

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2013038756501**

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

RE: Jason L. Figueroa, Respondent  
General Securities Representative  
CRD No. 5062799

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**

Figueroa first became associated with The GMS Group, LLC (“GMS” or the “Firm”) in November 2005, and he received his Series 7 registration in April 2006. During the course of his career in the securities industry, Figueroa also obtained his Series 63 license. Figueroa’s association with GMS was terminated in March 2015 due to an “accumulation of customer complaints and settlements” and a Form U5 was filed on his behalf on April 8, 2015.

Figueroa 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 October 2011 and October 2013, Respondent recommended and engaged in unsuitable trading in nontraditional ETFs in four customer accounts, in violation of NASD Rule 2310 (before July 9, 2012) and FINRA Rules 2010 and 2111 (on and after July 9, 2012). Moreover, Respondent exercised discretion without having obtained prior written authorization in fourteen customer accounts, in violation of NASD Conduct Rule 2510(b) and FINRA Rule 2010.

## FACTS AND VIOLATIVE CONDUCT

### Unsuitable Transactions in Non-Traditional ETFs

NASD Conduct Rule 2310(a) 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.”

FINRA Rule 2111(a), which superseded NASD Rule 2310 on July 9, 2012, also provides that an associated person must “have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least some investors.”<sup>1</sup>

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 NASD Rule 2310 and FINRA 2111 also constitutes a violation of FINRA Rule 2010.

Both NASD Rule 2310 and FINRA Rule 2111 require 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. A registered representative lacks a reasonable basis to recommend a security to its customers if he fails to investigate the security's characteristics sufficiently to understand the potential risks and rewards of the transaction. Moreover, a security is not suitable from a customer-specific standpoint if it does not align with an investor's financial situation, risk tolerance, and investment objectives.

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<sup>1</sup> FINRA Rule 2111.05(a).

In June 2009, FINRA issued Regulatory Notice 09-31, which dealt specifically with nontraditional ETFs.<sup>2</sup> 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.” 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.”

Beginning in October 2011, Figueroa revised the investment strategy that he was recommending for four customer accounts, each of which was owned by unsophisticated and retired investors with limited investment experience and a moderate risk tolerance. Previously, these customers had been primarily invested in corporate bonds and mutual funds. A major component of the revised strategy, however, was leveraged and inverse-leveraged ETFs, including Proshares Ultra S&P 500, Proshares Ultrashort S&P 500 and Direxion ETF Daily Gold Miners Bull 3X shares, as well as related exchange-traded notes, including Barclay’s Ipath S&P 500 VIX Short Term Futures ETN and Credit Suisse Velocity Shares Daily Inverse VIX ETN. Moreover, Figueroa employed the use of leverage in each of the four accounts, which further exacerbated the amount of risk of his revised strategy.

Figueroa recommended these nontraditional ETF transactions without first conducting adequate due diligence concerning the unique features and specific risks of these products. Specifically, Figueroa failed to account for the compounding of risk associated with holding nontraditional ETFs overnight, and the fact that they are designed to achieve their stated objectives within a single trading day. As a result of this misapprehension of the risks associated with holding nontraditional ETFs overnight, Figueroa routinely failed to sell these products on the same day he purchased them without conducting any analysis as to whether it was appropriate to hold the product for an extended period of time. Indeed, Figueroa held nontraditional ETFs in the four customers’ accounts for more than one trading day on 118 occasions.

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<sup>2</sup> 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.

Figuroa also failed to conduct an adequate customer-specific suitability analysis with respect to the purchase and sale of nontraditional ETFs on behalf of these four customers:

- Customer A.W. is a retired and unsophisticated 70 year old investor, with limited investment experience. Her income is limited to her investment account and social security. Her stated risk tolerance was “moderate” and her specified investment objective was “total return.” Figuroa purchased nontraditional ETFs on behalf of this customer on 70 occasions. Of these 70 purchases, Figuroa held the product for one to seven days on 42 occasions, between eight and 30 days on five occasions, and longer than 31 days on five occasions. These transactions collectively resulted in more than \$92,000 in realized losses.
- Customers L.W. and M.G.K. (the same M.G.K. who is referenced below) are sisters who jointly held an account at GMS. L.W., who was the decision-maker with respect to this account, is a 72 year old retired homemaker with no independent investment experience. Her GMS account comprised her entire liquid net worth. The risk tolerance for this account was “moderate” and the assigned investment objective was “income.” Figuroa purchased nontraditional ETFs on behalf of these customers on 27 occasions, and held the ETFs between one and seven days on 11 occasions, between eight and 30 days on three occasions and longer than 31 days on four occasions. These transactions collectively resulted in more than \$36,000 in realized losses.
- Customers J.K. and M.G.K. are a retired and unsophisticated married couple, ages 75 and 54, respectively. Their highest level of education is high school. Their stated risk tolerance was “moderate,” and they identified “income,” “long-term growth” and “total return” as their investment objectives. Figuroa purchased nontraditional ETFs on behalf of these customers on 47 occasions, and held the ETFs between one and seven days on 26 occasions, between eight and 30 days on four occasions and longer than 31 days on four occasions. These transactions collectively resulted in nearly \$32,000 in realized losses.
- Customer J.K. (the sister of the J.K. referenced above) is a retired 65 year old former beauty salon owner who is also unsophisticated, with high school being her highest level of education. She has a “moderate” risk tolerance and an “income” investment objective. Figuroa purchased nontraditional ETFs on behalf of this customers on 29 occasions, and held the ETFs between one and seven days on 13 occasions, between eight and 30 days on three occasions, and longer than 31 days on four occasions. These transactions collectively resulted in approximately \$10,000 in realized losses.

Accordingly, Figueroa recommended unsuitable transactions in nontraditional ETFs and thereby violated NASD Rule 2310 (before July 9, 2012), FINRA Rule 2111 (on and after 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, Figueroa was not approved to exercise discretion in any customer accounts. Between October 2011 and October 2013, however, Figueroa exercised discretion in fourteen accounts, including three of the four accounts referenced above. Figueroa did not have the customers’ written authorization to effect the discretionary trades. Moreover, Figueroa did not disclose his use of discretion on his annual compliance questionnaires from 2006 through 2013, but instead answered negatively to the question, “[d]o you handle any customer accounts on a discretionary basis?”

By using discretion to execute trades without first obtaining written authorization by the customer and written acceptance of this arrangement by the Firm, Figueroa violated NASD Conduct Rule 2510(b) and FINRA Rule 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. Pursuant to FINRA Rule 8313(e), 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 prejudice 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;

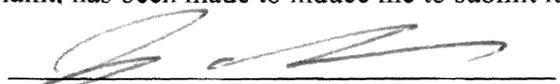
... shall be made available through FINRA's public disclosure ... in accordance with FINRA Rule 8313;

... 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 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 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.

10/13/15  
Date

  
Respondent Jason L. Figueroa

Accepted by FINRA:

\_\_\_\_\_  
Date

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

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Michael P. Manly  
Senior Regional Counsel  
FINRA Department of Enforcement  
12801 North Central Expy., Ste. 1050  
Dallas, Texas 75248  
Phone (972) 716-7692  
Fax (972) 716-7646

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.

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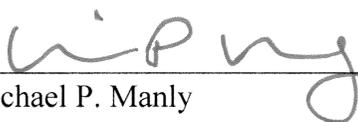
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Date

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Respondent Jason L. Figueroa

Accepted by FINRA:

October 21, 2015  
Date

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

  
\_\_\_\_\_  
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