

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2017054506902**

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

RE: Roy Aurelio Gaytan, Respondent  
CRD No. 5498239

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**

Gaytan became registered with FINRA as a Variable Contracts Representative February 2008 as a representative of a member firm. Gaytan became a representative of Transamerica Financial Advisors, Inc. (TFA) in January 2012. In May 2012, he registered as a Variable Contracts Principal. On June 2, 2017, TFA filed a Form U5 terminating his association. Although Gaytan is not currently registered with FINRA or associated with any FINRA member firm, he remains subject to FINRA's jurisdiction pursuant to Article V, Section 4(a) of FINRA's By-Laws, which provides for a two-year period of retained jurisdiction over formerly-registered persons.

**RELEVANT DISCIPLINARY HISTORY**

Gaytan has no prior disciplinary history.

## **OVERVIEW**

From approximately December 1, 2016 through April 1, 2017, Gaytan used discretionary authority to execute securities transactions in a customer's brokerage account at another FINRA member firm, using the customer's login credentials, and failed to notify his employing member of this discretionary account. As a result, Gaytan violated NASD Rule 3050(c) and FINRA Rule 2010.

Additionally, Gaytan failed to timely respond to two letters requesting information pursuant to FINRA Rule 8210. As a result, Gaytan violated FINRA Rules 8210 and 2010.

## **FACTS AND VIOLATIVE CONDUCT**

### **Failure to Disclose Discretionary Trading in Account Held at Another Member Firm**

NASD Conduct Rule 3050(c), which was in effect during the relevant period, requires that a person associated with a member, prior to opening an account with another member, shall notify both the employer member and the executing member, in writing, of his or her association with the other member. NASD Conduct Rule 3050(e) provides that this requirement applies to accounts with respect to which an associated person has discretionary authority. Rule 3050(c) applies where the associated person has *de facto* discretionary authority over the account. A violation of NASD Rule 3050(c) is also a violation of FINRA Rule 2010.

TFA discovered that Gaytan recommended that his customer, LG, a former registered representative with TFA, establish a self-directed account with another member firm, ET. LG then granted access to Gaytan, who executed trades using his discretion in the ET account using LG's login credentials. After sustaining losses in the account, LG complained to TFA. When questioned during the resulting investigation, Gaytan admitted to executing discretionary trades in the ET account without providing disclosure to TFA or ET. As a result, TFA terminated Gaytan. Gaytan did not receive any compensation for the trading activity in the account at ET.

As a result of the foregoing conduct, Respondent Gaytan violated NASD Conduct Rule 3050(c) and FINRA Rule 2010.

### **Failure to Timely Provide Information in Response to Rule 8210 Request**

FINRA Rule 8210 authorizes FINRA to "require a member, person associated with a member, or any other person subject to FINRA's jurisdiction to provide information ... in writing, or electronically .... If requested with respect to any

matter involved in the investigation, complaint, examination, or proceeding.” FINRA staff initiated a cause examination relating to the circumstances of Gaytan’s termination. On August 24, 2017, FINRA staff served Gaytan with a request for information pursuant to FINRA Rule 8210. The responses were due September 15, 2017. After Gaytan failed to respond, FINRA staff served a second Rule 8210 request on September 22, 2017 requesting that he respond no later than October 11, 2017. Gaytan did not respond to either Rule 8210 request.

As a result of the foregoing failures, FINRA staff commenced an expedited proceeding against Gaytan pursuant to FINRA Rule 9552 and issued a Notice of Suspension to Gaytan on October 19, 2017. Gaytan did not respond. Subsequently, on November 13, 2017, FINRA Staff sent Gaytan a letter advising him that he had been suspended pursuant to Rule 9552 and that he would be barred on January 22, 2018 if he failed to request termination of the suspension by that date.

On January 19, 2018, Gaytan sent FINRA staff a letter requesting that his suspension be terminated along with responses to the outstanding Rule 8210 requests. Gaytan’s responses were four months after the original deadline and were not complete. On January 24, 2018, Gaytan supplemented his responses with the information originally omitted. On January 25, 2018, FINRA terminated the suspension.

By failing to timely provide information requested pursuant to FINRA Rule 8210, Gaytan violated FINRA Rules 8210 and 2010.

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

- A suspension from associating with any FINRA member firm in all capacities for a period of eight months; and
- A \$15,000 fine.

The fine shall be due and payable either immediately upon reassociation with a member firm, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

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; 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.
- 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 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.

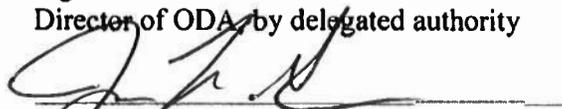
06-22-2018  
Date (mm/dd/yyyy)

  
\_\_\_\_\_  
Roy Aurelio Gaytan

Accepted by FINRA:

8/7/2018  
Date

Signed on behalf of the  
Director of ODA by delegated authority



John F. Guild  
Senior Counsel  
FINRA Department of Enforcement  
12801 N. Central Expressway, Suite 1050  
Dallas, TX 75243  
Phone 972-716-7608  
Fax 972-716-7612  
Email: [John.Guild@finra.org](mailto:John.Guild@finra.org)