FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015046728802

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Jay Dee Jordan, Respondent
General Securities Representative
CRD No. 1776666

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I submit this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

A. I hereby accept and consent, without admitting or denying the findings, 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, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

Jay Dee Jordan ("Jordan") first became associated with a FINRA member firm in 1987. He received his Series 7 license in December 1987. Jordan also obtained a Series 63 license. While in the securities industry, Jordan has been associated with five FINRA member firms.

Jordan was associated with WFG Investments, Inc. ("WFG" or the "Firm") and registered with FINRA as a General Securities Representative from September 2005 through April 2016. WFG filed a Uniform Termination Notice for Securities Industry Registration on April 6, 2016, terminating Jordan's association with the Firm.

Jordan is not currently registered with FINRA or associated with a FINRA member firm, but he remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-laws.

OVERVIEW

Between June 1, 2012 and March 31, 2016, Respondent engaged in a series of significant violations of FINRA Rules that resulted in substantial customer harm. These violations resulted from the following misconduct:

- He recommended and engaged in unsuitable trading in nontraditional ETFs in 84 of his customers' accounts. These trades, which were unsuitable from both a reasonable-basis and a customer-specific perspective, collectively resulted in customer losses exceeding $8 million.
- He exercised discretion without having obtained prior written authorization in the accounts of at least six customers.
- He mismarked 927 of his customers' purchases of nontraditional ETFs as "unsolicited" when he had, in fact, solicited those transactions.
- He failed to report two customer complaints to his Firm, and then surreptitiously attempted to settle one of the claims away from the Firm through the improper use of his personal email account.
- He failed to produce requested documents and information pursuant to a FINRA Rule 8210 information request.

As a result of the foregoing, Jordan violated NASD Rules 2310(a) (before July 9, 2012) and 2510(b), and FINRA Rules 2010, 2111(a) (on and after July 9, 2012), 4511 and 8210.

FACTS AND VIOLATIVE CONDUCT

Unsuitable Transactions in Non-Traditional ETFs

FINRA Rule 2111(a), provides that an associated person must "have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer's investment profile."[1]

[1] FINRA Rule 2111's predecessor, NASD Conduct Rule 2310(a), similarly provides that "[i]n recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs."

This Rule imposes two obligations on registered representatives that are applicable here. First, the representative must have a "reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least some investors. In general, what constitutes reasonable diligence will vary depending on, among other things, the complexity of and risks associated with the security or investment strategy and the member's or associated person's familiarity with the security or investment strategy. A member's or associated person's reasonable diligence must provide the member or associated person with an understanding of the potential risks and rewards associated with the recommended security or strategy. The lack of such an understanding when recommending a security or strategy violates the suitability rule."[2]

Second, the representative must have a "reasonable basis to believe that the recommendation is suitable for a particular customer based on that customer's investment profile, as delineated in Rule 2111(a)."[3] Relevant considerations include "the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose . . ."

FINRA Rule 2010 requires that member firms and associated persons "observe high standards of commercial honor and just and equitable principles of trade." A violation of FINRA 2111 also constitutes a violation of FINRA Rule 2010.

FINRA Rule 2111 (and NASD Conduct Rule 2310, its predecessor) thus requires that registered representatives not only have a reasonable basis for recommending a security, but that they also conduct a customer-specific inquiry to ensure that the security is suitable for that particular customer.

In June 2009, FINRA issued Regulatory Notice 09-31, which dealt specifically with nontraditional ETFs.[4] Among other things, Regulatory Notice 09-31 reminded firms and associated persons of their obligation "to fully understand the products and transactions they recommend. With respect to leveraged and inverse ETFs, this means that a firm must understand the terms and features of the funds, including how they are designed to perform, how they achieve that objective, and the impact that market volatility, the ETF's use of leverage, and the customer's intended holding period will have on their performance."

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[2] FINRA Rule 2111.05(a).

[3] FINRA Rule 2111.05(b)

[4] Exchange-traded funds are typically registered investment companies whose shares represent an interest in a portfolio of securities that track an underlying benchmark or index. Unlike traditional mutual funds, shares of ETFs typically trade throughout the day on a securities exchange at prices established by the market. Leveraged ETFs seek to deliver multiples of the performance of the index or benchmark they track. Inverse ETFs (also called "short" funds) seek to deliver the opposite of the performance of the index or benchmark they track. Like traditional ETFs, some leveraged and inverse ETFs track broad indices, some are sector-specific, and others are linked to commodities, currencies, or some other benchmark. Other non-traditional ETFs do not utilize leverage, but are instead linked to unconventional benchmarks, such as the CBOE's volatility index.

