

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Accelerated Capital Group, Inc.
(CRD No. 41270),

Respondent.

DISCIPLINARY PROCEEDING
No. 2012033566205

HEARING OFFICER:

COMPLAINT

The Department of Enforcement (the “Department”) alleges:

SUMMARY

1. During the period from August 31, 2012, through February 25, 2016 (the “Relevant Period”), Respondent Accelerated Capital Group, Inc. (“Accelerated” or the “Firm”), failed to establish and maintain a supervisory system, including written supervisory procedures (“WSPs”), reasonably designed to achieve compliance with federal securities laws and FINRA rules.

2. The Firm failed to reasonably supervise trading activity to ensure that all securities transactions were suitable, not excessive, and properly authorized by the Firm’s customers; failed to monitor mutual fund switches, exchanges, and sales for suitability; failed to ensure that its registered representatives informed customers of potential breakpoints when purchasing mutual fund products; and, failed to reasonably identify or respond to red flags of broker misconduct.

3. This absence of meaningful supervision allowed a Firm broker, BM, to defraud vulnerable Firm customers by churning their accounts, and by making fraudulent, unsuitable and unauthorized trades.¹ In sum, BM's customers sustained in excess of \$900,000 in trading losses and improper sales loads as a result of BM's unsupervised misconduct.

4. Through these actions and inactions of its personnel, the Firm violated NASD Rules 3010(a) and 3010(b), and FINRA Rules 2111, 3110(a), 3110(b), and 2010.

5. Further, the Firm, through several registered representatives in its Irvine, California branch office, serially used pre-signed and altered documents to facilitate the opening of new customer accounts and to accommodate customer requests for distributions, in violation of FINRA Rules 4511 and 2010.

6. Finally, the Firm failed to report to FINRA when it prohibited BM to act as a securities broker or to trade any securities on behalf of his customers, and failed to report to FINRA customer complaints against another registered representative, JLS, and a \$19,749 settlement made in connection with unauthorized trading by JLS, in violation of Article V, Section 2 of FINRA's By-Laws and FINRA Rules 4530 and 2010.

RESPONDENT AND JURISDICTION

Accelerated Capital Group, Inc.

7. Accelerated Capital Group, Inc. is a Costa Mesa, California-based full service broker-dealer, and has been a FINRA member since March 1997.

8. During the Relevant Period the Firm employed between 27 and 35 registered representatives at between four and six branch offices with the two largest branch offices located in Irvine, California and Scottsdale, Arizona.

¹ Pursuant to an AWC issued on February 25, 2016, BM was barred from the securities industry for, among other violations, willfully violating Section 10(b) of the Securities Exchange Act of 1934.

9. Under Article IV of FINRA's By-Laws, FINRA possesses jurisdiction over Accelerated because (a) it is currently registered with FINRA as a member firm and (b) the Complaint charges the Firm with misconduct committed while it was registered with FINRA.

FACTUAL BACKGROUND

Accelerated's Supervisory System and Written Supervisory Procedures

10. Throughout the Relevant Period, the Firm maintained serial versions of its Written Supervisory Procedures (collectively, the "WSPs"), which identified the principals of the Firm responsible for overseeing the Firm's business activity. Among others, the WSPs identified the Firm's President and its Chief Compliance Officer ("CCO") as the same two respective individuals throughout the Relevant Period, and established their supervisory duties and responsibilities.

11. Throughout the Relevant Period, the Firm's primary source of revenue was sales commissions earned through the sale of securities.

Mutual Fund Procedures

12. The WSPs included a section titled Investment Company Securities – Mutual Funds (the "Mutual Fund Procedures") that outlined the Firm's procedures concerning the sale of mutual fund products.

13. The Mutual Fund Procedures prohibited registered representatives from recommending or encouraging customers to switch mutual fund investments "primarily to obtain a commission."

14. The Mutual Fund Procedures stated "Switching can occur when a mutual fund with certain underlying investments is sold, redeemed, or liquidated to purchase another mutual fund with similar investment objectives but within a different fund family." In such instances,

the Mutual Fund Procedures required registered representatives who recommended a switch to obtain a “Switch Letter” (later referred to as a “Switch Form”) from the affected customer to document the customer’s “acknowledgement and consent of the switch.”

15. The Mutual Fund Procedures required Switch Forms to be completed prior to the underlying transaction, with secondary review and approval by the registered representative’s supervisor.

16. The CCO was the principal responsible for supervising mutual fund switching, and was required to conduct monthly reviews of customer account records and Switch Forms in order to “discover any unauthorized or unsuitable switching in customer accounts.”

