FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

Department of Enforcement, Complainant, v. Lawrence LaBine, (CRD No. 1279935), Respondent.	Disciplinary Proceeding No. 2009019605401 Hearing Officer - MJD **ORDER ACCEPTING OFFER OF SETTLEMENT** Date: April 8, 2016

INTRODUCTION

Disciplinary Proceeding No. 2009019605401 was filed on April 28, 2015, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Lawrence LaBine submitted an Offer of Settlement (Offer) to Complainant dated April 5, 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, 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, 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

LaBine entered the securities industry in 1984. He obtained a Series 7 license in June 1984 and obtained a Series 63 license in July 1984. He obtained Series 24, 65 and 66 licenses in August 1987, June 1998 and November 2002, respectively. Respondent was associated with six FINRA regulated broker-dealer firms prior to becoming associated with DeWaay Financial Network, LLC ("DeWaay")[1] from June 18, 2007 through October 21, 2010.

During the Relevant Period, LaBine was also an SEC-registered investment advisor. On October 22, 2010, FINRA received a Form U5 from DeWaay, reporting that it had made a "business decision" to terminate LaBine's association with the Firm on October 21, 2010. From November 2010 through March 2016, LaBine was a registered representative and principal with another registered broker-dealer. On March 23, 2016, FINRA received a Form U5 reporting that LaBine had voluntarily resigned from that broker-dealer. LaBine is not currently associated with a FINRA member. FINRA retains jurisdiction over LaBine pursuant to Article V, Section 4 of FINRA's By-Laws.

LaBine has been the subject of prior disciplinary action by the NASD and state actions by Arizona and Illinois. On November 22, 2005, following execution of an Offer of Settlement concerning a charge of unsuitable recommendations with respect to five customer accounts, the NASD suspended LaBine for 15 days, fined him $25,000 and required him to requalify as a

[1] DeWaay filed a Form BDW to withdraw its broker-dealer registration with FINRA that became final on January 9, 2013.

registered representative. In February 1991, the State of Arizona Securities Division issued a Cease and Desist Order against LaBine for selling unregistered securities. And on March 9, 2007, as a result of LaBine's November 2005 settlement with the NASD, the State of Illinois required him to withdraw his Illinois license for 18 months and pay the cost of a disciplinary proceeding against him; and (ii) ordered that upon re-registration in Illinois, he would be subject to enhanced supervision for a period of one year.

In addition, on March 2, 2016, following a hearing on the merits, the Chief Administrative Law Judge ("ALJ") of the Securities and Exchange Commission ("SEC") concluded that LaBine had willfully violated Section 10(b) of the Exchange Act and Rule 10b-5(b) promulgated thereunder, and was subject to scheme liability under Rule 10b-5(a) and (c), in connection with his sales of Domin-8 and Series D to the same customers at issue in this case. *See In the Matter of Lawrence M. LaBine*, Administrative Proceeding File No. 3-15967, SEC Initial Decision Release No. 973, dated March 2, 2016 (the "SEC Decision"). Among other things, the ALJ entered a cease and desist order with respect to current and future violations of § 10(b) of the Exchange Act and Rule 10b-5; ordered LaBine to disgorge $100,000 plus prejudgment interest; and barred him from associating with any investment advisor, broker, or dealer, with a right to reapply for association in two years. LaBine did not appeal the SEC Decision.

FINDINGS AND CONCLUSIONS

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

SUMMARY

Respondent Lawrence LaBine, a registered representative, made fraudulent misrepresentations and omissions of material facts and unsuitable recommendations to customers

while associated with DeWaay Financial Network (DeWaay or the Firm), a FINRA-regulated broker-dealer, from June 2007 through October 2010 (the Relevant Period).

During April 2009 to August 2009, LaBine sold senior debentures (Series D) issued by Domin-8, a company that developed software for real estate management companies. During that period, LaBine made fraudulent misrepresentations and omissions of material fact to five customers, Customers DSP and MSP (the "SPs"), JS and MS (the "Ss") MR, MD and CP, in connection with the sale of Series D. At the time of those sales, LaBine was receiving regular updates about Domin-8's poor financial condition from senior management at Domin-8 and the company's lead investment banker, and had arranged to receive compensation and other valuable consideration from the company – such as a seat on Domin-8's board of directors – for meeting Series D fundraising targets he had arranged with the company. This information about Domin-8's perilous financial condition and LaBine's personal incentive to sell Series D was material to Series D investors, yet LaBine failed to disclose it to these customers when he recommended Series D to them.

