

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2017052215401**

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

RE: Capitol Securities Management, Inc., Respondent
CRD No. 14169

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Capitol Securities Management, Inc. ("Capitol" or the "Firm") 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 the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Capitol 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

Capitol has been a FINRA member since May 1985. Capitol is based in Glen Allen, Virginia. The Firm maintains approximately 54 branch offices and has approximately 188 registered personnel.

RELEVANT DISCIPLINARY HISTORY

In 2015, the Firm entered into an AWC where it consented to the entry of findings that it failed to supervise the sale of reverse convertible notes.¹

OVERVIEW

From March 15, 2011 to March 15, 2017 (the "Relevant Period"), Capitol failed to establish, maintain and enforce a supervisory system and written supervisory procedures reasonably designed to detect and prevent unsuitable short-term trading in Unit Investment Trusts ("UITs"). Based on the foregoing, Capitol violated NASD Rule 3010 and FINRA Rules 3110 and 2010.

¹ See *Capitol Securities Management, Inc.*, No. 2011025548801 (AWC Oct. 2015).

During the Relevant Period, Capitol also failed to retain instant messages from 41 employees, including the Firm's senior management and compliance staff. Based on the foregoing, Capitol violated Section 17 of the Securities and Exchange Act of 1934 and Rule 17a-4 thereunder, NASD Rule 3110 and FINRA Rules 4511 and 2010.

FACTS AND VIOLATIVE CONDUCT

1. *Capitol failed to adequately supervise and prevent unsuitable short-term trading of UITs*

A UIT is a SEC-registered investment company that offers shares or "units" in a portfolio of securities in a public offering. Generally, a UIT's portfolio is not actively traded and follows a "buy-and-hold" strategy. UITs terminate on a specified maturity date, often after 15 or 24 months, at which point the underlying securities are sold and the proceeds are paid to investors.

UITs impose a variety of sales charges. For example, during the Relevant Period, a typical 24-month UIT imposed: (1) an initial sales charge, which was 1% of the purchase price; and (2) a deferred sales charge, which was up to 2.5% of the offering price. Also, most UIT sponsors charged a creation and development fee ("C&D fee"), which was generally 0.5% of the offering price.² The initial sales charge generally was charged at the time of purchase; the deferred sales charge and C&D fee typically were charged during months three through six of the UIT's duration.

Because of the long-term nature of UITs, their structure, and upfront costs, short-term trading of UITs may be improper and raises suitability concerns.

FINRA Rule 3110 and its predecessor, NASD Rule 3010, require that each member establish and maintain a system, and establish, maintain and enforce written supervisory procedures, to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD and FINRA Rules.

During the Relevant Period, the Firm had no procedures to specifically address the suitability concerns raised by short-term trading in UITs. While the Firm instituted a policy in April 2013 requiring the submission of a UIT switch form to detect the premature sales of UITs, the policy was not enforced. And, during the Relevant Period, the Firm had no surveillance or exception reports designed to detect unsuitable short-term trading of UITs.

² In addition to these charges, most UITs charge annual operating expenses that are paid to the sponsor out of the assets of the UIT.

During the Relevant Period, at least three Capital representatives recommended and effected short-term trades of UITs in their customers' accounts. The majority of the UITs recommended by these representatives had two-year maturity dates and carried sales charges ranging from 1.95% to 3.95%. Nevertheless, these representatives repeatedly recommended that their customers sell their UIT positions approximately one year after purchase. Indeed, the average holding period for the UITs acquired in these customer accounts was less than 325 days. In addition, on several occasions, these representatives recommended that their customers use the proceeds from the short-term sale of a UIT to purchase another UIT with identical investment objectives. As a result of this trading, customers paid excess sales charges in the amount of approximately \$44,740.33.

Based on the foregoing, Capitol violated NASD Rule 3010, and FINRA Rules 3110 and 2010.³

2. *Capitol failed to retain business-related instant messages*

Throughout the Relevant Period, Capitol utilized an instant messaging system called "Message Pal" for internal communications at its Glen Allen headquarters. Approximately 40 associated persons used the Message Pal system for business-related communications with co-workers, including the Firm's chief compliance officer, four other registered principals, and other senior executives.

Section 17 of the Securities and Exchange Act of 1934 ("Exchange Act") and Exchange Act Rule 17a-4 require that brokerage firms preserve, for a period of not less than three years, electronic communications relating to the firm's business as a broker-dealer. NASD Rule 3110(a) required member firms to preserve records in conformity with all applicable laws, rules and regulations, including Rule 17a-4. Likewise, FINRA Rule 4511 (which replaced NASD Rule 3110) incorporates the requirements of Rule 17a-4 into the rules governing FINRA members.

