

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,  
  
COMPLAINANT,

v.

DARYL MARC HOLZBERG,  
(CRD NO. 2504885),

RESPONDENT.

Disciplinary Proceeding  
No. 2009018956001

Hearing Officer - MC

**ORDER ACCEPTING OFFER OF  
SETTLEMENT**

Date: January 24, 2013

**INTRODUCTION**

Disciplinary Proceeding No. 2009018956001 was filed on April 24, 2012, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Daryl Marc Holzberg submitted an Offer of Settlement (Offer) to Complainant dated January 14, 2013. 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**

Holzberg first became registered as an Investment Company Products/Variable Contracts Representative (IR) through his association with a member firm in 1994. Subsequently, he was associated with several member firms where he was registered as an IR and a General Securities Representative (GSR), as well as in other capacities. From November 2006 to April 2010, he was associated with Private Asset Group, Inc. (PAG). From March 16, 2007 through April 26, 2010, he was registered as a GSR, General Securities Principal, General Securities Sales Supervisor, and a Municipal Securities Principal.

Holzberg is no longer registered or associated with a FINRA member, but remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after April 26, 2010, the effective date of the termination of his registration with PAG and (2) the Complaint charges him with misconduct occurring while he was associated with a FINRA member. Holzberg does not have any disciplinary history.

## FINDINGS AND CONCLUSIONS

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

### SUMMARY

During the period from on or about July 1, 2008, through on or about May 31, 2009 (Relevant Period), Holzberg was the registered principal of PAG, his employer firm, who was responsible for the firm's compliance with applicable laws, rules and regulations pertaining to PAG's offer and sale of private placements. In discharging this responsibility, Holzberg supervised his employer firm's offer and sale of securities issued by MPFC VI, a subsidiary of Medical Capital Holdings, Inc. (Med Cap).

In connection with his supervision of the firm's private placement business over the course of the Relevant Period, Holzberg failed to respond reasonably to "red flags" indicating increasing risks associated with the MPFC VI product. Holzberg relied upon Med Cap management's unverified representations and explanations in evaluating the significance of "red flags" and in concluding that his employer firm should continue to offer MPFC VI to its customers. As a result, Holzberg failed to supervise the firm's offer and sale of MPFC VI in a manner reasonably designed to achieve compliance with applicable rules, in violation of NASD Conduct Rule 3010. For the period ending on December 14, 2008, such conduct also violated NASD Conduct Rule 2110. For the period commencing on December 15, 2008, such conduct also violated FINRA Rule 2010.

## RESPONDENT AND JURISDICTION

Holzberg first became registered as an Investment Company Products/Variable Contracts Representative (IR) through his association with a member firm in 1994. Subsequently, he was associated with several member firms where he was registered as an IR and a General Securities Representative (GSR), as well as in other capacities. From November 2006 to April 2010, he was associated with PAG. From March 16, 2007 through April 26, 2010, he was registered as a GSR, General Securities Principal, General Securities Sales Supervisor, and a Municipal Securities Principal.

Holzberg's title was Chief Compliance Officer (CCO). In addition to his role as the firm's CCO, he assumed and carried out the responsibilities set forth in PAG's written supervisory procedures for the due diligence investigation of private placements, including the acquisition and review of relevant documents, discussions with product sponsors, review of third party due diligence reports, monitoring the affairs of the issuer during the period that a private placement was being offered for sale by the firm's representatives and, where applicable, establishing conditions upon the offer and sale of private placement securities. Holzberg is no longer registered or associated with a FINRA member, but remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after April 26, 2010, the effective date of the termination of his registration with PAG and (2) the Complaint charges him with misconduct occurring while he was associated with a FINRA member.

## BACKGROUND

Med Cap was a medical receivables financing company based in Anaheim, California. Med Cap's core business was to provide financing to healthcare providers by purchasing their accounts receivable and making secured loans to the providers. In 2001, Med Cap began raising funds for its operations through the sales of promissory notes through FINRA-registered firms. The promissory notes were issued by limited liability companies bearing the names Medical Capital Provider Funding Companies (MPFC) I-VI.

Med Cap made all interest and principal payments on these Regulation D offerings until July 2008 when it began experiencing liquidity problems and stopped making payments on two of its earlier offerings, MPFC II and MPFC III. Although Med Cap consistently stated its expectations that the past-due payments would be brought up to date and that its business model remained viable, the delinquencies continued after the July 2008 problems. In November 2008, the trustee for MPFC II declared the program in default. This was followed by additional delinquencies and defaults through the winter and spring of 2009. Med Cap ceased operations in or around June 2009.

