

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2016051098501**

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

RE: Dominic Tropiano, Respondent
An Unregistered Representative
CRD No. 4761462

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Dominic Tropiano, 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

Dominic Tropiano first entered the securities industry in February 2004 as a General Securities Representative with a FINRA member firm. Between July 2008 and April 2015, Tropiano was associated as a General Securities Representative with Key Investment Services LLC (CRD #1363000) ("KIS"), a FINRA member firm. In May 2015, Tropiano engaged in a securities business and became a nonregistered, associated person with America Northcoast Securities, Inc. ("America Northcoast"), a FINRA member firm. Between May 9, 2016 and June 10, 2016, Tropiano was associated as a General Securities Representative with America Northcoast. Since then, Tropiano has not been associated with another FINRA-regulated firm. However, America Northcoast filed an amended Form U5 disclosing new information on May 24, 2017. Therefore, although Tropiano is not currently associated with a FINRA member firm or registered with FINRA, he remains subject to FINRA's jurisdiction, pursuant to Article V, Section 4 of FINRA's By-Laws, until May 23, 2019.

RELEVANT DISCIPLINARY HISTORY

Tropiano has no relevant disciplinary history.

OVERVIEW

Between May 2015 and April 2016, Tropiano recommended over 800 transactions involving non-traditional exchange-traded funds (“ETFs”) to at least 47 customers, without having a reasonable basis to believe those transactions were suitable for anyone, due to his lack of understanding of the unique risks, terms and features of the products. Tropiano’s recommendations involving non-traditional ETFs were also unsuitable for those 47 customers in light of their investment profiles. As a result of his unsuitable recommendations, Tropiano violated FINRA Rules 2111 and 2010.

Between May and September 2015, Tropiano caused 52 non-traditional ETF transactions to be placed in two customer’s securities accounts without the customers’ knowledge or consent, and in the absence of written or oral authorization for Tropiano to place such trades. As a result of his unauthorized transactions, Tropiano violated FINRA Rule 2010.

Between May 2015 and April 2016, while Tropiano engaged in the securities business of American Northcoast by soliciting the purchase and sale of non-traditional ETFs in the accounts of at least 47 of America Northcoast’s customers, Tropiano was not properly registered with FINRA. As a result, Tropiano violated NASD Rule 1031 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

A. Non-Traditional ETFs

ETFs are typically registered unit investment trusts or open-end investment companies whose shares represent an interest in a portfolio of securities that track an underlying benchmark or index. Shares of ETFs typically are listed on national securities exchanges and trade throughout the day at prices established by the market.

Leveraged ETFs are different from other ETFs in that they seek to deliver multiples of the performance of the index or benchmark they track. Some non-traditional ETFs are “inverse” or “short” funds, meaning that they seek to deliver the opposite of the performance of the index or benchmark they track. Some funds are both inverse and leveraged, meaning that they seek to achieve a return that is a multiple of the inverse performance of the underlying index or benchmark. To accomplish their objectives, non-traditional ETFs use swaps, futures contracts, and other derivative instruments.

Most non-traditional ETFs reset daily, meaning that they are designed to achieve their stated objectives on only a daily basis. On a particular day, a non-traditional ETF may come close to achieving its intended return. However, the correlation between a non-traditional 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. The risks, features, and characteristics of non-traditional ETFs are typically discussed, in detail, in the prospectuses for these products.

1. Tropiano Lacked a Reasonable Basis to Solicit or Recommend Non-traditional ETFs

FINRA Rule 2111(a) provides that “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. A customer's investment profile includes, but is not limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the member or associated person in connection with such recommendation.”

The Supplementary Material to FINRA Rule 2111 provides that one of the three obligations associated with this Rule is reasonable-basis suitability. FINRA Rule 2111.05(a) provides that 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 associate 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.”

FINRA Rule 2010 requires associated persons to observe high standards of commercial honor and just and equitable principles of trade. A violation of FINRA Rule 2111 also constitutes a violation of FINRA Rule 2010.

As explained in Regulatory Notice 09-31, non-traditional ETFs are highly complex financial instruments. With respect to such products, the reasonable basis obligation means that a firm or associated person “must understand the terms and features of the funds, including how they are designed to perform, how

they achieve that objective, and the impact that market volatility, the ETF's use of leverage, and the customer's intended holding period will have on their performance."

Between May 2015 and April 2016, Tropiano solicited and placed 866 securities transactions, involving 15 different non-traditional ETFs, with at least 47 customers of American Northcoast. Tropiano lacked a fundamental understanding of the unique risks, terms and features of the non-traditional ETFs he recommended his customers buy or sell between May 2015 and April 2016. For example, Tropiano did not understand the daily reset feature, the compounding of the "tracking error" (the divergence between the non-traditional ETF's price and the price of the index or benchmark), and the various other risks of the products, including the daily exchange rate risk and the volatility of the underlying swap agreements, futures contracts, and options.

Tropiano therefore did not have a reasonable basis to believe that the investments he recommended in non-traditional ETFs were suitable for any investor.

By virtue of the foregoing, Tropiano violated FINRA Rules 2111 and 2010.

