

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2017053342601**

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

RE: Brian John Hussey, Jr., Respondent
General Securities Representative
CRD No. 4640067

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 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

Hussey entered the securities industry as an unregistered employee of Ameriprise Financial Services, Inc. ("Ameriprise" or the "Firm") in 2002. He obtained his Series 7 license in 2008 and associated with Ameriprise as a general securities representative. He also obtained a Series 66 license in 2008. He remains associated with Ameriprise. Hussey is subject to FINRA's jurisdiction because he is currently associated with and registered through a FINRA member.

RELEVANT DISCIPLINARY HISTORY

Hussey has no prior disciplinary history.

OVERVIEW

From February 2014 through July 2014, Hussey made unsuitable recommendations to a customer resulting in her investing 100% of her accounts in two penny stocks in violation of FINRA Rule 2111 and 2010. Hussey's member firm prohibited soliciting trades in these type of stocks, and thus, in order to effect the transactions, Hussey mismarked 16 trades as "unsolicited" in violation of FINRA Rules 4511 and 2010.

In July 2014, at Hussey's recommendation, the customer moved her account to another FINRA member firm, where Hussey, with the customer's permission, engaged in discretionary trading of her account using her login credentials. Specifically, from August 2014 through May 2016, Hussey exercised *de facto* discretion to trade TP's account at the third party firm in violation of NASD Conduct Rule 3050(c) and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

In September 2011 and December 2012, Hussey's customer, TP, who was an administrative employee of the Firm, opened two IRAs. TP's investment objectives were "growth," and her risk tolerance was "aggressive" in one account and "conservative/moderate" in the other. As of December 2012, the IRAs represented nearly all TP's liquid net worth. Prior to February 2014, TP's accounts were invested in various mutual funds.

Starting in February 2014, Hussey recommended that TP sell 100% of the mutual fund positions in her IRA accounts and invest the proceeds in two penny stocks focused on the marijuana business, Fusion Pharm, Inc. ("FSPM") and Hemp, Inc. ("HEMP"). The transactions were solicited in violation of the Firm's policies prohibiting the solicitation of penny stocks. In total, from February 12, 2014 to July 17, 2014, Hussey mismarked 16 solicited trades as unsolicited in TP's accounts to avoid the Firm's policy preventing its representatives from soliciting the purchase of penny stocks.

Moreover, during this period, the SEC issued an Order suspending all trading in FSPM's stock from May 16, 2014 through May 30, 2014. Hussey had already heavily invested TP's accounts in FSPM. Three days after trading resumed in FSPM, Hussey purchased an additional \$22,679.50 in FSPM stock in TP's account. By July 2014, Hussey had concentrated 100% of her portfolio in FSPM and HEMP.

After Ameriprise made inquiries regarding the trading activity in the customer's IRAs, in July 2014, Hussey recommended that TP transfer her assets to another member firm, CS, to avoid future compliance issues. Based on Hussey's recommendation, TP closed her Ameriprise IRAs and transferred the holdings to an account she already maintained at CS, which prior to the transfer had a balance

of less than \$10,000. Hussey then obtained TP's username and login credentials from TP to access and actively manage TP's CS account. From August 2014 through May 2016, Hussey aggressively traded TP's account at CS using discretion, making short-term, in-and-out trades in FSPM, HEMP, and various speculative energy stocks. Hussey did not disclose his exercise of discretion in this third party account to Ameriprise or CS.

In May 2016, TP complained to Ameriprise, asserting \$58,572 of market losses in her Ameriprise accounts and the CS account, in addition to damages from the lost opportunity to participate in market gains during the same period. Ameriprise settled for \$67,019.24, which Hussey is obligated to pay back to the Firm.

Unsuitable Transactions

FINRA Rule 2111 requires that a recommended transaction or investment strategy involving a security or securities is suitable for the customer. "A broker's recommendations must be consistent with his customer's best interests, and he or she must abstain from making recommendations that are inconsistent with the customer's financial situation."¹ A violation of FINRA Rule 2111 is also a violation of FINRA Rule 2010.

