FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. ALLEN MICHAEL GREEN (CRD No. 824126), Respondent.	Disciplinary Proceeding No. 2011028071901 Hearing Officer – MJD **DEFAULT DECISION** August 4, 2015

Respondent is barred from associating with any FINRA member firm in any capacity for recommending unsuitable securities to his customers, in violation of NASD Rules 2310 and 2110 and FINRA Rules 2111 and 2010.

Appearances

Miki Vucic Tesija, Esq. and Mark A. Koerner, Esq. for the Department of Enforcement.

Allen Michael Green *pro se*.

DECISION

I. Introduction

The Department of Enforcement filed the attached two-cause Complaint on January 29, 2015. Cause One alleges that Respondent Allen Michael Green recommended unsuitable securities to a customer with limited financial resources. Cause Two alleges that Green had no reasonable basis to recommend non-traditional exchange traded funds (ETFs) to 40 customers. The Complaint charges Green with violations of NASD Rules 2310 and 2110 and FINRA Rules 2111 and 2010.

Green Answered the Complaint by filing a one-page letter with the Office of Hearing Officers in which he did not directly contest Enforcement's allegations. Thereafter, Green notified the Hearing Officer that he did not want to participate in the proceeding. After failing to appear at the initial pre-hearing conference and a subsequent show cause hearing, the Hearing Officer held Green in default. Enforcement moved for entry of a default decision ("Default Motion") pursuant to FINRA Rules 9241(f) and 9269(a). The Default Motion is supported by the Declaration of Miki Vucic Tesija ("Tesija Decl.") and 17 exhibits (labeled CX-1 through CX-17).

II. Findings of Fact and Conclusions of Law

A. Green's Background

Green entered the securities industry in 1976. He was registered with FINRA through member firm Cullum & Burks Securities, Inc. from May 2006 to November 2009. While he was with Cullum & Burks, during 2007, Green first made the alleged unsuitable recommendations to customer AFR that gave rise to Cause One of the Complaint. Green was next registered through his association with member firm Royal Securities Company ("Royal") from November 19, 2009, to April 11, 2013, when Royal terminated Green's registration by filing a Uniform Termination Notice for Securities Industry Registration ("Form U5"). Green has not been associated with any FINRA member firm since April 11, 2013.[1]

B. FINRA's Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding pursuant to Article V, Section 4(a)(i) of FINRA's By-Laws. Enforcement filed the Complaint on January 29, 2015, which was within two years of the date Royal terminated Green's registration, and the Complaint alleges misconduct by Green while he was registered with FINRA.[2]

C. Origin of the Investigations

FINRA began its investigation into Green's securities recommendations to AFR in June 2011, after AFR filed an arbitration claim. The allegations contained in Cause One of the Complaint arose from this investigation. Cause Two of the Complaint arose from a routine cycle exam of Royal, which focused on Green's unsuitable recommendations to customers (other than AFR) that they invest in non-traditional ETFs. That investigation began in November 2011.[3]

D. Green Defaulted by Failing to Participate in a Pre-Hearing Conference

On February 25, 2015, Green filed his Answer to the Complaint. Green did not address the allegations in his Answer, but instead said, among other things, that his doctor instructed him not to participate in any legal proceedings. He attached notes from two doctors, one of whom said that his travel should be limited "due to his medical conditions."[4]

After receiving Green's Answer, the Hearing Officer scheduled an Initial Pre-hearing Conference ("Conference") for March 11, 2015. After learning that Green was in the hospital, the Hearing Officer ordered Green to file a status report by April 1, 2015, and rescheduled the

---

[1] Complaint ("Compl.") ¶ 5; Tesija Decl. ¶ 7; CX-1, at 2, 4-5, and 12-13.

[2] *See* Article V, Section 4, FINRA By-Laws, www.finra.org/industry/finra-rules (then follow FINRA Manual hyperlink to "Corporate Organization: By-Laws"); Tesija Decl. ¶ 8.

[3] Tesija Decl. ¶¶ 5-6.

[4] Tesija Decl. ¶ 13; CX-7.

Conference for April 14, 2015.[5] Green submitted a signed letter, dated March 17, 2015, stating that he did not want to speak with FINRA and asking that FINRA not contact him again.[6] Also on March 17, counsel for Enforcement spoke with Green's daughter who said her father wanted to be left alone, did not want to participate in the proceedings, and understood this could result in his default.[7] Green failed to appear at the rescheduled Conference on April 14, 2015.