In 2007, Holzberg and PAG's owners were introduced to Med Cap by Firm registered representatives CF and JH, who had sold MPFC offerings at previous employer firms. From May 2007 to December 2008, PAG customers invested approximately \$45 million in notes issued by MPFC III, IV, and V. In August 2008, Holzberg executed a selling agreement in which PAG agreed to offer and sell notes issued by MPFC VI. The notes bore annual interest rates of 9% to 9.5%. Holzberg approved the MPFC VI notes as a securities product of the firm. From August 2008 through April 2009, PAG customers invested approximately \$10 million in MPFC

VI notes in approximately 104 transactions. These transactions generated \$45,130.86 in revenue for the firm, and \$406,177.67 in commissions for the registered representatives who sold MPFC VI at the firm. On or about May 20, 2009, PAG suspended sales of MPFC VI.

#### CAUSE OF ACTION

On July 31, 2008, Holzberg received an email from Med Cap announcing the intention to offer MPFC VI for investment and attaching a draft of the private placement memorandum (PPM) that Med Cap intended to distribute in connection with the MPFC VI offering.

On or about August 5, 2008, Med Cap issued the PPM, which stated in relevant part, that: Our affiliates have never defaulted in the payment of their obligations on those debt securities, and all interest payments on those securities were made when due.

Around the time Holzberg received the PPM, he learned from BF, a wholesaler at Med Cap, that Med Cap had failed to make timely payments of principal to investors in a previous Med Cap issuance. Further, concurrent with the issuance of the PPM on August 5, 2008, Med Cap sent a letter to investors in the previous MPFC issuance confirming the missed payments, a copy of which Holzberg received on or about August 7, 2008. Because of the missed payments, the representations in the PPM that MPFC VI affiliates had never defaulted in the payment of obligations on previously-issued notes and were current on required interest payments were misleading. The representations were misleading because the PPM omitted to disclose that at least one prior MPFC program was or had been delinquent in making required payments of principal. Notwithstanding the misleading representations, Holzberg approved MPFC VI for offer and sale by the firm's representatives and the use of the PPM in connection with such offers and sales.

Between his August 2008 approval of MPFC VI with knowledge of the missed payments and the firm's eventual suspension of sales in May 2009, Holzberg became aware of additional missed or delayed payments to investors and the declaration by the trustee that a prior MPFC entity was in default. Further, the accumulating negative information about Med Cap's past offerings caused certain information previously received by Holzberg to take on greater significance with regard to the risk to PAG customers of an investment in MPFC VI.

#### Notices and Communications From Med Cap and MPFC Trustees

In October 2008, Holzberg received a copy of a notice issued by Med Cap on October 22, 2008, concerning notes issued by MPFC III, Series II. The notice represented that the principal for a prior MPFC offering was not paid on time; however, the notice also stated that "We are required to carry collateral to cover your interests of at least 100%. We currently have collateral of over 114%. We value collateral conservatively."

At the time Holzberg received this notice, the Note Issuance and Security Agreement that detailed the powers, authority and obligations of the trustee, provided that the trustee had no responsibility for the "existence, genuineness or value" of any collateral.

In October 2008 Holzberg instructed PAG representatives soliciting or accepting investments in MPFC VI to use a disclosure form he created. The form included five points, taken from the PPM for MPFC offerings, related to liquidity, governmental/insurance policy change, the collateral coverage ratio, the 40% rule, and the 30-day grace period. In addition, the disclosure form included a paragraph summarily identifying other risks of the offering. The disclosure form did not state that Med Cap had been and still was delinquent in payments to investors in previous offerings. Instead, Holzberg instructed selling representatives to make oral

disclosure of the delinquencies; however, he failed to implement a provision in the firm's written supervisory procedures pertaining to ongoing due diligence for private placements requiring that he "establish procedures to monitor, on an on-going basis, firm-wide compliance with any terms and/or conditions placed on the sale of the product."

In November 2008, Bank of New York Mellon, the trustee for MPFC II, Series I, declared the offering in default, which Holzberg received.

Holzberg failed to respond reasonably to this additional "red flag" and instructed representatives to disclose this information orally to customers but did not establish any supervisory practices or procedures to monitor for compliance with this condition on the offer and sale of MPFC VI.

There were additional red flags: On December 19, 2008, Med Cap sent letters notifying investors that certain December 2008 interest payments would be late. On January 19, 2009, Med Cap issued a letter to investors in one or more unspecified, previously-issued MPFC offerings stating that Med Cap would pay interest due on January 10 by January 31, 2009. Holzberg received a copy of both letters.

