

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20110292224-02**

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

RE: Edwin E. Mosquera, Respondent
Registered Representative
CRD No. 3049414

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Edwin E. Mosquera ("Respondent") 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 Respondent 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

Respondent first became registered as a General Securities Representative ("GSR") on or about August 12, 1998 while employed by a FINRA registered firm where he remained through June 30, 2000. Between June 30, 2000 and June 16, 2006, he was registered as a GSR through three other FINRA registered firms. From August 8, 2006 through December 31, 2010, he was registered as a GSR through member firm Investor Capital Corp. (BD No. 30613) ("ICC" or the "Firm"). ICC filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") on his behalf on December 23, 2010. Thereafter, ICC filed four Form U5 amendments on his behalf on January 21, 2011, July 26, 2011, August 16, 2011 and December 2, 2011. FINRA retains jurisdiction over Respondent pursuant to Article V, Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

Respondent has no relevant disciplinary history.

OVERVIEW

Between February 2007 and November 2010, Respondent recommended and engaged in unsuitable and excessive trading in three customer accounts in violation of NASD Rules 2310 and 2110 and FINRA Rule 2010. In two of the customer accounts, Respondent exercised discretion without having obtained prior written authorization, in violation of NASD Conduct Rules 2510 (b) and 2110 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

During the time period February 2007 through November 2010, Respondent recommended and engaged in unsuitable and excessive trading in three customer accounts. All three customers were unsophisticated investors, with limited education. In two instances, English was the customers' second language and in the third case the customer did not speak or read English. All three customers trusted Respondent to handle their accounts and gave him trading authority, either through written authority by one of the customers or through verbal authority by the other two customers. Respondent did not obtain the requisite prior written authorization from the customers or the firm to trade on a discretionary basis in connection with two of the accounts.

The trading in each account showed a pattern of buying and selling certain securities within short time periods while earning Respondent significant commissions. Moreover, during a very volatile time in the market, Respondent also recommended and engaged in unsuitable leveraged and inverse ETF transactions in each of the accounts.

Leveraged ETFs seek to deliver multiples of the performance of the index or benchmark they track. To accomplish their objectives, Non-Traditional ETFs use swaps, futures contracts and other derivative instruments. ETFs are typically registered unit investment trusts (UITs) or open-end investment companies whose shares represent an interest in a portfolio of securities that track an underlying benchmark or index.¹

Most Non-Traditional ETFs "reset" daily, meaning that they are designed to achieve their stated objectives only on a daily basis. This effect can be magnified in volatile markets. Despite the risks associated with holding Leveraged ETFs for longer time periods, Respondent, who controlled the trading in each account, in

¹ See FINRA Regulatory Notice 09-31, *Non-Traditional ETFs* (June 2009).

certain instances held the ETF positions in the customer accounts for long periods, resulting in significant losses.

Customer BNS

BNS is an immigrant from Ecuador with a young child who lost her husband, a restaurant worker, in the World Trade Center, in the terrorist attacks of September 11, 2001. BNS whose primary language is Spanish came to the United States as a teenager and after graduating high school in 2000, married TA. While TA worked as a bus boy at Windows of the World, BNS enrolled to study office technology, however after the death of her husband due to financial and emotional distress she and her young son moved in with her parents.

In February 2007, using funds received through the U.S. Government September 11th Victim's Compensation Fund ("9/11 Compensation Fund"), BNS opened an account with Respondent at ICC and deposited approximately \$350,000 into the account. On February 7, 2007, she completed and signed a trading authorization form, giving Respondent full trading authorization over the account.

BNS, an unsophisticated investor, let Respondent fill out the new account form ("NAF") for her. According to the NAF, her listed investment objectives were long term growth and speculation. Her listed net worth was \$2.5 million, based on the funds she received from the 9/11 compensation fund. According to BNS, she did not have the intention of engaging in speculation with her 9/11 Compensation Fund funds, despite the "Speculation" investment objective indicated on the NAF which was filled out by Respondent.

