

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2008014431801**

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

RE: Darren Joseph Capote, Respondent
General Securities Representative
CRD No. 5040527

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

On October 22, 2005, Darren Joseph Capote ("Capote") first became registered with FINRA as a General Securities Representative. From November 16, 2005, through September 29, 2010, Capote was registered in that capacity through member firm First Midwest Securities, Inc. Capote is presently registered in that capacity through another member firm. Capote has no FINRA disciplinary history.

OVERVIEW

Capote recommended and engaged in excessive, unsuitable trading in the accounts of four customers. This conduct violated NASD Conduct Rules 2310 and 2110 and IM-2310-2.

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FACTS AND VIOLATIVE CONDUCT

At various times from September 2006 through August 2008, Capote recommended and engaged in excessive and unsuitable trading in the accounts of four customers. Each of the four accounts were subjected to excessive, short-term trading by Capote, and excessive use of margin, which resulted in annualized cost-to-equity ratios ranging from 115 to 226 percent. Capote's trading resulted in gross commissions of approximately \$149,000 and customer losses of approximately \$287,380.

Capote did not have reasonable grounds for believing that the recommended transactions were suitable for the customers in view of their financial situation and needs. By recommending and engaging in excessive and unsuitable trading, Capote violated NASD Conduct Rules 2310 and 2110 and IM-2310-2.

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

- A six-month suspension from association with any member of FINRA in any capacity; and
- An order to pay restitution to the three customers listed on Attachment A hereto in the total amount of \$10,000.

Respondent Capote shall submit satisfactory proof of payment of restitution or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted to Michael J. Newman, Senior Regional Counsel, FINRA, 581 Main Street, 7th Floor, Suite 710, Woodbridge, NJ 07095, either by letter that identifies Respondent Capote and Case # 20080144318 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.

If for any reason Respondent cannot locate any customer identified in Attachment A after reasonable and documented efforts within 120 days from the date the AWC is accepted, or such additional period agreed to by a FINRA staff member in writing, Respondent shall forward any undistributed restitution 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 provide satisfactory proof of such action to the FINRA staff member identified above and in the manner described above, within 14 days of forwarding the undistributed restitution and interest to the appropriate state authority.

Respondent has specifically and voluntarily waived any right to claim an inability to pay at any time hereafter the restitution imposed in this matter.

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.

Respondent has submitted a sworn financial statement and demonstrated a limited ability to pay. In light of the financial status of the Respondent, the sanctions do not include a monetary fine.

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).

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 prejudice 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;
- 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

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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.

06/10/2011

Date (mm/dd/yyyy)



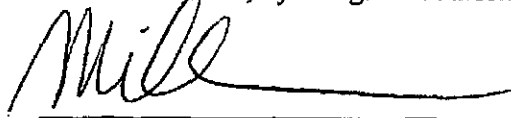
Darren Joseph Capote
Respondent

Accepted by FINRA:

7/11/11

Date

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

A handwritten signature in black ink, appearing to read "Mike", followed by a horizontal line.

Michael J. Newman
Senior Regional Counsel
FINRA Department of Enforcement
581 Main Street, Suite 710
Woodbridge, New Jersey 07095
Phone: (732) 596-2030
Fax: (202) 721-6557

Attachment A – Letter of Acceptance, Waiver and Consent
Darren Joseph Capote, No. 20080144318

Customer	Restitution Amount
BC	\$7,700
JP	\$1,200
DW	\$1,100