

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013038125501**

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

RE: John D. Kavalier, Respondent
Registered Representative
CRD No. 1676338

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:

SUMMARY

During 2012 and 2013, Respondent John D. Kavalier recommended that three of his customers invest in a security known as the iPath S&P 500 VIX Short Term Futures ETN ("VXX"), a highly volatile exchange-traded note. Kavalier's intent was to hedge his clients' long positions in certain S&P 500 equity securities and hedge against potential negative macroeconomic events. Kavalier implemented a strategy, however, that was not suited to the intended investment objective. Therefore, Kavalier failed to comply with his suitability obligations under NASD Rule 2310 and its successor rule, FINRA Rule 2111.

BACKGROUND

Kavalier entered the securities industry in 1986. He was registered with eight firms since that time, and has held General Securities Representative (Series 7), State Law (Series 63 and 66), and Investment Advisor (Series 65) licenses. Kavalier was last registered with Ameriprise Financial Services, Inc. from January 9, 2009 until his registration was terminated on November 12, 2013.

Although Kavalier is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding pursuant to Article V, Section 4 of FINRA's By-Laws because this AWC (1) is being issued within two years after the October 22, 2014 filing of an amended Form U5 disclosing that Kavalier may have engaged in actionable conduct and (2) charges him with misconduct committed while he was registered with a FINRA member.

FACTS AND VIOLATIVE CONDUCT

The VXX Exchange-Traded Note

The VXX is an exchange-traded note that offers investors exposure to the returns of one- and two-month futures contracts on the CBOE Volatility Index (the "VIX Index"). The VIX Index – referred to by some as the "fear index" – is calculated using one month put and call options on the S&P 500 Index and is designed to measure the market's expectations of volatility in large cap U.S. stocks over the next 30-day period. The VXX is generally considered a bearish investment, as market volatility typically is negatively correlated with market returns (although not directly correlated to the movement of the market as a whole or to specific equities). The VXX essentially tracks market negativity as reflected in the price of futures contracts. It is rarely if ever considered a suitable hedge for specific equity positions.

Although the VXX and similar products move in the opposite direction of the indices they track, they have their own independent risks. Most significantly, they are generally expected to lose value as time moves on, and thus they are rarely if ever considered to be prudent long-term investments. The value of futures contracts on the VIX Index generally decreases over time. As a result, the VXX is rarely if ever suitable as a long-term holding, but instead is generally held for brief periods measured in days rather than months or even weeks.

Kavalier's Unsuitable Recommendations

The VXX exchange-traded note is a complicated and risky investment which is not suitable for unsophisticated investors. However, Kavalier recommended the VXX to several customers in 2012 and 2013 as a purported hedge against their long positions in certain specific large-cap equity securities and as purported protection against potential market downturns resulting from, among other possibilities, the "fiscal cliff" anticipated in 2012. On certain of these occasions, Kavalier recommended that the customers buy additional VXX shares to reduce their average cost after they had sustained losses on earlier VXX investments.

Thus, based on Kavalier's recommendations, two customers bought 3,500 VXX shares during March and August 2012 for a total investment of almost \$58,000. They later sold these shares after holding periods of 79 and 402 days, suffering losses in excess of \$28,000. Another customer – also based on

Kavaler's recommendation – invested more than \$290,000 to buy a total of 27,000 VXX shares between February 2012 and February 2013, ultimately losing more than \$114,000 after holding those shares for periods ranging from 30 to 288 days. These customers all held long positions in the same two large-cap equity securities.

Kavaler's recommendations to these customers were unsuitable. His customers did not understand the nature and risks of the VXX, and it was not reasonable to expect VXX shares to increase in value, or even retain their value, over the extended periods through which Kavaler's customers held them. It likewise was not reasonable to expect VXX shares to serve as an effective hedge against a potential market downturn anticipated from the "fiscal cliff" or other potential future events the timing of which was either unpredictable or known to be at least several months away.

Violations

NASD Rule 2310(a), which was superseded by FINRA Rule 2111(a) on July 9, 2012, provided:

In recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.

The successor rule, FINRA Rule 2111(a), provides:

A member or an associated person 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.

One aspect of the suitability requirement is the "reasonable basis" requirement. This obligation requires that both the recommending broker and the customer understand the product and the risks thereof:

The reasonable-basis obligation requires a member or associated person to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least some investors. In general, what constitutes reasonable diligence will vary depending on, among other things, the complexity of and risks associated with the security or investment strategy and the member's or associated person's familiarity with the security or

investment strategy. A member's or associated person's reasonable diligence must provide the member or associated person with an understanding of the potential risks and rewards associated with the recommended security or strategy. The lack of such an understanding when recommending a security or strategy violates the suitability rule.¹

As noted above, Kavalier did not adequately explain the nature and risks of the VXX product, mistakenly recommending the product as a suitable hedge for long positions in the market for the customers discussed above. He also failed to take into account the significant difference between hedging strategies to limit potential losses and trading in a speculative investment to turn a quick profit on market movements or expected market movements. Moreover, Kavalier's customers did not fully understand the product, and therefore should not have been encouraged to purchase it.

By virtue of the conduct described above, Kavalier violated NASD Rule 2310(a) (for conduct prior to July 9, 2012) and FINRA Rule 2111(a) (for conduct on or after July 9, 2012). In addition, by violating those provisions, Kavalier also violated FINRA Rule 2010.

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

1. a three-month suspension from association with any FINRA member firm in all capacities; and
2. a \$15,000 fine.

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

The fine shall be due and payable either immediately upon reassociation with a member firm following the three-month suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier. 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 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

¹ FINRA Rule 2111.05 (supplementary material to Rule 2111).

member in any capacity, including clerical or ministerial functions, during the period of the 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 Chief Legal Officer, 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;

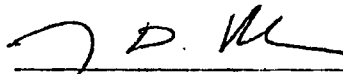
B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and

C. If accepted:

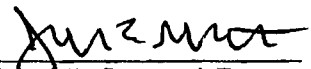
1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
3. FINRA may make a public 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.

10-20-15
Date


John D. Kavalier
Respondent

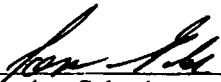
Reviewed by: *as to form*


Joseph E. Gasperetti, Esq.
Counsel for Respondent
Law Offices of Joseph E. Gasperetti, P.C.
115 Broadway, Suite 1505
New York, NY 10006

Accepted by FINRA:

Nov. 2, 2015
Date

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



Jonathan Golomb
Senior Special Counsel
FINRA Department of Enforcement
15200 Omega Drive
Rockville, MD 20832