

**FINANCIAL INDUSTRY REGULATORY
AUTHORITY LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019060694201**

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

RE: Sanctuary Securities, Inc., (formerly known as David A. Noyes & Company)
(Sanctuary or Respondent)
Member Firm CRD No. 205

Pursuant to FINRA Rule 9216, Respondent 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

Respondent became a member of FINRA in December 1939 and was known as David A. Noyes & Company until March 5, 2020, when it changed its name to Sanctuary Securities, Inc. in connection with executive leadership changes at the firm. The firm has 35 branch offices and approximately 190 registered representatives. Respondent has no relevant disciplinary history.

OVERVIEW

From January 1, 2014 through December 31, 2018, Respondent failed to establish and maintain a supervisory system, including written procedures, reasonably designed to achieve compliance with FINRA Rule 2111 in relation to the solicited sales of inverse and leveraged exchange traded funds (collectively Non-Traditional ETFs or NT-ETFs) in that the firm's supervisory system was not sufficiently tailored to address the unique features and risks of these products. Therefore, Respondent violated FINRA Rule 3110 and its predecessor, NASD Rule 3010, as well as FINRA Rule 2010.¹

¹ FINRA Rule 3110 superseded NASD Rule 3010 on December 1, 2014.

From January 2017 through January 2019, the firm failed to review and evaluate the outside business activities of approximately 15 of its registered representatives, in violation of FINRA Rules 3270.01 and 2010.

From January through December 2018, the firm distributed sales materials in connection with three private placement offerings that contained prohibited performance projections, in violation of FINRA Rules 2210(d)(1)(F) and 2010.

From June 2018 through June 2019, the firm failed to file offering documents with FINRA related to eight private placements sold by the firm's registered representatives, in violation of FINRA Rules 5123 and 2010.

Finally, between April and August 2019, the firm failed to terminate an offering of securities that did not meet a minimum contingency requirement under the terms of a private placement memorandum and return funds to investors, in contravention of Rule 10b-9 of the Securities Exchange Act of 1934. Therefore, the firm willfully violated Exchange Act Rule 10b-9 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from multiple FINRA examinations.

I. Respondent failed to establish, maintain, and enforce a supervisory system, including written procedures, reasonably designed to achieve compliance with FINRA suitability standards with regard to Non-Traditional ETF transactions.

A. Background

1. Non-Traditional ETFs

NT-ETFs are designed to return a multiple of an underlying index or benchmark, the inverse of that benchmark, or both, over only the course of one trading session—usually a single day. NT-ETFs typically rebalance their portfolios on a daily basis (also known as the “daily reset”). Due to the effects of compounding of daily returns during the holding period, the performance of NT-ETFs over periods longer than a single trading session “can differ significantly from the performance ... of their underlying index or benchmark during the same period of time.”² Because of these risks and the complexity of the products, FINRA has advised broker-dealers that NT-ETFs “are typically not suitable for retail investors who plan to hold them for more than one trading session, particularly in volatile markets.”

By January 2009, NT-ETFs' unique features and risks were prominently discussed in NT-ETF prospectuses and industry articles. FINRA Regulatory Notice 09-31

² FINRA Regulatory Notice 09-31, FINRA Reminds Firms of Sales Practice Obligations Relating to Leveraged and Inverse Exchange-Traded Funds (June 2009).

cautioned firms about the need to establish a reasonable supervisory system “to ensure that their associated persons comply with all applicable FINRA and SEC rules when recommending any product, including leveraged and inverse ETFs,” and implement written supervisory procedures that, among other things, require associated persons to perform appropriate suitability reviews. That Notice provided specific guidance regarding the risks and suitability concerns associated with NT-ETFs, and the need for a supervisory system to address those issues. The Notice also reminded firms that they must train registered persons, including supervisors, about the terms, features, and risks of all NT-ETFs.