During the Relevant Period, Capitol failed to retain any of the Message Pal messages.

Based on the foregoing, Capitol violated Section 17 of the Exchange Act and Rule 17a-4 thereunder, NASD Rule 3110 and FINRA Rules 4511 and 2010.⁴

³ The Firm violated NASD Rule 3010 for its conduct prior to December 1, 2014 and FINRA Rule 3110 for its conduct on and after that date.

⁴ The Firm violated NASD Rule 3110 for its conduct prior to December 5, 2011 and FINRA Rule 4511 for its conduct on and after that date.

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

- A censure;
- A fine in the amount of \$100,000; and
- Restitution in the amount of \$44,740.33.

Restitution is ordered to be paid to the customers listed on Attachment A hereto in the total amount of \$44,740.33, 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 March 28, 2011, until the date this AWC is accepted by the NAC.

A registered principal of Capitol shall submit satisfactory proof of payment of restitution or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted to Karen C. Daly, Principal Regional Counsel, either by letter that identifies the Respondent and the case number mailed to FINRA, 1601 Market Street, Suite 2700, Philadelphia, PA 19103 or by e-mail from a work-related account of the registered principal of Respondent firm to karen.daly@finra.org. This proof shall be provided to the FINRA staff member listed above no later than 120 days after 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 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 days of forwarding the undistributed restitution and interest to the appropriate state authority.

Respondent has specifically and voluntarily waived any right to claim an inability to pay at any time hereafter the monetary sanctions imposed in this matter.

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.

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

II.

WAIVER OF PROCEDURAL RIGHTS

Capitol specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against the Firm;
- 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, Capitol 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 the Firm; and

C. If accepted:

1. this AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the Firm;
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. Capitol 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. The Firm 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 the Firm'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. The Firm 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 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 the Firm has 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 the Firm to submit it.

5/4/2018
Date (mm/dd/yyyy)

Respondent Capitol Securities Management, Inc.

By: 
Mark Hamby, President

Accepted by FINRA:

May 25, 2018

Date

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



Karen C. Daly
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FINRA Department of Enforcement
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Fax: (215) 496-0434
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ATTACHMENT A
SCHEDULE OF RESTITUTION

No.	Account Number	Transaction Date	Amount Owed
1	*0223	5/22/2014	\$ 35.13
2	*0223	5/22/2014	\$ 270.30
3	*0468	3/22/2012	\$ 166.49
4	*0468	4/24/2014	\$ 898.58
5	*0468	9/10/2015	\$ 831.01
6	*0468	12/7/2016	\$ 76.44
7	*0468	12/16/2016	\$ 3.10
8	*0468	1/11/2017	\$ 499.30
9	*0468	1/11/2017	\$ 499.33
10	*0559	3/23/2016	\$ 198.49
11	*0559	4/22/2016	\$ 83.55
12	*0559	5/3/2016	\$ 806.32
13	*0559	9/15/2016	\$ 291.85
14	*0559	2/7/2017	\$ 206.15
15	*0559	2/14/2017	\$ 113.20
16	*0559	2/14/2017	\$ 187.21
17	*0559	2/15/2017	\$ 268.67
18	*0559	2/23/2017	\$ 4.52
19	*0559	3/13/2017	\$ 164.49
20	*0567	11/24/2015	\$ 78.69
21	*0567	3/23/2016	\$ 192.37
22	*0567	4/22/2016	\$ 100.83
23	*0567	5/3/2016	\$ 588.56
24	*0567	9/15/2016	\$ 291.86
25	*0567	2/14/2017	\$ 155.55
26	*0567	2/15/2017	\$ 167.10
27	*0567	3/13/2017	\$ 164.49
28	*0658	11/17/2015	\$ 86.83
29	*0658	3/23/2016	\$ 157.39
30	*0658	4/22/2016	\$ 152.55
31	*0658	6/7/2016	\$ 108.32
32	*0658	6/10/2016	\$ 23.34
33	*0658	6/21/2016	\$ 298.41
34	*0658	6/21/2016	\$ 41.02
35	*0658	9/15/2016	\$ 650.52
36	*0658	11/15/2016	\$ 228.01