Domin-8 ultimately filed for bankruptcy in September 2009. Between approximately August 2009 and December 2009, LaBine made fraudulent misrepresentations and omissions of material fact to four customers, the SPs, the Ss, CP and MR, in connection with the sale of securities of D8 Acquisition Corp. (D8), an entity he had formed with others in an effort to acquire the assets of Domin-8 in bankruptcy. These fraudulent statements included, at least, that Series D investors who invested in D8 would obtain the return of the principal they had invested in Series D.

By reason of the above, in connection with sales of Series D and D8, LaBine violated Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5

thereunder, Section 17(a)(1) of the Securities Act of 1933 (Securities Act) and FINRA Rules 2020 and 2010.

Between 2007 and 2010, LaBine also made unsuitable sales of non-traded real estate investment trusts (REITs) and other alternative investments, including Series D and D8, to the Ss, MR, MD, CP, MT and NA, who were elderly and/or inexperienced investors.

LaBine's recommendations of Series D, D8, REITs, and other alternative investments to the six customers were unsuitable, given that the investments were illiquid, hard to value, complex and high risk. LaBine did not have a reasonable basis to believe the securities he recommended were suitable in light of the investment objectives these customers had communicated to LaBine and their overall financial circumstances, including net worth, income, risk tolerance and investment experience. Three of these customers had limited financial means and two did not meet suitability standards specified in the prospectuses for the non-traded REITs that LaBine recommended and sold to them. LaBine earned high commissions from the sales of these securities to his customers.

By reason of the above, in connection with Series D, D8 and other investments, including non-traded REITs, LaBine made unsuitable recommendations to six customers in violation of NASD Rules 2310 and 2110 and FINRA Rule 2010.

RESPONDENT AND JURISDICTION

Respondent entered the securities industry in 1984. He obtained a Series 7 license in June 1984 and obtained a Series 63 license in July 1984. He obtained Series 24, 65 and 66 licenses in August 1987, June 1998 and November 2002, respectively. Respondent was associated with six FINRA regulated broker-dealer firms prior to becoming associated with DeWaay from June 18, 2007 through October 21, 2010.

During the Relevant Period, DeWaay's home office was located in Iowa. While associated with DeWaay, Respondent worked out of a Firm branch office in Arizona. The Firm also maintained a branch office in California, from which Respondent conducted business.

On or about October 21, 2010, DeWaay terminated Respondent's association with the Firm. From November 2010 through March 2016, LaBine was a registered representative and principal with another registered broker-dealer. On March 23, 2016, FINRA received a Form U5 reporting that LaBine had voluntarily resigned from that broker-dealer. LaBine is not currently associated with a FINRA member. FINRA retains jurisdiction over LaBine pursuant to Article V, Section 4 of FINRA's By-Laws.

BACKGROUND

Domin-8's business was developing and selling software to property-management companies to aid them in managing income-producing commercial and residential real estate. The company was undercapitalized after it acquired several competitors. To raise urgently needed capital, Domin-8 began issuing Series D units in 2008. Series D was offered as a private placement offering. Series D securities were not listed or traded on any securities exchange.

Series D was a priority secured obligation of Domin-8 in the event of liquidation. However, it was subordinated to funds owed to the owners of Domin-8 and their original partners, and payments to holders of Series D could be suspended in cases of bankruptcy or insolvency in order to repay the priority investors.

Each Series D unit was priced at $50,000. The minimum investment was one unit, consisting of a $50,000 Series D senior subordinated debenture and one warrant to purchase 857 shares of Domin-8 common stock at $7 per share.

The lead placement agent for the Series D offering, GAF, entered into a Selling Agreement with the Firm providing that the Firm's total compensation for selling Series D would be 80% of the commissions payable and 80% of the warrants issuable by Domin-8 to GAF. In or about November 2008, Domin-8 agreed to pay selling compensation directly to Respondent which could include warrants in Domin-8 stock, if the Firm provided Domin-8 with confirmation of Respondent's sales of Series D to customers.

The Private Placement Memorandum ("PPM") and other Series D offering documents did not disclose the Selling Agreement between GAF and DeWaay. Nor did they disclose that Domin-8 had agreed to compensate Respondent directly for his sales efforts and that the selling compensation potentially included warrants in Domin-8 stock.

During the five-month period from April 2009 to August 2009, just before Domin-8 declared bankruptcy, Respondent earned approximately $187,000 in commissions on Series D sales.