The Hearing Officer next issued a Show Cause Order directing Green to appear at a conference on April 22, 2015, to show cause why he should not be held in default. The Show Cause Order cautioned Green that a failure to appear at the conference may be deemed as a default.[8] Green failed to appear.

On April 22, 2015, the Hearing Officer issued an Order holding Green in default. On May 21, 2015, Enforcement filed a Motion for Entry of Default Decision.

Pursuant to FINRA Rules 9241(f) and 9269(a)(2), the Default Motion is granted. Accordingly, the Hearing Officer deems the allegations in the attached Complaint admitted.

E. Green Violated NASD Rules 2310 and 2110 and FINRA Rule 2010 by Recommending Unsuitable Securities to Customer AFR

Cause One alleges that Green recommended unsuitable securities to AFR from February 2007 to September 2010, in violation of NASD Rules 2310 and 2110 and FINRA Rule 2010.[9] NASD Rule 2310(a)[10] requires a member to have a reasonable basis for believing that a recommendation is suitable for a customer based upon the customer's other securities holdings and financial situation and needs. NASD Rule 2310(b) requires a member to make reasonable efforts to obtain information concerning a customer's financial and tax status, investment objectives, and other information used or considered in making recommendations to the customer.

A broker must recommend securities that are consistent with his customer's best interests. "The test for whether [the broker's] recommended investments were suitable is not whether [the customer] acquiesced in them, but whether [the broker's] recommendations . . . were consistent with [the customer's] financial situation and needs."[11] This is true even if the

---

[5] Tesija Decl. ¶ 15; CX-9; CX-11.

[6] Tesija Decl. ¶ 17; CX-10. FINRA received Green's March 17 letter on March 31, 2015.

[7] Tesija Decl. ¶ 16.

[8] Tesija Decl. ¶ 20; CX-13.

[9] Compl. ¶¶ 15-28.

[10] NASD Rule 2310 was in effect during the period that AFR was Green's customer. FINRA Rule 2111 replaced NASD Rule 2310, effective July 9, 2012.

[11] *Wendell D. Belden*, Exchange Act Release No. 47859, 2003 SEC LEXIS 3159, at *11 (May 14, 2003) (footnotes omitted); *see also Dane S. Faber*, Exchange Act Release No. 49216, 2004 SEC LEXIS 277, at *24 (Feb. 10, 2004) ("A recommendation is not suitable merely because the customer acquiesces in the recommendation.")

customer affirmatively seeks the unsuitable transactions or strategies.[12] A broker should not recommend aggressive investment objectives when a customer's account contains nearly all of her assets.[13] A violation of NASD Rule 2310 is also a violation of NASD Rule 2110 and FINRA Rule 2010, which require a member, in the conduct of his business to "observe high standards of commercial honor and just and equitable principles of trade."[14]

AFR was disabled as a result of a severe automobile accident. She had a limited ability to work and a finite amount of assets to support herself and her son for the rest of her life. In 2003, at age 33, AFR received $1.2 million in proceeds from an insurance settlement in connection with the accident. Through another broker-dealer, AFR invested approximately $1 million of the settlement in a combination fixed/variable annuity, which provided her with monthly payments for her support.[15]

AFR became Green's customer in February 2007 when he was registered with Cullum & Burks. Her new account documentation described her as a "disabled investor." She disclosed that her annual income was between $50,000 and $99,999, and her net worth and liquid assets were between $1,000,000 and $2,999,999. AFR told Green that the money funding the account "is all the money [she has] in the world" and she "can't afford to [lose] it."[16] Despite her financial condition, Green recommended that AFR designate an investment objective in the new account documents of "Growth" and "Aggressive Growth." "Growth" was defined as an investment strategy for "generating long-term capital growth." "Aggressive Growth" was defined as an objective for "generating growth and/or income with a willingness to assume a high level of risk."[17]

Green had an unusual worldview as it related to investment strategies, which resulted in his recommending unsuitable investments for AFR. Green believed that the world economy was about to collapse and that certain categories of assets would increase in value in the resulting disorder.[18] These beliefs led Green to recommend to AFR that she purchase securities involving investments in precious metals, commodities, natural resources, and energy (identified in the Complaint as "PCNRE"). Green did not provide AFR with other investment suggestions. To

---

[12] *Dep't of Enforcement v. Katsock*, No. C9A020018, 2003 NASD Discip. LEXIS 39, *26-27 (OHO Sept. 4, 2003) (citations omitted) ("a broker cannot rely upon a customer's investment objective to justify a series of unsuitable recommendations that may comport with the customer's stated investment objectives but are nonetheless not suitable for the customer, given the customer's financial profile.").

