

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2010024620302**

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

**RE: Andrew Scott Corbman, Respondent
General Securities Representative
CRD No. 2513558**

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, Andrew Scott Corbman (“Corbman” or “Respondent”) submits 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 him alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent hereby accepts and consents, 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

Corbman first became registered as a General Securities Representative (“GSR”) through his association with a FINRA member firm in July 1994. From July 1994 to February 2008, Corbman was consecutively registered as a GSR with several different FINRA member firms. From February 27, 2008 through January 25, 2011, Corbman was registered as a GSR in the Ashburn, Virginia branch office of FSC Securities Corporation (“FSC” or the “Firm”)(BD No.7461). On January 26, 2011, Corbman’s registration with FSC was terminated. Thereafter, Corbman joined another FINRA member firm on January 27, 2011, and voluntarily resigned from it on November 12, 2015. Corbman has been registered with another FINRA member firm since November 24, 2015.

RELEVANT DISCIPLINARY HISTORY

Corbman does not have any disciplinary history with any state securities agency, the Securities and Exchange Commission, FINRA or any other self-regulatory organization.

OVERVIEW

Between April 2009 and March 2010, while registered with a FINRA member firm, Corbman made unsuitable recommendations to three customers that were inconsistent with the customers' investment objectives and risk tolerances and resulted in over-concentration of their liquid net worth in these investments. From April 2009 through June 2009, Corbman improperly recommended to two of his customers, who were a married couple with growth objectives and moderate risk tolerances, to purchase unsuitable highly risky leveraged, inverse Exchange-Traded Funds ("Non-Traditional ETFs"). In March 2010, Corbman also improperly recommended to an elderly customer with a conservative risk tolerance and an investment objective of income to purchase an unsuitable and risky alternative mutual fund with no operational history. The investments that Corbman recommended were unsuitable as they were over-concentrated and exposed each customer to a risk of loss that exceeded each customer's risk tolerance and investment objectives. Therefore, Corbman's conduct violated NASD Rule 2310 and FINRA Rule 2010.

Additionally, between March 2010 and January 2011, Corbman distributed a sales brochure for an alternative mutual fund to at least 10 of his customers that contained information that was misleading and failed to provide a sound basis for evaluating the alternative mutual fund referenced in it. Corbman's misconduct violated NASD Rule 2210 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

1. Unsuitable Recommendations

NASD Rule 2310 requires associated persons to have reasonable grounds for believing that recommendations are suitable for a customer based on the facts disclosed by the customer as to his or her other security holdings and financial situation and needs.

FINRA Rule 2010 requires that a member, in the conduct of its business, observe high standards of commercial honor and just and equitable principles of trade.

Non-Traditional ETFs

Traditional ETFs are typically registered unit investment trusts or open-ended investment companies whose shares represent an interest in a portfolio of securities that track an underlying benchmark or index. Non-Traditional ETFs differ from traditional ETFs in

that they seek to return a multiple of the performance of the underlying index or benchmark (*i.e.* leveraged ETFs), the inverse of that performance (*i.e.* inverse ETFs), or both (*i.e.* leveraged/inverse ETFs).

Customers DNA and DRA

In March 2008, DNA and DRA opened several accounts with the Firm, including three IRAs and a joint account. DNA and DRA were married to each other, and they were in their forties during the time of the investments at issue. Together, they had an annual income of \$150,000, net worth of \$500,000 and a liquid net worth of \$200,000. DNA and DRA's primary investment objective for their accounts was growth/long-term growth, and their risk tolerance ranged from moderate to moderately aggressive. Neither of them had experience investing in ETFs.

Corbman recommended to DNA and DRA that they invest in two triple leveraged and inverse, Non-Traditional ETFs. Both Non-Traditional ETFs sought to deliver *thrice* the inverse performance of an equity index on a daily basis. The prospectus describing the two Non-Traditional ETFs, stated that the funds offered therein invested significantly in swap agreements; forward contracts; reverse repurchase agreements; options, including futures contracts; options on futures contracts and financial instruments, such as options on securities and stock indices; and caps, floors and collars. The underlying products described in the prospectus produce leveraged investment results, so Non-Traditional ETFs are riskier than alternatives that do not use leverage, and they are considered highly risky investments.

Between April 2009 and June 2009, based on Corbman's recommendations, DNA and DRA invested approximately \$128,000 in the two highly risky Non-Traditional ETFs. Given DNA's and DRA's investment objective of long term growth and growth, their moderate risk tolerance, their lack of experience of investing in ETFs and the inherent complexity of the product, it was an unsuitable investment for them.

Further, as DNA and DRA continued to invest more of their money into those products, those investments grew from 11% to 64% of their liquid net worth during that time. As of June 30, 2009, the investments in Non-Traditional ETFs also constituted 94% of all the assets in their four accounts at the Firm. This concentration level in highly risky Non-Traditional ETFs was inconsistent with DNA and DRA's investment objective of growing their money over the long term and their moderate risk tolerance. The concentration level exposed DNA and DRA to a risk of loss that exceeded their risk tolerance and investment objectives.