17. The Mutual Fund Procedures also prohibited “churning” and “twisting.” Churning was defined as “the unethical practice employed by a registered representative to convince a client to trade excessively and/or unnecessarily in order to generate commissions . . .” and twisting was defined as “occur[ing] when a registered representative induces a client to sell a mutual fund in order to buy another mutual fund with no benefit to the client.”

18. The CCO was also the principal responsible for monitoring for churning and twisting, which was to be accomplished by reviewing purchase and sales blotters, customer accounts, subscriptions documents and commission reports as needed, but at least monthly, to detect any twisting or excessive trading.

19. In October 2013, the Firm revised its Mutual Fund Procedures to include a section titled “Exchanges.” The new procedure required registered representatives to complete a “Mutual Fund Exchange Form” for any transaction in which a customer sold a mutual fund with a front-end sales load that had been held for less than 12 months from its original purchase date.

20. The Mutual Fund Exchange Form required that the registered representative provide the rationale for the exchange and supplemental documents supporting the rationale, however the WSPs did not provide any examples of supplemental documents, nor did they describe what the supporting documents were intended to show.

21. Prior to October 2013, the WSPs had no procedure in place to monitor transactions described in the revised section titled “Exchanges.”

22. Throughout the Relevant Period, the Mutual Fund Procedures contained no explanation of the circumstances under which a mutual fund exchange was or was not suitable for a given customer, nor did the procedures provide any description of the criteria upon which a Firm principal would analyze such activity for suitability.

23. Throughout the Relevant Period, the Firm received only one exception report that flagged potential mutual fund switches, however, the report did not indicate how long a customer had held the mutual fund when the customer sold a position in such fund. In addition, the CCO generally found this report to be inaccurate.

FINRA Reporting Obligations

24. The WSPs also identified the CCO as the principal responsible for “FINRA Notification.”

25. Among the CCO’s responsibilities in this capacity was to “[e]nsure reporting of events specified in FINRA Rule 4530 is current through web CRD.”

26. The WSPs further listed ten “reportable events,” that the Firm was required to report pursuant to FINRA Rule 4530, which included “any disciplinary action taken by the member against any person associated with the member . . . which would have significant limitation on the individual’s activities on a temporary or permanent basis.”

Supervision of Firm Personnel

27. The President and CCO were also responsible for directly supervising various Firm personnel.

28. The President was located in the Scottsdale branch office and supervised all of the Firm's registered representatives based in that office. The CCO was located in the Irvine branch and supervised the registered representatives based in that branch.

29. Among the CCO's direct reports were registered representatives BM and JLS. In addition, the President supervised the CCO and the CCO supervised the President.

30. With regard to new employee screenings, the WSPs required that the Firm conduct a pre-hire assessment of each prospective employee, which included, among other things, a review of the candidate's Form U4 and U5, a background check, and a review of the candidate's scope of business and employment history.

Excessive, Unsuitable, and Unauthorized Trading by Registered Representative BM

a. The Firm Hired and Immediately Placed BM on Heightened Supervision

31. The President, CCO and a third firm principal comprised the Firm's Executive Committee during the Relevant Period, and were collectively responsible for hiring and onboarding registered representatives.

32. According to the WSPs dated July 2012, which were in effect at the time BM was hired, the Firm placed associated persons and potential hires on heightened supervision if, within the prior three years, the person had more than one instance of (1) disciplinary actions involving sales practice abuse; (2) customer complaints reportable on Form U4; or (3) arbitrations not resolved in favor of the registered representative.

33. Among the registered representatives hired by the Firm during the Relevant Period was BM, who was assigned to the Irvine, California branch office that the CCO supervised.

34. BM was pre-screened by the members of the Executive Committee and became associated with the Firm on August 31, 2012. During BM's interview process, the Firm learned that BM was living "way beyond his means" and that he had amassed significant personal debt.

35. During this pre-screening process, the Firm also discovered that BM had unpaid federal tax liabilities exceeding \$60,000 that resulted in the IRS filing federal tax liens against BM. In addition, the Firm knew that BM had been involuntarily terminated from his immediate prior employment at another broker-dealer for sales practice violations.

36. Nevertheless, the decision to hire BM was unanimous among the members of the Executive Committee.

37. Because of his prior employment history and the existence of federal tax liens against him, BM was placed on heightened supervision for a three-month period when he became associated with Accelerated.

38. The terms of BM's heightened supervision were set forth in a one-page letter dated September 3, 2012, which specified the following procedures: (1) BM's customers' accounts were subject to compliance department review for suitability; (2) all BM trades were to be reviewed by compliance prior to execution; (3) the Firm was authorized to contact BM's clients at random; and (4) BM's trading was subject to daily monitoring.

b. BM's Excessive, Unsuitable, and Unauthorized Trading

39. Upon association with the Firm, BM began transferring customer accounts from his prior broker-dealer to Accelerated. Many of the customers whose accounts were transferred to the Firm had long-standing relationships with BM.