The suitability obligations under FINRA Rule 2111 and its predecessor, NASD Rule 2310, require firms and their representatives to, *inter alia*, perform reasonable diligence to understand the nature of a recommended security, as well as the potential risks and rewards.³ With respect to NT-ETFs, firms must understand the terms and features of the funds, including how they are designed to perform and how holding periods impact a fund’s performance.⁴

2. Respondent’s Non-Traditional ETF Business

From January 1, 2014 to December 31, 2018, approximately 30 firm registered representatives recommended to retail customers the purchase of approximately \$5 million worth of NT-ETFs which generated approximately \$60,000 in commissions. Respondent executed at least 600 NT-ETF purchases in approximately 150 retail customer accounts. Many of the customers to whom the firm recommended these products had primary investment objectives that included income, growth and income, and growth, and conservative or moderate risk tolerances. Many customers also held their NT-ETF positions for extended periods of time, often months and sometime years, and suffered net losses in those positions. In October 2018, the firm issued a directive to its registered representatives prohibiting them from purchasing *any* NT-ETFs on behalf of their customers going forward.

B. Respondent Failed to Establish and Maintain a Reasonable Supervisory System, including Written Procedures, Regarding Non-Traditional ETFs.

FINRA Rule 3110(a) and its predecessor, NASD Rule 3010(a), provides that “[e]ach member shall establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.”

FINRA Rule 3110(b)(1) and its predecessor, NASD Rule 3010(b)(1), requires that “[e]ach member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and

³ FINRA Rule 2111 superseded NASD Rule 2310 effective July 9, 2012.

⁴ See Notice 09-31 at 3; see also, FINRA Regulatory Notice 12-03, Heightened Supervision of Complex Products (January 2012), at 5-6.

regulations, and with applicable FINRA rules.”

The reasonable-basis suitability obligation under FINRA Rule 2111 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 associated 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 that member firms and associated persons “observe high standards of commercial honor and just and equitable principles of trade.” A violation of FINRA Rule 3110 also constitutes a violation of FINRA Rule 2010.

From January 1, 2014 to December 31, 2018, Respondent failed to have in place a reasonable supervisory system to monitor the recommendation of Non-Traditional ETFs. The firm did not have a reasonable supervisory system for reviewing representatives’ recommendations to purchase NT-ETFs based on a customer’s age, investment objective, risk tolerance or financial profile, including net worth. While the firm required representatives to complete product-specific training prior to recommending NT-ETF transactions, no such training was ever provided to representatives or to the supervisors reviewing their conduct. Likewise, the firm failed to educate, through its written procedures or otherwise, its representatives and supervisors regarding how to determine whether a NT-ETF was suitable for customers given the unique features and risks of those products.

Moreover, although the firm’s supervisory system incorporated exception reports and alerts as part of its routine electronic trade review system, none of those exception reports or alerts were designed or used to surveil for the unique risks posed by NT-ETFs. Additionally, the firm’s electronic trade review system was not designed to identify NT-ETF transactions held for longer periods, nor did the firm require supervisors to review NT-ETF transactions with this particular risk in mind. As a result, the firm’s customers held positions in NT-ETFs for extended periods, spanning from weeks to years in many instances, causing significant losses.

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

II. Respondent failed to evaluate registered representatives' outside business activities.

FINRA Rule 3270 prohibits registered persons from engaging in outside business activities (OBAs) unless they provide prior written notice to their member firms, in such form as specified by the member. After receiving notice that one of its registered persons is engaged in an OBA, every firm must evaluate that OBA consistent with Rule 3270. As described in the Supplementary Material .01 to Rule 3270:

Upon receipt of a written notice under Rule 3270, a member shall consider whether the proposed activity will: (1) interfere with or otherwise compromise the registered person's responsibilities to the member and/or the member's customers or (2) be viewed by customers or the public as part of the member's business based upon, among other factors, the nature of the proposed activity and the manner in which it will be offered. Based on the member's review of such factors, the member must evaluate the advisability of imposing specific conditions or limitations on a registered person's outside business activity, including where circumstances warrant, prohibiting the activity. A member also must evaluate the proposed activity to determine whether the activity properly is characterized as an outside business activity or whether it should be treated as an outside securities activity subject to the requirements of Rule 3280. A member must keep a record of its compliance with these obligations with respect to each written notice received and must preserve this record for the period of time and accessibility specified in SEA Rule 17a-4(e)(1).