[13] *See Dep't of Enforcement v. Chase*, No. C8A990081, 2001 NASD Discip. LEXIS 30, *19 (NAC Aug. 15, 2001) (customer whose account comprised virtually all of her liquid assets required more conservative investment objective), *aff'd*, *James B. Chase*, Exchange Act Release No. 47476, 2003 SEC LEXIS 566 (Mar. 10, 2003).

[14] *Dep't of Enforcement v. Evans*, No. 2006005977901, 2011 FINRA Discip. LEXIS 36 (NAC Oct. 3, 2011).

[15] Compl. ¶¶ 11-13.

[16] Compl. ¶¶ 15-16.

[17] Compl. ¶ 17.

[18] Compl. ¶¶ 7-9.

pursue this investment strategy, Green recommended that AFR liquidate her existing annuity. AFR followed Green's advice and sold the annuity, incurring a surrender charge of $59,583.[19]

AFR then transferred $860,656 to the new account that she opened with Green. This amount represented the proceeds of the annuity liquidation, after deducting the surrender charge. When she opened her account, Green invested 74% of AFR's money in PCNRE securities. Low-priced or penny stocks constituted 28% of the investment in PCNRE securities. Rather than diversify AFR's investments, Green recommended increasingly concentrated holdings of PCNRE assets, which led to losses in the value of AFR's account. In December 2007, the account was worth $748,150, and 95% of its holdings were in PCNRE assets, 58% of which were invested in low-priced securities or penny stocks. In December 2008, the account value dropped to $172,073, with 99% of the assets invested in PCNRE-related equities, of which 68% were held in low-priced securities or penny stocks.[20]

In November 2009, Green moved from Cullum & Burks to Royal. Soon thereafter, AFR transferred her account to Royal and filled out new account documents. At the time of the transfer, AFR's securities were valued at $187,110. Green again recommended selecting "Aggressive Growth" on the new account forms as AFR's objective even though AFR asked Green "to be as careful as possible" because it was all the money she had.[21] In September 2010, AFR transferred her account—valued at $134,891—from Green to another registered representative at another firm. Green's recommendations caused AFR to lose at least $193,165, not counting the $59,583 annuity surrender charge.[22]

F. Green Had No Reasonable Basis to Recommend Non-Traditional ETFs to Other Customers

In Cause Two, Enforcement alleges that Green did not have a reasonable basis to recommend non-traditional ETFs to his retail customers and that he violated NASD Rules 2310 and FINRA Rules 2111 and 2010 when he made those recommendations.

The Complaint alleges that Green failed to understand how non-traditional ETFs operated and the inherent risks they posed to retail customers. As a result, he failed to learn important facts relating to the suitability of the products as investments for his customers.

---

[19] Compl. ¶ 18.

[20] Compl. ¶¶ 20-22.

[21] Compl. ¶¶ 23-24.

[22] Tesija Decl. ¶ 26 and n.2. Enforcement disputes Green's claim that AFR withdrew a total of $532,600 from the account over the three and a half years he was her registered representative. Enforcement states that it did not calculate AFR's withdrawals with specificity because it is not seeking restitution from him because of a bankruptcy petition he filed in January 2014. *Id.*

NASD Rule 2310 and FINRA Rule 2111[23] require that, in addition to knowing a customer's financial situation, objectives, and needs, a broker must have an adequate understanding of the investment product he is recommending. Accordingly, there is a well-established duty to reasonably investigate the securities recommended and to have a reasonable basis for recommending them to customers – commonly referred to as "reasonable basis" suitability.[24]

Non-traditional ETFs operate differently from traditional ETFs. A traditional ETF is a registered unit investment trust or open-end investment company whose shares represent an interest in a portfolio of securities that track an underlying benchmark or index. ETFs are listed on national securities exchanges and trade daily at prices established by the market. Non-traditional ETFs seek to return a multiple of the performance of the underlying benchmark or index that they track (leveraged ETFs), the inverse of the performance (inverse ETFs), or both (leveraged/inverse ETFs). To achieve their objectives, non-traditional ETFs generally contain complex investment products, including derivative instruments.[25] Most non-traditional ETFs "reset" daily, meaning that they are structured to achieve their investment objectives on a daily basis and, as a result, managers of non-traditional ETFs will re-balance a fund's holdings daily.