40. Each new account opened by BM required an Accelerated New Account Form, which indicated, among other things, the age of the customer, his/her assets, and his/her investment experience and objectives.

41. Despite that BM was on heightened supervision when he opened many customer accounts at Accelerated, no supervisor at the Firm contacted any of BM's customers to confirm the accuracy of the information in their New Account Forms.

42. Beginning while BM still was on heightened supervision and continuing for over two years, BM engaged in excessive, unsuitable, and unauthorized trading in 21 customer accounts.

43. Collectively, the 21 customer accounts were held by 11 customers,² five of whom were over age 80, and at least seven of whom were on fixed incomes.

44. All but one of the 11 customers listed their investment objective on their New Account Form as "balanced growth." All listed moderate risk with an investment time horizon of at least four to six years and an investment holding period of at least one to three years (with most holding periods longer). Significantly, each customer indicated on the New Account Form, "I follow the recommendations of my Financial Advisor *all of the time*." (Emphasis added.)

45. As set forth in greater detail below, the two most egregious examples of improper transactions in the accounts of these 11 customers involved mutual fund "A" shares and a "swing-trade" strategy.

² For several accounts held by a husband and/or wife, the husband and wife are being counted as one customer.

c. *BM's Mutual Fund "A" Share Transactions*

46. As early as September 25, 2012, BM purchased on behalf of several of his Firm customers, Class A/front-end loaded mutual funds.

47. Within months, BM began selling many of his customers' Class A mutual funds and purchasing new front-end loaded mutual funds (or sometimes other securities products such as UITs or individual equities) with the proceeds generated by the sales of the recently sold funds.

48. In each instance, BM collected commissions and/or front-end fees for each purchase and re-purchase of mutual funds.

49. BM continued to serially purchase, sell, and re-purchase Class A mutual funds within 21 customer accounts from September 2012 through September 2014 after holding the funds for time periods from less than two months to approximately one year.

50. On several days, or within short spans of time, BM sold and re-purchased mutual funds within numerous customer accounts in large transactions that generated significant fees and commissions for BM. For example:

- a. On August 26, 2013, BM sold 13 Class A mutual funds from six customer accounts, each of which had been held for less than one year and one of which was held for only 38 days. BM had earned fees and commissions in connection with these funds totaling approximately \$16,513, while the aggregate portfolio losses from the mutual fund investments totaled approximately \$2,566. BM then used the proceeds from the 13 sales to purchase additional Class A mutual funds for the six customer accounts, for which he earned additional fees and commissions.

- b. During November 2013, BM sold 31 Class A mutual funds from seven customer accounts, each of which had been held for less than one year, and the average holding period of which was less than four months. BM earned fees and commissions in connection with these funds totaling approximately \$35,890, while the aggregate portfolio gains from the mutual fund investments totaled approximately \$18,666. BM then used the proceeds from the 31 sales to purchase additional Class A mutual funds for the seven customer accounts, for which he earned additional fees and commissions.
- c. On May 13, 2014, BM sold 18 Class A mutual funds from eight customer accounts, each of which had been held for less than 14 months, and the average holding period of which was less than 11 months. BM earned fees and commissions in connection with these funds totaling approximately \$21,570, while the aggregate portfolio losses from the mutual fund investments totaled approximately \$12,092. BM then used the proceeds from the 18 sales to purchase individual equities for the eight customer accounts, for which he earned additional commissions.

51. In sum, during the two-year period of September 2012 through September 2014, BM made over 150 purchases of Class A mutual funds among these 21 customer accounts, and subsequently sold 138 of such mutual fund positions after an average holding period of less than six months.

52. In the aggregate, these 138 mutual fund transactions generated over \$150,000 in commissions and fees for BM.

53. Of the 21 accounts in which BM placed mutual fund trades as described above, the mutual fund trades placed in 18 of the accounts (held by nine customers) were not authorized by the customers who controlled the accounts.

54. Neither did any of the nine customers grant BM authority to place trades in their accounts without first obtaining consent.

55. The Firm was required to reasonably supervise BM's recommendations to his customers to ensure that the recommendations were suitable for the customer, and to ensure that all trades BM executed were authorized by customers prior to execution, including any switching of mutual fund products.

56. As noted above, to monitor this activity, the Firm required BM to prepare Switch Letters/Forms, and later Exchange Forms, to identify mutual fund switches and document customer consent prior to executing the switch transactions.

