FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015044123501

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

RE: Scott Allen Sibley, Respondent
General Securities Representative
CRD No. 1523981

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Scott Allen Sibley, 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

Sibley first became associated with a FINRA member in July 1994. Between 1994 and 2007, Sibley was associated with several FINRA member firms. On November 26, 2007, Sibley became registered with FINRA as a general securities representative through his association with Raymond James & Associates, Inc. ("RJA"). On March 10, 2015, RJA filed a Uniform Termination Notice for Securities Industry Registration ("Form U5"), disclosing that Sibley was terminated "...after the firm received multiple customer complaints alleging unauthorized trading and improper use of time and price discretion" and his last day of employment was February 18, 2015. On March 19, 2015, Sibley became registered with FINRA through his association with another FINRA member firm. On February 27, 2017, that firm filed a Form U5 terminating Sibley's registration and disclosing that his last day of employment was February 24, 2017. Sibley has not been associated with a FINRA member firm since February 27, 2017, but remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

Sibley has no relevant prior disciplinary history with the Securities and Exchange Commission, any state securities regulator, or any self-regulatory organization.

OVERVIEW

Between January 2010 and February 2015 (the "Relevant Period"), Sibley effected unauthorized transactions in 2 accounts belonging to 1 customer; made unsuitable recommendations to 10 customers; exercised discretion without written authorization and without the accounts being accepted as discretionary in 14 accounts of 10 customers; created false books and records of his employing firm when he inaccurately marked transactions solicited; and willfully failed to disclose a compromise with creditors on his Form U4. By reason of the foregoing, Sibley caused his employing member firm to violate SEC Rule 17a-3 under section 17(a) of the Securities and Exchange Act of 1934 ("'34 Act"); Sibley acted in contravention of Article V, Section 2(a)(2) of FINRA's By-Laws; and violated NASD Rules 2310 (for conduct before July 9, 2012), 2510(b), and 3110(a) (for conduct before December 5, 2011); and violated FINRA Rules 1122, 2111 (for conduct after July 8, 2012), 2360(b)(18)(A), 2360(b)(18)(B), 2360(b)(19)(A), 2360(b)(19)(B), 4511 (for conduct after December 4, 2011), and 2010.

FACTS AND VIOLATIVE CONDUCT

1. Unauthorized Trading

FINRA Rule 2010 provides that "[a] member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade." It is well established that unauthorized trading violates FINRA Rule 2010.

Customer KS

In 2009, KS transferred his account to Sibley at RJA. Before he transferred his account to Sibley, KS relied on his prior registered representative to make recommendations. In addition, KS also relied on his brother to assist in financial matters, among other things. As of January 2010, KS was 62 years old, retired, and could not return to work for medical reasons. He had limited investment experience, his investment objectives were preservation of capital and income, and he had a low to moderate risk tolerance. KS relied on the money in the two accounts for his retirement, but he did not require significant income from the accounts. In 2010, KS's brother passed away, after which the frequency of transactions in KS's account increased.

During the Relevant Period, Sibley effected about 900 securities purchases and sales in KS's two accounts without authorization, knowledge, or consent. Of the

900 securities purchases and sales, 139 were equity options where Sibley sold uncovered put option contracts or closed put option contracts for KS.

In addition to effecting purchases and sales without written authorization, Sibley caused KS to carry a margin debit balance without KS's authorization, knowledge, or consent. KS never authorized Sibley to purchase securities in his account that would result in a debit balance.

By reason of the foregoing, Sibley violated FINRA Rule 2010.

2. Unsuitable Recommendations

NASD Rule 2310 required that a member have reasonable grounds for believing that a recommendation to buy, sell, or exchange a security was suitable for a customer in light of, among other things, the customer's financial status and investment objectives. NASD Rule 2310 was replaced by FINRA Rule 2111 (effective July 9, 2012). FINRA Rule 2111 also requires that associated persons have a reasonable basis for believing that a recommendation is suitable – the new rule includes recommended transactions as well as investment strategies involving a security or securities.

Similarly, FINRA Rule 2360(b)(19)(A) provides that associated persons shall not recommend the purchase or sale of an option contract unless the associated person has reasonable grounds to believe the transaction is not unsuitable. In addition, FINRA Rule 2360(b)(19)(B) provides that associated persons shall not recommend to a customer an opening transaction in an option contract unless the person making the recommendation has a reasonable basis to believe that the customer is capable of evaluating the risks of the transaction and can financially bear the risks.

