

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2017054755203**

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

RE: Sean J. Waters, Respondent
General Securities Representative
CRD No. 4414180

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

Respondent Sean J. Waters first became associated with a FINRA member firm in June 2001. He was registered with several other member firms as a General Securities Representative ("GSR") until December 2010 when he became registered as a GSR with Financial West Group. Waters was registered with Financial West until April 2017. From April 2017 until February 2018, Waters was registered with another member firm.

Waters is not currently registered or associated with a member firm but is subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws. Waters has no relevant disciplinary history.

OVERVIEW

Between January 2013 and March 2016 (the "relevant period"), Waters engaged in churning and excessive and unsuitable trading in two accounts held by a senior customer at Financial West. As a result, Waters willfully violated Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"); Exchange Act Rule 10b-5 promulgated thereunder; and FINRA Rules 2020, 2111, and 2010.

FACTS AND VIOLATIVE CONDUCT

Waters's misconduct was identified in a sales practice examination focusing on Waters's trading.

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. Exchange Act Rule 10b-5 further prohibits: (a) employing "any device, scheme, or artifice to defraud," (b) making "any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made . . . not misleading," and (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 is similar to Rule 10b-5 and provides that a member may not "effect any transaction in, or induce the purchase or sale of, any security by any manipulative, deceptive or other fraudulent device or contrivance."

Churning is a manipulative and deceptive device that violates Section 10(b), Rule 10b-5, and FINRA Rule 2020. It is fraudulent conduct that occurs when: (1) a registered representative controls trading activity in an account, (2) the level of activity in the account is inconsistent with the customer's objectives and financial situation, and (3) the registered representative acts with intent to defraud or a reckless disregard for the customer's interests.

FINRA Rule 2111—FINRA's suitability rule—imposes a "quantitative suitability" obligation that focuses on whether the number of transactions within a given timeframe is suitable in light of the customer's financial circumstances and investment objectives. Excessive trading occurs, and is unsuitable, when a registered representative, while exercising control over a customer's account, recommends a level of trading activity that is inconsistent with the customer's investment needs and objectives. Excessive trading becomes churning when the registered representative acts with an intent to defraud or a reckless disregard for the customer's interests.

Violations of FINRA Rules 2020 and 2111, as well as Section 10(b) and Rule 10b-5, also are violations of FINRA Rule 2010, which requires registered representatives to "observe high standards of commercial honor and just and equitable principles of trade."

In December 2010, customer AO transferred her individual retail brokerage account to Financial West with Waters serving as her registered representative. At that time, AO was 67 years old, was married, was working as an administrative assistant for a construction company, and had limited investment experience.

In 2011, AO's husband passed away. At the end of 2012, AO retired, her sole source of income became her monthly Social Security benefits and her savings, and her net worth was approximately \$275,000. In the beginning of 2013, AO's individual account at Financial West contained cash and securities worth approximately \$62,000, and included

a recent deposit of \$30,000 from the sale of her condominium. In October 2013, AO initiated an IRA rollover to open a separate account at Financial West with cash and securities totaling approximately \$88,000. AO's investment objectives for both her individual account and IRA were capital appreciation and income, with a moderate risk tolerance.

During the relevant period (January 2013 through December 2016), Waters exercised *de facto* control over and made all trading decisions in AO's individual account and IRA, including which specific securities to buy and sell, the quantity of securities to buy and sell, and when to buy and sell the securities.

Waters's trading in AO's accounts was excessive and was conducted with a reckless disregard for AO's interests. From January 2013 through March 2016, Waters executed a total of 523 trades in AO's individual account. And from October 2013 through March 2016, Waters executed a total of 527 trades in AO's IRA account. In total across both accounts, Waters executed 540 purchase transactions (with a total principal value of approximately \$1.986 million), executed 510 sale transactions (with a total principal value of approximately \$1.972 million), and charged AO commissions, markups/markdowns and fees totaling approximately \$115,000.

Waters's trading in AO's accounts included in-and-out trades—*i.e.*, a pattern of buying and selling the same security multiple times over a short period, which is an indicia of excessive trading—in at least 48 different securities in AO's individual account during the relevant period. From October 2013 through December 2016, Waters did the same with at least 41 securities in AO's IRA account.

From January 2013 through December 2016, the annualized turnover rate in AO's individual account (which is the number of times per year the securities in the account were replaced by new securities) was 7.20. The annualized cost-to-equity ratio (which is the percentage the account had to appreciate to break even) was 41.11 percent. The annualized turnover rate and cost-to-equity ratio in AO's IRA account from October 2013 through March 2016 were similar: 7.23 and 39.85 percent. A turnover rate of six or a cost-to-equity ratio in excess of 20 percent generally indicates that excessive trading has occurred.

Waters's trading resulted in more than \$88,000 in cumulative losses to AO out of the \$150,000 she initially transferred to Financial West, while Waters generated commissions, markups/markdowns and fees totaling approximately of \$115,000. In fact, during the four-year period of 2013 through 2016, Waters earned 40 percent of his total commissions solely from the trading he did in AO's two accounts. Waters's level of trading activity in AO's accounts, which he controlled, was inconsistent with the AO's investment objectives and financial situation, and he did so with reckless disregard for her interests.

By virtue of the foregoing conduct, Waters willfully violated Section 10(b) of the Exchange Act; Exchange Act Rule 10b-5; and FINRA Rules 2020, 2111, and 2010.

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

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

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.

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).

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;
 - 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.

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.

11/15/2018
Date (mm/dd/yyyy)

Accepted by FINRA:

11/28/2018
Date

Sean J. Waters
Sean J. Waters
Respondent

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

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