

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2017055890901**

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

RE: Cesar Hurtado (Respondent)
General Securities Representative
CRD No. 4137948

Pursuant to FINRA Rule 9216, Respondent Cesar Hurtado 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 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

Hurtado entered the securities industry in January 2000 and was first registered as a General Securities Representative (GSR) in April 2000. In January 2003, Hurtado was registered as a GSR through his association with Oppenheimer & Co. Inc., where he remains associated today.¹

OVERVIEW

Between January 2013 and August 2019, Hurtado recommended and effected an unsuitable options strategy in the accounts of two customers. He repeatedly recommended that the customers take assignment, hold the subject securities, and later sell them at a loss, rather than mitigate losses through a spread options strategy as intended. Hurtado therefore violated FINRA Rules 2111(a), 2360(b)(18)(A), 2360(b)(19), and 2010.

¹ For more information about the respondent, visit BrokerCheck® at www.finra.org/brokercheck.

FACTS AND VIOLATIVE CONDUCT

This matter arose from the filing of a Uniform Application for Securities Industry Registration or Transfer Form (Form U4) that disclosed customer complaints regarding the conduct at issue here.

Hurtado Recommended and Implemented Unsuitable Put Spread Investment Strategies

An investor pays a premium when they buy a put option, in return for the right to sell an underlying stock at a specified price (the "strike price") for a period of time. Conversely, an investor who sells (or "writes") a put collects a premium but promises to purchase the underlying stock at the strike price for a period of time.

A put spread is one way to mitigate risk of option investments, created when equal number of put options are bought and sold simultaneously. Unlike the outright purchase of put options which are employed by bearish investors, put spreads can be constructed to profit from a bull, bear, or neutral market, and ultimately limit the investor's risk of loss. Specifically, the maximum profit generated by put spreads is limited to the difference in the premiums on the long and short puts, while the maximum loss is the difference between the puts' strike prices minus the net premium.

Under FINRA Rule 2111(a), an associated person must have a reasonable basis to believe that a transaction or investment strategy is suitable for the customers to whom it is recommended, based on the customers' investment profiles. Violating FINRA Rule 2111(a) also constitutes a violation of FINRA Rule 2010.

In addition, pursuant to FINRA Rule 2360(b)(19)(A) and (B), an associated person may recommend the purchase or sale of an options contract only if they have reasonable grounds to believe that the transaction is "not unsuitable for [the] customer." Violating FINRA Rule 2360(b)(19)(A) and (B) also constitutes a violation of FINRA Rule 2010.

During the relevant period, Hurtado recommended and effected a complex put spread strategy for two customers. Both customers were inexperienced options investors with relatively conservative investment objectives. They both relied on their brokerage accounts for income. Hurtado understood that put spreads are designed as a risk-containment strategy and recommended such investments to these customers in those terms. In practice, however, with certain put spread transactions, Hurtado recommended that the customers forego this risk mitigation mechanism. Specifically, after putting on the initial put spread, Hurtado recommended that the customers take assignment of, and hold, securities whose stock prices had already declined, on occasions where he remained bullish on these securities. In many instances, after the customer held the security for a period of time, Hurtado recommended that the customer sell the security at a loss larger than the original put spread's maximum loss.

For example, Hurtado recommended that one customer complete a put spread on Twitter stock. At the outset of the transaction, the customer faced a maximum loss of \$92,700 on

the put spread strategy. After the customer purchased the initial options contracts, the stock price of Twitter declined. Hurtado, however, did not recommend that the customer close out the positions and thus protect against further loss. Hurtado instead recommended that the customer roll the investment into long puts with lower strike prices, then eventually take assignment and hold the security. Finally, Hurtado recommended that the customer sell the stock at a loss. The customer ultimately lost over \$207,000 on the series of transactions – more than double the original maximum loss had Hurtado implemented the put spread strategy as intended.

Hurtado also magnified the risk of numerous put spread transactions, and subsequent assignments, by recommending that the two customers fund assignments on margin. Executing securities transactions on margin increases risk by exposing the account to margin calls and by requiring the customer to pay interest on the margin loan. Indeed, both accounts saw individual assignments of nearly \$1 million funded on margin during the relevant period. Also, in 2015, Hurtado recommended that the customers over-concentrate their options investments in the energy sector, thus further increasing the risk of loss once the customers took assignment of the subject securities.

Hurtado's recommendations caused approximately \$1.6 million in net losses for the two customers from 2013 through 2019. Those losses could have been avoided or substantially limited through suitable investment recommendations.²

When Hurtado recommended that the customers take assignment of, and hold, securities whose stock prices had already declined, Hurtado disregarded the risk-containment purpose of a put spread strategy, and then magnified the risk of loss through margin transactions and energy sector concentration. This strategy was unsuitable for these customers given their respective investment profiles. Therefore, Hurtado violated FINRA Rules 2111(a), 2360(b)(18)(A) 2360(b)(19), and 2010.

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

- A 45-day suspension from associating with any FINRA member in all capacities;
- A \$5,000 fine; and
- An undertaking that within 90 days of notice that this AWC has been accepted, Hurtado will attend and satisfactorily complete no less than 10 hours of continuing education concerning options trading and customer suitability, by a provider not unacceptable to FINRA. Hurtado will notify Thomas Kuczajda, Director, of the name and contact information of the provider of the continuing education at least 10 days prior to attending the continuing education. Within 30 days following the completion of the continuing education, Hurtado will submit written proof that the continuing education program was satisfactorily completed to Thomas Kuczajda at tom.kuczajda@finra.org. All correspondence must

² Both customers settled claims against the firm in connection with Hurtado's conduct for a total amount of \$560,000, to which Hurtado personally contributed \$280,000.

identify the Respondent and matter number 2017055890901. Upon written request showing good cause, FINRA staff may extend any of the deadlines related to the continuing education component of the sanction.

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

Respondent agrees to pay the monetary sanction 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 he 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 sanction imposed in this matter.

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 him;
- 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, 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 testimonial obligations or 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. Respondent understands that he 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.

Respondent certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; Respondent has agreed to the AWC's provisions voluntarily; and 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 him to submit this AWC.

July 7th 2021
Date



Cesar Hurtado
Respondent

Reviewed by:



Angela A. Turiano
Counsel for Respondent
Bressler Amery & Ross, P.C.
17 State Street 34th Floor
New York City, NY 10004

Accepted by FINRA:

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



8/6/2021
Date

Thomas Kuczajda
Director
FINRA, Department of Enforcement
15200 Omega Drive, Suite 300
Rockville, MD 20850