The firm's written procedures required its compliance department to review and approve, or disapprove, in writing any outside business activity disclosed by an employee and to notify the employee and the employee's supervisor of that determination.

From January 2017 to January 2019, the firm recruited and hired approximately 15 new registered representatives. As part of the registration process, each representative disclosed various OBAs to the firm in writing. The firm, however, never evaluated the disclosed OBAs. The firm failed to evaluate whether the representatives' proposed activities would interfere with each representative's responsibilities to the firm, could be viewed by the firm's customers as part of the firm's business, or, more importantly, whether it should be treated as outside securities activity subject to the requirements of FINRA Rule 3280.

Therefore, Respondent violated FINRA Rules 3270.01 and 2010.

III. Sanctuary distributed communications to the public that contained prohibited performance projections.

FINRA Rule 2210(d)(1)(F) states that communications with the public may not project investment performance, imply that past performance will recur, or make any

exaggerated or unwarranted claim, opinion or forecast. A violation of FINRA Rule 2210 also constitutes a violation of FINRA Rule 2010.

From approximately January 1 to December 31, 2018, the firm distributed or made available to potential investors private placement materials related to three different offerings, all sponsored by the same issuer. The materials consisted of private placement memoranda (PPMs) that included various exhibits prepared by the issuer and that were specific to each offering.

Exhibit C to each of the PPMs, entitled “Property Summary & Financial Projections,” were communications subject to FINRA Rule 2210. Each communication contained financial metrics for each offering, including projections of future investment performance for up to a 15-year period in the sections entitled “Investor Return Summary” and “Investment Return Summary.” These projections included, but were not limited to, references to multiples on investment capital (MOIC), internal rate of return (IRR), and average cash-on-cash percentage return over that future 15-year period. Accordingly, the communications made through Exhibit C in all three offerings contained forward-looking projections of investor and investment returns, which are prohibited by FINRA Rule 2210(d)(1)(F).

Therefore, Respondent violated FINRA Rules 2210 and 2010.

IV. Respondent failed to timely file private placement memoranda with FINRA.

FINRA Rule 5123 requires that “[e]ach member that sells a security in a non-public offering in reliance on an available exemption from registration under the Securities Act (private placement) must: (i) submit to FINRA, or have submitted on its behalf, a copy of any private placement memorandum, term sheet or other offering document, . . . used in connection with such sale within 15 calendar days of the date of first sale, or (ii) notify FINRA that no such offering documents were used.”⁵ Rule 5123 was implemented to “enhance oversight and investor protection” and provide “more timely and complete information about the private placement activities of firms on behalf of other issuers.”⁶ A violation of FINRA Rule 5123 also constitutes a violation of FINRA Rule 2010.

From January 2017 through January 2019, the firm failed to timely file with FINRA the required materials related to eight private offerings that it offered for sale to its customers. The firm belatedly filed with FINRA materials for five private offerings (between 61 and 251 days late) and did not file any required materials for the other three offerings.

Therefore, Respondent violated FINRA Rules 5123 and 2010.

⁵ See FINRA Rule 5123.

⁶ See FINRA Regulatory Notice 12-40, *Private Placements of Securities* (December 2012).

V. While acting as a placement agent in connection with a contingency offering, the firm failed to terminate that offering and return investor funds after the contingency was not satisfied by the required deadline.

A “part-or-none” offering of securities (also known as a “best efforts contingency offering”) is an offering that requires the issuer to raise a minimum investment amount by a specified date. A broker-dealer acting as a placement agent for a best-efforts contingency offering must comply with the requirements of Exchange Act Rule 10b-9. Under Exchange Act Rule 10b-9, if an offering’s contingencies, including a minimum investment contingency, are not satisfied by the date specified in the offering materials, the offering must be terminated and investors promptly refunded.