In Regulatory Notice 09-31 ("Notice"), FINRA cautioned its members that the effects of the daily reset can be magnified in volatile markets to the detriment of retail customers. The Notice advised that "[d]ue to the effect of compounding, [non-traditional ETFs'] performance over longer periods of time can differ significantly from the performance . . . of their underlying index or benchmark during the same period of time."[26] Because of these risks and the inherent complexity of the products, the Notice instructed members that non-traditional ETFs "typically are unsuitable for retail investors who plan to hold them for more than one trading session, particularly in volatile markets."[27] The Notice further states that, with respect to non-traditional ETFs, the reasonable basis suitability requirement means that the registered representative "must understand the terms and features of the funds, including how they are designed to perform, how

---

[23] Unlike Cause One, Cause Two alleges violations of FINRA Rule 2111 because Green's recommendations to customers that they invest in non-traditional ETFs continued after FINRA Rule 2111 replaced NASD Rule 2310, on July 9, 2012.

[24] *Richard G. Cody*, Exchange Act Release No. 64565, 2011 SEC LEXIS 1862, *26-32 and n.8-16 (May 27, 2011). *See also Hanley v. SEC*, 415 F.2d 589, 595-596 (2d Cir. 1969); *Dep't of Enforcement v. Siegel*, No. C05020055, 2007 NASD Discip. LEXIS 20, at *38 (NAC May 11, 2007) (a "recommendation may lack 'reasonable basis' suitability if the broker: (1) fails to understand the transaction, which can result from, among other things, a failure to conduct a reasonable investigation into the security; or (2) recommends a security that is not suitable for any investors."), *aff'd*, Exchange Act Release No. 58737, 2008 SEC LEXIS 2459 (Oct. 6, 2008), *aff'd in relevant part*, 592 F.3d 147 (D.C. Cir. 2010), *cert. denied*, 2010 U.S. LEXIS 4340 (May 24, 2010).

[25] FINRA Regulatory Notice 09-31, at 2 ("Non-Traditional ETFs: FINRA Reminds Firms of Sales Practice Obligations Relating to Leveraged and Inverse Exchange-Traded Funds") (June 2009).

[26] *Id.*

[27] *Id.* at 1.

they achieve that objective, and the impact that market volatility, the ETF's use of leverage, and the effect the customer's intended holding period will have on their performance."[28]

During FINRA's investigation, Green exhibited a lack of knowledge about how non-traditional ETFs worked.[29]

From June 2010 to January 2013, Green recommended investments in non-traditional ETFs to 40 retail customers.[30] He also recommended that his customers hold the investment for longer than a day, contrary to the disclosures contained in the funds' prospectuses. Green's customers typically held the non-traditional ETFs for more than six months, and sometimes for longer than one year.[31] As a result, Green's customers lost money.

The Hearing Officer finds that Green violated NASD Rules 2310 and 2110 and FINRA Rules 2111 and 2010 by recommending unsuitable securities to AFR and by failing to have a reasonable basis to recommend non-traditional ETFs to his customers.

III. Sanctions

A bar in all capacities is the appropriate sanction for Green's unsuitable recommendations.

FINRA's Sanctions Guidelines ("Guidelines") for unsuitable recommendations suggest a fine of between $2,500 and $110,000 and a suspension in any or all capacities for a period ranging from ten business days to two years. The Guidelines state that "[w]here aggravating factors predominate," adjudicators should "strongly consider" a bar.[32]

The Hearing Officer has determined to impose a unitary sanction for the violations alleged in both causes of action—rather than separate sanctions for each cause—because the violations resulted from essentially the same conduct relating to Green's unsuitable recommendations. The Guidelines permit the "batching" of violations for purposes of determining sanctions where the violations result from a single systemic problem or cause.[33]

There are a number of aggravating factors that call for a bar. Green recommended that AFR liquidate her variable annuity and purchase more than $850,000 in securities that were

---

[28] *Id.* at 3.

[29] Tesija Decl. ¶ 30.

[30] Compl. ¶ 39; Tesija Decl. ¶ 31.

[31] Compl. ¶¶ 38-39.

[32] FINRA Sanction Guidelines (2015) at 94 and n.1 ("Unsuitable Recommendations"), http://www.finra.org/industry/sanction-guidelines. The Guidelines for violations of the suitability rule were revised effective March 2015. *See* FINRA Regulatory Notice 15-15, 2015 FINRA LEXIS 19 at 3 (May 2015). Enforcement is not seeking a monetary sanction in this case because Green has filed a bankruptcy petition. Default Mot. at 12 and n.19; Tesija Decl. ¶ 37.