The Notice further noted that "[w]hile the customer-specific suitability analysis depends on the investor's particular circumstances, inverse and leveraged ETFs typically are not suitable for retail investors who plan to hold them for more than one trading session, particularly in volatile markets."

Between June 1, 2012 and March 31, 2016 (the "Relevant Time Period"), Jordan recommended and executed hundreds of unsuitable purchases of nontraditional ETFs in his customers' accounts. Prior to June 2012, Jordan's business partner, MW, was primarily responsible for making asset allocation recommendations to Jordan's customers. MW resigned in June 2012, and Jordan became solely responsible for making investment recommendations to his customers.

Leading up to and during the Relevant Time Period, Jordan had become convinced that an economic crisis and/or stock market collapse was imminent, and that his customers' portfolios should be concentrated in various nontraditional ETFs so that they could benefit from rising oil prices, rising interest rates, and declining equity values. In June 2012, Jordan began making widespread recommendations to his customers that they purchase various nontraditional ETFs, including the following: (1) UWTI (three times the daily performance of the S&P GSCI Crude Oil Index ER); (2) BOIL (two times the daily performance of the Bloomberg Natural Gas Subindex); and UGAZ (three times the daily performance of the S&P GSCI Natural Gas Index); (3) TBT and TMV (two and three times, respectively, the daily performance of the inverse of the ICE U.S. Treasury 20+ Year Bond Index); (4) SDS (two times the inverse of the daily performance of the S&P 500); (5) QID (two times the inverse of the daily performance of the NASDAQ-100 Index); and (6) VIXY (matches the performance of the S&P 500 Short-Term Futures Index, which seeks to measure short-term volatility).

In February 2013, WFG implemented a new written supervisory procedure ("WSP") that incorporated the guidance in Notice to Members 09-31 and required, among other things, that registered representatives have an "adequate knowledge of the product being offered" and obtain a signed risk disclosure form for each customer seeking to trade in nontraditional ETFs. WFG distributed this new policy to all of its registered representatives, including Jordan. Despite this new policy, Jordan escalated his recommendations that customers purchase and hold nontraditional ETFs for extended periods of time throughout 2013, as he became increasingly convinced that an economic collapse was imminent. He also failed on numerous occasions to obtain the required signed risk disclosure form from his customers.

In direct contravention of the Firm's WSPs and FINRA Rule 2111, Jordan failed to use reasonable diligence to obtain an adequate knowledge base regarding these highly sophisticated products before recommending them to his customers. As a result, Jordan, throughout the Relevant Time Period, failed to understand the extraordinary risks associated with nontraditional ETFs. Likewise, because of Jordan's lack of diligence, he did not understand the features of such investments, including that they are designed to achieve their stated objectives within a single trading day, and that their performance could deviate substantially from the indices to which they were tied over longer periods of time. Jordan also failed to understand the compounding of risk associated with holding nontraditional ETFs overnight, and the fact that the leverage routinely utilized by these investments substantially increased their risk to customers.

During the Relevant Time Period, Jordan effected transactions in nontraditional ETFs in 84 of the 153 accounts for which he was the assigned registered representative. In total, Jordan recommended that his clients purchase more than $22 million in nontraditional ETFs during the Relevant Time Period. Jordan routinely failed to sell these products on the same day he purchased them, and he failed to conduct a daily analysis to ascertain whether it was appropriate to hold the products for an extended period of time. In 79 of these 84 accounts the positions were held longer than thirty days, and on many occasions these positions were held for years. Because he failed to do reasonable diligence to understand the attributes and risks of nontraditional ETFs, Jordan did not have a reasonable basis to believe that the recommendations to purchase the nontraditional ETFs were suitable for any investor, nor did he have a reasonable basis to believe that his long-term buy-and-hold recommendations were suitable.