Domin-8 filed for Chapter 11 bankruptcy protection in September 2009. In October 2009, Respondent and others formed D8, a company organized to attempt to acquire the assets of Domin-8, and filed a Notice of Exempt Offering of Securities (Regulation D Notice) with the United States Securities and Exchange Commission ("SEC"). The PPM for the D8 offering, dated October 21, 2009, indicated that D8 was offering 88 units to investors for $50,000 each, comprised of a $20,000 Series 1 Secured Subordinated Note and $30,000 allocated to 3,000 shares of Series 1 Convertible Preferred stock. The D8 PPM also stated that upon the purchase of Domin-8's assets, members of Domin-8's existing management team would continue in their respective roles with D8. Moreover, Respondent would be appointed a Director of D8's Board of Directors.

In February 2010, the bankruptcy court accepted the offer of a company other than D8 to acquire Domin-8's assets in bankruptcy. That company, RP, was, like Domin-8, in the business of developing and marketing property management software products and related services. RP merged Domin-8's operations into its existing business. Series D investors lost approximately one-third of their principal and lost the entire value of warrants they purchased as part of their investments as a result of Domin-8's bankruptcy. D8 investors received back all of their principal.

FRAUDULENT MISREPRESENTATIONS AND OMISSIONS OF MATERIAL FACT CONCERNING DOMIN 8

Section 10(b) of the Exchange Act prohibits "any person, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national security exchange . . . to use or employ, in connection with the purchase or sale of any security . . . any manipulative or deceptive device or contrivance."

Rule 10b-5 of the Exchange Act prohibits any person, "directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, (a) to employ any device, scheme or artifice to defraud, (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security."

Section 17(a) (1) of the Securities Act prohibits any person, "by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails . . . to employ any device, scheme, or artifice to defraud."

FINRA Rule 2020 provides that "[n]o member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance."

FINRA Rule 2010 requires members and associated persons, in the conduct of their business, to "observe high standards of commercial honor and just and equitable principles of trade."

A violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Section 17(a)(1) of the Securities Act and FINRA Rule 2020 constitutes a violation of FINRA Rule 2010.

In connection with the offer and sale of Series D and D8, and to induce customers to purchase those securities, Respondent, by the use of the means of instrumentalities of interstate commerce (including telephone and email), or of the mails, made numerous false statements to customers, and omitted to state facts necessary to make his statements not misleading.

Misrepresentations and Material Omissions Concerning Series D

During April 2009 to August 2009, while Respondent was recommending and selling Series D investments to his customers as a safe investment, Respondent knew that Domin-8 was experiencing severe financial difficulties. He exchanged frequent emails regarding Domin-8's financial difficulties with Domin-8's senior management and RO, an investment banker with GAF, in which they discussed Domin-8's urgent need for cash to meet ongoing obligations, and Respondent's role raising the needed funds.

Throughout that period while Respondent received information concerning details of Domin-8's precarious financial situation, he recommended and sold Series D to customers to raise cash to alleviate that situation, but did not tell his customers about the company's financial

difficulties or the special incentives that Domin-8 had offered Respondent in exchange for raising immediate cash.

a) On or about April 9, 2009, DB, Domin-8's Chief Financial Officer, emailed Respondent stating that DB appreciated Respondent's attention to the company's cash flow problems.

b) On or about April 21, 2009, DB emailed Respondent to memorialize what they had discussed in a recent meeting: "[Y]ou have again promised to deliver funding of $1.5 million in the next 45 days and then funding $1.0 million through late in 2009 when we have raised the full $15 million ... You are invited and welcome to attend [the Board meeting] and to speak to the Board ... [Y]ou indicated your desire to have [two Board seats added] for Series D debenture holders given the significance of your involvement in the offering and our survival. I agreed to pursue this with management and to discuss it with the Board."

c) On or about April 28, 2009, DB emailed both RO and Respondent and stated that "[w]e are out of cash and in a very difficult spot again... In the coming days, we are certain that there will be over $300,000 of critical payments that will become an issue. Following that will be our next payroll ... the retention bonuses have not been paid and there is negative sentiment by our employees that is festering about the lack of payment ... We believe this is critical at this time!"

d) On or about May 4, 2009, RO forwarded an email from DB to Respondent in which DB said that "we have only 7 more days of collections to meet our payroll funding ... we will be paying only those vendors between now and then that MUST be paid. There is no room for any discretionary payments ... we will need about $200k to close before [payroll payments are due] ... [I]f we make payroll, then we need at least another $300k for critical vendors in order to calm the current situation."

e) On or about May 14, 2009, DB emailed Respondent to thank him for raising $100,000 for Domin-8's payroll and said that he and another Domin-8 senior manager wanted to review some points before they and Respondent had a conference call with the Board. DB listed some of the topics that would be discussed with the Board along with some commentary for each: "The Board will ask about [your] commitment to raise $1.0 million per month and the shortfall that has led to our current vendor situation ... the Board may ask about your earlier commitment to fund all of the entire offering if other brokers do not participate ...."

