to the sales of the interest-only unregistered security, Respondent Garber, the Firm's President and CEO, violated NASD Rules 3010 (a) and (b) and FINRA Rule 2010.

BACKGROUND

The Firm was registered as a regulated broker-dealer from October 2001 to July 2016 with the U.S. Securities and Exchange Commission and FINRA. The Firm terminated its registration through a Uniform Request for Broker-Dealer Withdrawal (Form BDW) in July 2016. During the Relevant Period, the Firm was a full-service, retail independent broker-dealer located in New Woodstock, New York. At the time the Complaint was filed the Firm had approximately 60 registered individuals operating out of approximately 20 branch offices.

Respondent Kenley Brisard entered the securities industry in July 1995. Between 1995 and 2009, he was employed as a General Securities Representative with six FINRA-regulated broker-dealers.

In March 2009, K. Brisard became associated with the Respondent Firm as a General Securities Representative, where he remained associated until March 2016. He holds the following securities industry licenses: General Securities Representative (Series 7), Uniform Securities Agent (Series 63) and Corporate Securities Representative (Series 62).

Respondent Philip Brisard entered the securities industry in July 1995. Between 1995 and 2009, he was employed as a General Securities Representative with the same six FINRA-regulated broker-dealers as his brother, K. Brisard.

In March 2009, P. Brisard became associated with the Respondent Firm as a General Securities Representative, where he remained associated until March 2016. He is licensed as a General Securities Representative (Series 7) and Uniform Securities Agent (Series 63).

At all relevant times hereto, the Brisards transacted business through a separate entity known as Brisard & Brisard, Inc. They received commissions from the Respondent Firm through a joint representative number as well as through individual representative numbers.

The IOTA SBA COOF Trust Series 2010-A Pass-Through Certificates (the SBA Interest-Only Security) were a fixed income security that securitized a strip of interest payments owed on Small Business Administration (SBA) guaranteed loans that had been pooled into a different collateralized debt obligation. The underlying collateral for the SBA Interest-Only Security was interest from a pool of Confirmations of Originator Fee(s) (COOF) of Section 7(a) loans issued by the SBA's fiscal and transfer agent. The certificates were designed to provide a stream of income from the interest on the COOFs and did not provide for a return of an investor's principal at the end of the term. As a result, if the underlying loans were pre-paid, the investor stood to lose all or a substantial part of their investment.

Issuer 1 issued the SBA Interest-Only Security. Issuer 1's sole purpose was to issue private placement securities.

In early 2010, DS, another Firm representative, who was barred from association with any FINRA member firm in November 2014, learned about the SBA Interest-Only Security from a principal at Issuer 1 and brought it to the Firm's attention.

On March 30, 2010, Garber signed a letter to Placement Agent 1 certifying that the Firm would "only purchase Rule 144A securities in transactions in which it acts as a riskless principal (as defined in Rule 144A) on behalf of a qualified institutional buyer[.]"

The private placement memorandum (PPM) for the SBA Interest-Only Security provided that the security was restricted for sale only to QIBs as defined under Rule 144A under the Securities Act. The PPM warned that a secondary trading market for the SBA Interest-Only

Security was unlikely to develop and thus purchasers of the security may be required to bear the risks of their investment in the SBA Interest-Only Security for an indefinite period of time.

The SBA Interest-Only Security was first issued and offered for sale via private placement on or about June 24, 2010. Placement Agent 1 acted as the sole placement agent for the SBA Interest-Only Security.

Between June 28, 2010, and August 4, 2010, the Brisards improperly sold the SBA Interest-Only Security to five individual retail customers in riskless principal trades, after having sent false general solicitation emails to existing and prospective customers. The Firm had the customers' purchase orders in hand when it purchased the SBA Interest-Only Security from the placement agent.

On June 28, 2010, customer NT purchased 310 million shares of the SBA Interest-Only Security. The Firm paid approximately $161,395 for the shares seven minutes before charging NT approximately $200,145, resulting in a markup of approximately $38,750 or 24%. On June 30, 2010, customer CS purchased 318 million shares of the SBA Interest-Only Security. The Firm paid approximately $170,640 one day before charging CS approximately $199,417, resulting in a markup of approximately $28,777 or 17%. On July 8, 2010, customers SJ and PC purchased 158 million and 99 million shares of the SBA Interest-Only Security respectively. The Firm paid approximately $87,124 for the shares purchased by SJ and approximately $54,591 for the shares purchased by PC five minutes before charging SJ approximately $99,468 and PC approximately $62,325, resulting in respective markups of approximately $12,344 and approximately $7,734 or 14% each. On August 4, 2010, customer VH purchased 127.5 million shares of the SBA Interest-Only Security. The Firm paid approximately $74,972 for the shares

one hour and 41 minutes before charging VH approximately $99,776, resulting in a markup of approximately $24,804 or 33%.