57. BM generally evaded the requirement in the WSPs that he obtain a Switch Form from his customers. He did so by switching the customers between funds with different investment objectives (which was technically not a "switch" under the WSPs even though the transaction involved a short-term, mutual fund sale and purchase). When BM did switch his customers between funds with arguably similar investment objectives, he never had his customers complete Switch Forms.

58. After the Firm's adoption of the mutual fund exchange procedures in October 2013, BM did complete many Mutual Fund Exchange Forms, which should have put the Firm on notice of his unsuitable, short-term mutual fund trading, but did not.

59. In some instances, the CCO requested that BM prepare written explanations for some of his short-term mutual fund transactions, after the transactions had been executed.

60. BM's explanations, such as selling a growth and income fund and purchasing sector focused UITs "to achieve growth and income but have diversification" and selling a \$45,000 mutual fund position held less than two months to realize a \$145 gain should have also been red flags to the CCO.

61. Other justifications by BM for short-term sales, such as selling in response to readily changing markets or short-term poor performance were not proper justifications for short-term trading in investment vehicles that generally are suitable only as long-term investments.

62. In March 2014, the Firm placed BM on heightened supervision for three months for excessive mutual fund trading which required all of BM's mutual fund sales "to be reviewed by compliance prior to trading." This heightened supervision resulted in yet another supervisory failure since BM continued to sell Class A mutual funds from his customers' accounts after holding periods of less than a year.

63. Despite placing BM on heightened supervision for excessive mutual fund transactions, no one at the Firm contacted any of BM's customers to determine whether they understood or approved BM's practice of short-term mutual fund trading.

64. Had the Firm done so, it would have discovered that the unsuitable, short-term mutual fund sales had also been executed without customer authorization.

65. Some of the mutual fund issuers whose products Accelerated sold contained provisions that reduced the amount of associated sales charges if certain monetary investment thresholds or "breakpoints" were met.

66. The Firm had the obligation to reasonably supervise mutual fund transactions to ensure that registered representatives disclosed material information regarding breakpoints to customers and that its customers obtained breakpoint discounts where appropriate.

67. However, the Firm failed to determine whether BM had identified and disclosed breakpoints to the customers to whom he sold mutual fund products, nor did it attempt independently to determine whether BM's customers were in a position to qualify for a breakpoint discount.

d. BM Employed an Unsuitable and Excessive "Swing Trading" Strategy Without Customer Authorization

68. In about October 2013, BM began to excessively trade other securities products such as equities, corporate bonds, preferred stocks, and limited partnerships in his customer accounts. BM did much of this excessive trading by following, in whole or in part, a "swing trading" strategy.

69. According to BM, the swing trading strategy was a short-term investment strategy that was based on computer algorithms and was designed to identify and purchase undervalued securities.

70. BM employed the swing trading strategy in the accounts of the same 11 customers for whom he had excessively traded mutual fund "A" shares.

71. Despite that BM broadly employed this trading strategy in numerous customer accounts, BM never understood how the strategy was supposed to work.

72. When questioned about this strategy, BM stated that the proprietor of the system "... had, you know, algorithms. Way over my head."

73. Accordingly, when BM implemented this strategy on behalf of his customers, he had no reasonable basis to believe that the strategy was suitable for any customer.

74. BM's swing trading in his customer accounts was excessive, unsuitable and unauthorized, and ultimately a complete failure for his customers.

75. From October 2013 through December 2014, BM placed over 2,000 trades among the accounts of the 11 customers.

76. Without any exception reports to identify questionable trading patterns, the Firm failed to detect the velocity of BM's trading and that BM's excessive trading had resulted in excessive customer losses over an approximately 15-month period.

77. From October 2013 through December 2014, the average annualized turnover rate for the accounts of the 11 customers in which BM employed the swing trading strategy exceeded eight. The average annualized cost-to-equity ratio for those same accounts during the same period exceeded 30 percent.

78. Because the Firm failed to identify these red flags of excessive trading in BM's customer accounts, the 11 customers suffered aggregate portfolio losses of over \$750,000.

79. In addition, like the mutual fund transactions, BM's customers did not authorize him to enter any of the swing trades in accounts held by the nine customers described in ¶ 53, above.

80. Indeed, throughout the period October 2013 through December 2014, BM's unauthorized trades in accounts held by the nine customers described in ¶ 53 generated over \$500,000 in commissions for BM.

81. Although the Firm had contemporaneous knowledge that BM was engaging in this swing trading strategy, it failed to assess whether BM sufficiently understood the swing trading strategy so as to have a reasonable basis to recommend the strategy to his customers or whether the strategy was suitable for any retail customers.

