

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2010022283702**

**To: Department of Enforcement
Financial Industry Regulatory Authority (FINRA)**

**Re: Edward D. Jones & Co., L.P., Respondent
CRD No. 250**

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Edward Jones, submits 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 Edward Jones alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent hereby accepts and consents, 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

Edward D. Jones & Co., L.P., a Missouri limited partnership, is a full-service broker-dealer and has been a FINRA member since 1939. The firm's principal offices are located in St. Louis, Missouri. It has more than 15,000 registered representatives and more than 10,000 branch offices throughout the United States.

Relevant Disciplinary History

On June 2, 2010, Edward Jones agreed to a settlement (AWC No. 2007010537701) which found that it violated NASD Rules 3010(a), 3012(a)(2)(B)(i), and 2110 when it failed to establish, maintain, and enforce a supervisory system, including written supervisory procedures, that was reasonably designed to review and monitor all transmittals of funds from the accounts of customers to third-party accounts. Edward Jones was censured and fined \$200,000 for this misconduct.

Overview

Between January 1, 2008 and July 31, 2009, Edward Jones failed to establish and maintain a supervisory system, including written procedures, that was reasonably designed to ensure that the firm's sales of leveraged and inverse exchange traded funds (collectively "nontraditional ETFs") complied with applicable securities laws and NASD and FINRA rules. Through this conduct, Edward Jones violated NASD Conduct Rules 3010 and 2110, and FINRA Rule 2010.

During the same time period, certain registered representatives of Edward Jones recommended nontraditional ETFs to customers without first investigating those products sufficiently to understand the features and risks associated with them. These recommendations were, therefore, unsuitable. Through this conduct, Edward Jones violated NASD Conduct Rules 2310 and 2110, and FINRA Rule 2010.¹

Facts and Violative Conduct

Nontraditional ETFs

Exchange-traded funds, or "ETFs," are typically registered unit investment trusts or open-end investment companies whose shares represent an interest in a portfolio of securities that track an underlying benchmark or index. Shares of ETFs are typically listed on national securities exchanges and trade throughout the day at prices established by the market.

Whereas ETFs came to prominence in the 1990s, the first nontraditional ETFs began trading in 2006. More than 100 nontraditional ETFs came to market by April 2009, with total assets under management of approximately \$22 billion. From January 2008 through July 2009, Edward Jones retail customers bought and sold a total of approximately \$164 million worth of nontraditional ETFs. The number of nontraditional ETFs on the market has since increased to more than 250.

Nontraditional ETFs differ from other ETFs in that they seek to return a multiple of the underlying index or benchmark, the inverse of that benchmark, or both. In addition, nontraditional ETFs are designed to achieve their stated objectives only over the course of one trading session.

¹ FINRA Rule 2010, which replaced NASD Conduct Rule 2110, applies to conduct occurring after December 15, 2008.

To accomplish their objectives, nontraditional ETFs use swaps, futures contracts, and other derivative instruments. Between one trading session and the next, the fund manager must generally rebalance the fund's holdings in order to meet its objective. For most nontraditional ETFs, this happens on a daily basis, and is known as the "daily reset."

For each day's trading session, a nontraditional ETF may come close to achieving its intended returns. But any difference between the fund and its benchmark may be compounded over time. This effect becomes more pronounced during periods of volatility in the underlying index or benchmark. As FINRA advised its membership in a June 2009 regulatory notice concerning nontraditional ETFs, "[d]ue to the effect of compounding, their performance over longer periods of time can differ significantly from the performance . . . of their underlying index or benchmark during the same period of time."

Because of these risks and the inherent complexity of the products, FINRA Regulatory Notice 09-31 advised broker-dealers and their representatives that nontraditional ETFs "are typically not suitable for retail investors who plan to hold them for more than one trading session, particularly in volatile markets."

