

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015046315102**

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

RE: Moloney Securities, Co., Inc., Respondent
Member Firm
CRD No. 38535

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Moloney Securities, Co., Inc. (the "Firm," "Respondent" or "Moloney") 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 Respondent 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

Moloney became a FINRA member firm in July 1995. Moloney has approximately 50 branch offices and approximately 150 registered representatives. The Firm is headquartered in Manchester, Missouri.

RELEVANT DISCIPLINARY HISTORY

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

OVERVIEW

From January 2013 through April 2015 (the "Relevant Period"), the Firm failed to establish and maintain a supervisory system reasonably designed to: (1) achieve compliance with FINRA's suitability rule with respect to qualitative suitability and concentration in high-risk products; and (2) achieve compliance with applicable NASD and FINRA Rules pertaining to the detection and prevention of a form of manipulative

trading known as marking-the-close.¹ Through this conduct, the Firm violated NASD Rule 3010 (for conduct before December 1, 2014) and FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

FINRA Rule 3110 requires member firms to establish and maintain a supervisory system, and to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable NASD and FINRA Rules. NASD Rule 3010 imposed similar requirements before December 1, 2014.

FINRA Rule 2010 requires that member firms “observe high standards of commercial honor and just and equitable principles of trade.” A violation of NASD Rule 3010 or FINRA Rule 3110 also constitutes a violation of FINRA Rule 2010.

Moloney Failed to Establish and Maintain a Supervisory System Reasonably Designed to Achieve Compliance with FINRA Rule 2111.

FINRA Rule 2111 requires member firms to have a reasonable basis to believe that a recommended securities transaction or investment strategy is suitable for the customer, based on the information obtained through the firm’s reasonable diligence to ascertain the customer’s investment profile. A customer’s investment profile includes, but is not limited to, the customer’s age, other investments, financial situation and needs, investment objectives, investment experience, investment time horizon, liquidity needs, and risk tolerance. Under Rule 2111, a recommended securities transaction or investment strategy is qualitatively unsuitable when it is inconsistent with a customer’s investment profile, including among other things the customer’s investment objectives and risk tolerance. A recommended securities transaction or investment strategy may also be unsuitable if it results in a customer’s account being overconcentrated in a particular security or type of security that is inconsistent with the customer’s investment profile.

During the Relevant Period, Moloney failed to establish and maintain a supervisory system, including written supervisory procedures reasonably designed to achieve compliance with FINRA’s suitability rule with respect to qualitative suitability and concentration in high-risk products. Moloney’s written procedures stated that each Regional Manager was responsible for conducting a daily review of all trades executed by the registered representatives assigned to them (approximately 50 registered representatives per Regional Manager during the Relevant Period).

During the Relevant Period, Moloney’s written supervisory procedures contained a cursory discussion of monitoring for qualitative suitability, including procedures related to speculative, low priced securities, and no discussion of concentration in high-risk products. Further, during the same period, the Firm did not provide any training to its Regional Managers on reviewing the suitability of recommendations in such products,

¹ The Relevant Period for the Firm’s supervision of marking-the-close ended on April 15, 2015.

nor did the firm issue any instructional materials or alerts, such as compliance bulletins, addressing these issues.

Moloney Regional Managers responsible for daily reviews of all trades executed by registered representatives reviewed equity transactions almost exclusively through the same electronic surveillance system provided by its clearing firm. The electronic surveillance system provided to and utilized by Moloney during the Relevant Period, however, was not equipped to reasonably surveil for concentration in high-risk products or qualitative suitability. While Moloney generally instructed Regional Managers to review transactions for potential suitability concerns, the Firm did not provide reasonable guidance, written procedures or training programs to address how to conduct those reviews. The Firm also failed to provide Regional Managers with reasonable automated tools that would have helped them perform those reviews. Moloney's supervisory system and written procedures during the Relevant Period were not reasonably designed to achieve compliance with FINRA Rule 2111 with respect to qualitative suitability and concentration in high-risk products.