82. In July 2014, Accelerated appeared to respond to the red flags of BM's high commissions and the velocity of his trading when it issued BM a disciplinary letter for trading

“which appeared aggressive.” The Firm claimed to have initiated an internal review of BM for excessive trading of mutual funds and equities, and rebooked 110 trades in order to partially refund the commissions to BM’s customers.

83. The Firm, however, failed to respond appropriately to these red flags as, despite having placed BM on heightened supervision twice before these July 2014 disciplinary actions, BM was able to continue his excessive trading in his customers’ accounts for another five months through December 2014.

84. Moreover, in response to these red flags, no one at the Firm contacted any of BM’s customers to determine whether they understood or approved BM’s swing trading strategy or the excessive amount of transactions in their accounts.

85. Had the Firm done so, it would have discovered that the customers neither understood, nor approved the underlying transactions.

86. In addition, the Firm knew that BM was experiencing significant financial stress throughout his employment at the Firm, and thus, BM had a potential motive to generate commissions and fees to which he was not entitled.

87. For example, the Firm knew that in April 2013, BM’s prior employer had filed an arbitration against BM seeking \$165,174, plus interest and attorneys’ fees, for breach of promissory notes.

88. Further, in December 2013 the Firm loaned BM \$10,000 through an unsecured note, which was due in full on January 15, 2014. However, BM failed to timely repay the note, and only satisfied the debt through sporadic payments over the following three months after the note was in default.

89. In May 2014, the Firm also learned that BM had accrued over \$250,000 in consumer debt and had entered into compromise agreements with five lenders between May 2013 and March 2014.

90. In addition, in June 2014, the Firm received a Notice of Suspension letter issued by FINRA's Office of Dispute Resolution after BM failed to make payments in connection with an agreement BM had entered to settle the above-described dispute with his prior employer broker-dealer concerning breach of promissory notes.

91. Despite that the Firm was aware of BM's financial difficulties, and in the face of red flags such as high commissions and the heightened supervisions and the disciplinary letter, the Firm failed to detect that BM was making unauthorized, excessive, and unsuitable trades in his customers' accounts.

Unauthorized Trading by Registered Representative JLS

92. JLS became associated with Accelerated on September 2, 2014, and was a registered representative in the Firm's Irvine, California branch office.

93. In or about August 2015, JLS managed approximately 32 accounts for employees of a Santa Cruz, California-based law firm.

94. On August 24, 2015, the market broadly experienced a significant drop; at one point the Dow Jones Industrial Average had fallen over 1,000 points, and it closed down 588 points for the day's trading.

95. As a result, on August 25, 2015, JLS liquidated mutual fund-based investments in many of the 32 law firm employee accounts, as well as several other customer accounts, and placed all of the proceeds in money market funds.

96. The gross proceeds of JLS's liquidations exceeded \$2.5 million.

97. JLS did not obtain authorization from the account holders prior to liquidating the mutual fund investments and moving the proceeds into money market funds.

98. Further, JLS did not have proper authority to make discretionary trades in any of the affected accounts.

99. Although the Firm purportedly conducted daily reviews of JLS's trading activity, it failed to detect or investigate the approximately \$2.5 million of mutual fund sales when they occurred on August 25, 2015.

100. Instead, the Firm learned about JLS's unauthorized trading when a Firm customer, SB, emailed the CCO on August 31, 2015 to request the sales transactions in her account to be reversed.

101. In addition to SB, at least seven additional customers sent emails to JLS in which each customer made clear that JLS had placed the August 25, 2015 trades without authorization.

102. At least six of these customers contacted JLS through his Firm-issued email address.

Registered Representatives in the Firm's Irvine, California Branch Office
Used Pre-signed and Altered Customer Forms and Documents

103. In or about May or June 2012, Accelerated conducted an internal audit of its Irvine, California branch office.

104. During the audit, the Firm reviewed numerous client files and discovered that several customer New Account Forms and Fund Distribution Forms had been "reused."

105. In particular, when existing customers opened secondary accounts with Accelerated, Firm personnel used original account opening documents bearing the customer's personal information and signature(s), and removed and/or altered the account number to apply to the newly-opened account.

106. Similarly, when customers were unable to sign distribution forms, Firm personnel reused prior distribution forms, or used blank, pre-signed distribution forms to accommodate the customer's request for a distribution.

107. At the time this activity was discovered in mid-2012, the Firm had no written policies or procedures to instruct Firm personnel that they were not permitted to reuse forms or to use pre-signed forms in connection with customer activity.

108. After discovering this activity, the Firm's registered representatives were instructed, orally, that alteration or reuse of forms, and the use of pre-signed forms, were prohibited by the Firm.