The Firm did not make a market in this security. The price the Firm charged its retail customers for the security was not reasonably related to its contemporaneous cost, which was the price it paid for the security shortly before selling it to its customers.

(Failure to Supervise)
(NASD Rules 3010(a) and (b) and FINRA Rule 2010)

NASD Rule 3010(a), entitled Supervisory System, requires that

> Each member shall establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules.

NASD Rule 3010(b), entitled Written Procedures, requires that:

> Each member shall 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.

During the Relevant Period, Garber failed to enforce written supervisory procedures with respect to the excessive markups and the Section 5 violations described herein.

Markups Not Properly Supervised

During the Relevant Period, according to the Firm's written supervisory procedures (WSPs) and FINRA guidance, markups in principal transactions in excess of 5% were generally presumed to be unfair and unreasonable.

In each of the transactions listed in the following chart, the Firm purchased the SBA Interest-Only Security for its own account from Placement Agent 1 and shortly thereafter sold it to individual, retail customers. In each of these transactions, the Firm already had the order from the customer in hand before it purchased the security from the placement agent.

Date	Customer	Number of shares	Cost to Firm	Amount Firm Charged Customer	Mark ups	Time between buy from placement agent and sell to customer
6/28/2010	NT	310,000,000	$161,395	$200,145	$38,750 or 24%	7 min
6/30/2010	CS[2]	318,000,000	$170,640	$199,417	$28,777 or 17%	25 hrs, 3 min (waiting for wire)
7/8/2010	SJ	158,000,000	$87,124	$99,468	$12,344 or 14%	5 min
7/8/2010	PC	99,000,000	$54,591	$62,325	$7,734 or 14%	5 min
8/4/2010	VH	127,500,000	$74,972	$99,776	$24,804 or 33%	1 hr, 41 min

In each instance Garber, on behalf of the Firm signed the trade tickets approving the markup.

As reflected in the above chart, in total, the Firm charged approximately $112,408 in markups for a security which the Firm purchased for a total of about $548,722 and sold to customers for a total of about $661,131. Specifically, the Firm charged excessive markups between 14-33% of the relevant market price on each of the five trades, well in excess of the 5% markup permitted by policy.

Nothing in the nature of the Firm's or the Brisards' business or the identified purchases of the SBA Interest-Only Security justified the size of the markups on the purchases by the five Firm customers. In particular, (a) the Firm did not provide services warranting extraordinary markups; (b) the Firm's expenses in executing or filling its customers' orders were not extraordinary, and in fact were likely de minimus given that the purchases were executed as riskless principal transactions; (c) the transactions were for total dollar amounts with a range that did not justify extraordinary markups; (d) the securities did not have features that warranted

[2] On July 16, 2010, the Firm took back into inventory 200 million shares from CS and then re-sold them, along with an additional 800 million shares to another customer at an additional markup of approximately 24%. A portion of the markup originally charged to CS was absorbed by this customer.

extraordinary markups; (e) the Firm did not make a market in this security; and (f) an exercise of reasonable best judgment would not have allowed the imposition of the extraordinary markups.

Garber was the Firm's designated supervisor responsible for reviewing the reasonableness of all markups. Garber signed trade tickets approving the markups on the sales of the SBA Interest-Only Security to the five customers. She reviewed at the same time two trade tickets, one for the purchase of the shares into the Firm's inventory, and one for the sale of the shares from the Firm's inventory to the customers. Therefore, she could see the price the Firm and the customer paid for the SBA Interest-Only Security simultaneously during her review. The markups were excessive on their face. For example, the Firm paid approximately $75,000 for the SBA Interest-Only Security that VH purchased but then charged her approximately $100,000. The other sales were similarly handled and plainly excessive, as described above.

Garber reviewed the trade tickets for all five customers showing the markups exceeded 5% but she did not have any reasonable justification to approve them. Garber, therefore, did not reasonably evaluate the propriety of the markups and failed to engage in appropriate supervision of the markups.

Consequently, Garber failed to reasonably supervise the markups and failed to enforce the Firm's WSPs, in violation of NASD Rules 3010 (a) and (b) and FINRA Rule 2010.

