

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO: 2005000346105**

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

RE: George Montes, Respondent
CRD No. 602337

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, George Montes (Montes or 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

Montes became registered as a General Securities Representative, General Securities Principal, and Financial and Operations Principal in June 1976 while associated with another member of FINRA. Montes also became registered as a Registered Options Principal in February 1979 and as a Municipal Securities Principal in October 1982 and remained with the FINRA member until December 1989. Montes became associated with Emmett A. Larkin Co., Inc. (Emmett Larkin) in January 1990. From January 1990 through July 2009, Montes has been Emmett Larkin's Treasurer, Chief Financial Officer, Senior Registered Options Principal (SROP) and Compliance Registered Options Principal (CROP). From January 1990 through August 2007, Montes also held the title of Chief Compliance Officer. Montes voluntarily terminated his registration with Emmett Larkin on July 31, 2009.

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RELEVANT DISCIPLINARY HISTORY

Montes does not have a formal disciplinary history.

OVERVIEW

Montes failed to reasonably supervise the trading activity of two former registered representatives of Emmett A. Larkin Co., Inc. (Emmett Larkin) who engaged in fraud by trading excessively and unsuitably in customer accounts

FACTS AND VIOLATIVE CONDUCT

Montes' Failure to Supervise

Between January 2003 and April 2005, Emmett Larkin's written supervisory procedures (WSPs) specified that Montes, the Senior Registered Options Principal and Compliance Registered Options Principal (as well as the Chief Compliance Officer), had overall responsibility for developing and implementing adequate supervisory procedures for the review of all options accounts. This responsibility included the regular review of options trades to assess suitability and customers' ability to evaluate and bear the risks of the recommended positions.

Emmett Larkin's WSPs also described a report entitled Monthly Surveillance Activity Report (MSAR). The WSPs stated that activity captured on the MSAR included accounts that experienced 10 or more trades, \$1,500 in commission charges, three or more Regulation T requests, or a 10% or \$20,000 decline in equity in a given month. Any account that appeared on the MSAR for two of three consecutive months would be subject to what was described as "active account surveillance." Active account surveillance, according to the WSPs, required: a review of account agreements and account statements; a review of month to date gross commissions; and a review of the quantity and principal amount of buys and sells.

If an account was subject to active account surveillance, the firm's compliance department, headed by Montes, created spreadsheets that included information such as turnover and cost-to-equity ratios, account profit and losses, and commissions. Montes received these spreadsheets through emails.

Between January 2003 and April 2005, two Emmett Larkin registered representatives who used options strategies in their customer accounts repeatedly became subject to active account surveillance and appeared on the compliance department's spreadsheets. These registered representatives were located in a branch office outside of the firm's headquarters. Kelly Wright (Wright) and

Anthony Chatman (Chatman) were located in the Chicago area, and worked jointly together.¹

Activity in Accounts Handled by Wright and Chatman

Spreadsheets from the firm's compliance department, provided to Montes, showed that between January 2003 and April 2005, ten customer accounts handled by Wright and Chatman sustained losses from voluminous stock and options transactions. The options strategies they implemented in these customers' accounts involved primarily buy-writes, married puts and collars.² The frequent trading in these ten accounts resulted in annualized turnover rates ranging from 10.72 to 20.76, and cost-to-equity ratios of 42.75% to 74.23%.³

Wright and Chatman engaged in rapid options trading in their customers' accounts. The frequent trading increased commission costs and fees to the customers. Wright and Chatman frequently utilized options in combination with stock trading, incurring two or three commissions each time a position was opened or closed. This rapid trading undermined the intended reason for establishing the stock and corresponding option positions that were designed to be held for a longer period of time. This rapid trading caused significant losses for these customers' accounts.

Despite being made aware of "red flags" indicating that unsuitable and excessive trading was occurring in the ten customer accounts, Montes failed to take reasonable supervisory steps to respond to these "red flags" with a view towards preventing the unsuitable and excessive trading. Montes did not adequately investigate Wright and Chatman's options trading.

The conduct described above constitutes separate and distinct violations of NASD Rules 3010, 2860(20) and 2110 by Montes.

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

A one year suspension from association with any FINRA member in any principal

¹These former registered representatives of Emmett Larkin have been barred from the industry by FINRA for engaging in, among other things, excessive and unsuitable trading in customer accounts, which trading amounted to fraudulent activity, in violation of FINRA and SEC rules, including Section 10(b) of the Securities and Exchange Act and SEC Rule 10b-5 promulgated thereunder. (See *Kelly Wright*, Offer of Settlement No. 200500346102 (Sept. 11, 2008); and *Charles Anthony Chatman*, Offer of Settlement No. 200500346101 (Oct. 5, 2007).

²A buy-write involves the simultaneous purchase of an equity security and the sale of a covered call option to generate income from the premium received on the sale of the call option. This is a moderately bullish strategy. A married put involves the purchase of a put option to hedge against the decrease in the price of the underlying security. This is a protective strategy for a customer who is bullish on the underlying security. A collar involves the simultaneous sale of a call option and the purchase of a put option, usually at a zero-cost basis, against an underlying equity position. The premium received from selling the call can offset the cost of the put. In this moderately bullish strategy, the investor is limiting upside potential to obtain downside protection.

³The options activity was eliminated from the turnover calculations because options can be traded more frequently due to their finite life span.

capacity, a \$15,000 fine and a requirement that I requalify by examination before acting in any principal capacity with any FINRA member.

The fine shall be due and payable either immediately upon reassociation with a member firm following the one year suspension noted above, 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.

I understand that this settlement includes a finding that I failed to supervise two individuals who violated Section 10(b) of the Securities Exchange Act of 1934 and that under Article III, Section 4 of FINRA's By-Laws, this 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.

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 General Counsel, 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 response to public inquiries about my disciplinary record;
 - 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 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.

10-20-09
Date


George Montes

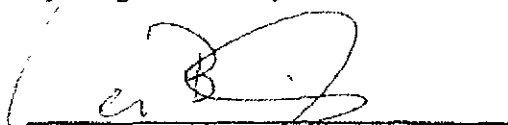
Reviewed by:

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Accepted by FINRA:

1.2.10
Date

Signed on behalf of the Director of ODA
By delegated authority


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