FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015045984001

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

RE: Mark Kaplan, Respondent
Registered Representative
CRD No. 1978048

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent, Mark Kaplan ("Respondent" or "Kaplan"), 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 Respondent 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

Kaplan entered the securities industry in 1989 as a registered representative at Lehman Brothers, Inc., and has since been associated with several FINRA regulated broker-dealers. In March 2011, Kaplan became associated with Vanderbilt Securities, LLC ("Vanderbilt" or the "Firm") in Woodbury, NY, where he worked as a registered representative until he voluntarily resigned on February 22, 2018.

Kaplan obtained his Series 7 (General Securities Representative) and 63 (Uniform Securities Agent State Law) licenses in August 1989 and his 3 (National Commodities Futures) in October 1989. He obtained a Series 65 license in February 1995.

Although Kaplan is not currently registered with FINRA or associated with a FINRA regulated broker-dealer, he remains subject to FINRA's jurisdiction pursuant to Article V, Section 4(a) of FINRA's By-Laws

RELEVANT DISCIPLINARY HISTORY

Kaplan has no relevant disciplinary history.

OVERVIEW

Between March 2011 and March 2015 (the "Relevant Period"), Kaplan engaged in churning and unsuitable excessive trading in the brokerage accounts of a senior customer. As a result, Kaplan willfully violated Section 10(b) of the Securities Exchange Act of 1934 (the "SEA"), and SEA Rule 10b-5, and violated FINRA Rules 2020, and 2111, NASD Rule 2310, for conduct before July 9, 2012, and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Section 10(b) of the Exchange Act prohibits the use of "any manipulative or deceptive device or contrivance" in connection with the purchase or sale of a security. SEA Rule 10b-5 further prohibits: (a) employing "any device, scheme, or artifice to defraud," (b) making any untrue statement or omission of a material fact, or (c) engaging "in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person."

FINRA Rule 2020 states that "[n]o member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance."

In addition, under FINRA Rule 2111, a registered representative must have a reasonable basis to believe, based on reasonable diligence, that a recommended transaction or strategy is suitable for a customer. NASD Rule 2310(a) similarly provides that when recommending the purchase, sale, or exchange of any security, registered representatives "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." The rule requires that a broker's recommendations be consistent with his customer's best interests.

NASD IM-2310-2(a)(1) likewise provides that representatives have a responsibility to deal fairly with their customers and others. Registered representatives must have reasonable grounds to believe that the number of recommended transactions within a particular period is not excessive. NASD IM-2310-2(b)(2) specifically prohibits registered representatives from excessively trading customer accounts.

An excessive trading violation occurs when (i) a registered representative has control over trading in an account and (ii) the level of activity in that account is inconsistent with the customer's objectives and financial situation. This activity

constitutes churning, in violation of Section 10(b), SEA Rule 10b-5, and FINRA Rules 2020 and 2010, when there is an intent to defraud or reckless disregard for the customer's interests.

Customer BP, a 93-year-old retired clothing salesman, opened accounts at Vanderbilt with Kaplan during March 2011. As of March 31, 2011, the value of Customer BP's accounts was approximately $507,544.64. Social Security was Customer BP's only source of income during the Relevant Period.

During the Relevant Period, Kaplan exercised de facto control over BP's accounts. Customer BP relied on Kaplan to direct investment decisions in his accounts, contacting Kaplan frequently. In addition, Customer BP was experiencing a decline in his mental health. In April 2015, the Court granted an application by BP's nephew to act as his legal guardian and manage Customer BP's financial affairs after he was diagnosed with dementia during January 2014.

During the Relevant Period, Kaplan effected more than 3,500 transactions in Customer BP's accounts, which resulted in approximately $723,000 in trading losses and generated approximately $735,000 in commissions and markups for Kaplan and the Firm.

Kaplan never discussed with Customer BP the extent of his total losses or the aggregate amount he paid in sales charges and commissions.

During the Relevant Period, the average annualized cost-to-equity ratios, or the percentage return on the customer's average net equity needed to pay sales charges and other account expenses over a given period of time, in Customer BP's two primary accounts were 31.7% and 301.6%, respectively. The annual cost-to-equity ratios in the accounts ranged from 16.50% to 814.41%. For the same period, the annual turnover rates in these accounts, or the rates at which the securities were sold and replaced within a given period of time, ranged from 2.34 to 118.65.

The high turnover rates and cost-to-equity ratios reflect how difficult it would have been for Customer BP to obtain sufficient profits to cover the costs of Kaplan's active trading. This level of trading was excessive and unsuitable for Customer BP given his investment profile, including his age, risk tolerance, and income needs.

By virtue of the foregoing, Respondent willfully violated SEA Section 10(b) and SEA Rule 10b-5. Respondent also violated NASD Rule 2310, for conduct before July 9, 2012, and FINRA Rules 2020, 2111 and 2010.

On April 4, 2016, the Firm and Kaplan made a settlement payment totaling $470,000 to the guardian for Customer BP's accounts.

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

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

Respondent understands that if he is barred or suspended from associating with any FINRA member, he 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).

Respondent understands that this settlement includes a finding that Respondent willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and that under Article III, Section 4 of FINRA's By-Laws, this makes Respondent subject to a statutory disqualification with respect to association with a member.

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

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 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.

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 him; 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. Respondent 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 Respondent's: (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.

Respondent certifies that a person duly authorized to act on his behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Respondent 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 Respondent to submit it.

8/24/18
Date

Respondent

Reviewed by:

Charles M. O'Rourke, Esq.
2 Swenson Drive
Woodbury NY 11797

Accepted by FINRA:

March 7, 2018
Date

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

Seth Kegan
Senior Counsel