

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2017052699301**

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

RE: Richard J. Coleman, Respondent
Former General Securities Representative
CRD No. 2720422

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, I, Richard J. Coleman, 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

Coleman first registered with FINRA as a General Securities Representative (“GSR”) through an association with a member firm in September 1996. Between March 2015 and February 2016, Coleman was registered with FINRA as a GSR through an association with Legend Securities, Inc. (“Legend”) (CRD No. 44952). Between February 2016 and March 2017, Coleman was registered with FINRA as a GSR through an association with SW Financial (“SWF”) (CRD No. 145012). After leaving SWF, Coleman registered with another member firm before returning to SWF in May 2018. Coleman remained registered with FINRA as a GSR through SWF until his registration was terminated in March 2019.

Although Coleman is not currently registered or associated with a FINRA member firm, FINRA retains jurisdiction over him pursuant to Article V, Section 4 of FINRA’s By-Laws.

RELEVANT DISCIPLINARY HISTORY

In February 2012, Coleman consented to the entry of an AWC (No. 2011026458701) that included findings that he engaged in a pattern of trading activity in a customer account that was excessive and unsuitable in light of the customer's objectives, financial situation and needs in violation of NASD Rule 2310 and FINRA Rule 2010. Coleman's trading in the account resulted in a cost-to-equity ratio for the period of 89.24% and a turnover rate of 29.20. Coleman was suspended from associating with any FINRA member in any capacity for three months and fined \$15,000.

OVERVIEW

Between October 2015 and February 2017 (the "Relevant Period"), Coleman excessively traded four customers' accounts in violation of FINRA Rules 2111 and 2010. In addition, Coleman marked sale orders as unsolicited when, in fact, they were solicited, in violation of FINRA Rules 4511 and 2010.

FACTS AND VIOLATIVE CONDUCT

1. Excessive Trading

FINRA Rule 2111(a) provides in pertinent part that "[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." As explained in the Supplementary Material found at 2111.05(c):

Quantitative suitability requires a member or associated person who has actual or de facto control over a customer account to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile, as delineated in Rule 2111(a). No single test defines excessive activity, but factors such as the turnover rate, the cost-equity ratio, and the use of in-and-out trading in a customer's account may provide a basis for a finding that a member or associated person has violated the quantitative suitability obligation.

Turnover rate represents the number of times that a portfolio of securities is exchanged for another portfolio of securities. The cost-to-equity ratio measures the amount an account has to appreciate just to cover commissions and other expenses. In other words, it is the break-even point where a customer may begin to see a return. A turnover rate of six or a cost-to-equity ratio above 20 percent

generally indicates that excessive trading has occurred.

During the Relevant Period, Coleman engaged in quantitatively unsuitable trading in the accounts of customers JT, SB, TM and AE. Coleman recommended the trading in the four customers' accounts and they followed his recommendations. As a result, Coleman exercised *de facto* control over the four customers' accounts.

Coleman's trading of the four accounts resulted in high turnover rates and cost-to-equity ratios as well as significant losses, as set forth below.

- JT's account exhibited an annualized turnover rate of 71.14 and an annualized cost-to-equity ratio of 210%. JT's account incurred losses of \$84,858 and paid \$51,525 in commissions and fees (\$24,533 was charged at Legend and \$26,992 was charged at SWF).¹
- SB's account exhibited an annualized turnover rate of 26.29 and an annualized cost-to-equity ratio of 89.05%. SB's account incurred losses of \$61,426 and paid \$49,235 in commissions and fees.
- TM's account exhibited an annualized turnover rate of 35.81 and an annualized cost-to-equity ratio of 167.5%. TM's account incurred losses of \$15,737 and paid \$10,498 in commissions and fees.
- AE's account exhibited a turnover rate of 40.35 and a cost-to-equity ratio of 117.16%. AE's account incurred losses of \$63,724 and paid \$28,672 in commissions and fees.

Coleman's trading in the accounts of JT, SB, TM and AE was excessive and unsuitable given the customers' investment profiles. As a result of Coleman's excessive trading, the four customers suffered collective losses of \$225,745 and paid \$139,930 in commissions and fees.

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

2. Mismarking Orders

FINRA Rule 4511(a) requires member firms to "make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules." Exchange Act Rule 17a-3 requires a firm to make and keep current certain books and records relating to its business, including memoranda of each brokerage order. Inherent in this recordkeeping requirement is the obligation to maintain accurate records.

¹ The figures presented for JT's account reflects trading at both Legend and SWF. The figures presented for the other three customers reflects trading only at SWF.

While associated with SWF during the Relevant Period, Coleman routinely mismarked sale orders for customers SB, JT, TM and AE as unsolicited when, in fact, he solicited the sales. In total, Coleman marked 113 out of 136 sale orders as unsolicited when they were not, thereby causing SWF's books and records to be inaccurate.

By virtue of the foregoing, Coleman violated FINRA Rules 4511 and 2010.

B. Respondent also consents to the imposition of the following sanctions:

- A two-year suspension from association in all capacities with any FINRA member firm;
- A fine of \$15,000; and
- Restitution of \$139,930 plus interest, as set forth below.

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.

An order to pay restitution to the customers listed on Attachment A hereto in the total amount of \$139,930, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from the respective dates set forth on Attachment A, until the date of payment. Restitution amounts ordered, pursuant to this disciplinary action, are due and payable 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. The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies. If for any reason Coleman cannot locate any customer identified in Attachment A after reasonable and documented efforts within such period, or such additional period agreed to by the staff, Coleman shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property, or abandoned property fund for the state in which the customer is last known to have resided.

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 specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanctions 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 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

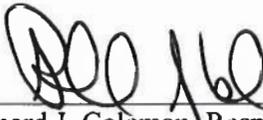
I understand that:

- 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;

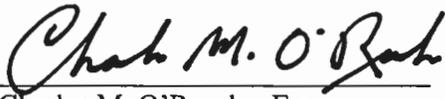
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and
- C. If accepted:
1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against 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.
- 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.

6/24/19
Date (mm/dd/yyyy)


Richard J. Coleman, Respondent

Reviewed by:


Charles M. O'Rourke, Esq.
Counsel for Respondent
2 Swenson Drive
Woodbury, NY 11797
(516) 677-9785

Accepted by FINRA:

8/8/2019
Date

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


Michael Perkins, Senior Counsel
FINRA Department of Enforcement
Brookfield Place
200 Liberty Street
New York, NY 10281
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Attachment A

Customer	Restitution Amount (Legend Trading)	Restitution Amount (SWF Trading)	Total Restitution Amount	Interest Date
SB	N/A	\$49,235	\$49,235	February 27, 2017
AE	N/A	\$28,672	\$28,672	February 3, 2017
TM	N/A	\$10,498	\$10,498	February 7, 2017
JT	\$24,553	\$26,992	\$51,525	February 16, 2017