Edward Jones made unsuitable recommendations in violation of NASD Rules 2310 and 2110 and FINRA Rule 2010

NASD Conduct Rule 2310 requires that, before recommending a security to any customer, a broker-dealer and its registered representatives must have an "adequate and reasonable basis" for any recommendation that they make.² This is a prerequisite to any recommendation, because "a broker cannot determine whether a recommendation is suitable for a particular customer unless he has a 'reasonable basis' to believe that the recommendation could be suitable for at least some customers."³

A broker-dealer lacks a reasonable basis to recommend a security to its customers if it or its representatives fail to investigate the security's characteristics sufficiently to understand the potential risks and rewards of the transaction. Thus, to satisfy Rule 2310, a broker-dealer must exercise due diligence to understand the nature of the recommended security. With respect to nontraditional ETFs, "this means that a firm must understand

² *FJ Kaufman and Co.*, 50 S.E.C. 164, 168 (1989).

³ *Id.*

the terms and features of the funds, including how they are designed to perform, how they achieve that objective and the impact that market volatility, the ETFs' use of leverage, and the customer's intended holding period will have on their performance."⁴

Between January 1, 2008 and June 30, 2009, Edward Jones allowed its registered representatives to recommend nontraditional ETFs to customers without first conducting reasonable due diligence concerning those products. The firm also did not train or adequately educate its brokers regarding nontraditional ETFs before permitting them to recommend them to customers.

Nonetheless, Edward Jones registered representatives placed approximately 15,000 nontraditional ETF transactions, at a combined value of approximately \$164 million, in retail customers' accounts between January 1, 2008 and June 30, 2009. Certain registered representatives of Edward Jones recommended nontraditional ETFs to customers who had not indicated a desire to take aggressive risks with their Edward Jones accounts. Some of these customers held their nontraditional-ETF positions for weeks or months at a time.

Through this conduct, Edward Jones violated NASD Conduct Rules 2310 and 2110, and FINRA Rule 2010.

Edward Jones failed to establish and maintain a reasonable supervisory system, including written procedures.

NASD Rule 3010(a) states in part that each member shall establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD and FINRA Rules. Final responsibility for proper supervision shall rest with the member.

NASD Rule 3010(b)(1) states in part that each member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons that are

reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable NASD and FINRA Rules.

Edward Jones failed to establish and maintain an adequate supervisory system to monitor transactions in nontraditional ETFs involving its retail customers. The firm did not exercise due diligence in investigating nontraditional ETFs. Further, Edward Jones did not ensure that its brokers obtained adequate information and instruction regarding nontraditional ETFs before recommending those products to customers. Between January 2008 and June 2009, Edward Jones did not provide such information directly to brokers or require that they obtain it from other sources.

Edward Jones' supervisory system was also inadequate with respect to its oversight of nontraditional-ETF transactions. Until June 2009, when FINRA issued Regulatory Notice 09-31, Edward Jones relied on its general supervisory procedures to oversee transactions in nontraditional ETFs. Those procedures, however, did not address the products' unique features and risks. For example, the firm's sales-exception reports and other supervisory tools did not differentiate between exchange-traded equity securities, traditional ETFs, and nontraditional ETFs. In addition, the firm's general supervisory procedures did not require it to monitor either the length of time customers held open positions in nontraditional ETFs or the effect of long holding periods on those positions.

Thus, during the relevant period, Edward Jones failed to establish and maintain a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with applicable NASD or FINRA rules in connection with the sale of nontraditional ETFs. This conduct violated NASD Conduct Rules 3010 and 2110, and FINRA Rule 2010.

Conclusion

Through the conduct described above, Edward Jones violated NASD Rules 3010, 2310, and 2110, and FINRA Rule 2010.

- B. Edward Jones also consents to the imposition of the following sanctions:
1. Censure;
 2. A fine of \$200,000; and

3. Restitution in the amount of \$51,581.25.

Edward Jones agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Edward Jones has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Edward Jones specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

Restitution is ordered to be paid to the customers listed on Attachment A hereto in the total amount of \$51,581.25.

