FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, COMPLAINANT, v. JAMES EDWARD MCGRATH, CRD NO. 1582846, AND J.P. TURNER & COMPANY, LLC, BD NO. 43177, RESPONDENTS.	DISCIPLINARY PROCEEDING NO. 2009016612701 Hearing Officer –LBB **ORDER ACCEPTING OFFER OF SETTLEMENT** DATED: SEPTEMBER 14, 2011

INTRODUCTION

Disciplinary Proceeding No. 2009016612701 was filed on January 28, 2011 by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondents James Edward McGrath (McGrath) and J.P. Turner & Company, LLC (Firm) submitted an Offer of Settlement (Offer) to Complainant dated September 8, 2011. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondents have consented, without admitting or denying the allegations of the Complaint, 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, to the entry of

00009230 2011

findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understand that this Order will become part of Respondents' permanent disciplinary records and may be considered in any future actions brought by FINRA.

BACKGROUND

On or about February 26, 1987, McGrath first became registered with FINRA as General Securities Representative. On or about January 18, 2001, he became registered as a General Securities Principal. Since March 14, 2006, McGrath has been registered in those same two capacities through the Firm.

The Firm has been a FINRA member since July 1997. The Firm is based in Atlanta, Georgia and conducts a general securities business.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

SUMMARY

1. McGrath, Area Vice President for the Firm, failed to reasonably supervise registered representative DS in connection with his activity in the account of customer BD. McGrath was aware of "red flags" of possible misconduct in BD's account, such as a continuing pattern of short-term trading, high turnover and cost-to-equity ratios, and substantial losses. BD's account frequently appeared on Firm exception reports. Nevertheless, McGrath failed to take necessary supervisory action to address the "red flags" in BD's account. On two occasions, McGrath employed ineffective (and untimely) measures to address DS' mishandling of BD's account, including imposing a commission reduction for all purchases in the account. These limited measures,

however, had no impact on DS, who continued his excessive trading of the account continued until April 2007, when BD closed it after suffering losses of approximately $120,000. McGrath's conduct violated NASD Conduct Rules 3010 and 2110.

2. The Firm failed to enforce its written supervisory procedures (WSPs) in connection with BD's account by: allowing DS to effect transactions in the account for four months without obtaining a signed, new account form from BD; failing to send a required suitability questionnaire to BD and to qualify his account as suitable for active trading; and failing to perform a review of the account on a quarterly basis. The Firm's conduct violated NASD Conduct Rules 3010 and 2110.

Failure to Supervise (McGrath)
(NASD Conduct Rules 3010 and 2110)

BD's Account

3. From in or about February 2006 through in or about April 2007 (relevant period), BD maintained an account with DS at the Firm. At the time he opened the account, BD was a 41-year-old growth investor with no prior experience trading stocks.

4. During the relevant period, DS recommended and effected unsuitable and excessive trading in BD's account. BD initially deposited securities worth approximately $150,000 in the account. DS purchased and sold approximately $4.25 million worth of stock, generating approximately $105,000 in commissions, resulting in an annualized turnover ratio of 48, and annualized cost-to-equity ratio of approximately 129%. Of the 49 stocks that DS purchased during this period, only three positions were held longer than 30 days. As a result of DS' recommendations and trading, BD suffered losses of approximately $120,000.

5. DS frequently made purchases in the BD account utilizing margin, thereby enabling him to increase trading velocity and earn greater commissions. During the majority of the months that DS traded the account, he maintained a margin balance in excess of 100% of the account's value. By March 2007, the ratio of the margin balance to the account's value had increased to 248%. DS' use of margin increased BD's trading costs, resulting in further losses and the forced frequent liquidations of positions to meet margin calls.

6. BD closed his account at the Firm on or about April 30, 2007. DS' unsuitable and excessive recommendations in BD's account violated NASD Conduct Rules 2310 and 2110 and IM-2310-2. In September 2008, the Firm paid BD $72,500 to settle an arbitration claim that he had filed based on the mishandling of his account.

McGrath's Failure to Supervise

7. McGrath had supervisory responsibility over DS throughout the relevant period (excluding the first month) and was responsible for reviewing his securities recommendations to ensure compliance with Firm procedures and applicable securities rules. DS worked in the Firm's Shrewsbury, New Jersey Branch office, a non-OSJ location, with one other individual.