37	*0658	11/15/2016	\$	9.82
38	*0658	12/21/2016	\$	304.98
39	*0658	2/15/2017	\$	186.08
40	*0658	3/10/2017	\$	331.69
41	*0732	9/17/2015	\$	260.18
42	*0732	2/22/2016	\$	73.20
43	*0732	5/17/2016	\$	409.15
44	*0732	6/9/2016	\$	7.87
45	*0732	6/9/2016	\$	22.37
46	*0732	12/20/2016	\$	187.68
47	*0831	5/11/2011	\$	257.13
48	*0831	11/17/2014	\$	166.27
49	*0831	8/26/2015	\$	863.46
50	*0831	3/16/2016	\$	375.27
51	*0971	3/23/2016	\$	157.41
52	*0971	5/3/2016	\$	588.39
53	*0971	8/25/2016	\$	263.28
54	*0971	8/25/2016	\$	0.32
55	*0971	1/26/2017	\$	233.98
56	*0971	1/26/2017	\$	0.50
57	*0971	2/17/2017	\$	104.80
58	*0971	2/17/2017	\$	83.23
59	*0971	2/17/2017	\$	91.37
60	*1136	11/25/2016	\$	80.32
61	*1406	9/25/2012	\$	38.88
62	*1652	9/23/2015	\$	3.40
63	*2275	1/20/2015	\$	142.25
64	*2275	7/13/2015	\$	145.13
65	*2275	9/8/2015	\$	147.72
66	*2275	9/9/2015	\$	105.90
67	*2275	10/27/2015	\$	24.79
68	*2275	3/9/2016	\$	293.27
69	*2275	6/27/2016	\$	331.56
70	*2275	9/7/2016	\$	266.60
71	*2275	10/4/2016	\$	288.22
72	*2275	12/14/2016	\$	285.99
73	*2275	2/2/2017	\$	405.69
74	*2275	2/21/2017	\$	300.82
75	*2333	3/2/2015	\$	366.75
76	*2333	9/21/2015	\$	123.21
77	*2333	3/24/2016	\$	260.65

78	*2333	4/5/2016	\$	3.54
79	*2333	7/20/2016	\$	228.53
80	*2333	12/23/2016	\$	131.66
81	*2374	2/12/2015	\$	124.10
82	*2416	4/30/2015	\$	79.92
83	*2516	11/25/2013	\$	186.32
84	*2516	11/6/2014	\$	91.19
85	*2615	5/20/2014	\$	28.25
86	*2615	7/11/2014	\$	61.07
87	*2712	12/1/2014	\$	359.19
88	*2789	10/1/2014	\$	10.48
89	*2948	2/22/2013	\$	55.66
90	*3060	2/25/2013	\$	113.46
91	*3278	5/19/2014	\$	17.49
92	*3278	8/26/2014	\$	388.10
93	*3454	11/5/2015	\$	246.92
94	*3454	5/5/2016	\$	331.18
95	*3454	6/22/2016	\$	180.01
96	*3454	8/30/2016	\$	89.80
97	*3454	9/26/2016	\$	98.59
98	*3454	1/9/2017	\$	109.56
99	*3454	2/9/2017	\$	367.79
100	*3454	2/16/2017	\$	196.82
101	*3520	11/9/2016	\$	234.38
102	*3672	11/20/2014	\$	192.28
103	*4798	3/21/2012	\$	91.23
104	*4837	12/8/2016	\$	2.12
105	*5610	10/6/2014	\$	3.25
106	*5712	5/22/2014	\$	32.79
107	*5712	6/10/2014	\$	0.03
108	*5712	7/28/2016	\$	346.39
109	*5712	11/29/2016	\$	168.97
110	*5712	11/29/2016	\$	102.13
111	*5712	1/3/2017	\$	445.90
112	*5712	1/4/2017	\$	172.27
113	*5743	11/17/2011	\$	11.32
114	*5792	2/25/2013	\$	42.25
115	*5897	3/22/2016	\$	93.33
116	*5897	4/15/2016	\$	31.37
117	*5897	6/21/2016	\$	120.06
118	*5897	8/23/2016	\$	203.21

