

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2009016654401**

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

RE: Eric Damien Kallies
Registered Representative
(CRD No.4753714)

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

Eric Damien Kallies entered the securities industry in February 2004 as a general securities representative with a FINRA firm. In September 2005, he became registered in the same capacity with Thrivent Investment Management Inc., a registered FINRA firm. On January 30, 2009, Thrivent terminated him. Since that time, he has not been registered with any firm. Kallies has no disciplinary history.

OVERVIEW

On December 31, 2008, Kallies made two unauthorized purchases of exchange traded funds for the joint account of two of his customers, without their knowledge or consent, in violation of FINRA Rule 2010. On January 2, 2009, Kallies effected the sale of an exchange traded fund in that same joint account, without having obtained prior written authorization from the customers to exercise discretion and prior written acceptance of the account as discretionary

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from his firm, in violation of NASD Rule 2510 and FINRA Rule 2010. Finally, Kallies showed those same customers a PowerPoint presentation concerning a certain investment strategy that did not meet FINRA content standards. He also failed to obtain approval for the presentation from a principal of the firm before showing it to the customers, and failed to file the presentation with FINRA within ten days of its use. This conduct violated NASD Rules 2210 and 2110, and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

- A.
 1. On December 31, 2008, Eric Kallies executed two purchases of exchange traded funds (ETFs) in a managed joint account of public customers HO and GO (husband and wife). One purchase involved 150 shares of an ETF symbolized as RTW, which was bought at a cost of \$8,260.80, while the second purchase concerned 120 shares of an ETF symbolized as SJH, which was bought at a cost of \$9,148.50.
 2. Kallies placed the orders to purchase RTW and SJH, as described above, without the knowledge or consent of the customers, HO and GO, in violation of FINRA Rule 2010.
 3. On January 2, 2009, Kallies effected a sale in a managed joint account of public customers HO and GO when he sold 242 shares of an ETF, symbolized as RFN, and obtained sales proceeds of \$8,414.29.
 4. Kallies placed the order to sell RFN, as described above, without having obtained prior written authorization from the customers to exercise discretion and prior written acceptance of the account as discretionary from his firm, in violation of NASD Rule 2510 and FINRA Rule 2010.
 5. In or about December 2008, Kallies made a PowerPoint presentation consisting of several slides to public customers HO and GO in connection with an investment strategy program he was recommending. Given that the presentation was akin to "seminar tests" concerning a firm's products and services, it was considered "sales literature" under NASD Rule 2210.
 6. NASD Rule 2210(b)(1) generally requires that a registered principal must approve by his signature or initials sales literature before it is used. Kallies made the presentation without first obtaining approval from the appropriate registered principal of the firm. This conduct was in violation of NASD Rules 2210(b)(1) and 2110 and FINRA Rule 2010.
 7. NASD Rule 2210(c)(2)(A) generally requires that sales literature concerning registered investment companies be filed with FINRA within ten business days of its first use. Kallies' PowerPoint presentation was

never filed with FINRA. By failing to file the PowerPoint presentation with FINRA, Kallies violated NASD Rules 2210(c)(2)(A) and 2110 and FINRA Rule 2010.