Jordan also failed to conduct an adequate customer-specific suitability analysis with respect to the purchase and sale of nontraditional ETFs on behalf of many of his customers, including each of the instances below:

- Customers C.C. and J.C. are a married couple who are both 76 years old. Both C.C.'s and J.C.'s trust accounts listed a moderate risk tolerance and primary investment objectives of capital appreciation and income. Although C.C.'s and J.C.'s trust accounts were both initially invested in conservative, diversified portfolios, Jordan improperly exercised discretion[5] in these WFG accounts to sell the account's holdings and invest the funds almost exclusively in nontraditional ETFs, including TMV and VIXY. Jordan also extensively utilized hundreds of thousands of dollars in margin debt to even further increase C.C.'s and J.C.'s trust account holdings in these investments. Compounding the losses, Jordan caused C.C.'s and J.C.'s accounts to maintain positions in these products for several years, even as these positions declined precipitously. Jordan never explained the risks associated with these investments (or the

[5] As noted below, Jordan lacked written authorization to use discretion in any of his WFG accounts, all of which were designated as nondiscretionary by the Firm.

magnification of these risks through the use of margin) to either C.C. or J.C. In October 2016, C.C. and J.C. submitted a demand letter to the Firm, alleging that they had sustained $3.8 million in losses from Jordan's unsuitable recommendations.

- Customer L.M. is a retired and unsophisticated 76-year old who lives on a fixed income. Her new account document for her IRA account at WFG listed her primary investment objective as preservation of capital and her risk tolerance as conservative. Between March 2013 and June 2015, however, Jordan, improperly using discretion, caused L.M. to purchase shares of eight nontraditional ETFs in her account, which collectively resulted in realized losses of more than $100,000, or nearly 70% of her account value. Jordan never explained the risks of these products to his customer. In August 2015, L.M.'s husband complained to Jordan about the transactions and demanded that the 92% of L.M.'s account that was invested in UGAZ and UWTI be liquidated immediately. Jordan failed to report the complaint or to comply with this instruction. He later falsely advised L.M.'s husband that he had sold the positions when he had not.

- Customer L.S. is a retired 68-year old individual whose investment objectives were capital appreciation, preservation of capital, and income, in that order. His risk tolerance was listed on his new account form as moderate. Despite these objectives and risk tolerance, Jordan improperly utilized discretion in L.S.'s account to acquire concentrated positions in VIXY and UGAZ. These investments resulted in a loss of more than $40,000, which represented a decline of more than 60% of the account's value.

In addition to the foregoing examples, Jordan failed to conduct an appropriate customer-specific suitability analysis for many of the customers for whom he either made recommendations or exercised discretion to purchase nontraditional ETFs. Because of the complex and risky nature of these investments, Jordan's recommendations were unsuitable, from a customer-specific perspective, for each of the following: (1) the 41 accounts where his customers had limited investment experience; (2) the 31 accounts where his customers had moderate, moderate/conservative, or conservative risk tolerances; and (3) the 10 accounts that listed preservation of capital as a primary or secondary investment objective.

Ultimately, Jordan's unsuitable recommendations in nontraditional ETFs in 79 client accounts resulted in realized and unrealized customer losses exceeding $8.4 million for positions held longer than thirty days, while Jordan and WFG received gross commissions of approximately $810,000 from nontraditional ETF transactions.

Accordingly, by recommending unsuitable transactions in nontraditional ETFs, Jordan violated FINRA Rule 2111 (and its predecessor, NASD Rule 2310(a) which was in effect prior to July 9, 2012) and FINRA Rule 2010.

Improper Exercise of Discretion

NASD Conduct Rule 2510(b) provides that "[n]o member or registered representative shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the member, as evidenced in writing by the member or the partner, officer or manager, duly designated by the member, in accordance with Rule 3010."

During his association with the Firm, Jordan was not approved to exercise discretion in any WFG accounts. During the Relevant Time Period, however, Jordan exercised discretion to purchase nontraditional ETFs in the accounts of six customers, C.C., J.C., L.M., L.S., B.G. and the T.B.F. Trust. Jordan did not have the customers' written authorization (or manager approval) to effect any discretionary trades in any of these customers' accounts.

Moreover, Jordan provided false information to the Firm regarding his use of discretion. Specifically, in four instances from 2012 through 2015, Jordan provided false answers on his annual compliance questionnaires when he negatively answered the following question: "In the past year, have you managed or are you managing, trading or in any other way, handling the affairs of any client's account on a discretionary basis?" Jordan also responded falsely to an email inquiry from his supervisor about the use of discretion on June 30, 2015.

By using discretion to execute trades without first obtaining written authorization by the customer and the Firm and providing false information to his Firm, Jordan violated NASD Conduct Rule 2510(b) and FINRA Rule 2010.