[33] Guidelines at 4 (General Principles Applicable to All Sanction Determinations, No. 4).

clearly unsuitable given her serious financial condition and needs that resulted from her brain injuries and given her limited ability to earn a living. This money represented nearly all of AFR's liquid assets. Green's investment strategy, which was based on placing a large percentage of AFR's money in PCNRE assets and in penny stocks, and which resulted from his unfounded views about a coming world economic collapse, was not suitable for AFR. His recommendations caused AFR to lose at least $200,000, including the $59,583 in charges she incurred for surrendering her existing annuity.

Green did not understand basic aspects of non-traditional ETFs. First, he did not understand the so-called "decay factor" that resulted when non-traditional ETFs are re-balanced each day. Second, he relied on non-traditional ETFs for his customers as a hedge against a drop in the stock market even though the products are not intended as a long-term hedge against the market. Third, for each of the non-traditional ETFs he had sold, Green also ignored the funds' prospectuses that state the funds seek investment results for one day only. Fourth, Green failed to disclose to his customers the risks of investing in non-traditional ETFs.

Finally, the Hearing Officer notes that Green engaged in numerous acts of recommending unsuitable securities over a period covering at least five years, which demonstrated a pattern of misconduct.[34]

The Hearing Officer finds that a bar in all capacities is the appropriate sanction for Green's unsuitable recommendations to AFR and for his failure to have a reasonable basis to recommend non-traditional ETFs to 40 other customers.

IV. Order

Respondent Allen Michael Green is barred from associating with any FINRA member firm in any capacity for violating NASD Rules 2310 and 2110 and FINRA Rules 2111 and 2010 by recommending unsuitable securities.

If this Decision becomes FINRA's final disciplinary action, the bar shall be effective immediately.

Michael J. Dixon
Hearing Officer

Copies to: Allen Michael Green *(via overnight courier and first-class mail)*
Miki Vucic Tesija, Esq. *(via email and first-class mail)*
Mark Koerner, Esq. *(via email)*
Jeffery Pariser, Esq. *(via email)*

---

[34] Guidelines at 6 (Principal Considerations in Determining Sanctions Nos. 8 and 9).

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement, Complainant, v. Allen M. Green (CRD No. 824126), Respondent.	DISCIPLINARY PROCEEDING No. 20110280719

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Allen Michael Green ("Green" or "Respondent") violated NASD Rules 2310 and 2110, and FINRA Rules 2111 and 2010 when he (1) made unsuitable recommendations to a disabled customer, and (2) had no reasonable basis to recommend non-traditional exchange traded funds ("Non-traditional ETFs") to his customers.

2. Green claimed to believe that the world economy was on the precipice of catastrophe and that certain asset classes would respond very positively to the resulting "world chaos." As a result of his view, Green recommended to virtually all of his customers that they invest almost exclusively in securities with exposure to precious metals, natural resources, commodities, and energy (hereinafter, the "Investment Strategy").

3. One of the customers to whom Green recommended the Investment Strategy was customer "AFR", who, due to a disability, had a limited capacity to work and a finite and limited

amount of assets to support her and her son for the rest of her life. Green's recommendation that AFR liquidate her existing variable annuity and employ his Investment Strategy resulted, over a 3½ year period of time, in massive losses in AFR's account, and violated his obligation to make suitable recommendations to AFR.

4. Finally, as part of his Investment Strategy, Green frequently recommended Non-traditional ETFs to his customers. Yet, Green lacked sufficient knowledge regarding these Non-traditional ETFs. Among other things, Green routinely recommended that Non-traditional ETFs be held for long periods of time despite the potential risks associated with holding Non-traditional ETFs more than one trading session. Therefore, Green had no reasonable basis to recommend these Non-traditional ETFs to his customers.

RESPONDENT AND JURISDICTION

5. Green had been in the securities industry as a registered representative since 1976, and had also been acting in a principal capacity since 2003. Green was registered with Royal Securities Company ("Royal"), as a registered representative and principal from November 2009 to April 2013. Green was the supervising principal for one of Royal's Michigan branch offices and did business in that branch as the "A. Green Financial Group." On April 11, 2013, Green's registration with Royal was terminated. Green has not been in the securities industry since April 11, 2013. On July 2, 2013, FINRA suspended Green pursuant to FINRA Rule 9554, due to his failure to comply with an arbitration award in connection with AFR's account, described below.