On February 12, 2009, Med Cap issued a letter to its note holders about the ongoing delayed interest payments, a copy of which Holzberg received.

At no time during the period of PAG's sales of MPFC VI did Holzberg receive an amended PPM correcting the materially misleading and false representations identified above or add an affirmative disclosure concerning the payment delinquencies or the defaults. An amended PPM was not issued until May 27, 2009, after PAG had suspended sales.

Holzberg knew, or should have known, that PAG representatives were providing customers with a PPM that was materially misleading and/or materially false. He did not suspend sales pending the receipt of an updated PPM.

Concerns Set Forth in 2007 Third Party Due Diligence Reports Received and Reviewed by Respondent Holzberg and Prior Business Conduct of Med Cap's Chief Executive Officer

In 2007, Holzberg received and reviewed a due diligence report prepared by Bryan Mick & Associates for MPFC V ("Mick Report"). The Mick Report identified as a concern the diminished role of the trustees associated with MPFC III, IV and V, as compared to the more active role of the trustee under the terms of MPFC II. The MPFC VI PPM also provided for a limited role of the trustee, in that it stated that the trustee had "no obligation to monitor, supervise or verify our actions or omissions, or those of our affiliates ... [n]either the trustee ... is responsible to make any calculations of principal or interest, or to independently determine any collateral coverage ratios." Holzberg also received a due diligence report in 2007 that was prepared by Dana Woodbury of Buttonwood Investment Services, LLC and related to MPFC III & IV, that noted that the PPMs for the various MPFC entities permitted them to sell account receivables to another MPFC entity. Further, at the time Holzberg executed the selling agreement and approved MPFC VI for sale by firm representatives, he was aware that Med Cap's Chief Executive Officer had been barred from the insurance industry in 1987 by the State of California and was later charged with insurance-related fraud.

Respondent Holzberg's Inadequate Implementation of PAG's Written Supervisory Procedures Pertaining to Due Diligence on Private Placements

PAG's written supervisory procedures required Holzberg to, among other things, undertake ongoing due diligence and "[Reassess] the suitability issues surrounding the product" as part of his oversight of the firm's private placement business. In carrying out these assigned

responsibilities with regard to MPFC VI, Respondent Holzberg failed to respond reasonably to new information described above and failed reasonably to evaluate previously-received information in the context of the new information of which he became aware.

The communications from Med Cap and the trustee represented an increasing number of “red flags” that affected the risks of an investment in MPFC VI and raised questions about MPFC VI’s ability to meet its future payment obligations to PAG’s customers who invested in the offering.

Respondent Holzberg did not take reasonable steps to evaluate the significance of these “red flags” in order to reassess the suitability concerns and other issues surrounding the offer and sale of MPFC VI. His ongoing due diligence consisted of conversations with BF, who represented to Holzberg at various times that the delayed payments and defaults were the result of economic conditions at the time, frozen credit markets, declining real estate values and the performance of the equity markets. Holzberg relied upon these representations and other representations made by (an agent of Med Cap) in continuing to consider MPFC VI a suitable product for PAG customers. His reliance, without verifying or assessing the reliability of these representations, was not reasonable.

Respondent Holzberg’s reliance on various representations by Med Cap management, concerning among other things, collateral coverage ratios, asset transfers between offerings, and prior business conduct of Med Cap’s CEO was unreasonable. By unreasonably relying on unverified representations of Med Cap management, Holzberg failed to respond reasonably to “red flags” indicating an increasing level of risk of an investment in MPFC VI. By (i) failing to respond reasonably to these “red flags” in the course of ongoing due diligence and risk

reassessment, (ii) failing to implement required procedures to monitor compliance with the conditions he imposed upon representatives offering and selling MPFC VI, and (iii) permitting representatives to offer and sell securities pursuant to a PPM containing false and misleading information, Holzberg failed to supervise PAG's offer and sale of MPFC VI in a manner reasonably designed to achieve compliance with applicable laws, rules and regulations.

Based on the foregoing, Holzberg violated NASD Conduct Rule 3010. With respect to conduct occurring between August 1, 2008 and December 15, 2008, such conduct was also inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of NASD Conduct Rule 2110. With respect to conduct occurring on or after December 15, 2008, such conduct was also inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of 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 suspended for six (6) months from associating with any FINRA member in a principal capacity. On July 19, 2011, Respondent filed a Chapter 13 bankruptcy petition pursuant to Title 11, United States Code. Accordingly, no monetary sanction is being assessed in this matter.

The sanction 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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