Despite Respondent's direct knowledge of Domin-8's precarious financial situation from April 2009 to August 2009, he misrepresented to his customers that the Series D offering was a safe investment.

a) Respondent represented to customers DSP and his wife MSP (the "SPs") that Series D had a good return, was a no risk investment and that they were certain to get their entire principal returned to them should Domin-8 ever file for bankruptcy. The SPs decided to invest in Series D, based on Respondent's representations about its lack of risk. The SPs commenced a $50,000 purchase of Series D securities in or about May 2009.

b) In or about April 2009, Respondent recommended that customer CP invest in Series D. Respondent represented that Series D was a low risk investment. CP purchased Series D securities on or about April 14, 2009.

c) In or about early April 2009, Respondent recommended that customer MD invest in Series D. Respondent told CD, who managed MD's account, that there would be little risk involved in an investment in Series D and that Domin-8 would return MD's investment principal should anything go wrong with the company. Based on Respondent's representations, MD purchased $54,113 worth of Series D securities on or about April 20, 2009.

d) In or about April 2009, Respondent recommended that customer MR invest in Series D, misrepresenting to MR that Series D was a safe, secure investment that would not lose any of her money. MR made a $92,500 purchase of Series D securities on or about June 1, 2009.

e) In or about July 2009, Respondent recommended that customers JS and MS (the "Ss") invest in Series D, representing that Series D was safe and that Domin-8 would return the entire amount of their principal to them should the company ever file for bankruptcy because they would be secured debenture holders. The Ss made a $100,000 purchase of Series D securities on or about July 29, 2009.

Respondent recommended Series D to Firm customers SPs, CPs, MD, MR and the Ss, while failing to disclose several material facts:

a) Domin-8's financial condition was dire and rapidly deteriorating;

b) Domin-8's solvency was dependent on Respondent being able to sell additional units of Series D to investors;

c) Domin-8 was on the verge of bankruptcy;

d) Respondent was incentivized to recommend Series D, because he was entitled to receive Domin-8 warrants and consideration beyond that which was contemplated by the Selling Agreement between the Firm and GAF as part of his compensation for selling Series D;

e) Respondent was incentivized to recommend Series D because he had sought and been offered a seat on Domin-8's Board of Directors as consideration for meeting personal Series D fundraising targets he had discussed and/or agreed to with Domin-8 management; and

f) Series D debentures were subordinated to certain notes executed in connection with prior corporate acquisitions by Domin-8 in the event of a bankruptcy or other default event. Moreover, in such event, Series D was equal in rank and not senior to certain other debt financing up to the amount of $3 million.

Misrepresentations and Material Omissions Concerning D8

In September – October 2009, around the time that Domin-8 filed for bankruptcy, Respondent met with certain Series D investors and solicited them to invest additional money in D8. Respondent told the investors that they should invest in D8 so that the money they had invested in Domin-8 would be returned to them in full.

a) On or about September 21, 2009, Respondent met with the Ss and informed them that Domin-8 had filed for bankruptcy. In late October 2009, Respondent met with the Ss again and told them that an investment in D8 was the only way they would get their Domin-8 investment returned to them in full. At Respondent's recommendation, the Ss purchased $50,000 worth of D8 securities in or about November 2009.

b) In or about September 2009, Respondent informed the SPs of Domin-8's bankruptcy and told them that they could only receive the return of their Domin-8 investment if they invested in D8. At Respondent's recommendation, the SPs purchased D8 securities on or about December 15, 2009.

c) In or about September 2009, Respondent had a telephone conversation with CP and informed CP that Domin-8 had filed for bankruptcy. In that call, Respondent informed CP about D8 and stated that CP needed to invest in D8 to get back his Series D investment. At Respondent's recommendation, CP purchased D8 securities on or about November 20, 2009.

d) In October 2009, Respondent met with MR and stated that MR should invest in D8 to receive a return of the previous Series D investment. Respondent further stated that investment in D8 would be successful if D8 acquired Domin-8's assets in bankruptcy. Those representations were false and/or misleading. Respondent's representation that a D8 investment would be successful amounted to an unwarranted prediction of the outcome of the bankruptcy proceeding and of the success of the re-organized company. Respondent did not have a reasonable basis for this prediction.

