

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2017056579502**

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

RE: Robert James D'Andria, Respondent  
General Securities Representative  
CRD No. 1916172

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Robert James D'Andria ("D'Andria" or "Respondent") submits 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 Respondent alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. Respondent hereby accepts and consents, 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**

At various time since 1989, D'Andria was associated with several FINRA members. Since July 2010, D'Andria has been associated with International Assets Advisory, LLC ("IAA") as a general securities representative, and is subject to FINRA's jurisdiction.

**RELEVANT DISCIPLINARY HISTORY**

In April 2003, D'Andria entered into an AWC for failing to disclose material information on his Form U4. D'Andria was suspended for 10 days in all capacities and was fined \$5,000.

**OVERVIEW**

From October 2014 through September 2015 (the "Relevant Period"), D'Andria recommended the purchase of non-traditional exchange traded products ("NT-ETPs")<sup>1</sup> to five customers without having a sufficient understanding of the risks and features associated with these NT-ETPs and thereby failing to have a reasonable basis to make

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<sup>1</sup> NT-ETPs include leveraged and inverse exchange-traded notes (NT-ETNs) and funds (NT-ETFs).

these recommendations. As a result, during the Relevant Period, D'Andria violated FINRA Rule 2111.

### FACTS AND VIOLATIVE CONDUCT

The reasonable-basis suitability obligation under FINRA Rule 2111 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.<sup>2</sup>

Under FINRA Rule 2111, to make a suitable recommendation, representatives must first have an understanding of the potential risks and rewards inherent in that recommendation. Thus, a representative may violate the suitability rule if he or she has no reasonable basis to make the recommendation to any customer, regardless of the investor's wealth, willingness to bear risk, age, or other individual characteristics.

FINRA Rule 2010 requires that member firms and associated persons "observe high standards of commercial honor and just and equitable principles of trade." A violation of FINRA Rule 2111 also constitutes a violation of FINRA Rule 2010.

NT-ETPs are designed to return a multiple of an underlying index or benchmark, the inverse of that benchmark, or both, over only the course of one trading session — usually a single day. NT-ETPs typically rebalance their portfolios on a daily basis (also known as the "daily reset"). As a result, due to the effects of compounding of daily returns during the holding period, the performance of NT-ETPs over periods longer than a single trading session "can differ significantly from the performance ... of their underlying index or benchmark during the same period of time."<sup>3</sup> Because of these risks and the complexity of the products, FINRA has advised its members that NT-ETPs "are typically not suitable for retail investors who plan to hold them for more than one trading session, particularly in volatile markets."<sup>4</sup>

During the Relevant Period, D'Andria recommended 21 NT-ETP purchases to five of his customers at IAA.<sup>5</sup> All of these transactions were solicited. The customers held these

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<sup>2</sup> FINRA Rule 2111.05(a) (Supplementary Material to Rule 2111).

<sup>3</sup> FINRA Regulatory Notice 09-31 (addressing NT-ETFs).

<sup>4</sup> *Id.*

<sup>5</sup> IAA consented to supervision charges in AWC No. 2017056579501 in relation to D'Andria's unsuitable recommendations of NT-ETPs and agreed to a fine and order of restitution to be paid to the affected customers.

positions for periods ranging from 30 to 758 days. The average holding period was 327 days. These extended holding periods caused D'Andria's customers to incur approximately \$93,000 in losses.

D'Andria failed to perform a reasonable basis suitability analysis of NT-ETPs to understand the unique features and specific risks associated with these products before offering them to his customers. In fact, the prospectuses for the NT-ETPs that D'Andria recommended warned that the products were risky, intended to be daily trading tools for sophisticated investors, and should be actively and frequently monitored, even intra-day. Moreover, D'Andria did not understand that losses in NT-ETPs are compounded because of how the valuations reset each day.

As a result of the foregoing conduct, D'Andria violated FINRA Rules 2111 and 2010.

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

- a two-month suspension from association with any FINRA member in any capacity; and
- a \$5,000 fine.

Respondent agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. Respondent has submitted an Election of Payment form showing the method by which he proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim an inability to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

Respondent understands that if he is barred or suspended from associating with any FINRA member, he becomes 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, he 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

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against him;

- 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, Respondent specifically and voluntarily waives 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.

Respondent further specifically and voluntarily waives 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

Respondent understands that:

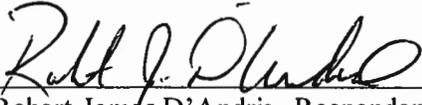
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
  - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
  - 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. Respondent 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. Respondent 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 Respondent's: (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.

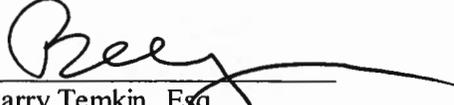
D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that he may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

Respondent certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; Respondent has agreed to the AWC's provisions voluntarily; and 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 him to submit this AWC.

12-13-19  
Date

  
Robert James D'Andria, Respondent

Reviewed by:

  
Barry Temkin, Esq.  
Counsel for Respondent  
Mound Cotton Wollan & Greengrass LLP  
One New York Plaza  
New York, NY 10004

Accepted by FINRA:

1/3/2020  
Date

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

  
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Janine D. Arno  
Principal Counsel  
Department of Enforcement  
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