

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2013035035902**

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

RE: James S. Fleming III, Respondent  
Registered Representative  
CRD No. 846806

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, I, James S. Fleming III (“Fleming” or “Respondent”), 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**

In December 1977, Fleming first became registered with FINRA as a Registered Representative (Series 1). He also became registered as a General Securities Representative in April 1987. From February 2005 through August 2016, Fleming was registered as a General Securities Representative through Investors Capital Corp. (CRD No. 30613). He is currently registered in that capacity through another FINRA member firm.

**RELEVANT DISCIPLINARY HISTORY**

Fleming has no formal disciplinary history with the Securities and Exchange Commission, any self-regulatory organization, or any state securities regulator.

## FACTS AND VIOLATIVE CONDUCT

Between June 2010 and December 2014 (the "Relevant Period"), Fleming engaged in a pattern of short-term trading of UITs in two customers' accounts.

UITs are investment companies that offer shares of a fixed portfolio of securities in a one-time public offering, and terminate on a specified date. As such, they are not designed to be used as trading vehicles. In addition, UITs typically carry significant upfront charges, and as with mutual funds that carry front-end sales charges, short-term trading of UITs is presumptively improper.

During the Relevant Period, in connection with two customers' accounts, Fleming repeatedly recommended that the customers purchase UITs and then sell them well before their maturity dates. The UITs that Fleming recommended had maturity dates of 24 months or longer and carried significant sales charges. Nevertheless, on 177 occasions, Fleming recommended that his customers sell their UIT positions within eight months of their purchase. The holding period for the UITs ranges from between three and 235 days, with an average holding period of only 96 days. In addition, on several occasions, Fleming recommended that his customers use the proceeds from the short-term sale of a UIT to purchase another UIT with similar investment objectives. Fleming's recommendations caused the customers to incur unnecessary sales charges, and were unsuitable in view of the frequency and cost of the transactions.

Based on the foregoing, Fleming violated NASD Rule 2310 (for conduct before July 9, 2012) and FINRA Rules 2111 (for conduct on and after July 9, 2012) and 2010.

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

- a suspension from association with any FINRA member in all capacities for four months; and
- a fine of \$10,000.

I agree to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. I have submitted an Election of Payment form showing the method by which I propose to pay the fine imposed.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

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.

## 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;
- 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.
- D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I 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.

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.

09/12/2017  
Date (mm/dd/yyyy)

  
James S. Fleming III, Respondent

Reviewed by:

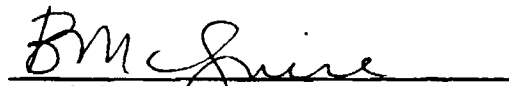


John G. Cataldo, Esq.  
Counsel for Respondent  
D'Ambrosio Brown LLP  
185 Devonshire Street, 10th Floor  
Boston, Massachusetts 02110  
T: 617-720-5657

Accepted by FINRA:

8/1/2017  
Date

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



Bonnie S. McGuire  
Deputy Regional Chief Counsel  
FINRA Department of Enforcement  
99 High Street, Suite 900  
Boston, MA 02110  
Tel: (617) 532-3424  
Fax: (202) 721-6531