In or about September and October 2009, an investment in D8 would not, as Respondent represented to SPs, CP, the Ss and MR, ensure that a Series D investor would be repaid the entire amount of his or her invested principal. In fact, D8 was not successful in its attempt to acquire Domin-8 during Domin-8's bankruptcy proceeding. As a result, the Series D investors incurred substantial losses following Domin-8's bankruptcy.

The statements and omissions that Respondent made to his customers, described above, were material and false, misleading, or both.

Respondent knew, or was reckless in not knowing, that the statements and omissions described above were materially false, misleading, or both.

As a result of the foregoing conduct, Respondent willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and violated FINRA Rules 2020 and 2010. Moreover, Respondent violated FINRA Rule 2010, in that he failed to comply with Section 17(a)(1) of the Securities Act.

Unsuitable Recommendations

NASD Rule 2310(a) requires that, in recommending a purchase, sale or exchange of any security, a registered representative must have a reasonable basis for believing that the recommendation is suitable for a customer based upon facts, if any, disclosed by such customers as to the customer's securities holdings and financial situation and needs.

NASD Rule 2310(b) requires that prior to the execution of a transaction, a registered representative shall make reasonable efforts to obtain information concerning a customer's financial and tax status, the customer's investment objectives, risk tolerance and such other information used or considered to be reasonable by such registered representative in making recommendations to customers.

A violation of NASD Rule 2310 constitutes violations of NASD Rule 2110 and FINRA Rule 2010.

As described herein, customers MR, the Ss, CP, MD, MT, and NA each told Respondent that they were interested only in conservative, low-risk investments that would preserve the principal they were to invest – objectives and risk tolerances entirely commensurate with their ages, levels of wealth and income, and investment experience.

Respondent ignored these critical investment objectives expressed by these customers, and instead recommended that they invest in alternative investments, including Series D and non-traded REITs, that were significantly riskier than the customers' risk tolerances, did not comply with the customers' investment objectives and were not suitable, given the customers' overall financial circumstances and investment experience.

As discussed herein, Respondent recommended four non-traded REITs -- CNL Lifestyle Properties (CNL), KBS REIT II (KBS), Inland American Real Estate Trust (Inland), and

Behringer Harvard Multifamily REIT I (Behringer Harvard) -- to customers for whom those investments were unsuitable. The prospectus for each such REIT described it as having a high degree of risk and cautioned that it was only suitable for investors who could afford to lose their entire capital invested in the REIT. The prospectuses for the four REITs also described special suitability concerns and set customer minimum suitability standards, including net worth of $250,000, or $70,000 of annual gross income and $70,000 net worth.

Investments in those non-traded REITs carried the risks of illiquidity for long periods of time, very limited opportunities for early redemption of shares, unreliable reported values for shares, real estate market risk, specific real estate sector risk, and loss of some or all of an investor's principal.

Customer MR

Customer MR is a retiree in her 80s. MR began her customer relationship with Respondent in 2002, when she was in her 70s and recently widowed. Prior to 2002, MR did not have any investment experience. Her late husband was the primary income earner and had handled the couple's finances. MR had been a homemaker for much of her adult life.

During his lifetime, MR's husband had placed most of the couple's funds in conservative assets. Upon opening a brokerage account in 2002 and continuing thereafter, MR informed Respondent that she wished to continue holding her funds in a similar low-risk fashion because she needed a safe, steady income stream for the rest of her life.

In or about July 2007, MR transferred her brokerage accounts to the Firm and Respondent. At the time, MR was 78 years old. According to the new account form that MR signed in approximately July 2007, her annual income was $76,000 and her net worth was approximately $1 million. The new account forms that Respondent had MR sign inaccurately

stated that MR had extensive investment experience. MR did not fill out those forms. The forms were already filled in when she came to Respondent's office and she signed them as Respondent directed her.

Respondent ignored MR's request that he recommend safe, low-risk investments, instead recommending that she invest a significant percentage of her investible assets in Series D, Inland, KBS, and CNL – each of which placed a significant amount of MR's principal at risk of loss and carried other risks entirely inconsistent with the investment objectives MR had expressed to Respondent. Respondent also recommended that MR invest in Superfund Green, a commodity futures fund that was described in its prospectus as being speculative and highly leveraged.