6. Although Green is no longer registered or associated with a FINRA registered firm, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because: (1) this Complaint was filed within two

years after the date upon which he ceased to be associated with a FINRA member, namely April 11, 2013, and (2) this Complaint charges Green with misconduct committed while associated with a FINRA registered firm.

FIRST CAUSE OF ACTION
(Unsuitable Recommendations to AFR- NASD Rule 2310)

Background

7. Green believed that there was an ongoing world monetary crisis and that the debt burden of the United States and other countries may result in default and hyperinflation. As a result, Green's Investment Strategy relied almost exclusively on securities with exposure to precious metal, commodity, natural resource and energy ("PCNRE") assets. Hence, virtually all of his customers were heavily concentrated in PCNRE assets.

8. In recommending his Investment Strategy, Green focused on one potential risk – namely, his prediction of the impending collapse of the monetary and financial system as we know it. In failing to account for any other risks, including the risk that his predictions regarding the collapse of the world economy may not come to pass, Green recommended to virtually all of his customers heavy concentrations in PCNRE assets.

9. Despite his view that the PCNRE portfolio was the only "safe" and "conservative" investment strategy, Green realized that such a portfolio could not be implemented for a customer who identified a conservative, or even a moderate, investment objective and risk tolerance. Green told his customers and potential customers that an aggressive investment objective identification was necessary if they wanted to become his customer and use his Investment Strategy.

Green Recommended The Investment Strategy to Disabled Customer, AFR

10. Among the more egregious examples of Green's unsuitable recommendations was the recommendation of his Investment Strategy to his customer, AFR.

11. In 1996, when she was 27 years old, AFR was involved in a car accident that resulted in brain injuries leaving her permanently disabled and unable to work. Among other things, AFR suffered from cognitive impairments which affected her memory and ability to process and retain new information.

12. In 2003, AFR reached a $2 million insurance settlement in connection with the accident. After attorney fees' and other expenses, approximately $1,200,000 remained for AFR to support herself and her minor child.

13. Through another broker, AFR initially invested $1 million in a combination variable/fixed annuity offered by Transamerica Life Insurance Company (the "Annuity"). The Annuity provided AFR with immediate monthly payments necessary for her and her son's basic living expenses. The Annuity also limited the amount of money she could withdraw penalty-free.

14. In late 2006, Respondent and AFR had discussions about the Annuity during which Respondent provided his "standard presentation about the coming world monetary crisis." Respondent claimed that his Investment Strategy would result in a better rate of return than that provided by the Annuity. Indeed, according to AFR, Respondent told her that the investment would make so much money "she would think he was a god."

15. In February 2007, AFR opened an account at Green's prior broker-dealer with Green as her advisor. The new account form for AFR, which Respondent filled out for AFR,

identified her as a "disabled investor." In addition, account documentation indicated an annual income of $50,000-$99,999 and a net worth and liquid assets of $1,000,000-$2,999,999.

16. In opening her account, AFR indicated that the money funding the account "is all the money [she has] in the world" and she "can't afford to loose [sic] it." Nonetheless, Green recommended to AFR an investment objective of Growth and Aggressive Growth.

17. "Aggressive Growth" was defined as focusing on "generating growth and/or income with a willingness to assume a high level of risk. *Aggressive.*" "Growth" was defined as focusing on "generating long-term capital growth. *Moderate.*"

18. Green recommended that AFR liquidate her Annuity and invest the proceeds consistent with his Investment Strategy. Green recommended this approach despite the fact that liquidation of the Annuity resulted in AFR incurring a surrender charge of $59,583, which Green said she could recoup through his Investment Strategy.

19. In making his recommendation, Green claimed to be concerned that AFR was concentrated in a single product that depended on the solvency of a single insurance company – Transamerica – that he feared left AFR vulnerable to a potential bankruptcy of Transamerica. Prior to making his recommendation, however, Green did not conduct any research to determine if Transamerica was in danger of defaulting or was in any financial distress. In addition, Green did not conduct any research on AFR's specific Transamerica policy before recommending its liquidation, including researching the investment options, death benefit, or riders. Finally, Green did not discuss with AFR whether the death benefit of her Annuity was an important feature for her.

20. When the account was initially opened, $860,656.77 was transferred from the proceeds of the Annuity liquidation, after deduction of the surrender charge.

