

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013039507102**

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

RE: Joseph Gunnar & Co. LLC, Respondent
BD No. 24795

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Joseph Gunnar & Co. LLC ("Gunnar," the "Firm," or "Respondent") 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 the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The Firm 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

Gunnar has been a FINRA member since 1990. The Firm engages in a general securities business, with the majority of its revenues coming from its underwriting business, which includes the Firm's participation in syndicate offerings as a selling group member. The Firm currently employs approximately 66 registered representatives, working out of three branch offices. The Firm's principal place of business is in New York, New York.

RELEVANT DISCIPLINARY HISTORY

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

OVERVIEW

From approximately January 2010 through January 2015 (the "Relevant Period"),

the Firm failed to establish and maintain a supervisory system, including written supervisory procedures, reasonably designed to prevent unsuitable trading in certain customer accounts of AS, one of the Firm's top-producing registered representatives, in violation of NASD Rules 3010(a) and 3010(b), and FINRA Rules 3110(a), 3110(b), and 2010.¹

FACTS AND VIOLATIVE CONDUCT

The Unsuitable Recommendations By AS

AS is a Managing Director and eight percent equity partner of the Firm, and the head of the Firm's syndicate department.

During the Relevant Period, AS made unsuitable recommendations in the accounts of JM. JM had two accounts with Gunnar. JM was in her 70s. She was widowed, unemployed and living on a fixed income, with a liquid net worth of approximately \$300,000. On her account opening forms at Gunnar, JM listed her investment objectives as growth, income and capital appreciation. JM originally listed her risk tolerance as "Moderate," but later changed it to "Moderately Aggressive," as required by Gunnar in order for her to purchase certain types of securities.

During the Relevant Period, AS repeatedly recommended that JM purchase high-risk, speculative securities that were inconsistent with her investment profile. Additionally, AS's recommendations often resulted in an undue concentration of the accounts of JM, which represented substantially all of her liquid assets, in speculative securities. Further, AS often engaged in short-term in-and-out trading of the speculative investments in the accounts of JM causing losses of more than \$150,000.²

The Firm's Failure To Monitor For Potentially Unsuitable Transactions

The Firm failed to effectively monitor certain of AS's customer accounts for potentially unsuitable transactions. The Firm's supervisory failure included the failure to establish and maintain policies and procedures reasonably designed to detect and respond to over-concentration in and short-term in-and-out trading of speculative securities.

The Firm's supervisory system was unreasonable in a number of respects.

First, the Firm placed the responsibility with AS's branch manager to ensure, among other things, that the securities transactions recommended by AS were

¹ NASD Rules 3010(a) and 3010(b) apply to conduct that occurred before December 1, 2014, and FINRA Rules 3110(a) and 3110(b) apply to conduct that occurred on or after December 1, 2014.

² The Firm and AS previously settled an arbitration in which JM alleged that AS made unsuitable recommendations. The settlement amount was more than \$150,000.

suitable. However, Gunnar did not provide reasonable tools, such as alerts or exception reports, to assist the branch manager in assessing the suitability of the securities transactions recommended by AS. For example, the Firm failed to provide the branch manager with any alerts or exception reports to assist in determining whether the purchase of any security created an unduly concentrated position in the customer's account, whether the risk level of a particular security was inconsistent with the customer's investment profile, or whether an account was being actively traded. Instead, the branch manager relied on a manual review of a trade report, which contained all trades executed over the previous five business days. This report did not include information about concentration levels and the risk rating for the securities bought and sold in a customer's account, among other information relevant to suitability, and was otherwise not reasonably designed to detect patterns of unsuitable trading. In order to see complete suitability information, the branch manager had to look up each customer's account using a platform that was provided by Gunnar's clearing firm. Although the Firm eventually put in place a monthly "Active Accounts" report, the Firm did not make the report available to the branch manager to assist him in reviewing AS's trading activity and instead provided the report only to the Compliance Department.

As a result of the Firm's failure to provide the branch manager with reasonable tools to assist in his suitability review, the Firm failed to detect a number of red flags that suggested AS was making unsuitable recommendations in the accounts of certain customers. The red flag warnings that the Firm failed to detect included, among others, the high commissions that AS was earning on the accounts; the pattern of losses in the accounts; the high-risk, speculative nature of the securities purchased; the over-concentration of the accounts in those speculative securities; the fact that AS often recommended purchases in amounts that the customers could not afford and that resulted in restrictions being placed on their accounts; and the pattern of short-term in-and-out trading by AS, almost always for losses. The Firm unreasonably failed to monitor for any of these red flags even though AS was on heightened supervision during the entirety of the Relevant Period.

For example, AS recommended that JM invest \$72,000 (approximately 24 percent of her liquid net worth) in the initial public offering of a microcap pharmaceutical company. According to the prospectus, the investment involved "a high degree of risk . . . Our recurring losses from operations have raised substantial doubt regarding our ability to continue as a going concern." JM held the investment for less than two days before selling the shares for a loss. The Firm failed to detect as red flags the large amount of the investment, its risk level, or the short-term nature of the trade.

