

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019062882101**

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

RE: Calton & Associates, Inc. (Respondent)
Member Firm
CRD No. 20999

Pursuant to FINRA Rule 9216, Respondent Calton & Associates, Inc. (“Calton,” the “Firm” or “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

Calton became a FINRA member in December 1987 and its registration remains in effect. Calton is headquartered in Tampa, Florida, employs approximately 407 registered representatives, and maintains approximately 166 branches. The Firm provides, among other things, trading services in connection with municipal, corporate, government, agency, and mortgage-backed fixed income securities.

RELEVANT DISCIPLINARY HISTORY

On September 14, 2016, FINRA accepted an AWC in which the Firm was fined \$5,000 for failing to report to the Trade Reporting and Compliance Engine (“TRACE”) certain transactions in TRACE-eligible securities within the time period permitted by FINRA Rule 6730(a) during the period of April 1, 2015 through June 30, 2015.

OVERVIEW

Between January 1, 2019 and October 31, 2019 (the “Review Period”), Calton violated FINRA Rule 6730(a) by reporting to TRACE 1,329 customer allocation transactions in TRACE-eligible Securitized Products that should have been reported as 95 block transactions.

Calton also violated FINRA Rule 6730(c) by failing to report to TRACE the correct capacity and/or commission for 391 transactions in TRACE-eligible securities.

Additionally, Calton failed to establish and maintain a system, including written supervisory procedures (“WSPs”), to supervise the activities of each associated person that was reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules, specifically those concerning the Firm’s compliance with TRACE reporting rules in violation of FINRA Rules 3110(a), (b), and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter arose from prior matters relating to similar trade reporting issues by Calton in TRACE-eligible Securitized Products.

TRACE Reporting Violations

FINRA Rule 6730(a) provides, in relevant part, that a “member that is a Party to a Transaction in a TRACE-Eligible Security must report the transaction.” FINRA’s “Frequently Asked Questions (FAQ) about the Trade Reporting and Compliance Engine (TRACE)” (the “TRACE FAQs”) provide guidance on reporting obligations in different scenarios. The FAQ applicable to the facts here, TRACE FAQ 3.1.47, provides that where an investment advisor places a block order with a broker-dealer that will be allocated to the investment advisor’s customers’ accounts, the broker-dealer must report the block trade with the investment advisor to TRACE, but not the allocations to the customers’ accounts.¹

During the Review Period, Calton reported to TRACE 1,329 transactions in TRACE-eligible Securitized Products that should have been reported as 95 block trades. Specifically, Calton executed 95 block trades in TRACE-eligible securities with an investment advisor not affiliated with the Firm. The 95 block orders were then allocated to the investment advisor’s customers’ accounts, resulting in 1,329 customer allocation transactions. Calton in turn reported to TRACE the 1,329 customer allocation transactions when it should have only reported the 95 block trades it executed with the investment advisor. The 1,329 transactions constituted 18.06 percent of the total number of transactions the Firm should have reported to TRACE during the Review Period (7,360).

FINRA Rule 6730(c) requires, in relevant part, that “[e]ach TRACE trade report shall contain the following information: . . . (7) Capacity – Principal or Agent (with riskless principal reported as principal) . . . (11) The commission (total dollar amount), if applicable”

During the Review Period, Calton entered 391 fixed income transactions it executed into its clearing firm’s system for reporting to TRACE. Calton entered the transactions as

¹ See <https://www.finra.org/filing-reporting/trace/faq#GeneralReporting>.

principal and, for certain transactions, also included a fee to offset the clearing costs associated with the trade. Calton used a unique principal designation offered by its clearing firm to report such clearing cost fees in the “commission” field. TRACE does not allow the submission of principal transactions with commissions. Because of this restriction, and unbeknownst to Calton, its clearing firm changed the principal capacity for these transactions to agent in the relevant TRACE reports. As a result, the publicly disseminated TRACE reports inaccurately reported Calton as having acted in an agency capacity in connection with these transactions when, in fact, it had acted in a principal capacity.

In 209 of those 391 fixed income transactions, the Firm inaccurately reported to TRACE that it acted in an agency capacity when, in fact, Calton acted in a principal capacity. In 182 of those 391 transactions, the Firm not only inaccurately reported that it acted in an agency capacity when it acted in a principal capacity, but also inaccurately reported clearing cost fees as commissions. The 391 inaccurately reported transactions constituted 5.31 percent of the total number of transactions the Firm should have reported to TRACE during the Review Period (7,360).

Therefore, Calton violated FINRA Rule 6730.

Supervision Violations

FINRA Rule 3110(a) requires, in relevant part, 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) states 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 regulations, and with applicable FINRA rules.”

FINRA Rule 2010 states that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.” A violation of FINRA Rule 3110 is also a violation of FINRA Rule 2010.

During the Review Period, the Firm’s WSPs provided, in relevant part, that “TRACE notices and/or reports provided by the clearing firm are reviewed for timeliness, accuracy and rejections” by the Trade Desk Supervisor. The WSPs required the supervisor to “review[] daily TRACE reports received from the clearing firm,” and evidence such reviews with “initials or signature or electronic signature. . . .” The WSPs, however, failed to describe the supervisory steps to be taken by the designated supervisor to review for, among other things, the accuracy of the Firm’s TRACE reports. The WSPs also failed to describe what “TRACE notices and/or reports” any such supervisor should consult in conducting reviews.

Although Calton reviewed the information it entered into its clearing firm's system before it was reported to TRACE for long and short positions, profit and loss, and activity/trade amount, it did not include a review of the accuracy of the TRACE reports (or the accuracy of its capacity/commission entries).

A Firm registered representative also reviewed the accuracy of the Firm's TRACE reports after they were reported to TRACE. Because Calton rarely included commissions in principal transactions, the registered representative would not have been aware of the capacity and commission issue described above. Moreover, Calton's frontline supervision of its TRACE report amounted to a review of "reports" generated by its clearing firm, yet none of those reports contained information that would have allowed Calton to verify the accuracy of its TRACE reports.

Therefore, Calton violated FINRA Rules 3110 and 2010.

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

- a censure;
- an \$18,000 fine (comprising a \$13,000 fine for violating FINRA Rule 6730, and a \$5,000 fine for violating FINRA Rules 3110 and 2010); and
- an undertaking to update the Firm's WSPs with respect to TRACE reporting. Within 45 business days of this AWC becoming final, a principal of the Respondent shall submit to the COMPLIANCE ASSISTANT, DEPARTMENT OF ENFORCEMENT, 15200 OMEGA DRIVE, SUITE 300, ROCKVILLE, MD 20850, a signed, dated letter, or an email from a work-related account of the registered principal to MarketRegulationComp@fmra.org, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its WSPs to address the deficiencies described in this AWC; and (3) the date the revised procedures were implemented.

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.

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:

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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.

December 3, 2020

Date

Nils Ericson

Calton & Associates, Inc.
Respondent

Print Name: Nils Ericson

Title: CCO

Reviewed by:

Attorney Name:
Counsel for Respondent
Firm Name:
Address:
City/State/Zip:

Accepted by FINRA:

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



December 18, 2020

Date

Manuel Yanez
Senior Counsel
FINRA
Department of Enforcement
15200 Omega Drive, 3rd Floor
Rockville, Maryland 20850