2. Tropiano Failed to Perform Customer-Specific Suitability Analysis and Made Unsuitable Recommendations

The Supplementary Material to FINRA Rule 2111 provides that another one of the three obligations associated with this Rule is customer-specific suitability. FINRA Rule 2111.05(b) provides that the "customer-specific obligation requires that a member or associated person have a reasonable basis to believe that the recommendation is suitable for a particular customer based on that customer's investment profile, as delineated in Rule 2111(a)." Further, as explained in Regulatory Notice 09-31, "While the customer-specific suitability analysis depends on the investor's particular circumstances, inverse and leveraged ETFs typically are not suitable for retail investors who plan to hold them for more than one trading session, particularly in volatile markets."

From May 2015 to June 2016, Tropiano recommended non-traditional ETFs to at least 47 customers who had opened accounts at America Northcoast. Tropiano did not have reasonable grounds to believe that these highly complex products were suitable for those customers, in view of their investment profiles, which included conservative investment objectives.

By virtue of the foregoing, Respondent violated FINRA Rules 2111 and 2010.

3. Tropiano Engaged in Unauthorized Trading

FINRA Rule 2010 requires that members observe high standards of commercial honor and just and equitable principles of trade. Both the SEC and FINRA have characterized unauthorized trading as "a fundamental betrayal of the duty owed

by a salesman to his customers, and therefore is a serious violation of just and equitable principles of trade.”

Between May and September 2015, Tropiano caused 33 non-traditional ETF transactions to be effected in customer M.C.’s securities account, and 19 non-traditional ETF transactions to be placed in I.C.’s securities account; without the knowledge or consent of either customer, and in the absence of written or oral authorization to place such trades.

By virtue of the foregoing, Respondent violated FINRA Rule 2010.

4. Tropiano Engaged in Securities Business without Being Registered

NASD Rule 1031(a) requires that “[a]ll persons engaged or to be engaged in the investment banking or securities business of a member who are to function as representatives shall be registered as such with [FINRA] in the category of registration appropriate to the function to be performed....” Activities that require registration include providing investment advice, soliciting prospective customers, and recommending the purchase or sale of securities. Engaging in these types of activities while unregistered is inconsistent with “high standards of commercial honor” and violates FINRA Rule 2010.

Tropiano’s father-in-law, R.B., was the Chairman and Chief Financial Officer for America Northcoast. R.B. hired Tropiano to help with research at a non-member affiliate of America Northcoast, in May 2015. The affiliate and America Northcoast shared office space, and Tropiano’s desk was next to that of his brother-in-law, C.B., who was the President and Chief Compliance Officer for American Northcoast.

Shortly after Tropiano began working at American Northcoast in May 2015, KIS customers began contacting Tropiano for investment advice. Tropiano asked C.B. whether he should refer the customers to a different broker-dealer, since he was not registered with American Northcoast. Instead, C.B. told Tropiano to “bring the accounts” to the firm. As a result, between May 2015 and April 2016, at least 47 individuals who had been securities customers at KIS opened securities accounts at America Northcoast, with C.B. listed as the representative of record.¹

In addition, between May 2015 and April 2016, Tropiano provided investment advice to these customers and recommended the purchase and sale of securities for their accounts. Specifically, Tropiano solicited approximately 866 transactions involving non-traditional ETFs for the accounts of at least 47 former KIS customers, while he was not registered in any capacity at America Northcoast.

¹ When Tropiano left KIS on April 20, 2015, he was bound by a non-solicitation agreement he had signed with KIS, which by its terms prevented him from directly or indirectly calling upon, soliciting, or doing business with any KIS customer for one year, or until April 19, 2016.

By engaging in securities business while not registered with a FINRA member firm, Tropiano violated NASD Rule 1031 and FINRA Rule 2010.

- B. I also consent to the imposition of the following sanctions: a bar from associating with any FINRA member in any capacity.²

The sanctions imposed herein shall be effective on a date set by FINRA staff. A bar or expulsion shall become effective upon approval or acceptance of this AWC.

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.

² No restitution was ordered, because America Northcoast has paid a total of \$1,526,500 to its customers for losses suffered as a result of the non-traditional ETF transactions solicited by Tropiano while at the firm.

III.

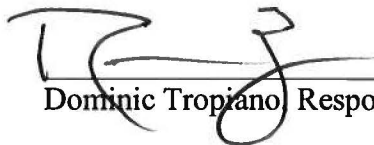
OTHER MATTERS

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 understand and acknowledge that FINRA does not represent or advise me and I cannot rely on FINRA or FINRA staff members for legal advice; 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.

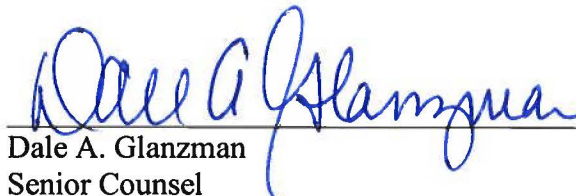
4/11/2019
Date (mm/dd/yyyy)


Dominic Tropiano Respondent

Accepted by FINRA:

05/09/2019
Date

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


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