109. However, the Firm did not update its WSPs to instruct Firm personnel that they were prohibited from such activity.

110. Nor did the Firm take any other measures to prevent or detect improper use, alteration, or reuse of customer forms or to enhance its supervision in this area.

111. Several registered representatives in the Irvine branch office continued to use pre-signed customer forms to accommodate certain customer requests.

112. Indeed, after discovery of this activity in mid-2012 until August 2015, there were at least 15 additional instances in which registered representatives in the Firm's Irvine branch office received blank signed forms from customers or used such forms to accommodate a customer request.

Failure to Timely and Accurately Notify FINRA about Misconduct
Involving Registered Representatives BM and JLS

113. In January 2015, the Firm indefinitely suspended BM's ability to conduct commissions-based securities transactions.

114. No one at the Firm reported BM's suspension to FINRA, despite that BM was thereafter prohibited from engaging in any securities-related activity.

115. Notwithstanding this suspension, the Firm permitted BM to maintain all of his active securities licenses, and also permitted him to continue to sell insurance products and alternative investments.

116. Moreover, after his suspension, BM attempted to maintain his Firm customers by engaging them through an investment advisory agreement (*i.e.*, fee for service in lieu of commissions). To this end, BM sent a letter to each of his Firm customers that misleadingly stated that the primary reason for converting his brokerage customers to investment advisory customers was to provide "superior investment services."

117. The Firm approved the content of this letter despite that the true reason for the change in BM's business was that he was prohibited by the Firm from continuing business as a commissions-based securities broker.

118. In addition, several of JLS's customers contacted him after he placed unauthorized trades in their accounts.

119. Multiple Firm customers corresponded in writing with JLS concerning his August 25, 2015 trading, with most customers contacting JLS through his Firm-issued email address.

120. Several of the emails sent to JLS's Firm-issued email explicitly complained that JLS placed trades in their account without prior authorization.

121. In the months following JLS's unauthorized trading, the Firm agreed to reverse the trades placed in approximately 30 of the customer accounts in which JLS liquidated assets without authorization.

122. In addition, JLS reimbursed Accelerated \$19,749 for its payment to one mutual fund company to cover the losses associated with the reversal of his unauthorized trades in a single customer's accounts.

123. The Firm prepared the instructions sent to another mutual fund company that listed each of the approximately 30 account numbers in which the mutual fund company was to reverse trades.

124. In connection with JLS's unauthorized trading, however, the Firm reported only two customer complaints to FINRA via Rule 4530 filings, instead of reporting each individual customer complaint separately as required by the rule.

125. In one of the filings, the Firm described the underlying conduct as "broker sold American Funds due to the drop in market, putting funds into money market. This account was SEP IRA for a law firm, so there were multiply [sic] accounts involved."

126. The Firm failed to report any of the complaints about JLS's unauthorized trading activity to FINRA by updating JLS's Form U4.

FIRST CAUSE OF ACTION

INADEQUATE SUPERVISION SYSTEM AND FAILURE TO SUPERVISE (Violation of NASD Rules 3010(a) and (b), FINRA Rules 3110(a) and (b) and 2010)

127. The Department re-alleges and incorporates by reference paragraphs 1-126 above.

128. NASD Rule 3010(a) required, and effective December 1, 2014, FINRA Rule 3110(a) requires, member firms to "establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. Final responsibility for proper supervision shall rest with the member."

129. NASD rule 3010(b) required, and effective December 1, 2014, FINRA Rule 3110(b) requires, member firms to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.

130. FINRA Rule 2010 requires FINRA members to observe high standards of commercial honor and just and equitable principles of trade.

131. Conduct that violates NASD Rule 3010 and FINRA Rule 3110 also violates FINRA Rule 2010.

Inadequate Supervisory System and WSPs

132. Accelerated failed to establish and maintain a supervisory system, including WSPs, reasonably designed to detect unauthorized, excessive, or unsuitable trading in customer accounts.

133. In particular, the Firm's supervisory system was inadequate to ensure that its customers understood recommendations made by the Firm's registered representatives, including that customers were aware of all commissions, fees, and any potential breakpoints associated with mutual fund transactions, and that the recommendations were suitable for the customer.

134. With regard to mutual fund transactions, the Firm's Mutual Fund Procedures failed to ensure that the customers understood the differences in fees among mutual fund products, specifically that Class A mutual funds contained front-loaded fees that made them generally unsuitable as short-term investments, in large part, because the Mutual Fund Exchange Form did not disclose fees and did not have to be acknowledged by customers.