8. NASD Rule 2210(d)(1)(A) generally provides that communications with the public must be fair and balanced and provide a sound basis for evaluating the facts in regard to any particular security or service. It furthermore provides that no firm may omit material facts that, in light of the facts presented, would cause the communication to be misleading.
9. The PowerPoint presentation generally failed to disclose the risks of investing in the securities that were discussed. Specifically, the presentation failed to disclose the general risks associated with investing in mutual funds and ETFs and failed to disclose the heightened risk of investing in inverse types of ETFs.
10. Specifically, certain slides referenced in the PowerPoint presentation failed in the following regards:
 - a. Two slides failed to disclose what market performance is being represented in the graphs;
 - b. Six slides failed to disclose that past performance is no guarantee of future results;
 - c. Four slides failed to define the term “maximum drawdown”; and
 - d. Four slides failed to explain the meaning of the term “fee reduction.”
11. The absence of certain disclosures set forth in paragraphs 9 and 10 above result in the PowerPoint presentation not being fair and balanced and not providing the investor with a sound basis for evaluating facts in regard to a particular security or service. Consequently, they are in violation of NASD Rules 2210(d)(1)(A) and 2110 and FINRA Rule 2010.
12. NASD Rule 2210(d)(1)(B) generally provides that a firm may not make any false, exaggerated, unwarranted or misleading statements or claims.
13. Certain slides referenced in the PowerPoint presentation contain the following statements that are unwarranted and/or misleading:
 - a. One slide, by using the phrase “TDM Protective Portfolio,” implied that the portfolio was safe and protected from loss. However, as this portfolio was invested in ETFs when the market was on an upswing, it actually was not safe and there should not have been any implied

assurance that there would not be any losses. The implication of safety was misleading and unwarranted;

b. One slide, by stating that an investor can “utilize inverse funds to create positive returns in down markets,” implied an unwarranted assurance that inverse funds would always produce positive returns during a down market; and

c. Nine slides show charts that contained hypothetical, back-tested performance. They were misleading because they typically depicted favorable results.

14. The information and statements in the PowerPoint described in paragraph 13 above are unwarranted and misleading. Consequently, they were made in violation of NASD Rules 2210(d)(1)(B) and 2110 and FINRA Rule 2010.
15. NASD Rule 2210(d)(3) generally provides that communications with the public involving the presentation of “non-money market fund open-end management investment company performance data” must disclose the total annual fund operating expense ratio.
16. Charts found in two slides involving the ProShares S&P Short ETF failed to include the total annual fund operating expense ratio. By failing to include this information, Kallies violated NASD Rules 2210(d)(3) and 2110 and FINRA Rule 2010.
17. NASD Rule 2210(e) generally provides that violations of any rule of the SEC, the Securities Investor Protection Corporation or the Municipal Securities Rulemaking Board shall be deemed a violation of Rule 2210.
18. The presentations for the mutual fund shown in one slide and for the ETFs shown in another slide failed to include a prospectus offer, as required by SEC Rule 482(b)(1). By failing to include a prospectus offer, Kallies violated NASD Rules 2210(e) and 2110 and FINRA Rule 2010.
19. The charts for the mutual fund shown in one slide and for the ProShares S&P Short ETF shown in another slide failed to include the standardized average annual total returns for one, five and ten years, in accordance with SEC Rules 482(d)(5)(ii) cross-referencing SEC Rule 482(d)(3). Rather, they included the annualized rates of return, which is considered non-standardized performance. In accordance with SEC Rule 482(d)(5), non-standardized performance must be accompanied by the standardized performance for the mutual funds listed on the charts. By failing to include standardized performance, Kallies violated NASD Rules 2210(e) and 2110 and FINRA Rule 2010.

20. The charts for the mutual fund shown in one slide and for the ProShares S&P ETF shown in another slide failed to include the performance disclosures required by SEC Rule 482(b)(3). These disclosures generally require that the sales material disclose that the performance data quoted represents past performance, that past performance does not guarantee future results and that performance may be lower or higher. By failing to include the required performance disclosures, Kallies violated NASD Rules 2210(e) and 2110 and FINRA Rule 2010.

B. I also consent to the imposition, at a maximum, of the sanctions of a suspension from association with any member of FINRA in any capacity for 30-business days and a fine of \$15,000.

The fine shall be due and payable either immediately upon reassociation with a member firm following the 30-business day 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 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 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 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 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

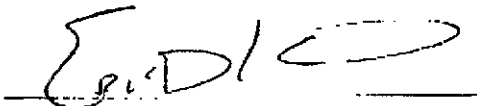
4. I may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. I may not take any position in any proceeding brought 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.

1/17/10

Date


Eric Damien Kallies

Reviewed by:

Counsel for Respondent

Accepted by FINRA:

1/26/11
Date

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


Richard A. March
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