21. Green recommended that the Annuity proceeds be invested in a PCNRE portfolio and acknowledged that he did not present AFR with other investment options. Upon opening the AFR account in February 2007, Green invested 74% of the account holdings in a PCNRE portfolio, of which approximately 100% was concentrated in equities, and 28% of the equity holdings were invested in low priced securities or penny stocks.

22. Throughout the life of the account, Respondent's recommendations led to increasingly heavier concentrations in the PCNRE asset class. For example:

a. In December 2007, there was a total account value of $748,150.64. Of the total account value, 95% of the account holdings were invested in the PCNRE portfolio, of which approximately 100% were concentrated in equities, and 58% of the equity holdings were invested in low priced securities or penny stocks.

b. In December 2008, there was a total account value of $172,073. Of the total account value, over 99% of the account holdings were invested in the PCNRE portfolio, of which 100% were concentrated in equities, and 68% of the equity holdings were invested in low priced securities or penny stocks.

23. In November 2009, Green moved from his prior broker-dealer to Royal. AFR transferred her account to Royal shortly thereafter, filling out new account paperwork to do so. Again, Green recommended "Aggressive Growth" as her Investment Objective. AFR reluctantly agreed given her "limited knowledge" of investments. But, in doing so, AFR again implored Green "to be as careful as possible" because it is the only money she has for living.

24. AFR had transferred $187,110.37 in securities to her account at Royal. Of the total account value, over 99% of the account holdings were invested in the PCNRE portfolio, of

which approximately 100% were concentrated in equities, and 57% of the equities were concentrated in penny stocks.

25. In September 2010, AFR transferred her account to another representative at another firm. At that time, the account balance was only $134,891.37.

26. Green's recommendation to AFR that she liquidate the Annuity to invest in the Investment Strategy enabled AFR, who was disabled with demonstrated cognitive impairments, to withdraw excess funds without penalty. The unsuitable Investment Strategy led to massive losses in AFR's account, which was exacerbated by her ability to withdraw funds from the account unencumbered.

27. Green's recommendations that AFR (a) liquidate the Annuity and incur a surrender charge, and (b) invest in the Investment Strategy and concentrate her portfolio in PCNRE assets were made without having reasonable grounds for believing that the recommendations and resultant transactions were suitable for AFR on the basis of information known to him about AFR and her financial situation and needs. These unsuitable recommendations led to a portfolio of AFR that lacked any diversification, was unduly concentrated in the PCNRE asset class, and caused significant risk of loss of principal.

28. Consequently, Green violated NASD Rules 2310 and 2110 (for the conduct prior to December 15, 2008), and FINRA Rule 2010 (for the conduct after December 15, 2008).

SECOND CAUSE OF ACTION

(Reasonable Basis Suitability Relating to Non-traditional ETFs - NASD Rule 2310 and FINRA Rule 2111)

29. The Department realleges and incorporates by reference paragraphs 1 through 9 above.

30. In implementing his Investment Strategy, Green also relied on Non-traditional ETFs. Exchange Traded Funds ("ETFs") are typically registered unit investment trusts or open-end investment companies whose shares represent an interest in a portfolio of securities that track an underlying benchmark or index. Shares of ETFs are typically listed on national securities exchanges and trade throughout the day at prices established by the market.

31. Non-traditional ETFs differ from other 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). To accomplish their objectives, the portfolios' underlying Non-traditional ETFs typically contain very complex investment products, including interest rate swap agreements, futures contracts, and other derivative instruments.

32. Non-traditional ETFs typically are designed to achieve their stated objectives only over the course of one trading session, *i.e.*, one day. As a result, between one trading session and the next, the fund manager for a Non-traditional ETF generally will rebalance the fund's holdings in order to meet its objective. For most Non-traditional ETFs, this happens on a daily basis, and is known as the "daily reset."

33. Within a particular day's trading session, a Non-traditional ETF may come close to achieving its intended returns. As a result of the daily reset, however, the correlation between the performance of a Non-traditional ETF and its linked index or benchmark is inexact, and there is typically at least a small difference, or "tracking error." Over longer periods of time, this "tracking error" between a Non-traditional ETF and its benchmark, may be compounded significantly. This potential divergence between the performance of the Non-traditional ETF and

its benchmark becomes more pronounced during periods of volatility in the underlying index or benchmark.

