

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2016048675902**

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

RE: James Dresselaers, Respondent
FINRA Registered Representative
CRD No. 1106109

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, James Dresselaers, 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:

BACKGROUND

Dresselaers entered the securities industry in 1983. He currently is registered with H. Beck, Inc., and holds Series 4, 7, 24, 63, and 65 licenses.

OVERVIEW

Between 2008 and 2011, while registered with H. Beck, Inc., Dresselaers recommended to the firm's customer, EB, investments in several nontraditional exchange-traded funds ("ETFs") and stocks issued by companies in the metals and mining sector. These recommendations were unsuitable for EB, a professional athlete with no investment experience, a moderate risk tolerance, and an investment objective of long-term growth. EB suffered losses of more than \$1.1 million on these investments. As a result, Dresselaers violated NASD Rules 2310 and 2110 and FINRA Rules 2111 and 2010.

FACTS AND VIOLATIVE CONDUCT

Customer EB was a professional athlete when he opened an account with H. Beck in 2004. At the time, EB had no investment experience. On his new account form, EB stated that he had a moderate risk tolerance and that his investment objective was long-term growth. EB told Dresselaers that he needed his earnings as an athlete to last the rest of his life.

Dresselaers Recommends Nontraditional ETFs to EB. Between 2008 and 2010, Dresselaers recommended that EB invest in several nontraditional ETFs. Nontraditional ETFs differ from traditional ETFs in that they seek to deliver multiples of the performance of the underlying index or benchmark, the inverse of that performance, or both. To accomplish their objectives, nontraditional ETFs use swaps, futures contracts, and other derivative instruments. In addition, nontraditional ETFs are designed to achieve their stated objectives over the course of one trading session. Between one trading session and the next, the fund manager must rebalance the fund's holdings in order to meet its objective. For most nontraditional ETFs, this happens on a daily basis, and is known as the "daily reset."

For each day's trading session, a nontraditional ETF may come close to achieving its intended return. However, the correlation between a nontraditional ETF and its linked index or benchmark is inexact, and there is typically at least a small difference, or "tracking error," between a fund and its benchmark, which may compound over longer periods of time. This effect becomes more pronounced during periods of volatility in the underlying index or benchmark. FINRA advised its membership in June 2009 in FINRA Regulatory Notice 09-31 concerning nontraditional ETFs that "[d]ue to the effect of compounding, their performance over longer periods of time can differ significantly from the performance . . . of their underlying index or benchmark during the same period of time." FINRA Regulatory Notice 09-31 further advised broker-dealers that nontraditional ETFs "are typically not suitable for retail investors who plan to hold them for more than one trading session, particularly in volatile markets."

Notwithstanding EB's investment profile, between July 2008 and August 2011, Dresselaers recommended that EB invest more than \$2.3 million in nontraditional ETFs, including leveraged, inverse ETFs. Dresselaers then recommended that EB hold these investments for extended periods of time, some for more than five years. These recommendations were unsuitable, and EB lost a total of \$851,175 on these investments.

Dresselaers Recommends Metals and Mining Stocks to EB. In addition to recommending nontraditional ETFs, in February and August 2011, Dresselaers recommended that EB invest approximately \$500,000 in several different equities, including approximately \$375,000 in stocks issued by companies in the

metals and mining sector. As a result of these and other recommendations by Dresselaers, as of August 2011, approximately 65% of EB's portfolio was invested in the metals and mining sector. This concentration exposed EB to the risk of significant losses when the metals and mining market declined. These recommendations were unsuitable, and EB lost a total of \$264,618 on these investments.

Dresselaers's Recommendations Were Unsuitable. NASD Rule 2310 and FINRA Rule 2111 require that, when recommending the purchase, sale, or exchange of any security, a FINRA-registered person must have reasonable grounds for believing that the recommendation is suitable for the customer upon the basis of the facts, if any, disclosed by the customer as to his other security holdings and as to his financial situation and needs.¹

Dresselaers's recommendations of nontraditional ETFs and metals and mining stocks were not suitable for EB. These securities were not consistent with EB's stated investment objective of long-term growth and moderate-risk tolerance.

By virtue of the foregoing, Dresselaers violated NASD Rules 2310 and 2110 and FINRA Rules 2111 and 2010.²

B. Dresselaers consents to the imposition of the following sanctions:

- 60 calendar-day suspension from association with any FINRA-member firm in any capacity;
- \$10,000 fine; and
- Disgorgement of commissions received, which is ordered to be paid to FINRA in the amount of \$18,708 plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621, from the date of EB's purchase in each unsuitable transaction until the date this AWC is accepted by the NAC.

I agree to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. I have submitted an Election of Payment form showing the method by which I propose to pay the monetary sanctions imposed.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

I understand that if I am barred or suspended from associating with any FINRA member, I become subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities

¹ NASD Rule 2310 applies to conduct occurring before July 9, 2012.

² NASD Rule 2110 applies to conduct occurring before December 15, 2008.

Exchange Act of 1934. Accordingly, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rules 8310 and 8311).

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

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

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.

08/31/2017
Date (mm/dd/yyyy)

By: [Signature]
Respondent

Reviewed by:

Chad Weaver
Freeman Mathis & Gary, LLP
2615 Pacific Coast Highway, Suite 300
Hermosa Beach, CA 90254-2227
(310) 937-2066
Counsel for Respondent

Accepted by FINRA:

9/27/17
Date

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

[Signature]
James E. Day
Vice President and Chief Counsel
FINRA Department of Enforcement
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