At Respondent's recommendation, MR sold or redeemed conservative investments and used the proceeds to invest in non-traded REITs, Series D and Superfund Green, as follows:

a) In or about March 2008, Respondent recommended to MR that she invest in Inland REIT. MR made a $28,000 investment in Inland on or about March 20, 2008.

b) In or about January 2009, Respondent recommended to MR that she invest in KBS REIT. MR made an $80,000 investment in KBS on or about February 9, 2009.

c) In or about April 2009, Respondent recommended to MR that she invest in Series D. MR invested $92,500 in Series D on or about June 1, 2009.

d) On or about May 1, 2009, Respondent met with MR and recommended that she invest in Superfund Green and CNL REIT. MR made a $53,000 investment in Superfund Green on or about June 1, 2009 and a $96,000 investment in CNL on or about June 25, 2009.

In total, at Respondent's recommendation, MR invested approximately $350,000 in risky and illiquid alternative investments, which, by 2009, comprised a significant portion of her liquid net worth.

Based upon MR's age, risk tolerance, investment objectives, limited understanding of risk and lack of financial sophistication, Respondent did not have a reasonable basis to believe that his recommendations that MR invest in Inland, KBS and CNL REITs, Series D and Superfund Green were suitable.

Respondent's recommendations to MR that she invest in Inland, KBS and CNL REITs, Series D and Superfund Green also resulted in an undue concentration of her investible assets in risky and illiquid alternative investments, and resulted in significant financial loss to MR.

MR sustained net losses totaling approximately $36,000 in her Inland and CNL REIT investments. She lost approximately one-third of her principal invested in Series D and lost the entire value of the Series D warrants. Respondent earned approximately $24,000 in commissions from his sales of alternative investments, including Inland, KBS, CNL, Superfund Green and Series D, to MR.

Customers JS and MS

JS is a 91-year old retired employee of the United States Air Force. MS, JS's wife, (collectively the Ss), is in her 80s and is also a retired Air Force employee. In or about June 2009, MS inherited $300,000 from her mother. JS and MS met with Respondent in or about July 2009, when they were both in their 80s, to discuss their investment objectives. The Ss told Respondent that, given their age, they wanted to invest the $300,000 only in low risk investments and did not want to lose any principal. At the time, the Ss' investment experience was limited to low-risk mutual funds and a few blue-chip stocks.

In or about July 2009, when they opened their account at the Firm, the Ss had a net worth of approximately $693,000 (including the $300,000 inheritance) and annual income of

approximately $100,000. The sources of that income included pension and Social Security payments.

Respondent ignored the Ss' request that he recommend investments that posed little or no risk to the principal they were to invest. Instead, he recommended that they invest a significant percentage of their investible assets in Series D, D8, KBS, and Behringer Harvard – each of which placed a significant amount of the Ss' principal at risk of loss and carried other risks entirely inconsistent with the investment objectives the Ss had expressed to Respondent.

At Respondent's recommendation, the Ss invested MS' inheritance and sold or redeemed conservative investments and used the proceeds to invest in non-traded REITs, Series D and D8, as follows:

a) In or about July 2009, Respondent recommended that the Ss invest in KBS REIT, Behringer Harvard REIT, and Series D.

b) The Ss made $100,000 investments each in KBS and Behringer Harvard, for a total of $200,000, or about July 29, 2009. On or about the same date, they also invested $100,000 in Series D.

c) Respondent met with the Ss on or about September 21, 2009 and informed them that, in fact, Domin-8 had recently filed for bankruptcy. In or about October 2009, Respondent recommended that they invest in D8.

d) The Ss invested $50,000 in D8 in or about November 2009, at Respondent's recommendation. They sold a bond and two mutual funds held in their brokerage account to generate cash for the D8 purchase.

At the time that Respondent made the recommendations described above to the Ss, for investment of approximately 45% of their household liquid net worth, the Ss were elderly, relatively inexperienced investors who had informed Respondent that they wanted to invest their inheritance conservatively. Based upon the Ss' age, risk tolerance, investment objectives, limited understanding of risk and lack of financial sophistication, Respondent did not have a

reasonable basis to believe that his recommendations that the Ss invest in KBS and Behringer Harvard REITs, Series D and D8 were suitable.

Respondent's recommendations that the Ss purchase KBS and Behringer Harvard REITs, and Series D and D8 also resulted in an undue concentration of their investible assets in risky and illiquid alternative investments.