During the period from February 2007 through April 2010, there were 1,027 transactions executed in the BNS account. Of the \$350,000 invested with Respondent, BNS lost a total of \$305,387, consisting of \$199,556 in trading losses, \$104,098 in commissions, \$1,489 in fees and charges, and \$242 in margin interest. During the relevant time period, BNS's average monthly equity was \$160,533, and the total purchases in the account totaled more than \$7,000,000. The annualized turnover was 13.9 and the annualized cost equity was over 20%. In other words, BNS would have had to earn more than 20% return on her investment to just meet the commissions and fees earned by Respondent and the Firm.

One example of Respondent's reckless trading in the account and his lack of understanding of the volatility of Leveraged ETFs is illustrated by the purchase of 2000 ProShares Ultra Financials ("UYG") on September 25, 2008, and another 2000 UYG share purchase on September 29, 2008, totaling \$76,718. UYG sought daily investment results that corresponded to two times (2x) the daily performance of the Dow Jones U.S. Financials Index. Notwithstanding the reset feature of the security, Respondent held the entire ETF position until October 9, 2008 and then he then sold the shares for a loss of \$37,538.50.

BNS filed an arbitration claim on April 11, 2011, against the Firm and Respondent for \$275,000. On November 21, 2011, the Firm settled the matter for \$362,500, an amount more than the claim. Respondent did not contribute to the award.

Customer WG

WG, a 33 year old Honduran immigrant with three dependents, opened his account with Respondent at ICC in November 2008. At the time WG was not employed and took out a bank loan for \$35,000 to fund the account. Prior to coming to the United States WG worked in his family's hardware store in Honduras. English was not WG's first language. And WG's only source of income at the time he opened the account with Respondent was a monthly payment from an annuity he held at a bank. The annuity worth about \$800,000, represented funds he received from an accident settlement. WG, like BNS, let Mosquera fill out the information listed on his NAF and, like BNS, WG's investments objectives were noted as long term growth and speculation.

Despite the fact that Respondent did not have written authority to exercise discretion over the account as he did for BNS, Respondent received verbal discretionary authority over the account from WG and he determined what securities were purchased and sold in the account, as well as when those securities would be purchased or sold. WG trusted Respondent and Respondent rarely spoke with WG about the trading in the account.

From the onset of depositing the \$35,000 into the account, Respondent engaged in a pattern of buying and selling securities including transactions in non-traditional ETFs. For example, on February 6, 2009, like in the BNS account, Respondent purchased in WG's account UYG, a leveraged ETF which corresponded to two times (2x) the daily performance of the Dow Jones U.S. Financials Index. The cost of the UYG trade totaled \$14,240. Respondent held the position in WG's account for over twelve days, until February 18, 2009 when he sold it for a loss of \$4,800, yet earned \$800 in commission. During the time period December 2008 through April 2010, there were 65 transactions in the account. WG incurred losses of \$23,915, consisting of \$15,990 in trading losses, \$7,715 in commission and \$206 in fees and charges.

During the time period December 2008 through April 2010, WG's account had an average monthly equity of \$10,145 and the annualized turnover ratio was almost 12. WG's account's annualized cost equity was 52%, meaning that the account would have had to earn more than 52% to just meet the commissions and fees associated with the account.

On December 30, 2010, WG filed an arbitration claim against Respondent and the Firm for \$35,000 and the claim was settled on July 22, 2011 for \$25,000. Respondent did not contribute to the settlement.

Customer MS

MS, now 44 years old is an immigrant from Ecuador who first opened an account with Respondent at CIS in May 21, 2005, with a moderate investment objective. MS was disabled in a construction accident in 1999 and his sole source of income was the \$426,760 settlement he received in 2005. MS deposited the entire settlement into his CIS account handled by Respondent. During the time period Respondent serviced the account at CIS, the investments were generally held in mutual funds and treasuries. Respondent left CIS in June 2006 and at that time MS kept his account at CIS.