135. Prior to October 2013, the Firm had no procedures in place, written or otherwise, to identify short-term Class A mutual fund switches that were made between products with dissimilar investment objectives. Even after October 2013, the category of transactions defined as “Exchanges” limited identification and review by Firm principals to loaded mutual funds sold less than 12 months from the original purchase, even though for some unauthorized mutual fund sales made by BM the funds had been held for periods slightly longer than 12 months.

136. Further, as noted above, the Firm utilized no useful exception reports to identify potentially problematic trading activity. Instead, the Firm relied on the CCO to conduct manual reviews of trading activity, which failed to identify questionable patterns, such as excessive turnover or high cost-to-equity ratios with respect to individual customers.

137. The absence of useful exception reports further led to the CCO failing to identify the high number of short-term purchases and sales of Class A mutual funds in BM’s customers’ accounts.

138. In addition, the CCO’s manual review of trading failed to detect that BM was churning or twisting his customers’ accounts without customer authorization, which would have been evident if the Firm had received commonly-utilized exception reports that detected excessive turnover rates and cost-to-equity ratios within customer accounts.

Failure to Supervise BM

139. As noted above, the CCO was principally responsible for supervising all mutual fund switching that occurred at the Firm, including ensuring that registered representatives were mindful of potential breakpoints and were communicating such information to Firm customers.

140. Notwithstanding these supervisory responsibilities, and despite the presence of numerous red flags, the Firm, through its CCO, failed to detect that BM was switching front-end

loaded mutual funds in at least 21 customer accounts, and that over 130 purchases of these mutual funds were not authorized by BM's customers.

141. Again, in the face of red flags, the Firm, through its CCO, failed at any time to contact any of BM's customers to inquire whether the trades BM recommended were authorized and consistent with their investment objectives (*i.e.*, that the recommendations were suitable).

142. The Firm, through its CCO, further failed to ensure that BM understood the swing trading strategy that BM implemented sufficient to have a reasonable basis to recommend the strategy.

143. Despite the presence of red flags, the Firm, through its CCO, further failed to ensure that thousands of trades, including swing trades, in BM's customers' accounts were suitable and executed with customer authorization.

144. The Firm, through its President, who was also the CCO's supervisor, also failed to ensure that the CCO reasonably supervised BM and followed through with the mandates of BM's heightened supervision.

145. Moreover, the Firm, through its President, failed to ensure that the CCO fulfilled her obligations described in the Firm's WSPs concerning mutual fund switching, breakpoints, and customer suitability. Specifically, Accelerated failed to ensure that customers were aware of the fees associated with Class A mutual funds, that customers were aware of potential breakpoints available when purchasing mutual funds within a family of funds, and that all mutual fund and equity trades were suitable and authorized by the customers.

146. Accelerated also authorized BM to make misleading statements to Firm customers when BM sought to persuade his customers to sign investment advisory agreements, when, in

fact, the Firm knew that the truthful reason for BM's request was that he was prohibited from placing commissions-based securities trades.

147. Based on the foregoing, the Firm violated NASD Rules 3010(a) and (b), and FINRA Rules 3110(a) and (b), and 2010.

SECOND CAUSE OF ACTION

EXCESSIVE, UNSUITABLE, AND UNAUTHORIZED TRADING (Violations of FINRA Rules 2111 and 2010)

148. The Department re-alleges and incorporates by reference paragraphs 1-147 above.

149. FINRA Rule 2111(a) states, in relevant part, that a member must have "a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer's investment profile." A violation of FINRA Rule 2111 also violates FINRA Rule 2010.

150. The accounts of the customers at issue were excessively and unsuitably traded by BM.

151. For example, BM engaged in a pattern of excessively and unsuitably trading Class A mutual funds in the accounts of his customers; and also engaged in a pattern of excessively and unsuitably conducting swing trades in the accounts of his customers.

152. The excessive trading activity in the customer accounts, as evidenced by the high turnover rates and high cost-to-equity ratios in the accounts, was inconsistent with their financial circumstances and/or investment objectives.

153. Moreover, the trading in most of the customer accounts was controlled by BM, who executed the transactions without the customers' authorization.

154. The Firm is liable for the excessive and unauthorized trading of, and unsuitable investment recommendations made by BM under the doctrine of *respondeat superior*.

155. As a result of the foregoing, Accelerated violated FINRA Rules 2111 and 2010.

THIRD CAUSE OF ACTION

USE OF PRE-SIGNED AND ALTERED CUSTOMER FORMS AND DOCUMENTS (Violation of FINRA Rules 4511 and 2010)

156. The Department re-alleges and incorporates by reference paragraphs 1-155 above.

157. FINRA Rule 4511 requires that members make and preserve books and records, as required under the FINRA rules, the Exchange Act of 1934 and applicable Exchange Act rules.