At various times during the Relevant Period, Sibley's recommendations to purchase, sell, or exchange and his recommended strategy to over-concentrate customers' accounts in the basic materials sector securities (e.g., precious metals) were unsuitable with respect to at least ten customers (including KS). The ten customers were all seniors – they all relied on the money in their accounts to help fund their ongoing retirements. Sibley's recommendations to over-concentrate the ten customers' accounts between 25 and 62 percent (per customer household) in the basic materials sector (e.g., precious metals securities) were unsuitable in light of the customers' investment experiences, risk tolerances, investment objectives, ages, and financial situations. In fact, Sibley recommended similar strategies to these customers regardless of their varying investment objectives and financial situations.

Customers GN and BW

One example of Sibley's unsuitable recommendations is the account of BW and GN, who previously opened an account at RJA, which was transferred to Sibley around 2009 or 2010. In and around 2011, GN, who was about 83 years old, inherited a large amount of money that was deposited into her joint account with BW at RJA and for which Sibley was the registered representative. BW and GN were unsophisticated investors with limited investment experience. Their combined income prior to the inheritance was between $20,000 and $50,000. BW and GN's combined net worth prior to the inheritance was between $100,000 and $250,000. After the inheritance, GN's net worth increased to about $1,000,000. GN intended to use the money to do things she would otherwise have been unable to do in retirement and leave the remaining funds to her daughter, BW.

Between 2011 and 2014, Sibley made unsuitable recommendations to GN and BW to invest in the basic materials sector. As of January 2013, their account was about 28 percent concentrated in basic materials equities, ETFs, and closed-end funds. As of September 2013, after gold prices decreased significantly in April 2013, the account was concentrated 31 percent in basic materials. As stated above, this was unsuitable in light of GN and BW's financial status, investment objectives, investment experience, and risk tolerance.

Customer KS

As described above, KS had limited investment experience and had investment objectives of preservation of capital and income with a low to moderate risk tolerance. During the Relevant Period, Sibley made unsuitable recommendations to concentrate KS's accounts in the basic materials sector (e.g., precious metals securities). As of December 2010, after KS's brother passed away, Sibley concentrated KS's IRA and individual accounts in precious metals securities, 33 percent and 22 percent respectively, or 26 percent in total). By December 2011, Sibley began selling uncovered put option contracts for precious metal equities in KS's individual account. At that time, KS's IRA account had more than 41 percent concentration in precious metals securities and his individual account had more than 28 percent, excluding options, or more than 57 percent including options. These holdings exposed KS's portfolio and liquid net worth to significant volatility. Between December 31, 2010 and December 31, 2014, the total value of his accounts had decreased by about 50 percent due to the decrease in market value. Meanwhile, during that same time period, the S&P 500 had increased almost 47 percent.

Unsuitable Options Recommendations

During the Relevant Period, Sibley also recommended that at least three of the ten customers (including KS) further concentrate their accounts in precious metals securities by selling uncovered put option contracts in the sector, in addition to

certain precious metals equities already owned by the customers. In and around April 2013, the precious metals equities began to decrease in value, increasing the risk that the options would be assigned and the stocks put to the customers. Nevertheless, Sibley continued recommending that the customers sell additional uncovered put option contracts with expirations one or more years from the sale (LEAPS), which carried even greater risk. In 2014, when Sibley was selling LEAP put option contracts in the three customers' accounts, their accounts had concentrations in precious metals of about 40 – 60 percent.

Sibley also failed to have a reasonable basis for believing, at the time of making the recommendation, that the three customers had such knowledge and experience in financial matters that they may reasonably be expected to be capable of evaluating the risks of the recommended transactions, and were financially able to bear the risks of the recommended positions in the option contracts.

By reason of the foregoing, Sibley violated NASD Rule 2310 (for conduct before July 9, 2012) and FINRA Rules 2111 (for conduct after July 8, 2012), 2360(b)(19)(A), 2360(b)(19)(B), and 2010.