After Respondent solicited MS to move his account to him at ICC, in June 2008 MS opened an account with Respondent at ICC and transferred about half of his CIS account, or over \$200,000 to fund his ICC account. MS's positions were transferred in to ICC on July 11, 2008, and sold the same day.

MS, whose highest level of education is from an elementary school in rural Ecuador, is not financially sophisticated, and does not understand or read English. At the time MS opened his account with Respondent at ICC, Respondent knew that MS could no longer work and planned to live off the settlement funds. Accordingly, MS needed the principal preserved and interest generated. Notwithstanding MS's financial needs and investment objectives, Respondent helped MS to fill out the NAF form which indicated that his investment objectives were Short-Term growth and Speculation.

As was the case with WG, Respondent did not have written trading authorization over MS's account, but he controlled the trading activity in the account and exercised discretion over the account without the proper written authorization.

During the month of October 2008 alone, the account lost \$125,477 or 69% of the equity at the start of the month or approximately 60% of the initial equity when the account was opened. Much of the loss incurred in the account was a result of trading and shorting leveraged ETFs.

For example, Respondent engaged in risky trading in the MS account in UYG and Direxion Daily Financial Bear 3X Shares ("FAZ"). FAZ seeks daily investment results of 300% of the inverse (or opposite) of the performance of the Russell 1000 Financial Services Index. According to the prospectus, the fund, under normal circumstances, creates short positions by investing at least 80% of its assets in financial instruments that, in combination, provide leveraged and unleveraged exposure to the index. The index is a subset of the Russell 1000

Index that measures the performance of the securities classified in the financial services sector of the large cap U.S. equity market.

MS lost over \$3,400 based on trading in a FAZ position held for three days. Additionally, the account lost over \$75,000 in a UYG position established on September 25, 2008 and held until October 9, 2008.

During the time period July 2008 through November 2010, the average equity in the MS account was \$36,891, and the total monthly purchases equaled \$4,171,316.22. The annualized turnover rate was 37.69 and Respondent earned \$82,934.70 in commissions. During the relevant time period and the annualized commission to equity was 74.94%, meaning that the account would have had to earn more than 74% to just meet the commissions generated in account.

In October 2011, MS filed an arbitration claim against Respondent and the Firm for approximately \$200,000 in compensatory damages and an additional \$500,000 in punitive damages. On or around November 16, 2012, the Firm settled with MS for \$260,000. Respondent did not contribute to the settlement.

By recommending and engaging in unsuitable and excessive trading in three customer accounts, Respondent violated NASD Rules 2310 and 2110 and FINRA Rule 2010. Further, in two of those customer accounts, Respondent exercised discretion without having obtained prior written authorization, in violation of NASD Conduct Rules 2510 (b) and 2110 and FINRA Rule 2010.

B. Respondent also consents to the imposition of the following sanctions:

- A bar from association with any FINRA member in any capacity.

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).

On August 9, 2011, Respondent was granted a discharge in bankruptcy under Section 727 of Title 11, United States Code. Accordingly, no monetary sanction is being assessed in this matter.

The sanctions 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.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives 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, Respondent 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.

Respondent 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

I understand that:

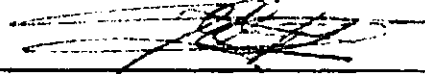
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will 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: (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.

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.

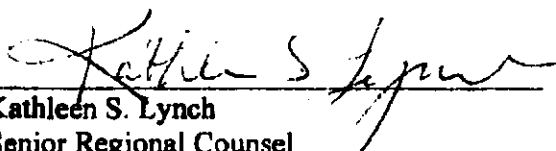
04/29/2013
Date (mm/dd/yyyy)


Edwin E. Mosquera, Respondent

Accepted by FINRA:

5/17/13
Date

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


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