

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2016051156903**

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

RE: Janney Montgomery Scott LLC (Respondent)
Member Firm
CRD No. 463

Pursuant to FINRA Rule 9216, Respondent Janney Montgomery Scott LLC 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 in this AWC.

I.

ACCEPTANCE AND CONSENT

- A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

Janney has been a member of FINRA since 1936. The firm is headquartered in Philadelphia, Pennsylvania, and has approximately 1,650 registered persons and 140 registered branch offices.¹

OVERVIEW

From December 2013 through December 2016, Janney failed to reasonably supervise two registered representatives who recommended that their customers invest an unsuitably high percentage of their assets in energy-sector securities in violation of NASD Rule 3010 and FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a FINRA examination surrounding the circumstances alleged in a customer arbitration filed against Janney.

FINRA Rule 3110(a), like its predecessor, NASD Rule 3010(a), requires a member firm to establish and maintain a system to supervise the activities of each associated person

¹ For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. The duty to supervise under Rule 3110 also includes the responsibility to reasonably investigate red flags that misconduct may be occurring and to act upon the results of such investigation.² A violation of FINRA Rule 3110 or NASD Rule 3010 also is a violation of FINRA Rule 2010, which requires member firms to “observe high standards of commercial honor and just and equitable principles of trade” in the conduct of their business.

FINRA Rule 2111 requires member firms and their associated persons to have a reasonable basis to believe that a recommended securities transaction or investment strategy is suitable for a customer, based on information obtained through the reasonable diligence of the firm 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, investment objectives, investment experience, investment time horizon, liquidity needs, and risk tolerance. A recommended securities transaction or investment strategy may be unsuitable if it results in a customer’s account being concentrated in a particular security or category of securities in a manner that is inconsistent with the customer’s investment profile.

From December 2013 through December 2016, Janney failed to reasonably supervise two registered representatives who recommended that 11 customers unsuitably concentrate their accounts in certain energy-sector securities, including master limited partnerships focused on the exploration or development of natural resources.³ Both representatives recommended that customers purchase additional energy-sector securities even after their accounts already were concentrated in that sector. Because these investments focused on the energy sector, their value was sensitive to shifts in oil and gas prices and subjected investors with concentrated positions to a high risk of loss if oil and gas prices declined.

During this period, Janney used automated alerts to identify trading activity that warranted further review by the firm, including alerts that identified accounts whose holdings were concentrated in a particular market sector. Although trades recommended in the 11 customers’ accounts generated many such alerts, Janney failed to take reasonable steps to understand the potential risks and rewards associated with these recommendations or to determine whether the recommendations were suitable in light of these customers’ investment profiles. Moreover, Janney did not prevent the two representatives from recommending that the customers further concentrate their accounts in securities in the energy sector.

The investments recommended by the two Janney representatives caused each of the 11 customers to have accounts that were unsuitably concentrated in the energy sector. In each instance, the representatives recommended that the customers purchase additional

² FINRA Rule 3110 superseded NASD Rule 3010 on December 1, 2014.

³ FINRA barred both representatives from associating with any FINRA member firm in all capacities for failing to appear for on-the-record testimony requested pursuant to FINRA Rule 8210 in connection with FINRA’s investigation in this matter.

energy-sector securities after they were already concentrated in the energy sector, and the customers suffered realized losses on certain positions even after accounting for the income the investments generated.⁴

For example, Customer A was a senior investor who, when she opened her account at Janney, had a liquid net worth of less than \$100,000 and a moderate risk tolerance. Between December 2013 and January 2015, the representative servicing her account recommended 19 purchases of securities in the energy sector at times when Customer A's account was already concentrated in that sector. Despite receiving numerous alerts that Customer A's account was concentrated in energy-sector securities, Janney did not determine whether the recommended trades were consistent with her investment profile. The recommended purchases caused Customer A to suffer more than \$100,000 in realized losses, after accounting for the income she earned from the investments.

Therefore, Respondent violated NASD Rule 3010(a) and FINRA Rules 3110(a) and 2010.

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

- a censure;
- a \$100,000 fine; and
- restitution of \$145,019 plus interest as described below.

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 after the execution of this AWC, the monetary sanctions imposed in this matter.

Restitution is ordered to be paid to the customers listed on Attachment A to this AWC in the total amount of \$145,019, 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 December 31, 2016, 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 prejudgment 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

⁴ Janney has already paid restitution to eight of the 11 customers who suffered losses as a result of the conduct described in this AWC. This AWC orders restitution in the amount of \$145,019, which reflects losses incurred by the three customers to whom Janney has not yet paid restitution.

EnforcementNotice@FINRA.org from a work-related account of the registered principal of Respondent. The email must identify 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 the date of the notice of acceptance of the AWC.

If for any reason Respondent cannot locate any customer identified in Attachment A after reasonable and documented efforts within 120 days after the date of the notice of acceptance of the AWC, or such additional period agreed to by FINRA 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 FINRA 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 in this AWC, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

The sanctions imposed in this AWC shall be effective on a date set by FINRA

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 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 its acceptance or rejection.

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.

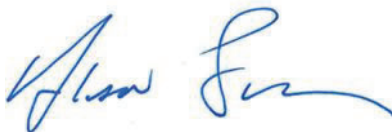
OTHER MATTERS

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 action 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 its subject matter 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 right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.
- 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.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's 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 Respondent 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 in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.



Date: October 7, 2022

Janney Montgomery Scott LLC
Respondent

Print Name: William A. Smith

Title: Vice President, Deputy General Counsel

Reviewed by:



Paula D. Shaffner
Counsel for Respondent
Stradley Ronon Stevens & Young, LLP
2005 Market Street, Suite 2600
Philadelphia, PA 19103

Accepted by FINRA:

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



October 19, 2022
Date

Kevin Hartzell
Director
FINRA
Department of Enforcement
581 Main Street 7th Floor
Woodbridge, NJ 07095

Attachment A

Customer	Restitution
Customer A	\$116,261
Customer B	\$18,981
Customer C	\$ 9,777
Total	\$145,019