

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2014043043601**

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

RE: Marlon O. Cole, Respondent
General Securities Representative and General Securities Principal
CRD No. 5054806

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.

09/26/17 PM 1:41 FIN

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

Marlon O. Cole (“Cole” or “Respondent”) entered the securities industry in 2005 as a registered representative through an association with a FINRA member firm. Since that time, Cole has been associated with several FINRA member firms, including Legend Securities, Inc. (“Legend” or the “Firm”), where he was registered from April 2013 through October 2014. At Legend, Cole worked as a registered representative out of the Firm’s main office, located at 45 Broadway, New York, NY. Cole obtained his Series 7 (General Securities Representative) and 63 (Uniform Securities Agent State Law) licenses in 2006, and his Series 24 (General Securities Principal) license in 2008. Cole became registered with FINRA again through an association with another member firm from February 2017 through May 2017.

Although Cole is not presently associated with a FINRA member firm, he remains subject to FINRA’s jurisdiction pursuant to Article V, Section 4 of FINRA’s By-Laws.

RELEVANT DISCIPLINARY HISTORY

In 2011, Cole entered into a settlement with the Alabama Securities Commission concerning allegations that he “engaged in dishonest or unethical practices” including unauthorized trading in a customer account. Cole consented to a monetary sanction of \$10,000, which he paid in 2012.

OVERVIEW

From April 2013 through October 2014 (the “Relevant Period”), while Cole was associated with Legend, he engaged in excessive and qualitatively unsuitable trading, and unauthorized trading. Specifically, Cole engaged in excessive trading in eight accounts of six senior citizens. During the Relevant Period, Cole controlled the accounts, and his trading generated cost-to-equity ratios ranging from 29.82% to 589% and turnover rates ranging from 6.01 to 63.39. Such high costs and turnover rates were inconsistent with the objectives of the customers, yet generated steady sales charges for Cole. In addition, Cole engaged in qualitatively unsuitable trading in two accounts by recommending transactions solely to generate sales charges. Cole also engaged in unauthorized transactions in two accounts.

As a result, Cole violated FINRA Rules 2111 and 2010.

FACTS AND VIOLATIVE CONDUCT

Unsuitable Trading

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. Relevant to Cole’s trading here, the Rule prohibits excessive trading and trading that lacks a reasonable basis in light of a customer’s investment profile. A violation of Rule 2111 is also a violation of FINRA Rule 2010, which requires registered representatives to “observe high standards of commercial honor and just and equitable principles of trade.”

1. Excessive Unsuitable Trading

Rule 2111 requires that where a representative controls the trading in an account, a series of recommended transactions, even if suitable when viewed in isolation, is not excessive and unsuitable for the customer when taken together in light of the customer’s investment profile. Excessive trading occurs when a registered representative: (1) exercises control over a customer’s account, and (2) the level of activity in that account is inconsistent with the customer’s investment objectives, financial situation and needs.

Where control is present, excessive trading may be established by a turnover rate, cost-to-equity ratio, and the use of in-and-out trading inconsistent with a customer’s investment profile. The turnover rate is the rate the securities in the account are sold and replaced

over a given period of time. The cost-to-equity ratio represents the percentage of return on the customer's average net equity needed to pay commissions and other account expenses over a given period of time. In other words, it is the break-even point where a customer has covered costs and may begin to see appreciation. An annualized turnover ratio of six or more is presumptive evidence of excessive trading. An annualized cost-to-equity ratio in excess of 20 percent indicates excessive trading.

When the costs in an account are so high that there can be no expectation of a reasonable return, no rational investor would knowingly agree to them. This extends to customers with an investment objective of speculation. The six customers here had investment objectives of growth and income or speculation.

The sales charges for the six customers were in the form of both commissions and mark-ups and mark-downs. These sales charges were set forth on trade confirmations to the customers. Commissions were clearly stated on trade confirmations. The mark-ups and mark-downs, however, which accounted for many of the sales charges, were not clearly stated. Thus, these customers would need to understand that they must calculate the aggregate cost for the trade.

Cole's six customers, BB, CA (two accounts), WJ (two accounts), TT, AD and DK all had limited investment experience and relied on Cole to direct investment decisions in their accounts. Also, as set forth in more detail below, Cole engaged in unauthorized trades in at least two accounts. Thus, during the Relevant Period, Cole had control over the eight accounts.

In addition, the turnover rates for the accounts ranged from 6.01 to 63.39, and the cost-to-equity ratios ranged from 29.82% to 589% as follows:

Customer	Turnover Rate	Cost-to-Equity Ratio
BB	63.39	589%
CA	18.85	148.71%
CA, 2 nd Account	11.25	86.68%
WJ	13.37	125.5%
WJ, 2 nd Account	8.68	89.91%
TT	10.21	82.81%
AD	6.01	52.34%
DK	6.42	29.82%

These high turnover rates and cost to equity ratios demonstrate the increasing difficulty for the accounts to make sufficient profits to cover the costs of Cole's trading. Further, because many of the trades were marked up or marked down, the customers could not appreciate the extent of the costs.

By virtue of the foregoing, Cole engaged in excessive unsuitable trading and violated FINRA Rules 2111 and 2010.

2. Qualitatively Unsuitable Trading

Under Rule 2111, trading lacks a reasonable basis, or is qualitatively unsuitable, when a transaction is inconsistent with a customer's investment objectives.

Between April and October 2014, Cole engaged in a strategy in WJ's account of purchasing a security, selling a covered call option on that security, and then buying back the call position at a loss, and selling the underlying stock at a loss. Cole executed more than 30 of these trades, which resulted in more than \$30,000 in losses to WJ, while generating \$26,000 in sales charges for Cole. Cole recommended a similar strategy in CA's account in July 2013, which also resulted in losses. This covered call strategy had no economic benefit for the customers and was recommended solely to generate sales charges.

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

Unauthorized Trading

It is well-established that an unauthorized trade in a customer's account is a violation of FINRA Rule 2010.

In July 2013, CA authorized the purchase of 500 shares of ABC stock, but Cole purchased 2,000 shares. The transaction generated a sales charge of \$2,980 for Cole.

In June and July 2014, Cole executed 12 transactions in AD's account without authorization that resulted in losses of more than \$12,000 to AD, but generated sales charges of more than \$8,000 for Cole.

By virtue of the foregoing, Cole violated FINRA Rule 2010.

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

- A 16 month suspension from association with any FINRA member firm in any capacity; and
- A fine in the amount of \$5,000.

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.

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.

9/22/2017
Date (mm/dd/yyyy)

Marlon O. Cole
Marlon O. Cole

Accepted by FINRA:

10/11/17
Date

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

Susan Light
Susan Light
Sr. Vice President & Chief Counsel
FINRA Department of Enforcement
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