158. FINRA Rule 2010 requires FINRA members to observe high standards of commercial honor and just and equitable principles of trade.

159. By May or June 2012, Accelerated knew that registered representatives in its Irvine, California branch were using pre-signed and altered documents to facilitate the opening of new customer accounts and to accommodate customer requests for distributions.

160. However, despite orally instructing the offending registered representatives that such behavior was prohibited, the registered representatives continued to receive and use pre-signed documents through at least August 2015.

161. These pre-signed documents were materially inaccurate in that they purported to be signed and authorized by a Firm customer on a specific date simultaneous with the account opening or request for distribution, but, in fact, were pre-signed and not made in connection with the activity for which the customer was purported to have attested.

162. As a result, through the actions of the offending registered representatives, Accelerated violated FINRA Rules 4511 and 2010.

FOURTH CAUSE OF ACTION

FAILURE TO REPORT REQUIRED INFORMATION TO FINRA (Violation of FINRA By-laws Article V, Section 2, and FINRA Rules 4530 and 2010)

163. The Department re-alleges and incorporates by reference paragraphs 1-162 above.

164. FINRA Rule 4530(a)(2) requires the reporting of an associated person who is disciplined in any manner by the member firm that would have significant limitation on the individual's activities on a temporary or permanent basis. FINRA Rule 4530(d) requires firms to report quarterly statistical and summary information regarding written customer complaints, due quarterly by the 15th calendar day from the end of the quarter. A violation of FINRA Rule 4530 also constitutes a violation of FINRA Rule 2010.

165. Article V, Section 2 of FINRA's By-Laws requires all registered representatives to keep Forms U4 current by, among other things, filing amendments with FINRA within 30 days of learning of facts or circumstances giving rise to the amendment.

166. Failure to timely update a Form U4 that results in the Form being inaccurate or incomplete constitutes conduct inconsistent with just and equitable principles of trade.

167. By October 1, 2015, Accelerated and its CCO knew that JLS placed unauthorized trades in at least 30 customer accounts, and that as many as 10 customers contacted JLS in writing via JLS's Firm-issued email account to complain about JLS placing trades without prior authorization.

168. However, the Firm made only a single FINRA Rule 4530 filing for many of the complaints, which failed to name or describe the additional customers that made complaints by email to JLS. Thus, the Firm failed to make at least nine required filings pursuant to Rule 4530 for each individual customer complaint that concerned JLS placing unauthorized trades in his customers' accounts.

169. In addition, the Firm failed to report to FINRA through a Form U4 amendment, any customer complaints made as a result of JLS's unauthorized trading.

170. The Firm also failed to report to FINRA, through a Form U4 amendment, when JLS paid the mutual fund company \$19,749 to cover a single customer's losses when the Firm reversed unauthorized trades that JLS placed on August 25, 2015.

171. Notably, the payment exceeded \$15,000 and was related to numerous customer complaints involving unauthorized trading.

172. In addition, the Firm failed to report to FINRA, pursuant to FINRA Rule 4530(a)(2), when the Firm indefinitely suspended BM's ability to conduct securities transactions.

173. As a result, Accelerated violated Article V, Section 2 of FINRA's By-Laws and FINRA Rules 4530 and 2010.

RELIEF REQUESTED

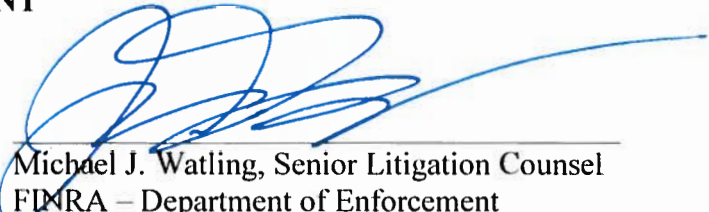
WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein, including a finding that Respondent failed to supervise an individual who violated Section 10(b) of the Securities Exchange Act of 1934;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed;
- C. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that Respondent be required to disgorge fully any and all ill-gotten gains and make full and complete restitution to the customers specified in Attachment A, together with interest in connection with the above-described conduct; and,

D. order that Respondent(s) bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: December 13, 2017



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Department of Enforcement v. Accelerated Capital Group, Inc.

(Disciplinary Proceeding No. 2012033566205)

Attachment A – Restitution For Customers Who Have Not Settled With Firm

CUSTOMER INITIALS	RESTITUTION
DB	\$156,314.04
SD	\$67,115.29
JQ	\$17,474.99
LH	\$81,208.32
SF	\$77,288.10
LA	\$22,628.79
Total	\$422,029.52