TP's risk tolerance in her Ameriprise accounts was "aggressive" in one account and "conservative/moderate" in the other, and her investment objectives were "growth" in both accounts. Her Ameriprise accounts represented nearly all of her liquid net worth. Hussey recommended that TP invest nearly all of her liquid assets into two thinly-traded penny stocks. Given TP's age, limited liquid net worth, and lack of investment experience, concentrating nearly all of her assets into two thinly-traded penny stocks was inconsistent with her investment objectives and financial situation. Because of Hussey's recommendations, TP lost a majority of her investments in highly speculative securities. The overconcentration of TP's account in those securities at Hussey's recommendation was unsuitable for her. By virtue of the foregoing, Hussey violated FINRA Rules 2111 and 2010.

False and Inaccurate Books and Records

FINRA Rule 4511 provides that, "Members shall make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules." SEC Rule 17a-3 requires firms to make a record of "each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted." This record includes the terms and conditions of the order, including whether the order was solicited. A registered representative who mismarks an order as unsolicited therefore causes a firm to create an inaccurate record, in violation of Rules 4511 and 2010.

¹ *Dane S. Faber*, 57 S.E.C. 297, 310 (2004) (citations omitted).

On 16 occasions between February 2014 and July 2014, Hussey mismarked order tickets for trades as unsolicited when, in fact, he solicited the trades, in violation of FINRA Rules 4511 and 2010. Hussey engaged in this conduct to facilitate transactions in securities that he knew were prohibited for solicitation by his member firm, Ameriprise. Because Ameriprise's electronic order system did not allow solicited orders in penny stocks to be processed, Hussey mismarked the orders as unsolicited.

By virtue of the foregoing, Hussey violated FINRA Rules 4511 and 2010.

Failure to Disclose Trading in Account Held at Another Member Firm

NASD Conduct Rule 3050(c)² requires that a person associated with a member, prior to opening an account with another member, shall notify both the employer member and the executing member, in writing, of his or her association with the other member. Rule 3050(c) further provides that if the account was established prior to association of the person with the employer member, the associated person shall notify both members in writing promptly after becoming so associated. NASD Conduct Rule 3050(e) provides that this requirement applied to accounts with respect to which an associated person has discretionary authority, including *de facto* discretionary authority.

From August 2014 through May 2016, Hussey exercised *de facto* discretionary authority by using TP's login credentials to execute trades in TP's account at CS. Hussey failed to provide notice to both his employing firm, Ameriprise, and CS, the executing member of the outside accounts over which he had discretionary authority. By virtue of the foregoing, Hussey violated NASD Conduct Rule 3050(c) and FINRA Rule 2010.

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

A seven-month suspension from associating with any FINRA member firm in all capacities.

Respondent has submitted a sworn financial statement and demonstrated an inability to pay. In light of the financial status of Respondent, no monetary sanctions have been imposed.

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 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).

² NASD Conduct Rule 3050 was superseded by FINRA Rule 3210 on April 3, 2017, subsequent to the relevant conduct here.

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

05/21/2018
Date (mm/dd/yyyy)

Brian John Hussey, Jr.
Brian John Hussey, Jr.

Reviewed by:



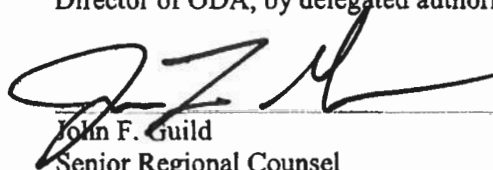
Lawton R. Graves, Esq.
Counsel for Respondent
Murphy Anderson
1501 San Marco Blvd.
Jacksonville, FL 32207

Accepted by FINRA:

5-23-2018

Date

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



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