

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2010021688101**

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

RE: Michael Douglas Venable, Respondent
CRD No. 1782517

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

Michael Douglas Venable ("Venable" or "Respondent") entered the securities industry in 1989. He was employed as a registered representative for six FINRA regulated entities prior to joining Morgan Keegan & Company Inc. (the "Firm") in February 2009. In a Uniform Termination Notice for Securities Industry Registration, dated April 29, 2010, the Firm reported that Venable's employment was terminated on April 15, 2010. Venable has not been employed in the securities industry since April 15, 2010. However, he remains subject to FINRA's jurisdiction pursuant to FINRA By-Law Article V, Section 4, until at least Friday April 27, 2012.

RELEVANT DISCIPLINARY HISTORY

Venable has no disciplinary history.

OVERVIEW

Between February 2009 and April 2010, Venable engaged in various sales practice violations related to transactions that he effected in the accounts of 14 Firm customers regarding Direxion, a highly speculative and volatile exchange traded fund. During this period, Venable exercised improper discretion in 12 of the 14 customer accounts, effected excessive transactions in one customer account, recommended unsuitable transactions in 10 customer accounts until September 2009, and mismarked order tickets in the 14 customer accounts. Venable's conduct violated NASD Rules 2310, 2510(a) and (b), 3110, NASD IM-2310-2, and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

The Direxion Exchange Traded Funds

Exchange traded funds ("ETFs") are typically registered investment companies whose shares represent an interest in a portfolio of securities that track an underlying benchmark or index. (Some ETFs that invest in commodities, currencies, or commodity- or currency-based instruments are not registered as investment companies.) Unlike traditional mutual funds, shares of ETFs typically trade throughout the day on a securities exchange at prices established by the market. Leveraged ETFs seek to deliver multiples of the performance of the index or benchmark they track. Inverse ETFs (also called "short" funds) seek to deliver the opposite of the performance of the index or benchmark they track. Like traditional ETFs, some leveraged and inverse ETFs track broad indices, some are sector-specific, and others are linked to commodities, currencies, or some other benchmark.

The Direxion ETFs (hereinafter collectively referred to as "Direxion") include: Direxion Daily Financial Bull 3X Shares ("FAS"), Direxion Daily Financial Bear 3X Shares ("FAZ"), Direxion Energy Bull 3X Shares ("ERX"), Direxion Daily Small Cap Bear 3X Shares ("TZA"), Direxion Daily Cap Bull 3X Shares ("TNA"). Venable effected trades in one or more of these funds in the 14 customer accounts.

The prospectus for Direxion, contained the following warning:

The Funds offered in this Prospectus are exchange-traded funds that seek daily leveraged investment results. The Funds are intended to be used as short-term trading vehicles. The Funds are not intended to be used by, and are not appropriate for, investors who do not intend to actively monitor and manage their portfolios. The Funds are very different from most exchange-traded funds. First, all of the Funds pursue daily leveraged investment goals, which means that the Funds are riskier than alternatives that do not use leverage because the Funds magnify the performance of the benchmark on an investment. Second, each of the Bear Funds pursues investment goals which are inverse to the performance of its benchmark, a result opposite of most exchange-traded funds. Third, each Fund offered in this Prospectus seeks daily leveraged investment results. The pursuit of daily leveraged investment goals means that the return of a Fund for a period

longer than a full trading day will be the product of the series of daily leveraged returns for each trading day during the relevant period.

The prospectus also warned:

The Funds are not suitable for all investors. The Funds should be utilized only by sophisticated investors who (a) understand the risks associated with the use of leverage, (b) understand the consequences of seeking daily leveraged investment results, (c) understand the risk of shorting and (d) intend to actively monitor and manage their investments. Investors who do not understand the Funds or do not intend to actively monitor and manage the Funds should not buy the Funds.

Regarding the Direxion funds, Morningstar Fund Analyst Reports, stated “[l]everaged funds are expensive and extremely risky, so they are best left to speculative traders or hedgers that have the desire to monitor and trade their positions daily.” Despite these facts, as discussed below, Venable made unsuitable investments in Direxion in the accounts of 10 customers.

