

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2011025436102**

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

RE: John E. Tucker (CRD No. 2214088),
Respondent

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, John E. Tucker ("Respondent" or "Tucker"), 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

Tucker first became registered with FINRA as an Investment Company and Variable Products Representative on June 15, 1992. On April 16, 1999, Tucker became registered as a General Securities Representative. Since June 2008, Tucker has been registered in those same capacities through member firm Infinex Investments, Inc. (BD No. 35371) ("Infinex" or the "Firm").

RELEVANT DISCIPLINARY HISTORY

Tucker does not have any relevant disciplinary history with the Securities and Exchange Commission, any self-regulatory organization or any state securities regulator.

OVERVIEW

Tucker recommended unsuitable transactions in inverse and inverse-leveraged Exchange Traded Funds ("Non-Traditional ETFs") in the accounts of his customers. By recommending unsuitable transactions, Tucker violated NASD Conduct Rule 2310 and IM-2310-2 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

From in or about April 2009 through in or about July 2010, Tucker recommended 411 Non-Traditional ETF purchase transactions to 93 customers without performing reasonable diligence to understand the risks and features of the Non-Traditional ETFs, including the risks associated with the daily reset and leverage components associated with these securities.

Accordingly, these transactions lacked a "reasonable basis" and were unsuitable.

Additionally, certain of the 411 recommendations referenced above were also unsuitable on a customer-specific basis. Specifically, Tucker recommended 133 Non-Traditional ETF purchase transactions to 62 customers who had conservative to moderate risk tolerances and investment objectives of growth and long-term growth.

Moreover, the prospectuses for the two Non-Traditional ETFs that Tucker recommended highlighted that the funds sought "investment results for a single day only" and outlined several risks to investors who held their funds for more than one trading session or as long-term investments. Notwithstanding this caution, 111 of Tucker's Non-Traditional ETF recommendations were purchases that were held in the accounts of 45 customers for longer than seven business days, with an average holding period of over 300 days. The 45 customers lost money on these investments.

By reason of the foregoing, Tucker violated NASD Conduct Rule 2310 and IM-2310-2 and FINRA Rule 2010.

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

- a suspension from associating with any FINRA member firm in any and all capacities for a period of two (2) months; and
- a \$10,000 fine.

I agree to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. I have submitted an Election of Payment form showing the method by which I propose to pay the fine imposed.

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 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 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;
- 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: (i) testimonial obligations; or (ii) 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.

04/07/2014
Date (mm/dd/yyyy)

John E. Tucker
John E. Tucker

Reviewed by:

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Pete S. Michaels, Esq.
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Accepted by FINRA:

4/13/14
Date

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

Michael J. Newman
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