The Ss lost approximately one-third of their principal invested in Series D and lost the entire value of the Series D warrants. Respondent earned approximately $21,000 in commissions from his sales of alternative investments, including non-traded REITs and Series D, to the Ss.

Customer CP

CP is in his 60s. Upon his retirement in 2008 from a military contractor, CP obtained a retirement package in which he would receive payments of approximately $23,000 a month for five years, beginning in January 2009. Because his retirement payments would end in five years, CP had a low risk tolerance. In or about November 2008, when CP opened his accounts with the Respondent at the Firm his prior annual income was approximately $135,000. He had limited investment experience and no prior experience investing in REITs. The Firm's new account forms for his account inflated CP's net worth to $1.3 million, because Respondent included the full value of CP's five-year retirement package at the time of the opening of the account. CP's actual liquid net worth at the time was approximately $100,000. CP indicated to Respondent that he was only willing to accept a small amount of risk, because his retirement income was limited to the five years of payments that would end in 2014.

Respondent ignored CP's request for conservative low-risk investments, instead recommending to him that he invest a significant portion of his assets in Series D, D8 and CNL, KBS, Inland, and Behringer Harvard REITs – each of which placed a significant amount of CP's

principal at risk of loss and carried other risks inconsistent with the investment objectives CP had expressed to Respondent.

At Respondent's recommendation, CP invested in non-traded REITs, Series D and D8, as follows:

a) In or about January 2009, CP followed Respondent's recommendations to invest in CNL, KBS and Inland REITs and invested $55,000 each in CNL, KBS and Inland, for a total of $165,000.

b) In or about April 2009, although CP was not an accredited investor, Respondent recommended that CP invest in Series D. CP followed that recommendation and made a $50,000 investment in Series D.

c) In or about July 2009, at LaBine's recommendation, CP made a $53,000 investment in Behringer Harvard REIT.

d) In or about September 2009, Respondent notified CP that Domin-8 had filed for bankruptcy. In that call, Respondent informed CP about D8 and stated that CP needed to invest in D8 to get back his Series D investment. CP invested $50,000 in D8, on or about November 20, 2009.

Altogether, at Respondent's recommendation, CP invested $318,000 in the risky and illiquid alternative investments described above.

At the time that Respondent made the above recommendations and sales CP had indicated to Respondent that he only wanted conservative investments with little risk. Based upon CP's risk tolerance, investment objectives, limited understanding of risk and financial situation, Respondent did not have a reasonable basis to believe that his recommendations that CP invest in CNL, KBS, Inland and Behringer Harvard REITs and Series D and D8 were suitable.

CP sustained losses totaling approximately $32,000 from his Inland and CNL REIT investments. He lost approximately one-third of his principal invested in Series D and lost the entire value of the Series D warrants. Respondent earned approximately $18,000 in commissions

from his sales of alternative investments, including Series D, D8, CNL, KBS, Inland, and Behringer Harvard, to CP.

Customer MD

In December 2008, when MD opened her account at the Firm with Respondent, her liquid net worth was approximately $800,000 and her annual income was $48,000. MD funded the account by transferring approximately $100,000 in existing assets that she held in another brokerage account. MD was 88 years old at the time. MD's son CD made the investment decisions for MD's account.

In early 2009, Respondent was told that any investments in MD's account had to be safe and with no risks because of MD's advanced age. Respondent ignored CD's request that he recommend safe, low-risk assets, instead recommending to CD and MD that MD purchase Series D, KBS, and Behringer Harvard – each of which placed a significant amount of MD's principal at risk of loss and carried other risks entirely inconsistent with the customer's investment objectives.

At Respondent's recommendation, MD invested in non-traded REITs and Series D, as follows:

a) In or about April 2009, Respondent recommended to CD that MD invest in Series D. CD agreed and MD made a $54,113 investment in Series D.

b) In or about April 2009, Respondent recommended to CD that MD invest in KBS. On or about April 20, 2009, CD followed Respondent's recommendation and invested $46,816 in KBS for his mother's account.

c) In or about May 2009, Respondent recommended an investment in Behringer Harvard for MD's account. On or about September 18, 2009, CD invested $80,000 in Behringer Harvard shares for MD's account.

In total, at Respondent's recommendation, MD purchased approximately $181,000 in the risky and illiquid alternative investments described above.

