

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2007009877901**

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REGULATORY & DISCIPLINE

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

RE: John M. Mendola, Respondent
CRD No. 2891416

Pursuant to NASD Rule 9216 of FINRA's Code of Procedure, John M. Mendola ("I," "Mendola" 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

Mendola was registered with Wells Fargo Investments, LLC (the "Firm") and its predecessor as a Registered Representative from May 7, 1997 until his termination on July 9, 2007. Since August 29, 2007, Mendola has been registered as a Registered Representative with Kovak Securities, Inc.

OVERVIEW

Between August 2006 and June 2007, Mendola exercised discretion in the accounts of five customers without prior written authorization from them or written acceptance of the accounts as discretionary by the Firm. Mendola also made unsuitable recommendations to two of these customers.

By virtue of this conduct, Mendola violated NASD Conduct Rules 2510(b), 2310 and 2110.

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FACTS AND VIOLATIVE CONDUCT

Discretionary Trading

Customers BH, DW, ES, NM, BK

Between August 2006 and June 2007, Mendola effected 63 transactions (27 sales and 36 purchases) on a discretionary basis in five customers' accounts. None of the customers had provided Respondent or the Firm with written authorization to exercise discretion in the accounts as required by NASD Conduct Rule 2510(b). Mendola did not receive authorization from these customers to buy or sell these securities in each of their accounts before he made each of the transactions. Instead, Mendola effected each of the following transactions on a discretionary basis in accounts that were designated as non-discretionary accounts by the Firm:

<u>Customer</u>	<u>Trade Date</u>	<u>Transaction</u>	<u>Proceeds/(Cost)</u>
BH	5-30-07	Buy 400 shs MU	(\$4,776)
	6-6-07	Buy 200 shs ALK	(\$5,472)
	6-6-07	Buy 100 shs PLL	(\$4,560)
DW	8-14-06	Buy 1,969 Claymore UIT	(\$19,998)
	5-23-07	Buy 100 shs ADBE	(\$4,334)
	5-23-07	Buy 300 shs MU	(\$3,477)
	5-23-07	Sell 200 shs OMI	\$5,836
ES	2-2-07	Sell 1,200 shs YMI	\$2,028
	3-22-07	Sell 72.072 shs PZEVX	\$2,000
	3-22-07	Buy 500 shs MU	(\$5,790)
	3-22-07	Buy 500 shs PMCS	(\$3,350)
	3-22-07	Buy 300 shs S	(\$5,817)
	5-21-07	Buy 200 shs ADBE	(\$8,614)
	5-21-07	Sell 200 shs NCR	\$10,392
	5-21-07	Sell 300 shs OMI	\$8,766
	5-21-07	Buy 200 shs SBUX	(\$5,826)
	6-19-07	Buy 200 shs SIL	(\$4,221)
	6-19-07	Buy 100 shs ECA	(\$10,857)
	6-19-07	Sell 100 shs EEM	\$7,183
	6-19-07	Buy 100 shs PLL	(\$4,747)
NM	2-26-07	Sell 1,000 shs YMI	\$1,690
	2-26-07	Buy 200 shs MU	(\$2,474)
	2-26-07	Buy 200 shs S	(\$3,892)

	3-28-07	Sell 300 shs GLBL	\$5,322
	3-28-07	Buy 200 shs MU	(\$2,410)
	3-28-07	Sell 100 shs OMI	\$2,661
	3-28-07	Buy 600 shs PMCS	(\$3,954)
	3-28-07	Buy 100 shs S	(\$1,860)
	4-18-07	Buy 150 shs ADBL	(\$6,437)
	4-18-07	Sell 100 shs CBI	(\$3,385)
	4-18-07	Sell 200 shs CLBL	\$3,980
	4-18-07	Sell 50 shs NCR	\$2,367
	4-18-07	Buy 200 shs NSR	(\$5,802)
	4-19-07	Sell 300 shs OMI	\$8,745
	5-30-07	Buy 200 shs ALK	(\$5,740)
	5-30-07	Buy 200 shs SBUX	(\$5,710)
	6-5-07	Buy 100 shs ECA	(\$6,452)
	6-5-07	Sell 100 shs IBM	\$10,579
	6-6-07	Buy 100 shs PLL	(\$4,541)
	6-19-07	Sell 150 shs NCR	\$7,912
BK	2-26-07	Sell 1,000 shs YMI	\$1,690
	3-7-07	Sell 100 shs CMCSA	\$2,602
	3-7-07	Sell 300 shs LVLT	\$1,875
	3-7-07	Buy 300 shs MU	(\$3,465)
	3-7-07	Sell 100 shs OMI	\$2,237
	3-7-07	Buy 200 shs S	(\$3,932)
	3-7-07	Sell 200 shs SYMC	\$3,318
	3-7-07	Buy 100 shs TKR	(\$2,906)
	3-29-07	Sell 100 shs GLBL	\$1,779
	3-29-07	Sell 100 shs GFAFX	\$8,564
	3-29-07	Buy 100 shs MU	(\$1,191)
	3-29-07	Sell 100 shs OMI	\$2,641
	3-29-07	Buy 1,000 shs PMCS	(\$6,360)
	3-29-07	Buy 100 shs S	(\$1,877)
	3-29-07	Buy 70 shs WHR	(\$5,907)
	4-25-07	Buy 100 shs ADBL	(\$4,271)
	4-25-07	Buy 300 shs ASL	(\$4,416)
	4-25-07	Sell 100 shs CLBL	\$2,093