In July 2009, DNA and DRA sold their investments in Non-Traditional ETFs at a loss of approximately \$9,450.

By reason of the foregoing, Corbman violated NASD Rule 2310 and FINRA Rule 2010.

The Absolute Return Fund

An Absolute Return fund is an alternative mutual fund that seeks to achieve capital appreciation with a focus on producing positive returns regardless of the direction of the financial markets. Alternative mutual funds employ complex trading strategies. In March 2010, Corbman sold shares of an Absolute Return fund that was a new mutual fund with a limited history of operations. The prospectus for this Absolute Return fund stated that the fund's portfolio of securities may include common stocks of foreign and domestic companies, preferred securities, fixed income securities of domestic or foreign issuers, open-ended funds, close-ended funds, inverse ETFs, and exchange traded portfolios (including unit investment trusts, commodity pools and investment funds that invest in physical commodities that offer exposure beyond traditional stocks, bonds and cash). The prospectus also stated that the investment involved risks and was not appropriate for an investor seeking "Safety of principal" or "Regular income."

Customer JB

In March 2010, JB opened two accounts with the Firm – an IRA and an individual account. At the time of the account opening, JB was a 74 year old retired widow. JB's primary investment objective was income, and her risk tolerance was conservative. Her net worth was \$500,000, and her liquid net worth was approximately \$400,000. JB's annual gross income was approximately \$22,250.

Shortly after opening her accounts in March 2010, based on Corbman's recommendations, JB invested a total of \$285,000 in the Absolute Return fund.

Corbman's recommendation to invest in the Absolute Return fund was unsuitable for JB, who had a conservative risk tolerance and an investment objective of income. She was a widowed, retired senior citizen and had limited income. JB needed regular income for making mortgage payments, and she had no appetite for risky investments. The Absolute Return fund employed complex trading strategies, and at the time of JB's investment, it was a new fund with a limited history of operations; it was therefore a risky investment. Further, the investment objective of this Absolute Return fund was to achieve capital appreciation. It was not appropriate for investors, like JB, who were seeking regular income.

Further, JB's investment through Corbman in the risky Absolute Return fund constituted 71% of her liquid net worth and 79% of all assets in her two FSC accounts. This concentration level was unsuitable for JB in light of her conservative risk tolerance and investment objective of income. It exposed her to a risk of loss that exceeded her risk tolerance and investment objective.

In August, JB sold all shares of the Absolute Return fund from her individual account and incurred a loss of approximately \$25,600.

Based on the foregoing, Corbman violated NASD Rule 2310 and FINRA Rule 2010.

2. Improper Communications with the Public

NASD Rule 2210(a) defines the term “communication with the public” to include “correspondence,” which is defined as any written (including electronic) communication that is distributed or made available to 25 or fewer retail customers within any 30 calendar-day period.

NASD Rule 2210(d)(1)(A) requires all member communications with the public to be fair and balanced, provide a sound basis for evaluating the facts in regard to any particular security being discussed. No member may omit any material fact or qualification if the omission, in the light of the context of the material presented would cause the communications to be misleading.

NASD Rule 2210(d)(1)(B) prohibits false, exaggerated, unwarranted or misleading statements or claims in any communication with the public.

Between March 2010 and January 2011, Corbman distributed via email and in person a sales brochure for the Absolute Return fund to at least 10 of his customers. That distribution constituted correspondence because it was sent to fewer than 25 retail customers within a 30 calendar-day period.

The sales brochure discussed strategies that were model-driven. The illustrations and performance-related data contained in the sales brochure did not represent the performance of any particular investment. Corbman’s use of the sales brochure was misleading since the brochure used hypothetical performance data that was not a result of actual trading of a specific product. Also, the sales brochure that Corbman distributed did not provide a sound basis for evaluating the alternative mutual fund referenced. The sales brochure failed to explain the specific risks associated with the portfolio as well as the specific securities and asset classes discussed in the materials. It also failed to provide a balanced discussion of risks and rewards.

By reason of the foregoing, Corbman violated NASD Rule 2210 (d)(1)(A) and (B) and FINRA Rule 2010.

B. Respondent also consents to the imposition of the following sanction:

- A one month suspension from association with any FINRA member firm in any capacity.¹

Respondent understands that if he is barred or suspended from associating with

¹ On September 8, 2015, Respondent Andrew Scott Corbman filed a Chapter 11 bankruptcy petition pursuant to Title 11, United States Code. Accordingly, no monetary sanction is being assessed in this matter.

any FINRA member, Respondent becomes 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, Respondent 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 sanction imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against him;**
- 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, Respondent specifically and voluntarily waives 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.

Respondent further specifically and voluntarily waives 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

Respondent understands 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 Respondent; and**
- C. If accepted:**
 - 1. this AWC will become part of Respondent’s permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against him;**
 - 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. Respondent 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. He 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 his (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.**
- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that he may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.**

Respondent Andrew Scott Corbman certifies that he has read and understands all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that he has 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 him to submit it.

1/13/16
Date

Andrew Scott Corbman
Andrew Scott Corbman
Respondent

Reviewed by:

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1/13/16
Date

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

February 1, 2016

Susan Light
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