Mismarking Solicited Customer Trades As "Unsolicited"

Rule 4511 requires each member to make and preserve books and records in conformity with Rules 17a-3 and 17a-4 of the Securities Exchange Act of 1934. SEC Rule 17a-3 requires that member firms maintain accurate memoranda of customer transactions. An associated person violates FINRA Rule 4511 by mismarking customer trades as unsolicited when, in fact, the associated person had solicited the trade.

During the Relevant Time Period, Jordan solicited 1,269 customer purchases of nontraditional ETFs. He mismarked 927 of these purchases as "unsolicited." By engaging in this conduct, Jordan violated FINRA Rules 4511 and 2010.

Failure to Report Customer Complaint/Settling Away/Unauthorized Email

It is a violation of FINRA Rule 2010 for a registered representative to violate his FINRA Member Firm's WSPs. WFG's WSPs required that registered representatives: (1) promptly report all customer complaints to the Firm; (2) not settle or attempt to settle any customer complaints away from the Firm; and (3) only use approved e-mail accounts to conduct securities business on behalf of the Firm.

SEC Rule 17a-4(b)(4) requires each member to preserve for a period of three years the originals of all communications received and copies of all communications sent by the member relating to its business. Emails fall within the purview of Rule 17a-4. An associated person violates FINRA Rule 4511 by engaging in business-related communications with Firm customers through the use of an undisclosed or unauthorized email account.

Between January 1, 2012 and March 31, 2016, Jordan violated WFG's WSPs in connection with two customer complaints. Specifically, in or around the beginning of 2012, Jordan's customer B.G. became aware of transactions in his account that had resulted in losses exceeding $140,000, and complained about these transactions to Jordan. In response, Jordan blamed the transactions on his partner at the time, M.W., promised to recoup those losses with his own investment recommendations, and agreed to make $1,000 payments to BG beginning in 2014 to the extent any losses remained. Jordan did not report this complaint or his efforts to independently settle the complaint to WFG.

Between September and November 2013, Jordan used his personal email account to exchange communications with B.G. about the status of his complaint and their informal settlement. Jordan advised B.G. that the losses were still approximately $127,000, and that he would begin making monthly payments at the end of January 2014. Jordan failed to make any of the promised payments, and again failed to report the complaint, his attempts at settlement, or his personal email usage to WFG. B.G. submitted a complaint directly to WFG in or around May 2015.

In addition to the foregoing, Jordan used his personal email account to discuss a customer complaint by L.M. and her husband regarding unsuitable trading account in August 2015. Jordan failed to report the customer complaint or his usage of personal email.

By violating WFG's WSPs regarding the reporting of customer complaints, settlements away from the firm, and the unauthorized use of personal email, Jordan violated FINRA Rule 2010 and 4511.

Failure to Produce Requested Documents and Information

FINRA Rule 8210 authorizes FINRA, in the course of its investigations, to require persons associated with a FINRA member to "...provide information orally, in writing, or electronically...with respect to any matter involved in the investigation..."

On December 1, 2016, FINRA staff sent a letter to Jordan, pursuant to FINRA Rule 8210, requesting that he produce documents pertaining to outside investments that Jordan may have had made with C.C. After Jordan failed to produce the requested information or to seek an extension, FINRA staff sent Jordan a second letter on December 16, 2016, pursuant to FINRA Rule 8210 requesting the same information. Once again, Jordan failed to timely produce the requested information or to seek an extension by the specified deadline. To date, Jordan has wholly failed to produce any of the requested information.

By refusing to produce documents and information that was requested pursuant to Rule 8210, Jordan violated FINRA Rules 8210 and 2010.

B. I also consent to the imposition of the following sanctions:

- A bar from associating with any FINRA member in any capacity.

I understand that if I am barred or suspended from associating with any FINRA member, I become subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rules 8310 and 8311).

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 AWC.

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

A. To have a Complaint issued specifying the allegations against me;

B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;

C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and

D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, I specifically and voluntarily waive any right to claim bias or prejudgment of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

I further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

I understand that:

A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;

B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and

C. If accepted:

1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;

2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;

3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and

4. I may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. I may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects my: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I understand and acknowledge that FINRA does not represent or advise me and I cannot rely on FINRA or FINRA staff members for legal advice; that I have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

8/10/17
Date (mm/dd/yyyy)

Respondent Jay Dee Jordan

Accepted by FINRA:
8/14/2017
Date

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

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