4-25-07	Sell 200 shs OMI	\$5,814
5-2-07	Sell 100 shs NCR	\$5,090
5-18-07	Buy 150 shs CBI	(\$5,298)
6-11-07	Buy 75 shs ECA	(\$4,726)
6-11-07	Sell 235.96 shs IAFAX	\$5,000

Mendola's actions described above constitute violations of NASD Conduct Rules 2510(b) and 2110.

Unsuitable Trading

Customer DW

In April 2002, Mendola began servicing the non-discretionary account of 63 year old customer, DW. DW was a widow, who had a high school education and limited financial means. DW lived off of her social security and late husband's military pension. At the time that Mendola began servicing DW's account, approximately 97% of DW's account consisted of mutual funds. Her prior investment experience was limited to mutual funds. Her investment objectives were conservative growth and safety of principal combined with a low risk tolerance.

Between 2005 and June 2007, Mendola recommended that DW sell the majority of these mutual funds and purchase higher risk equities and a Unit Investment Trust. DW purchased the UIT Mendola recommended, Claymore Securities Defined Strategic Portfolio UIT 311 (the "Claymore UIT"), in August 2006. According to Claymore UIT's prospectus, investors should not consider the Claymore UIT if they were unwilling to accept the risks involved with owning a multiple asset class portfolio and if they sought capital preservation as a primary investment objective, like DW. In August 2006, the Claymore UIT represented 17% of DW's account's portfolio. By June 2007, the last month Mendola serviced DW's account, the equities and Claymore UIT positions in the account represented approximately 51% of DW's portfolio. These investments were unsuitable for DW in light of DW's experience, investment objectives, risk tolerance, financial resources and circumstances. Mendola's actions in DW's account constitute a violation of NASD Conduct Rules 2310 and 2110.

Customer BH

In May 2007, Mendola began servicing the non-discretionary account of a 78 year old customer, BH, whose husband had recently passed away. BH had a high school education and limited financial means. BH had no significant securities investment experience beyond the seven municipal bonds that represented approximately 86% of the joint account's portfolio she had previously maintained with her husband. BH was living on a fixed income and the income generated by her municipal bonds. BH's investment objective was income and the safety of the principal invested in these assets was a high priority. BH therefore had a low risk tolerance level.

Between May and June 2007, Mendola recommended that BH sell six of her seven municipal bonds and purchase higher risk equities that did not generate dividends. These

recommendations were unsuitable for BH, in light of her experience, investment objectives, risk tolerance, financial resources and circumstances. As a result, BH suffered realized losses of approximately \$5,568. Mendola's actions constitute a violation of NASD Conduct Rules 2310 and 2110.

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

1. A suspension from association with any FINRA member in any capacity for two months;
2. A fine of \$10,000; and
3. An order to pay restitution to customer BH, listed on Attachment A hereto, in the total amount of \$5,600, 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 May 30, 2007, until the date this AWC is accepted by the NAC.

Restitution amounts ordered, pursuant to this disciplinary action, are due and payable immediately upon reassociation with a member firm following the 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. 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 Respondent cannot locate customer BH after reasonable and documented efforts within such period, or such additional period agreed to by the staff, Respondent 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.

Respondent shall submit satisfactory proof of payment of restitution or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted to Julie Broderick, Enforcement Director, FINRA, 14 Wall Street, 14th Floor, New York, New York 10005, either by letter that identifies the Respondent and the case number and includes a copy of the check, money order or other method of payment or by e-mail, with pdf copies of the payment documentation, to EnforcementNotice@FINRA.org. This proof shall be provided to the FINRA staff member listed above no later than 120 days after acceptance of the AWC.

The fine shall be due and payable either immediately upon reassociation with a member firm following the two-month 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(s) imposed in this matter.

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 Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, I may not be as-

sociated 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

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against me;
- B. To be notified of the Formal 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 NASD Rule 9143 or the separation of functions prohibitions of NASD 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 NASD 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;

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 NASD Rule 8310 and IM-8310-3; 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; and

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.

09/18/2009
Date

John M. Mendola
John M. Mendola
Respondent

Reviewed by:

Keith A. Ketterling
Keith A. Ketterling, Esq.
Counsel for Respondent
Stoll, Stoll, Berne, Lokting, & Schlachter P.C. Lawyers
209 Southwest Oak Street
Portland, OR 97204
415-396-5914

Accepted by FINRA:

10/27/09
Date

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

Julie H. Broderick R.B.
Julie Han Broderick
Director
FINRA Department of Enforcement
14 Wall Street, 14th Floor
New York, NY 10005
(646) 315-7313