34. FINRA advised its membership in June 2009 in FINRA Regulatory Notice 09-31 concerning Non-traditional ETFs that "[d]ue to the effect of compounding, [Non-traditional ETFs'] performance over longer periods of time can differ significantly from the performance . . . of their underlying index or benchmark during the same period of time."[1] Because of these risks and the inherent complexity of the products, FINRA Regulatory Notice 09-31 advised broker-dealers and their representatives that Non-traditional ETFs "are typically not suitable for retail investors who plan to hold them for more than one trading session, particularly in volatile markets."

35. FINRA's suitability rules, NASD Rule 2310 and FINRA Rule 2111, require, among other things, that a registered representative have reasonable grounds to believe that a recommendation could be suitable for at least some customers. To make a suitable recommendation, a registered representative must first have an understanding of the potential risks and rewards inherent in that recommendation. A registered representative violates the suitability rule if he or she had no reasonable basis to make the recommendation to any customer, regardless of the customer's wealth, willingness to bear risk, age, or other individual characteristics.

36. With respect to Non-traditional ETFs, FINRA Regulatory Notice 09-31 also states that the reasonable basis suitability requirement means that the registered representative must understand the terms and features of the funds, including how they are designed to perform, how they achieve that objective, and the impact that market volatility, the ETF's use of leverage, and the effect the customer's intended holding period will have on their performance.

[1] FINRA Regulatory Notice 09-31.

37. Despite his reliance on Non-traditional ETFs, Green exhibited a lack of knowledge regarding several fundamental aspects of these ETFs. For example, while Green claimed to understand that "tracking errors" existed with these funds, he did not know what caused the tracking errors. Similarly, Green did not understand the concept of a "decay factor" that occurs as a result of a Non-traditional ETF rebalancing its assets on a daily basis. In addition, Green claimed to rely on Non-traditional ETFs as a hedge against a drop in the stock market despite the fact that Non-traditional ETFs are not intended as a long-term hedge against market forces generally.

38. Given his lack of understanding of Non-traditional ETFs, Green improperly recommended transactions in Non-traditional ETFs, including the recommendations that they hold the products for more than a day.

39. Specifically, during the review period of June 2010 to January 2013, Green engaged solicited Non-traditional ETF transactions in 40 accounts. The prospectus for each of the Non-traditional ETFs purchased in these accounts indicates that the fund seeks investment results for a single day only. Yet, most of the holding periods for the Non-traditional ETFs held by Green's customers were longer than six months, including holding periods longer than one year. During that period, Green's customers sustained significant losses.

40. Prior to recommending the products to his customers, Green also failed to adequately disclose to his customers the risks associated with Non-traditional ETFs. For example, with respect to the recommendation to purchase ProShares Ultra Silver ETF, Green only discussed with the clients the fact that the product was a "silver ETF", "leveraged to the price of silver" with "a little more bang for your money" if the price of silver rises. Moreover, in response to questions by FINRA regarding the rationale for recommending certain Non-

traditional ETF transactions and holding periods, Green simply responded that the disclosures that the customers sign contain the rationale. Significantly, none of the disclosures mention the use of leveraged or inverse products, much less discuss the features and risks associated with those products.

41. As a result of the above, Green did not have a reasonable basis to believe that the Non-traditional ETF products he recommended were suitable for any customer, in violation of NASD Rule 2310 for the conduct prior to July 9, 2012, and FINRA Rule 2111 for the conduct after July 9, 2012. His conduct also violated FINRA Rule 2010.

RELIEF REQUESTED

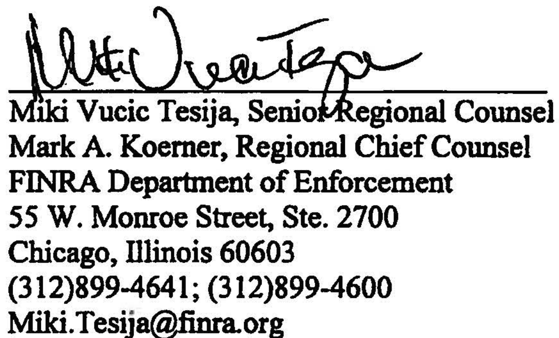
WHEREFORE, the Department respectfully requests that the Panel:

A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein; and

B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed.

FINRA DEPARTMENT OF ENFORCEMENT

Date: January 29, 2015



Miki Vucic Tesija, Senior Regional Counsel
Mark A. Koerner, Regional Chief Counsel
FINRA Department of Enforcement
55 W. Monroe Street, Ste. 2700
Chicago, Illinois 60603
(312)899-4641; (312)899-4600
Miki.Tesija@finra.org