Venable’s Misconduct in Customer Accounts

A. Recommending Unsuitable Direxion Transactions in 10 Customers’ Accounts in Violation of NASD Rules 2310 and NASD IM-2310-2 and FINRA Rule 2010

NASD Rule 2310 requires associated persons to have reasonable grounds for believing that recommendations are suitable for a customer based on the facts disclosed by the customer as to his or her other security holdings and financial situation and needs. NASD IM 2310-2(a)(1) provides that, “[i]mplicit in all member and registered representative relationships with customers and others is the fundamental responsibility for fair dealing.”

FINRA Rule 2010 requires that a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

From February 2009 to September 2009, Venable recommended Direxion, a highly speculative product, to 10 unsophisticated customers with conservative investment objectives and risk profiles and whose ages ranged from 40 to 91 years old. Venable effected a total of 345 Direxion trades in the customers’ accounts. Furthermore, half of these accounts traded Direxion on margin thereby increasing the leverage and risk. As discussed below, based upon the customers’ age, investment objective, risk profile, assets and income, the investments in Direxion were unsuitable.

1. Customers A.G. and C.G. (the “Gs”)

The Gs were, respectively, 58 and 59 years old. The Gs opened a joint account with Venable in March 2009. They had investment objectives of “growth” and “income; a “moderate” risk tolerance level; investment experience with stocks; an annual income of \$50,001 to \$75,000; a net worth of \$200,001 to \$250,000; and a liquid net worth of \$200,001 to \$250,000. Venable did not speak to the Gs prior to each trade and the Gs were unaware that their account was traded on margin. Despite these facts, between March 2009 and August 2009, Venable caused 43 Direxion

transactions to be executed in the Gs' account. Each transaction was effected using margin and included 35 in FAS, 6 in ERX, and 2 in FAZ.

2. Customers O.B and J.B. (the "Bs")

The Bs were, respectively, 83 and 69 years old. The Bs opened a joint account with Venable in February 2009. They had investment objectives of "growth" and "income"; a "moderate" risk tolerance level; investment experience with stocks, bonds and mutual funds; an annual income of \$25,000 to \$50,000; a net worth of \$500,001 to \$750,000; and a liquid net worth of \$250,001 to \$500,000. Venable initiated all trading in the Bs' account and did not speak to the Bs prior to each trade. The Bs were unaware that their account was traded on margin. Despite these facts, between February 2009 and September 2009, Venable caused 40 Direxion transactions to be executed in the Bs' account. Each transaction was effected on margin and included 27 in FAS, 10 in ERX, and 3 in FAZ.

3. Customers W.C. and N.C. (the "Cs")

The Cs were, respectively, 91 and 87 years old. The Cs opened a joint account with Venable in March 2009. They had an investment objective of "income;" a "conservative" risk tolerance level; investment experience with bonds and real estate; an annual income of \$25,000 to \$50,000; a net worth of \$200,001 to \$250,000 and a liquid net worth of \$200,001 to \$250,000. Venable initiated all trading in the Cs' account and did not speak to the Cs prior to each trade. The Cs were unaware that their account was traded on margin. Despite these facts, between March 2009 and September 2009, Venable caused 32 Direxion transactions to be executed in the Cs' account. Each transaction was effected on margin and included 21 in FAS, 6 in ERX, and 5 in FAZ.

4. Customer RY ("Y")

Y was 77 years old. Y opened an individual account with Venable in March 2009. She had investment objectives of "growth" and "income"; a "moderate" risk tolerance level; investment experience with stocks, bonds, mutual funds and ETFs; an annual income of \$50,001 to \$75,000; a net worth of \$250,001 to \$500,000; and a liquid net worth of \$250,001 to \$500,000. Venable initiated all the trades in Y's account. Despite these facts, between March 2009 and September 2009, Venable caused 45 Direxion transactions to be executed in the Y's account, which included 41 in FAS, 2 in ERX, and 2 in FAZ.

5. Customer SL

SL was 40 years old. SL opened an individual retirement account with Venable in May 2009. He had investment objectives of "growth" and "tax advantage;" a "moderate" risk tolerance level; investment experience with stocks, bonds, mutual funds, ETFs; an annual income of \$50,001 to \$75,000; net worth of \$100,001 to \$150,000; and a liquid net worth of \$100,001 to \$150,000. SL had no investment experience other than in his 401K plan. Venable initiated all the transactions in SL's account and did not speak with SL prior to each trade. Despite these facts, between May 2009 and September 2009, Venable caused 23 Direxion transactions to be executed in SL's account, which included 16 in FAS, 5 in ERX, and 2 in FAZ.