8. McGrath failed to reasonably supervise DS by, among other things, failing to enforce Firm account review procedures and failing to respond to "red flags" regarding DS' trading activity in BD's account.

9. The Firm's supervisory procedures required McGrath to review account transactions, such as DS' recommended transactions in BD's account, on a daily and monthly basis

for among, other things, general suitability, excessive trading and churning, in-and-out trading and excessive commissions and fees.

10. Firm procedures also required that McGrath review all exception reports related to the individuals that he supervised and take appropriate measures as necessary. Among other things, the Firm issued exception reports for "Large Order Trades" and "Flip Trades," in which positions were held for 30 days or less.

11. In addition, the Firm identified BD's account as an "Active Account" during the relevant period due to its high turnover ratio, thereby requiring McGrath to perform a supervisory review of the account on a quarterly basis.

12. Through these required reviews, McGrath was aware of "red flags" of possible misconduct in BD's account, including frequent short-term trading, excessive commission and margin charges, high turnover and cost-to-equity ratios, and substantial trading losses.

13. Furthermore, throughout the relevant period, BD's account regularly appeared on Firm exception reports. For example, in the six-month period from June-December 2006, DS' transactions in BD's account generated 233 "exceptions," primarily "Flip Trades."

14. McGrath failed to reasonably respond to and address the "red flags" in BD's account. For example, he never spoke with BD directly to confirm that he was aware of the activity level in his account or that such activity was appropriate for BD in light of his financial circumstances and investment objectives.

15. The Firm's compliance department sent several e-mail notifications to McGrath in February and March 2007, advising him that BD's account needed "customer contact," as required by the Firm's WSPs. Nevertheless, McGrath never spoke with BD. In fact, McGrath's sole attempt to contact BD directly occurred on or about April 19, 2007, the same day that the Firm restricted the BD account based on the fact that McGrath had failed to contact him.

16. In addition, as further described in paragraph 32 below, McGrath also failed to ensure that an "Active Account Suitability Supplement and Questionnaire" (Active Account Questionnaire) was sent to BD within the time frame required by the Firm's WSPs.

17. In two instances, McGrath employed ineffective (and untimely) measures to address DS' unsuitable trading.

18. In September 2006, nearly seven months after DS began trading the BD account, McGrath instructed DS to curtail the short-term trading in BD's account and hold positions for a longer period. This was the only time that McGrath spoke to DS about BD's account.

19. By the time of this conversation, approximately half of the BD's account opening value ($150,000) had been dissipated through losses and margin and commission charges incurred from DS' trading. Furthermore, during the relevant period, DS's trading activity in the account produced "red flags" on a regular basis requiring supervisory follow up. DS, however, ignored McGrath's request to curtail short-term trading and continued trading BD's account in the same excessive manner. Moreover, McGrath did not take any action against DS based on his failure to comply with his instructions.

20. Three months later, in December 2006, McGrath reduced DS' commissions to 1% for purchases in BD's account. This measure did not have the desired impact. In fact, DS actually increased the number of purchases and frequency of short-term transactions in BD's account to offset the effects of the commission reduction. The excessive trading continued until BD closed his account on or about April 30, 2007.

21. DS' actions in ignoring McGrath's instructions to stop trading BD's account, and in later failing to reduce the level of trading in response to the commission reduction, represented further "red flags" warranting a further response by McGrath, but he failed to take action. Among other things, he never restricted the trading in BD's account, spoke to BD, placed DS on heightened supervision or recommended disciplinary measures against him to address these concerns. McGrath also never spoke with the Firm's compliance department regarding the supervision of DS.

22. By failing to reasonably supervise the activities of DS, McGrath violated NASD Conduct Rules 3010 and 2110.

Failure to Enforce WSPs (Firm)
(NASD Conduct Rules 3010 and 2110)

23. During the relevant period, the Firm failed to enforce its WSPs in connection with BD's account

24. The Firm's WSPs in effect during the relevant period required that it obtain a signed and completed "New Account Application" for each new customer account. Furthermore, the WSPs specified that, if the Firm failed to obtain a signed and completed application within 30 days of the account being opened, then that account had to be restricted from further activity until such time as the deficiency was cured.