For example, during the Relevant Period, Moloney registered representative JM recommended that five senior customers, with investment objectives that included "balanced growth" and "preservation of principle/income," purchase risky oil and gas limited partnerships and oil and gas exchange traded funds.² As a result of JM's recommendations, these customers became concentrated in these products. Moloney's electronic surveillance system, however, did not flag the transactions for concentration issues, nor was the concentration questioned or reviewed by anyone at the Firm.

Similarly, customer LM, with an investment objective of "balanced growth" and risk tolerance of moderate, accepted JM's recommendations to purchase six different oil and gas limited partnerships in two accounts LM held at Moloney.³ By June 30, 2015, when LM was 78 years old, as much as approximately 64% of her net worth (excluding residence) was invested in oil and gas limited partnerships.⁴ In September 2015, when LM transferred the assets in her Moloney accounts to another FINRA member firm, she had suffered unrealized losses of \$15,574.13.⁵

By virtue of the foregoing, Moloney violated NASD Rule 3010 and FINRA Rules 3110 and 2010.

² As used herein, senior investors refers to investors aged 65 and older.

³ Moloney defined "balanced growth" as "focus is on generating income and/or long-term capital growth."

⁴ LM's account update form from the Relevant Period listed her net worth (excluding residence) as ranging from \$100,000-\$249,000.

⁵ LM's Moloney accounts were over 90% concentrated in oil and gas limited partnerships.

Moloney discharged JM on August 7, 2015.⁶ Additionally, during its 2015 FINRA cycle exam, Moloney retained a consultant to make recommendations regarding the Firm's supervisory systems and written supervisory procedures. The Firm revised and enhanced its written supervisory procedures in April 2015, including its procedures on reviewing transactions for qualitative suitability, including concentration issues. The Firm also started using a more robust electronic surveillance system the same year. Finally, Moloney paid restitution totaling \$195,500 to four senior customers of former Moloney representative JM, and is paying restitution to customer LM pursuant to this AWC.

Moloney Failed to Establish and Maintain a Supervisory System Reasonably Designed to Identify Potential Instances of Marking the Close.

"Marking the close" is the execution of transactions in a security at or near the end of the trading day in order to affect the security's closing price. If successful, the marking activity may make the value of the security appear to be higher or lower than it otherwise was during the trading day, which could allow the manipulator to benefit from the artificially affected price. Marking the close is a violation of Section 10(b) of the Securities Exchange Act of 1934 ("SEA") and SEA Rule 10b-5 and FINRA Rules 2020 and 2010.

During the Relevant Period, the Firm failed to establish and maintain a supervisory system reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules, prohibiting marking the close.⁷ Specifically, the Firm did not conduct any surveillance or conduct supervisory reviews for possible indicia of marking the close activity. The Firm also failed to establish, maintain, and enforce written supervisory procedures to monitor for potential marking the close activity.

The Firm did not have a system or written procedures reasonably designed to supervise for possible indicia of marking the close activity. The Firm also failed to reasonably investigate two of its representatives who frequently executed purchase or sale orders of common stock of Company X, a thinly-traded security, at or near the close of the market during 2013.

By virtue of the foregoing, Moloney violated NASD Rule 3010 and FINRA Rules 3110 and 2010.

⁶ In an AWC dated April 26, 2016, JM agreed to accept a bar from associating with any FINRA member firm in any capacity for refusing to provide information and documents and for refusing to appear for on-the-record testimony, both requested pursuant to FINRA Rule 8210.

⁷ The Relevant Period for the Firm's supervision of marking-the-close ended on April 15, 2015.

On April 15, 2015, the Firm revised and enhanced its supervisory system and procedures pertaining to the supervision and prevention of marking the close activity.

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

1. A censure;
2. A fine of \$100,000; and
3. Restitution is ordered to be paid to the customer LM in the total amount of \$15,574.13, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from August 31, 2015, until the date this AWC is accepted by the National Adjudicatory Council (NAC).

