

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2014040644001**

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

RE: James Flower, Respondent
General Securities Representative
(CRD No. 2817701)

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, James Flower ("Flower" or the "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

Respondent James Flower first became registered with FINRA as a General Securities Representative ("GS") through his association with a member firm in 1997. He was registered with fifteen different member firms between 1997 and 2010, when he joined former FINRA member firm Global Arena Capital Corp. (BD No. 16871), where he remained until 2014. Flower is currently registered with FINRA as a GS through another member firm and is located in Melville, New York.

RELEVANT DISCIPLINARY HISTORY

Flower has no disciplinary history.

OVERVIEW

During 2013 and 2014, Respondent recommended that thirteen of his customers invest in a security known as the iPath S&P 500 VIX Short Term Futures ETN

("VXX"), a highly volatile exchange-traded note, without having a reasonable basis for recommending the transactions. As a result of this conduct, Flower violated FINRA Rules 2111 and 2010.

FACTS AND VIOLATIVE CONDUCT

The VXX Exchange-Traded Note

The VXX is an exchange-traded note that offers investors exposure to the returns of one- and two-month futures contracts on the CBOE Volatility Index (the "VIX Index"). The VIX Index is designed to measure the market's expectations of volatility in large cap U.S. stocks over the next 30-day period. Although the VXX moves in the opposite direction of the index it tracks, it has its own independent risks. Most significantly, it is generally expected to lose value as time moves on, and thus it is rarely if ever considered to be a prudent long-term investment. The value of futures contracts on the VIX Index generally decreases over time. As a result, the VXX is rarely if ever suitable as a long-term investment, but instead is generally held for brief periods measured in days for short-term speculation or to hedge a portfolio against a market downturn, rather than months or even weeks.

Flower's Unsuitable Recommendations

Flower recommended the VXX to thirteen customers in 2013 and 2014. At the time he was recommending the VXX, Flower incorrectly believed that it traded inverse to the S&P 500 index. This erroneous perception led him to recommend that customers purchase and hold the VXX as a hedge to an anticipated overall market decline.

Based on Flower's recommendations, thirteen customers made 58 purchases and 39 sales of VXX shares between February 2013 and March 2014, suffering losses in excess of \$249,000 after holding their shares for periods ranging from two weeks to over one year.

Flower lacked a sufficient understanding of the mechanics of the VXX to form a reasonable basis upon which to recommend the purchase of it to his customers.

Violations

FINRA Rule 2111(a) provides:

A member or an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the

member or associated person to ascertain the customer's investment profile.

One aspect of the suitability requirement is the “reasonable basis” requirement. This obligation requires that the recommending broker understand the product and the risks thereof:

The reasonable-basis obligation requires a member or associated person to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least some investors. In general, what constitutes reasonable diligence will vary depending on, among other things, the complexity of and risks associated with the security or investment strategy and the member's or associated person's familiarity with the security or investment strategy. A member's or associated person's reasonable diligence must provide the member or associated person with an understanding of the potential risks and rewards associated with the recommended security or strategy. The lack of such an understanding when recommending a security or strategy violates the suitability rule.¹

As noted above, Flower lacked a sufficient understanding of the mechanics of the VXX to form a reasonable basis upon which to recommend the purchase of it to his customers.

By virtue of the foregoing, Flower violated FINRA Rules 2111 and 2010.

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

- A three-month suspension from association with any FINRA member firm in any capacity;²
- The requirement that within 60 days of the date of the Notice of Acceptance of this AWC, Flower will undertake to attend and satisfactorily complete ten hours (10) hours of continuing education concerning complex products, which includes exchange traded notes, by a provider not unacceptable to FINRA. Within 30 days of following completion of such training, Flower will submit written proof that the continuing education program has been satisfactorily completed. Such proof shall be submitted by letter to Samuel Barkin – FINRA Department of Enforcement, Brookfield Place, 200 Liberty Street, New York, NY 10281, and by email to Samuel.Barkin@FINRA.org and

¹ FINRA Rule 2111.05 (supplementary material to Rule 2111).

² On February 10, 2016, Respondent Flower was granted a discharge in bankruptcy under Section 727 of Title 11, United States Code. Accordingly, no monetary sanction is being assessed in this matter.

FINRANotice@FINRA.org. All correspondence must identify the Respondent and Matter No. 20140406440-01.

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

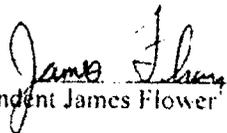
I understand that:

- 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.

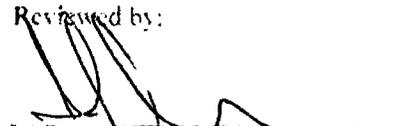
I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its provisions voluntarily; and that

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.

5/3/17
Date (mm dd yyyy)


Respondent James Flower

Reviewed by:


Ian J. Frihet, Esq.
Counsel for Respondent
Wexler Burkhardt Hirschberg & Unger, LLP
377 Oak Street
Garden City, NY 11530
516-222-2230

Accepted by FINRA:

June 12, 2017
Date

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


Samuel L. Barkin
Senior Regional Counsel
FINRA, District 10
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