3. Discretionary Trading

NASD Rule 2510(b) states that a registered representative may not exercise discretion in a customer's account "unless such customer has given prior written authorization" and such discretionary authority has been approved, in writing, by the member firm. FINRA Rule 2360(b)(18)(A) states that "[n]o member and no person associated with a member shall exercise any discretionary power with respect to trading in option contracts in a customer's account...except in compliance with the provisions of NASD Rule 2510..." FINRA Rule 2360(b)(18)(B) states that the record of each transaction in which a person associated with a member exercised discretion must clearly reflect that discretion was exercised.

During the Relevant Period, in order to effect his recommended strategy for customers to concentrate their accounts in the basic materials sector, Sibley effected at least 1,000 discretionary transactions in 14 accounts belonging to 10 customers without written discretionary authority and without the accounts being accepted by the firm as discretionary. RJA's written procedures prohibited discretionary brokerage accounts. The discretionary transactions effected by Sibley included purchases and sale of various security types including, but not limited to, equities and options. None of the transactions were designated as discretionary in the firm's systems.

By reason of the foregoing, Sibley violated NASD Rule 2510(b) and FINRA Rules 2360(b)(18)(A), 2360(b)(18)(B), and 2010.

4. Creating False Books and Records of Sibley's Employing Firm

During the Relevant Period, RJA did not permit registered representatives to solicit transactions in equities priced below $2 per share ("low-priced securities"). Between September 18, 2012 and September 11, 2014, Sibley entered at least 22 low-priced securities purchases as unsolicited when in fact they were solicited and/or effected using discretion without written authorization. These 22 transactions were effected on 13 days in 6 customers' accounts. By incorrectly entering the transactions as unsolicited, Sibley caused RJA to maintain inaccurate books and records.

By reason of the foregoing, Sibley caused his employing firm to violate SEC Rule 17a-3 under section 17(a) of the '34 Act, and violated NASD Rule 3110(a) (for conduct before December 5, 2011) and FINRA Rules 4511 (for conduct after December 4, 2011) and 2010.

5. Willful Failure to Disclose Material Information on Form U4

Article V, Section 2(c) of FINRA's By-Laws of the Corporation provides that "[e]very application for registration [Form U4] filed with the Corporation shall be kept current at all times by supplementary amendments...not later than 30 days after learning of the facts or circumstances giving rise to the amendment." FINRA Rule 1122 provides that "[n]o member or person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof."

At all times during the Relevant Period, Question 14 of the Form U4 asked" "Within the past 10 years: (1) have you made a compromise with creditors...?" FINRA's "Form U4 and U5 Interpretive Questions and Answers," which was available on FINRA's website at the time, included information about what was required to be disclosed under question 14K.

> Q2: Is a real estate short sale reportable under Question 14K on Form U4?
> A: The answer depends on the terms of the short sale transaction. A short sale is reportable as a 'compromise with creditors' if the lender/creditor forgives all or part of the borrower's outstanding amount owed...Generally, in a short sale, a lender/creditor 'compromises' by agreeing to permit the sale of the real estate although it will receive from the borrower an amount less than the full amount owed. The nature of the short sale agreement and relevant state laws may enable a lender or third party to seek a judgment for the unpaid amount owed after the auction or sale of the real estate. Consequently, in such cases, a short sale may not

have been a compromise, and is therefore not reportable as a 'compromise with creditors." Any resulting judgment (to the extent it has not been satisfied) relating to the unpaid amount owed, however, would be reportable under Question 14M on Form U4. (Originally posted 03/23/12)

In and around February 2015, Sibley owed approximately $1.14 million for loans secured by real property. In December 2015, in lieu of foreclosure, Sibley entered into a short-sale of the property for $773,000. No judgment was entered against Sibley for the difference between the sale price and the amount owed to creditors and the amount owed was forgiven.

Sibley knew of the compromise with creditors at the time he made them. However, Sibley willfully failed to amend his Form U4 to disclose the compromise with creditors.

As described above, Sibley willfully failed to disclose on his Form U4 a compromise with creditors. As a result, Sibley violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

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

A bar from associating with any FINRA member firm in any capacity.

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).

I understand that this settlement includes a finding that I willfully omitted to state a material fact on a Form U4, and that under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 and Article III, Section 4 of FINRA's By-Laws, this omission makes me subject to a statutory disqualification with respect to association with a member.

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.

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.

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.

3-28-17
Date (mm/dd/yyyy)

Scott Allen Sibley, Respondent

Reviewed by:

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Accepted by FINRA:

4/27/2017
Date

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

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