6. Customer RR

RR was 70 years old. RR opened an individual retirement account with Venable in February 2009. He had investment objectives of “income,” “growth,” “tax advantage,” and “speculation;” a “moderate” risk tolerance level; investment experience with stocks, bonds, mutual funds, options and annuities; an annual income of \$50,001 to \$75,000; a net worth of \$500,001 to \$750,000; and a liquid net worth of \$250,001 to \$500,000. After the account was opened, R’s investment objectives were changed to “speculation and “growth.” RR had no investment experience other than in his 401K plan. Venable initiated all the trading in RR’s account, and did not call RR prior to each trade. Despite these facts, between February 2009 and September 2009, Venable caused 48 Direxion transactions to be executed in RR’s account, which included 29 in FAS, 15 in ERX, 2 in FAZ, and 2 in TZA.

7. Customer TD

TD was 54 years old. TD opened an individual account with Venable in April 2009. He had investment objectives of “growth” and “income;” a “moderate” risk tolerance level; investment experience with stocks, bonds, mutual funds and annuities; an annual income of \$75,001 to \$100,000; a net worth of \$1,000,001 to \$2,500,000; and a liquid net worth of \$500,001 to \$750,000. TD had no investment experience other than in his 401K plan and he relied on Venable regarding securities purchases. Venable did not speak to TD prior to each trade and TD was unaware that his account was traded on margin. Despite these facts, between April 2009 and September 2009, Venable caused 20 Direxion transactions to be executed in TD’s account. Each of these transactions was effected on margin and included 15 in FAS, 2 in ERX, and 3 in FAZ.

8. Customer GH

GH was 62 years old. TD opened an individual account with Venable in March 2009. He had investment objectives of “growth” and “income;” a “moderate” risk tolerance level; investment experience with stocks, bonds, mutual funds and annuities; an annual income of \$50,001 to \$75,000; a net worth of \$250,001 to \$500,000; and a liquid net worth of \$250,001 to \$500,000. Venable did not speak to GH prior to each trade. Despite these facts, between March 2009 and September 2009, Venable caused 24 Direxion transactions to be executed in GH’s account, which included 17 in FAS, 5 in ERX, and 2 in TNA.

9. Customers DW and DW (the “Ws”)

The Ws were, respectively, 79 and 76 years old. The Ws opened a joint account with Venable in March 2009. They had an investment objective of “growth;” a “moderate” risk tolerance level; investment experience with stocks, mutual funds, annuities and ETFs; an annual income of \$75,001 to \$100,000; a net worth of \$2,500,001 to \$5,000,000; and a liquid net worth of \$2,500,001 to \$5,000,000. Venable initiated all the trading in their account. Despite these facts, between March 2009 and September 2009, Venable caused 68 Direxion transactions to be executed in the Ws account, which included 48 in FAS, 17 in ERX, and 3 in FAZ.

10. Customer BF

BF was 81 years old. BF opened an individual account with Venable in March 2009. She had investment objectives of “income” and “growth;” a “moderate” risk tolerance level; investment experience with stocks, bonds, mutual funds and annuities; an annual income of \$50,001 to \$75,000; a net worth of \$500,001 to \$750,000 and a liquid net worth of \$100,001 to \$150,000. In August 2009, BF opened a second individual account with Venable. The second individual account had the same investment objectives, risk profiles, annual income and financial information as reflected in the first account, except that BF’s reported liquid net worth was reported as \$250,001 to \$500,000. Venable initiated all the trading in both accounts.

Venable did not speak to BF prior to each trade and BF was unaware that her accounts were traded on margin. Despite these facts, between March 2009 and September 2009, Venable caused 2 Direxion transactions to be executed in each of BF’s two accounts, for a total of 4 Direxion transactions. The four transactions were effected on margin, which included 2 in FAS and 2 in ERX.

In light of each of the customers’ age, investment objectives, risk profiles, investment experience, assets and income, the Direxion transactions that Venable caused to be executed in their accounts was unsuitable. Venable therefore violated NASD Rules 2310 and NASD IM-2310-2 and FINRA Rule 2010.