At the time that Respondent made the above recommendations, MD was in her late 80s and CD managed MD's financial affairs and was Respondent's contact for MD's account. CD had no prior investment experience and had indicated to Respondent that he wanted only low-risk investments for MD's account. Based on MD's age, medical condition, lack of capacity to understand risk and limited financial resources, and CD's lack of financial sophistication, Respondent did not have a reasonable basis to believe that his recommendations that MD invest in Series D, KBS and Behringer Harvard were suitable.

MD lost approximately one-third of her principal invested in Series D and lost the entire value of the Series D warrants. Respondent earned approximately $12,738 in commissions from his sales of alternative investments, including KBS, Behringer Harvard and Series D, to MD.

Customer MT

MT is in her 60s and formerly worked in administrative positions in physicians' offices. MT first became Respondent's customer around the late 1990s. In 1998, MT had a net worth of approximately $200,000, which she had conservatively invested in, among other things, annuities. MT had accumulated the funds from several employer retirement plans in which she had participated. She had limited investment experience.

In or about August 2008, MT opened an account at the Firm. At the time, MT's annual income, together with her husband's, was $40,000 and their joint net worth was approximately $176,000. She wanted the money invested conservatively.

In or about April 2009, Respondent recommended to MT that she invest in KBS. At Respondent's recommendation, MT invested $35,000 in KBS on or about May 21, 2009. MT's

$35,000 investment in KBS, at Respondent's recommendation, represented approximately 20% of her net worth. MT was not sufficiently sophisticated in financial affairs to independently evaluate and understand the risks of investing in non-traded REITs, as described above.

The suitability standards of KBS set forth in its prospectus required that an investor have a net worth of at least $250,000 or annual income of at least $70,000 and a net worth of at least $70,000. Based upon her income of $40,000 and applicable net worth of $176,000, MT did not meet those standards. Respondent recommended and sold an investment in KBS to MT even though he knew that she did not meet the prospectus suitability standards for that non-traded REIT.

MT and her husband did not have full time jobs, had low income, and lacked health insurance. Until 2009, MT had invested her limited retirement funds in conservative investments. MT had no experience with investing in REITs. Based on MT's risk tolerance, investment objectives, limited financial resources, insecure financial circumstances and lack of financial sophistication, Respondent did not have a reasonable basis to believe that his recommendation that MT invest in KBS, which resulted in undue concentration in an alternative investment, was suitable. Respondent earned $2,100 in commissions from his sale of KBS to MT.

Customer NA

NA is in her 70s. NA first became Respondent's customer in 2002 at another FINRA-regulated broker-dealer. In July 2007, NA transferred her brokerage account to the Firm. At the time, NA was a 70-year-old manager for a non-profit social work agency, had an annual income of $50,000 and liquid net worth of approximately $150,000. NA had no experience investing in REITs.

Respondent recommended that NA invest in REITs, although they were illiquid, risky investments inconsistent with her risk tolerance and investment objectives.

At Respondent's recommendation, NA sold or redeemed conservative investments and used the proceeds to invest in non-traded REITs, as follows:

a) In early 2009, Respondent recommended that NA liquidate an annuity that she owned and use the sale proceeds to invest in CNL and KBS REITs.

b) In or about March 2009, Respondent also recommended that NA invest in Inland REIT.

c) On or about April 14, 2009, NA made a $26,000 investment in KBS shares and a $33,000 investment in CNL on or about April 15, 2009.

The investments in KBS and CNL, which NA made at Respondent's recommendation, amounted to approximately 40% of NA's liquid net worth.

The suitability standards for CNL and KBS set forth in their prospectuses required an investor to have a net worth of at least $250,000 or annual income of at least $70,000 and a net worth of at least $70,000. NA did not meet those standards. Respondent recommended that NA purchase CNL and KBS even though he knew that she did not meet the prospectus suitability standards for those non-traded REITs.

Based on NA's risk tolerance, investment objectives, limited financial resources, limited understanding of risk and lack of financial sophistication, Respondent did not have a reasonable basis to believe that his recommendations that NA invest in KBS and CNL, which resulted in undue concentration in alternative investments, were suitable.

Respondent made unsuitable recommendations to MR, the Ss, CP, MD, MT and NA. Furthermore, Respondent failed to adhere to high standards of commercial honor and just and

equitable principles of trade. By reason of the foregoing conduct, Respondent violated NASD Rules 2310 and 2110 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 barred from association with any FINRA member in any capacity. The sanctions imposed herein shall be effective on a date set by FINRA staff. A bar or expulsion shall become effective upon approval or acceptance of this Order.

SO ORDERED.

FINRA

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

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