The Firm failed to detect similar red flag warnings with respect to the accounts of certain other customers. For example, during one month, AS recommended that one of his customers invest \$92,340 in a Real Estate Investment Trust ("REIT").

The net equity available in the account at the time was only \$63,556. Because the customer did not have sufficient cash available in the account to pay for the transaction, AS sold most of the REIT a few days later at a loss in order to cover the cost of the original purchase. Gunnar's clearing firm placed a 90-day restriction on the account as a result of this activity. The Firm failed to detect this risky trading activity as a red flag warning suggesting that AS may have been making unsuitable recommendations.

Also, the Firm failed to provide reasonable guidance regarding the steps that should be taken to investigate and respond to red flag warnings that suggested unsuitable trading in customer accounts. As a result, even when the Firm identified red flags, the Firm responded by merely sending the customers generic activity letters, which asked them to confirm by signing the letter that they were aware of the trading activity in their accounts.

For example, at different times during the Relevant Period, the Compliance Department identified one of JM's accounts as having appeared on the Active Accounts report. In fact, the account appeared on the report every month for seven straight months. That report showed that AS was placing a high number of trades in JM's account every month and that the annual commissions that AS was earning on the account also were high. Indeed, during the time when JM appeared on the Active Accounts report, her account was one of AS's top commission-generating accounts. Despite these red flags, the only follow up step taken by the Firm during the entire seven-month period that she appeared on the Active Accounts report was to send a single generic activity letter.

***The Firm's Failure To Ensure The Reevaluation Of
Customer Investment Profiles Following Life-Changing Events***

The Firm's supervisory system was not reasonably designed to ensure that a customer's investment profile would be reevaluated and updated as necessary in the event that he or she became mentally impaired. The Firm's written supervisory procedures stated that if a registered representative has reason to believe that a customer has become mentally impaired, he or she "must immediately bring the matter to the attention of the Compliance Department." But the Firm's procedures did not specify what steps should be taken following such notification and, in particular, they did not require any reevaluation of the customer's investment profile. As a result, even after AS and the Firm learned that one of his customers had been diagnosed with dementia, neither AS nor anyone else at the Firm conducted any analysis to determine whether this material change in the customer's circumstances warranted any changes to his investment profile, including his "Moderately Aggressive" risk tolerance.

By virtue of the foregoing, the Firm failed to establish and maintain a supervisory system, including written supervisory procedures, that was reasonably designed to

detect and prevent unsuitable trading by AS in customer accounts, in violation of NASD Rules 3010(a) and 3010(b), and FINRA Rules 3110(a), 3110(b), and 2010.

B. The Firm also consents to the imposition of the following sanctions:

1. A censure;
2. A \$60,000 fine; and
3. The following undertaking:
 - a) The Firm shall review and revise, as necessary, its policies, systems and procedures (written and otherwise), and training relating to the violations addressed in this AWC, including but not limited to those regarding suitability, customers with mental impairments, senior investors, the supervision of customer transactions, and the supervision of registered representatives under heightened supervision. Within no later than 90 days from the Notice of Acceptance of this AWC, or such additional period as agreed to by a FINRA staff member in writing, a registered principal and executive officer of the Firm, on behalf of the Firm, shall submit a certification that (i) the Firm has engaged in the review described above; and, (ii) as of the date of the certification, the Firm's policies, systems and procedures (written and otherwise), and training are reasonably designed to achieve compliance with the FINRA Rules addressed in this AWC.
 - b) The certification that the Firm has complied with the undertaking set forth above shall be provided to Megan P. Davis, FINRA, Department of Enforcement, Brookfield Place, 200 Liberty Street, New York, New York 10281, either by letter that identifies Gunnar and Matter No. 20130395071 or by email from a work-related account of a registered principal of the Firm to EnforcementNotice@FINRA.org.

The Firm agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. The Firm has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

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

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

II.

WAIVER OF PROCEDURAL RIGHTS

The Firm 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, the Firm specifically and voluntarily waives 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.

The Firm 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

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

1. this AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the Firm;
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. The Firm 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. The Firm 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 the Firm's: (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.

D. The Firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm 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.

The undersigned, on behalf of the Firm, 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 the Firm has 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 the Firm to submit it.

11/17/17
Date (mm/dd/yyyy)

Joseph Gunnar & Co. LLC
Respondent

By: 

Name: Stephan A. Stein

Title: President

Reviewed by:



Dan Viola

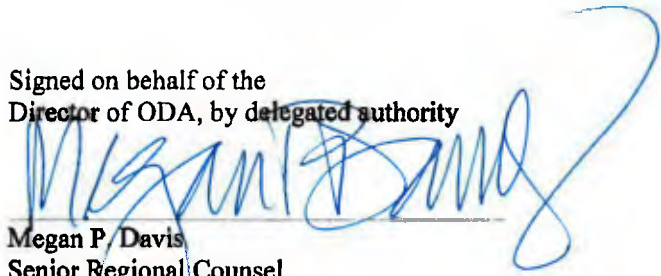
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Accepted by FINRA:

December 5, 2017

Date

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



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