B. Exercising Discretion Without Written Authorization in Violation of NASD Rule 2510(b) and FINRA Rule 2010

NASD Rule 2510(b) prohibits a registered representative from exercising discretionary power over a customer’s account without prior written authorization from the customer and the firm’s written acceptance of the account as discretionary. The requirement of written authorization permits the member firm to supervise discretionary accounts effectively. Similarly, the Firm’s procedures required registered representatives to have written authorization from the customers and receive Firm approval for all discretionary accounts.

Between February 2009 and April 2010, Venable exercised improper discretion relating to 1,580 trades in the accounts of 12 customers. Venable did not have the customers’ written authorization to effect the discretionary trades and the Firm had not approved Venable’s use of discretion in the 12 customer accounts.

Based upon his exercise of discretion in these customers’ accounts without the customers’ prior written authorization and without the Firm’s written acceptance of these accounts as discretionary, Venable violated NASD Rule 2510(b) and FINRA Rule 2010.

C. Excessive Trading in Violation of NASD Rule 2510(a), NASD IM-2310-2(b)(3), and FINRA Rule 2010

NASD Rule 2510(a) prohibits a registered representative from effecting for any customer’s account for which the registered representative is “vested with any discretionary power any transactions of purchase or sale which are excessive in size or frequency in view of the financial

resources and character of such account.” NASD IM 2310-2(b)(3) specifically prohibits registered representatives from excessively trading customer accounts.

The annual turnover rate of an account is computed by dividing the aggregate amount of purchases in an account by the average monthly equity. An annual turnover rate of six or greater is generally considered presumptive of excessive trading.

An account’s cost-to-equity ratio represents the percentage return on the customer’s average net equity needed to pay commissions and other account expenses. The cost-to-equity ratio measures the amount an investment would have to appreciate to “break even.”

The annualized turnover in the Gs’ account was approximately 67, well above the rate of six indicative of presumptive excessive trading. The Gs’ account had an average monthly equity of \$17,000, however, while the account remained open only for six months, it incurred approximately \$9,600 in commissions. As a result, the account had an annualized cost-to-equity ratio of approximately 140%. Thus, the Gs’ account investment of \$17,000 would have had to appreciate 140% to cover the commissions charged to the account.

By effecting excessive transactions in the Gs’ account, Venable violated NASD Rule 2510(a), NASD IM 2310-2(b)(3) and FINRA Rule 2010.

D. Mismarking Order Tickets, Which Caused the Firm to Create and Maintain Inaccurate Books and Records in Violation of NASD Rule 3110 and FINRA Rule 2010

NASD Rule 3110(a) requires that each member shall make and preserve books and records as prescribed by section 17, Rules 17a-3 and 17a-4, of the Exchange Act. SEC Rule 17a-3(a)(6) obligates a firm to mark order tickets with the “terms and conditions of the order or instructions,” presumably including whether the order was solicited or unsolicited. General Provision Rule 115 provides that a person associated with a member has the same duties and obligations as the member firm.

1. Failure to Mark Tickets as “Discretion Exercised”

Between February 2009 and April 2010, Venable executed 1,580 trades in 12 customers’ accounts in which he exercised improper discretion. For the majority of these trades, Venable should have marked the order tickets “discretion exercised” to reflect that he had exercised discretion for the particular transaction. However, Venable failed to mark the trade order tickets “discretion exercised,” therefore the order tickets did not reflect that he exercised discretion in the customers’ accounts.

2. Improperly Marking Tickets as “Unsolicited”

Between February 2009 and April 2010, Venable marked 383 order tickets in 14 customers’ accounts as “Unsolicited.” For the majority of these transactions, Venable effected a “solicited” transaction and failed to mark the order tickets accurately to reflect that designation.

By failing to mark order tickets as “discretion exercised” and incorrectly marking order tickets as “unsolicited”, Venable caused the Firm to create and maintain inaccurate books and records in violation of NASD Rule 3110 and FINRA Rule 2010.

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

A bar from employment or association in any capacity with any FINRA regulated firm.

The sanction imposed herein shall be effective on a date set by FINRA staff. Pursuant to FINRA Rule 8313(e), a bar or expulsion shall become effective upon approval or acceptance of this AWC.

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).

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.

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.

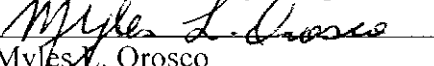
3/8/12
Date

Accepted by FINRA:

3/14/2012
Date


Michael Douglas Venable
Respondent, *pro se*

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


Myles L. Orosco
Enforcement Director
Department of Enforcement
FINRA

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