119	*5897	9/27/2016	\$	66.02
120	*5897	11/18/2016	\$	165.47
121	*5897	12/16/2016	\$	277.53
122	*5897	1/25/2017	\$	173.72
123	*5917	11/17/2011	\$	113.81
124	*5954	3/23/2016	\$	195.81
125	*5954	5/3/2016	\$	617.63
126	*5954	8/24/2016	\$	297.51
127	*5954	1/26/2017	\$	255.08
128	*5954	2/14/2017	\$	91.46
129	*5954	2/16/2017	\$	150.59
130	*5954	2/16/2017	\$	209.21
131	*6010	3/24/2016	\$	106.37
132	*6010	4/15/2016	\$	55.09
133	*6010	5/3/2016	\$	631.73
134	*6010	8/26/2016	\$	202.01
135	*6010	8/26/2016	\$	20.85
136	*6010	1/24/2017	\$	136.81
137	*6010	2/23/2017	\$	40.62
138	*6010	2/23/2017	\$	187.39
139	*6077	2/23/2017	\$	195.51
140	*6135	11/17/2015	\$	25.59
141	*6135	11/17/2015	\$	0.02
142	*6135	3/23/2016	\$	284.78
143	*6135	4/14/2016	\$	71.76
144	*6135	5/4/2016	\$	542.73
145	*6135	6/8/2016	\$	77.53
146	*6135	8/24/2016	\$	270.51
147	*6135	8/24/2016	\$	40.85
148	*6135	8/24/2016	\$	146.37
149	*6135	11/22/2016	\$	152.52
150	*6135	11/22/2016	\$	22.05
151	*6135	12/20/2016	\$	259.26
152	*6135	1/17/2017	\$	125.77
153	*6135	1/26/2017	\$	234.12
154	*6135	2/17/2017	\$	219.66
155	*6135	2/17/2017	\$	50.14
156	*6135	2/17/2017	\$	98.02
157	*6135	3/13/2017	\$	164.49
158	*6143	4/22/2016	\$	61.09
159	*6143	5/17/2016	\$	680.70

160	*6143	8/25/2016	\$	323.97
161	*6143	2/23/2017	\$	231.58
162	*6143	2/23/2017	\$	342.89
163	*6226	9/16/2016	\$	124.18
164	*6782	12/21/2011	\$	277.90
165	*6824	9/23/2015	\$	5.45
166	*6956	11/17/2011	\$	5.95
167	*6961	5/22/2014	\$	338.62
168	*7492	10/30/2013	\$	30.91
169	*7492	9/23/2015	\$	11.37
170	*7500	10/30/2013	\$	30.91
171	*7500	9/24/2015	\$	6.33
172	*7618	4/25/2014	\$	103.04
173	*7618	3/26/2015	\$	82.72
174	*7622	7/23/2014	\$	13.88
175	*7996	9/5/2014	\$	259.57
176	*8340	11/25/2013	\$	388.97
177	*8340	11/25/2013	\$	311.81
178	*8340	2/11/2014	\$	116.99
179	*8340	4/24/2014	\$	450.03
180	*8340	4/24/2014	\$	624.71
181	*8340	7/11/2014	\$	308.65
182	*8340	7/11/2014	\$	513.79
183	*8340	7/11/2014	\$	512.54
184	*8340	11/20/2014	\$	267.06
185	*8382	12/2/2016	\$	523.85
186	*8382	12/2/2016	\$	169.02
187	*8382	12/29/2016	\$	102.63
188	*8382	12/29/2016	\$	102.61
189	*8382	2/17/2017	\$	116.77
190	*8504	11/6/2014	\$	244.47
191	*8820	11/25/2013	\$	286.68
192	*8954	9/23/2015	\$	9.87
193	*9068	11/25/2013	\$	314.40
194	*9068	5/22/2014	\$	119.91
195	*9068	7/10/2014	\$	518.60
196	*9225	5/21/2014	\$	302.17
197	*9266	11/25/2013	\$	300.17
198	*9266	7/16/2014	\$	275.61
199	*9296	5/17/2011	\$	74.82
200	*9296	6/9/2011	\$	324.42

201	*9296	9/25/2015	\$	79.79
202	*9296	12/19/2016	\$	409.45
203	*9296	12/19/2016	\$	409.63
204	*9506	2/23/2015	\$	145.06
205	*9589	11/25/2013	\$	427.04
206	*9589	7/10/2014	\$	440.01
207	*9597	11/25/2013	\$	248.42
208	*9597	4/9/2014	\$	69.39
209	*9597	5/20/2014	\$	168.41
210	*9597	5/20/2014	\$	134.72
211	*9597	7/10/2014	\$	497.89
212	*9597	11/20/2014	\$	620.08
213	*9597	3/18/2015	\$	187.85
214	*9597	6/23/2016	\$	242.26

Total Restitution: \$ 44,740.33