25. The Firm, however, failed to enforce this procedure. The Firm opened an account for BD in or about February 2006 without obtaining from him a signed and completed New Account Application from him for approximately five months. Nevertheless, the Firm permitted BD's account to remain open and trade without limitation from inception until on or about May 23, 2006, at which time the account was finally restricted. BD did not return the signed and completed New Account Application to the Firm until on or about June 26, 2006.

26. The Firm also failed to enforce its WSPs regarding the review of "Active Accounts," accounts that it defined as having a turnover ratio of five or greater. The Firm identified such accounts on "Active Account Reports" that were reviewed by the compliance department and branch managers.

27. Throughout the relevant period, BD's account was an Active Account under the Firm's standards, as the turnover ratio in the account during each of the five quarters that it was open was greater than five. BD's account first appeared on the Firm's Active Account Report during the second quarter of 2006 (April-June).

28. The Firm's WSPs specified that the compliance department perform a review of the trading activity of all Active Accounts on a quarterly basis. Depending on the type of account and trading activity, that review could include a review of "profit and loss" and "turnover calculation." The WSPs also required that the Firm's compliance department contact the registered representative and designated supervisor for the Active Account to determine additional information regarding the customer and trading activity. The Firm, however, did not perform a quarterly review of BD's account as required by its procedures until in or about April 2007.

29. In addition, the Firm's WSPs further stated that if the Active Account customer continued "this pattern [turnover of five or more] for a 90[-] day period," the Firm would send an Active Account Questionnaire to that customer.

30. Under the Firm's WSPs, the Firm's compliance department would then have to "qualify" the customer for continued active trading based on a review of the Active Account Questionnaire. If this review indicated that the Active Account in question was not qualified for active trading, the Firm would restrict the account and continued trading would only be permitted with the approval of the Firm's compliance department.

31. Again, the Firm failed to enforce these procedures regarding BD's account. DS' active trading in that account resulted in turnover ratios in excess of five during all five quarters that the account was open, but the Firm did not send an Active Account Questionnaire to BD until on or about February 9, 2007, almost a year after the account had opened. By that time, BD's account had suffered significant losses due to the unprofitable short-term trading and commission and margin charges associated with DS's trading.

32. The Firm initially identified BD's account as requiring an Active Account Questionnaire in or about September 2006. The Firm's compliance department sent several e-mails to McGrath from on or about December 26, 2006 to on or about February 5, 2007, notifying him, among other things, that an Active Account Questionnaire needed to be mailed out for BD's account, and further, that the account would be restricted if the Active Account Questionnaire was not returned within 20 days. McGrath, however, did not send out the Active Account Questionnaire.

33. BD did not return the Active Account Questionnaire to the Firm until on or about March 13, 2007.

34. In addition to failing to timely send the Active Account Questionnaire to BD, the Firm also failed to timely "qualify" BD's account for active trading as required by its procedures. A necessary precursor for this determination is the receipt of an Active Account Questionnaire from the customer. The Firm did not perform this qualification review of BD's account until in or about April 2007, at which time it restricted the account from further trading.

35. By failing to enforce its WSPs, the Firm violated NASD Conduct Rules 3010 and 2110.

Based on the foregoing, Respondents violated NASD Conduct Rules 3010 and 2110.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondents from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that:

1) Respondent McGrath be suspended for ten business days from association with any FINRA member in any principal capacity and fined $5,000; and

2) Respondent J.P. Turner & Company, LLC be censured and fined $20,000.

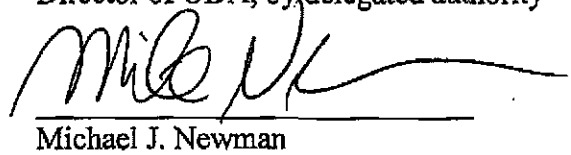
Respondents agree to pay the monetary sanctions upon notice that the Offer has been accepted and that such payments are due and payable. Respondents have each submitted an Election of Payment form showing the method by which they propose to pay the fines imposed.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

SO ORDERED.

FINRA

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



Michael J. Newman
Senior Regional Counsel
FINRA Department of Enforcement
581 Main Street, 7th Floor
Woodbridge, NJ 07095
(732) 596-2030; Fax (202) 721-6557