Sales of Unregistered Securities Not Properly Supervised

Garber also failed to reasonably supervise its representatives to ensure that they did not violate Section 5 of the Securities Act by general solicitation of potential investors in the SBA Interest-Only Security.

Section 5 of the Securities Act prohibits the sale of unregistered securities. It provides:

> (a) Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—

> (1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise

Rule 144A under the Securities Act is a safe harbor exemption from the registration requirements of Section 5 that allows for the sale of unregistered securities, such as the SBA Interest-Only Security, to QIBs. The PPM for the SBA Interest-Only Security states on the first page that "The Offered Certificates described herein may only be offered in the United States to 'qualified institutional buyers' as defined under Rule 144A[] under the Securities Act[.]" Only institutions, not individual retail investors regardless of their net worth or financial sophistication, can qualify as a QIB. There was no registration statement filed with the SEC for the SBA Interest-Only Security.

On March 30, 2010, Garber signed a letter in which she certified to Placement Agent 1 that the Firm would "only purchase Rule 144A securities for its own account or for the accounts of others that independently qualify" as QIBs. During the Relevant Period, the Brisards, on behalf of the Firm, sent emails soliciting an investment in the SBA Interest-Only Security to more than 115 potential investors. Because, among other reasons, the email solicitations offering the SBA Interest-Only Security were not limited to persons and institutions with which the Firm had a pre-existing relationship and instead targeted members of the general public, these emails constituted a general solicitation of potential purchasers of the SBA Interest-Only Security. At no time did either the Firm or the Brisards attempt to determine whether any of the investors to whom they sold the SBA Interest-Only Security were QIBs.

The five customers (NT, CS, SJ, PC and VH) who purchased the SBA Interest-Only Security were not QIBs and therefore the transactions were not exempt from Section 5 requirements under the safe harbor of Rule 144A. The offers and the sales by the Firm and the Brisards to customers and prospects used interstate facilities. The offers to sell were by email

and telephone, and the sales were communicated interstate through email, telephone and fax communications. No other exemption from the registration requirements of Section 5 was available to the Firm or the Brisards.

As a result of the above, the Firm's and the Brisards' sale of the SBA Interest-Only Security to five unqualified customers violated Section 5.

The Firm's WSPs include a section entitled "Investment Banking," which covers private offerings. During the Relevant Period, Garber was the designated supervisor for private placements. The WSPs required Garber to review all documents related to offerings and supervise sales activities, among other duties, to ensure that the offering proceeded in accordance with the Securities Act and related regulations. The WSPs specifically provided that private offerings could not be sold by means of general advertising or solicitation.

As set out above, the Brisards used email to generally solicit retail investors to purchase the SBA Interest-Only Security. They took no steps to consider the eligibility of the recipients of their soliciting emails to purchase the SBA Interest-Only Security.

Garber knew that the SBA Interest-Only Security was an unregistered security being sold by the placement agent pursuant to a Rule 144A exemption requiring QIB only sales. Garber signed a letter acknowledging that the Firm would only sell the security only to QIBs. Garber then reviewed and approved the sales despite the fact that they were to individual, retail investors, who did not qualify to invest in the security. Garber failed to reasonably respond to the red flags indicating that the Brisards were marketing and selling the SBA Interest-Only Security to customers who were not qualified to purchase the product under Section 5.

Despite signing a letter to the placement agent acknowledging that the SBA Interest-Only Security could only be sold to QIBs, Garber allowed K. Brisard to sell the SBA Interest-Only Security to individual retail customers.

The WSPs required Garber to review correspondence and contacts with customers to ensure that an offering proceeds without general solicitation. However, Garber failed to do that in connection with the SBA Interest-Only Security.

Garber's failure to supervise the Brisards' activities in soliciting the SBA Interest-Only Security by sending emails to prospective customers resulted in the general solicitation of investors, the sales to non-QIBs, and the Section 5 violation, and in violation of NASD Rules 3010 (a) and (b) and FINRA Rule 2010.

Based on the foregoing, Respondent violated NASD Rules 3010(a) and (b) and FINRA Rule 2010.

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

SANCTIONS

It is ordered that Respondent be sanctioned with

- A suspension from associating with any FINRA member in a principal capacity for one year; and
- A fine in the amount of $15,000

Respondent agrees to pay the monetary sanction(s) upon notice that this Offer has been accepted and that such payments are due and payable. Respondent has submitted an Election of Payment form showing the method by which she proposes to pay the fine imposed.

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

SO ORDERED.

FINRA

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

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