A registered principal on behalf of Edward Jones shall submit satisfactory proof of payment of restitution or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted to Adam Walker, Principal Regional Counsel, FINRA – District 4, 120 W. 12th Street, Kansas City, Missouri 64105, either by letter that identifies Edward Jones and AWC No. 2012022283702 or by e-mail from a work-related account of the registered principal of Edward Jones 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 Edward Jones cannot locate any customer identified in Attachment A within 90 days of the date the AWC is accepted, despite making and documenting reasonable efforts to do so, Edward Jones shall forward any undistributed restitution amounts to the appropriate escheat, unclaimed property, or abandoned-property fund for the state in which the customer is last known to have resided. Edward Jones shall provide satisfactory proof of such action to FINRA's Department of Enforcement in the manner described above, within 14 days of forwarding the undistributed restitution to the appropriate authority.

The imposition of a restitution order or any other monetary sanction herein does not preclude any customer from pursuing his or her own action to obtain restitution or other remedy.

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

II.

WAIVER OF PROCEDURAL RIGHTS

Edward Jones specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against it;
- 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, Edward Jones specifically and voluntarily waives 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.

Edward Jones further specifically and voluntarily waives 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

Edward Jones understands 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;

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- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Edward Jones; and
- C. If accepted:
 - 1. This AWC will become part of Edward Jones' permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Edward Jones;
 - 2. This AWC will be made available through FINRA's public disclosure program in response to public inquiries about Edward Jones' 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. Edward Jones 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. Edward Jones 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 Edward Jones' right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Edward Jones may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Edward Jones understands that it 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.

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Edward D. Jones & Co., L.P.

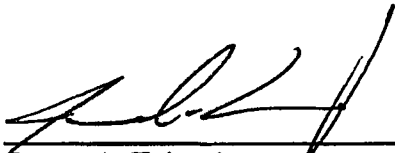
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The undersigned, on behalf of Edward Jones, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that I have agreed 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 Edward Jones to submit it.

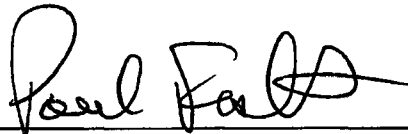
Date:

11/18/13

By:


James A. Tricarico
General Counsel
Edward D. Jones & Co., L.P.

Reviewed by:



Paul Foster
Assistant General Counsel
Edward D. Jones & Co., L.P.

Accepted by FINRA:

**Signed on behalf of the Director of ODA,
By delegated authority**

Date:

1/9/2014


Adam B. Walker, Principal Regional Counsel
120 West 12th Street, Suite 800
Kansas City, MO 64105
Telephone: (816) 802-4751
Facsimile: (816) 421-4519
Email: Adam.B.Walker@finra.org

EXHIBIT A	
EDWARD JONES ACCOUNT	RESTITUTION AMOUNT
1	\$351.54
2	\$275.84
3	\$280.15
4	\$521.22
5	\$269.85
6	\$240.49
7	\$568.80
8	\$415.22
9	\$320.54
10	\$1,592.00
11	\$395.10
12	\$713.62
13	\$268.54
14	\$376.81
15	\$889.84
16	\$650.53
17	\$382.20
18	\$5,675.70
19	\$283.14
20	\$133.00
21	\$2,473.09
22	\$4,104.50
23	\$582.08
24	\$1,165.40
25	\$526.50
26	\$1,040.42
27	\$248.75
28	\$1,805.78
29	\$268.79
30	\$808.50

EXHIBIT A	
EDWARD JONES ACCOUNT	RESTITUTION AMOUNT
31	\$202.65
32	\$1,631.54
33	\$319.61
34	\$671.00
35	\$179.81
36	\$234.83
37	\$1,097.28
38	\$415.79
39	\$3,130.66
40	\$824.99
41	\$582.60
42	\$3,163.00
43	\$1,664.21
44	\$322.70
45	\$760.20
46	\$242.82
47	\$204.30
48	\$235.40
49	\$789.67
50	\$190.66
51	\$1,194.48
52	\$266.40
53	\$755.70
54	\$305.81
55	\$898.00
56	\$578.34
57	\$971.54
58	\$641.48
59	\$448.92
60	\$358.13

EXHIBIT A	
EDWARD JONES ACCOUNT	RESTITUTION AMOUNT
61	\$570.35
62	\$100.47