A registered principal on behalf of Respondent shall submit satisfactory proof of payment of restitution and pre-judgment interest (separately specifying the date and amount of each paid to each customer listed on Attachment A) or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted by email to EnforcementNotice@FINRA.org from a work-related account of the registered principal of Respondent. The email must identify the Respondent and the case number and include a copy of the check, money order or other method of payment. This proof shall be provided by email to EnforcementNotice@FINRA.org no later than 120 days after acceptance of the AWC.

If for any reason Respondent cannot locate the customer identified in Attachment A after reasonable and documented efforts within 120 days from the date the AWC is accepted, or such additional period agreed to by a FINRA staff member in writing, Respondent shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property or abandoned property fund for the state in which the customer is last known to have resided. Respondent shall provide satisfactory proof of such action to the FINRA staff member identified above and in the manner described above, within 14 calendar days of forwarding the undistributed restitution and interest to the appropriate state authority.

The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

Restitution payments to customers shall be preceded or accompanied by a letter, not unacceptable to FINRA staff, describing the reason for the payment and the fact that the payment is being made pursuant to a settlement with FINRA and as a term of this AWC.

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

Respondent specifically and voluntarily waives any right to claim an inability to pay, now

or at any time hereafter, the monetary sanction imposed in this matter.

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

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 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, Respondent 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.

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

Respondent 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 Respondent; and

C. If accepted:

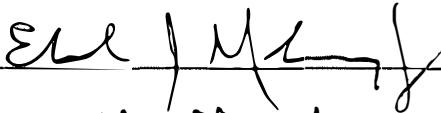
1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Respondent;
2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
4. Respondent 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. Respondent 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 Respondent'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. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent 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 Respondent 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 it has agreed to the AWC's 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 it to submit it.

Moloney Securities, Co., Inc.
Respondent

4-16-2020
Date (mm/dd/yyyy)

By: 
Print Name: EDWARD J MOLONEY JR
Title: PRESIDENT ; COO

Accepted by FINRA:

May 4, 2020
Date (mm/dd/yyyy)

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



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STATEMENT OF CORRECTIVE ACTION SUBMITTED BY MOLONEY SECURITIES CO., INC. (“MOLONEY SECURITIES”), IN CONNECTION WITH FINRA LETTER OF ACCEPTANCE, WAIVER AND CONSENT (“AWC”) NO.: 2015046315102

Moloney Securities submits this Statement of Corrective Action in connection with the foregoing AWC to demonstrate the steps it has taken to reduce the risk of recurrence of the issues addressed therein.

In the five years since the time FINRA commenced the investigation described in the AWC, Moloney Securities has engaged in significant and important efforts to completely overhaul and enhance its compliance program and supervisory systems. The Relevant Period is defined in the AWC as January 2013 through April 2015. Following the worsening of the illness of the firm’s founder and CEO and his death, the firm engaged in all of the following actions:

1. Appointed a new chief executive officer with more than thirty years’ experience at the time
2. Launched a comprehensive review of the firm’s compliance program, with the help of a nationally recognized broker-dealer consulting firm
3. Adopted a fully revised and entirely overhauled Written Supervisory Procedures manual that included enhanced provisions concerning suitability reviews for concentration and “mark the close” supervision
4. Replaced its chief compliance officer and later hired an additional compliance officer and additional compliance team members
5. Upgraded its trade surveillance system from the Standard version of Protegent™ Surveillance (ProSurv), an application provided by its clearing firm, RBC Correspondent Services (RBC), and apparently used by roughly 90% of RBC’s 200+ correspondent firms during the Relevant Period, to the more robust and expensive Enhanced Protegent™ Surveillance system
6. Discharged the representative cited in the AWC for recommending over-concentrated investments
7. Terminated both representatives cited in the AWC in connection with “mark the close” issues
8. Provided restitution to several clients of the Discharged former representative

Moloney Securities’ corrective actions, and the mitigating circumstances applicable to the AWC described in a statement that is not attached to the same but which has been submitted to FINRA, demonstrate the firm’s long and continuing commitment to compliance and its efforts to fully address and resolve the isolated, legacy items which were the subject of the AWC.

This Corrective Action Statement is submitted by Moloney Securities Co., Inc. It does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA, or its staff.