From April to August 2019, the firm acted as placement agent for the LLF offering, through which the issuer sought to raise a total of \$6 million for an investment in a senior living facility located in Florence, Kentucky. The PPM for the LLF offering required that a minimum of \$5 million investor funds be raised by April 30, 2019. The PPM further provided that, if the \$5 million minimum amount was not raised as of that specified date, all funds would be returned to investors without interest.

By the April 30, 2019 date specified in the LLF PPM, the firm had not raised investor funds in an amount that satisfied the \$5 million minimum contingency required by the PPM. The firm did not terminate the offering and return investor funds at that time, however, as it was required to do pursuant to the terms of the PPM. Rather, the firm continued to solicit investments in the LLF offering, under a modified PPM that improperly extended the termination date to July 31, 2019 and reduced the minimum contingency to \$4 million. Between April 30 and July 31, 2019, the firm raised funds sufficient to satisfy this modified contingency amount.

Therefore, Respondent willfully violated Exchange Act Rule 10b-9 and FINRA Rule 2010.

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

- A censure,
- A \$160,000 fine, and
- Restitution of \$370,161.39 plus interest as described below, and

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 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 sanction 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 \$370,161.39 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 the date of each customer's sale of a Non-Traditional ETF 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 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.

Restitution payments to customers shall be preceded or accompanied by a letter, not unacceptable to FINRA, describing the reason for the payment and the fact that the payment is being made pursuant to a settlement with FINRA and as a term of this AWC.

Respondent understands that this settlement includes a finding that it willfully violated Exchange Act Rule 10b-9 of the Securities Exchange Act of 1934 and that under Article III, Section 4 of FINRA's By-Laws, this makes Respondent subject to a statutory disqualification with respect to membership.

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 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 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.

5/24/2021
Date

Kevin P. Chase
Sanctuary Securities, Inc.

Print Name: Kevin P. Chase

Title: CCO

Reviewed by:

Paul Tyrrell
Paul Tyrrell
Sidley Austin LLP
Counsel for Respondent
60 State Street, 36th Floor
Boston, MA 02109

Accepted by FINRA:

July 1, 2021
Date

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

Richard A. March
Richard A. March
Senior Counsel
FINRA
Department of Enforcement
55 West Monroe, Suite 2700
Chicago, IL 60603

ATTACHMENT A
AWC NO. 2019060694201

CUSTOMER INITALS	AMOUNT OF RESTITUTION
SP	\$40,847.41
PH	\$39,536.98
TD	\$28,394.14
NOD	\$18,481.40
SF	\$15,911.62
SS	\$15,177.83
JJ	\$14,785.40
JO	\$13,758.93
JG	\$13,475.28
AA	\$11,534.49
SF	\$10,711.40
KL	\$10,667.23
SS	\$9,696.98
AT	\$9,307.85
CS	\$9,199.71
FH	\$8,117.43
CH	\$7,480.60
CH	\$7,337.87
BE	\$7,121.00
BS	\$5,533.45
RR	\$5,438.14
EH	\$5,200.01
PS	\$4,893.29
ER	\$4,689.36
CB	\$4,414.14
FCF	\$4,341.88
MO	\$4,256.23
JT	\$4,094.73
MH	\$3,878.34
BH	\$3,527.22
JC	\$3,062.32
DB	\$2,983.17
GARB	\$2,554.04
MH	\$2,544.88
VRL	\$2,491.48
YN	\$2,118.86
MVO	\$1,997.69
JR	\$1,878.57
MH	\$1,664.29
LF	\$1,223.46
MS	\$1,206.68
ES	\$1,206.67
TT	\$891.35

ATTACHMENT A
AWC NO. 2019060694201

CUSTOMER INIITALS	AMOUNT OF RESTITUTION
JI	\$838.42
SS	\$480.79
CM	\$403.07
WQ	\$248.05
JW	\$179.03
MC	\$162.64
HD	\$112.71
MM	\$102.88
	\$370,161.39