

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2016050685101**

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

RE: David Colflesh, Respondent
CRD No. 1184117

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 in this AWC.

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

Colflesh entered the securities industry in 1982. He was registered with FINRA or its predecessor as an investment company shares and variable contracts representative from 1983 to 2016 and as a direct participation programs representative from 1984 to 2009. He associated with NYLife Securities LLC (CRD No. 5167) ("NYLS") from 1982 to November 2016. Colflesh has not associated with any member of FINRA since November 1, 2016, but he is subject to FINRA's jurisdiction under Article V, Section 4 of its by-laws until October 31, 2018.

RELEVANT DISCIPLINARY HISTORY

Colflesh does not have any relevant history of discipline.

OVERVIEW

From October 2014 to July 2015, Colflesh recommended three nondiversified mutual funds to approximately ninety customers without having a reasonable basis to believe that his recommendations were suitable for at least *some* investors, because he did not understand the funds' complexity and potential risks. Further, Colflesh recommended that approximately four dozen of those customers make concentrated investments in the funds, exposing them to a level of risk that was unsuitable given their investment objectives and tolerances for risk.

By that conduct, Colflesh violated FINRA Rule 2111 and consequently FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

FINRA Rule 2111 requires every associated person to "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 reasonable efforts to understand the customer's risk tolerance, investment objectives, and other aspects of the customer's investment profile. That rule imposes obligations "to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least *some* investors" and "that the recommendation is suitable for a particular customer based on that customer's investment profile."¹ Violating FINRA Rule 2111 also constitutes a violation of FINRA Rule 2010, which requires every registered person to "observe high standards of commercial honor and just and equitable principles of trade."

In July 2014, NYLS began offering three mutual funds that focused on the exploration, production, storage, transportation, processing, and use of energy and natural resources. Colflesh was introduced to the funds at a meeting for NYLS's salespeople in September 2014. Colflesh listened to a forty-five-minute presentation about the funds' features, such as their yield and tax benefits, but he did not learn about their risks. Colflesh reviewed the funds' sales literature, which did not explain in detail how the funds worked. Subsequently, Colflesh spent less than an hour reviewing the funds' prospectus, which warned that the funds were not diversified and thus subject to additional risk, and also that the funds' holdings may be affected by the prices of oil and natural gas, which were expected to be volatile. Colflesh did not receive any other information about the funds or conduct any other investigation of them.

From the meeting and the materials that he reviewed, Colflesh understood that the funds were different from stocks, bonds, and other mutual funds, that the funds were not diversified, and that they involved some risk. However, Colflesh did not

¹ FINRA Rule 2111, Supplementary Material .05(a) and (b).

understand the magnitude of the funds' risks, as he did not have any experience selling securities focusing on the energy or natural resources industries.

A few weeks later, Colflesh began recommending the funds to his customers, primarily on the basis of the funds' yield, which he thought could exceed 10%. From October 2014 to July 2015, Colflesh recommended one or more of the funds to approximately ninety customers. Those customers made approximately 250 purchases of the funds totaling approximately \$4.5 million. Colflesh earned commissions of \$34,546.98 from those transactions.

Colflesh recommended concentrated investments in the funds to approximately four dozen of those customers, even though their expressed investment objectives and tolerances for risk were conservative or moderate. At least six of those customers invested 35% or more of their liquid net worth in the funds, and two of those customers invested more than 80% of their liquid net worth in the funds. Colflesh knew that those recommendations exceeded NYLS's limits on concentrations in risky securities by customers with conservative or moderate investment objectives and tolerances for risk. Colflesh also was aware that NYLS changed some of his customers' investment objectives and tolerances for risk from conservative or moderate to more aggressive levels so they would conform to the customers' purchases of the funds.

In late 2014, the funds' prices began to drop, and they lost between 49% and 80% of their value over the next eighteen months. Starting in late 2015, approximately two dozen customers filed complaints with NYLS, which precipitated FINRA's investigation.

From October 2014 to July 2015, Colflesh recommended the three funds at issue without having a reasonable basis for believing that they were suitable for at least *some* customers, as he had not adequately educated himself about the funds, and did not understand the funds' complexity and potential risk. Moreover, Colflesh recommended the funds to approximately four dozen customers for whom they were not suitable given his recommended concentration levels and the customers' expressed investment objectives, tolerances for risk, and other factors. By doing so, Colflesh violated FINRA Rule 2111 and consequently FINRA Rule 2010.

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

- Suspension of 18 months from associating in any capacity with any member of FINRA
- Disgorgement of commissions received, as described below

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 member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rules 8310 and 8311).

Disgorgement of commissions received shall be paid to FINRA in the amount of \$34,546.98, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621, from the dates of the transactions at issue until the date this AWC is accepted by the NAC. Disgorgement shall be due and payable either immediately upon reassociation with a member firm, 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 specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The sanctions imposed in this AWC 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

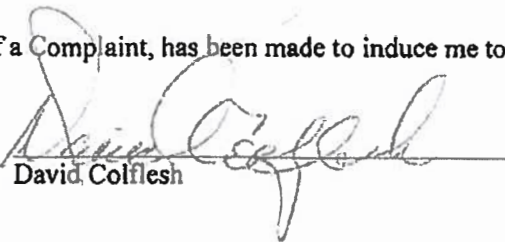
I understand that:

- 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 testimonial obligations or 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 I 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.

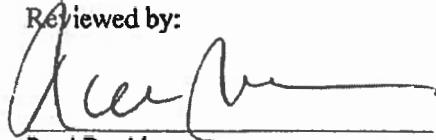
I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth in this AWC

and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

10/23/18
Date (mm/dd/yyyy)


David Colflesh

Reviewed by:



Paul Roshka
Polsinelli, P.C.
One East Washington Street, Suite 1200
Phoenix, Arizona 85004-2568
602-650-2098

Counsel for Respondent

Accepted by FINRA:

Oct. 26, 2018
Date

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


J. Loyd Gattis III
Senior Counsel
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