

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2017054755208**

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

RE: Efrain B. Trujillo (Respondent)  
General Securities Principal and General Securities Representative  
CRD No. 3106482

Pursuant to FINRA Rule 9216, Respondent Efrain B. Trujillo 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**

Trujillo first registered with a FINRA member as a General Securities Representative in October 1998. He later he became registered in various other capacities with that FINRA member where he was registered until October 2012. Between December 2013 until August 2017, Trujillo was registered as a General Securities Principal and as a General Securities Representative with Financial West Group, a former FINRA member.<sup>1</sup> Since August 2017 Trujillo has been registered in various capacities with another FINRA member.

Respondent does not have any relevant disciplinary history.

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<sup>1</sup> FINRA expelled Financial West Group from FINRA membership in February 2020 for failure to file numerous financial reports required under FINRA's rules.

## **OVERVIEW**

Between December 2013 and July 2017, while registered with Financial West, Trujillo failed to supervise four former Financial West registered representatives, who excessively traded and recommended qualitatively unsuitable trades involving options, low-priced securities, and Non-Traditional Exchange Traded Products (ETPs)<sup>2</sup> in nine accounts belonging to five customers. Trujillo failed to investigate red flags indicative of trading misconduct and take appropriate action in a manner reasonably designed to ensure that the representatives acted in compliance with FINRA rules. As a result, Trujillo violated NASD Rule 3010(a), and FINRA Rules 3110(a), 2360(b)(20), and 2010.<sup>3</sup>

## **FACTS AND VIOLATIVE CONDUCT**

This matter originated from FINRA's 2016 cycle examination of Financial West.

NASD Rule 3010(a) and FINRA Rule 3110(a) require that each member establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with the applicable securities laws and regulations, and with NASD and FINRA Rules. FINRA Rule 2360(b)(20)(C) requires that members provide principal supervisory review of options trading in customer option accounts, including, but not limited to: (i) the compatibility of options transactions with investment objectives and with the types of transactions for which the account was approved; (ii) the size and frequency of options transactions; (iii) commission activity in the account; (iv) profit or loss in the account; and (v) undue concentration in any options class or classes. The requirement to supervise includes the duty to investigate red flags that suggest misconduct may be occurring and to reasonably act upon the results of such investigation.

### **Trujillo's Failure to Supervise**

Between December 2013 and July 2017, Financial West designated a new Office of Supervisory Jurisdiction (OSJ) Supervisor and OSJ Manager (collectively, OSJ Supervisor) of the Brentwood OSJ office of Financial West. In these capacities, the OSJ Supervisor was responsible for supervising the Brentwood registered representatives, including four representatives who have since been barred for trading misconduct. Financial West's written supervisory procedures (WSPs), among other things, required the OSJ Supervisor, to review the transactions of these four representatives to ensure the suitability of the transactions they recommended to customers.

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<sup>2</sup> Non-Traditional ETPs include leveraged and/or inverse leveraged Exchange Trade Funds and Exchange Traded Notes.

<sup>3</sup> NASD Rule 3010 was effective for conduct prior December 1, 2014. FINRA Rule 3110 superseded NASD Rule 3010 on December 31, 2014.

In December 2013, the OSJ Supervisor orally delegated to Trujillo, another principal in the Brentwood OSJ office, certain supervisory responsibilities required by the firm's WSPs. Those responsibilities, later documented in writing in accordance with the WSPs, included: reviewing customer account transactions on a daily, monthly and periodic basis, and taking reasonable steps to ensure the representatives' recommended transactions were suitable. At the time of the delegation of the responsibilities to Trujillo in December 2013, Trujillo had just passed the General Principal examination in order to act in a principal capacity.

Between December 2013 and July 2017, when Trujillo was designated with certain supervisory tasks for Financial West's Brentwood OSJ office, he failed to reasonably supervise the four representatives notwithstanding multiple red flags that should have prompted greater scrutiny of the representatives' trading activities by Trujillo, but did not. Despite the red flags, Trujillo failed to further investigate the potential trading misconduct which was suggestive of both excessive trading and qualitatively unsuitable recommendations involving options, low-priced securities, and Non-Traditional ETPs.

In December 2013, a Financial West compliance principal specifically informed Trujillo of red flags indicative of excessive trading in the accounts of customers assigned to two of the four representatives. In addition, between January 2014 and November 2016, there were additional red flags that should have prompted Trujillo to investigate specific trading activity by the four representatives in the nine customer accounts, including:

- the accounts repeatedly appearing on the Monthly Account Supervision exception reports and reflecting high annualized turnover rates and a high number of transactions suggestive of excessive trading;
- the daily trade blotter for the representatives' transactions, reflecting their daily trading volume, and high daily and year-to-date commissions being charged to the customers;
- in-and-out trading in the customers' accounts;
- investment objectives for the customers' accounts that were inconsistent with the short-term trading activity in the accounts;
- inverse and/or leveraged ETF positions remaining in accounts for multiple trading sessions;
- trading in certain customer accounts involving short-term trading in low-priced securities;
- options trading in one customer account by one representative that was speculative and inconsistent with the customer's investment objectives and risk tolerance; and
- sustained losses due to the representatives' excessive trading in all nine customer accounts.

In the face of this information indicative of violative trading practices, Trujillo acted unreasonably by failing to further scrutinize the conduct of the four representatives. Trujillo was aware of but failed to investigate and address specific red flags indicating trading misconduct suggestive of excessive trading and qualitatively unsuitable recommendations in violation of FINRA's suitability rules, including the suitability rules relating to options trading.

For example, in March 2016, the Financial West compliance principal notified Trujillo of red flags suggesting that an unsuitable double-leveraged ETF position was being held in a customer's account for multiple trading sessions (for an account with investment objectives that included capital appreciation, income, and capital preservation). Trujillo, however, acted unreasonably by failing to investigate and curtail the misconduct. As a result, the customer's account held this unsuitable double-leveraged ETF position for over 520 days, from February 2016 until July 2017.

For the above reasons, Trujillo failed to reasonably supervise the trading activities of the four representatives in the Brentwood OSJ office, by ignoring and not reasonably responding to numerous red flags suggestive of excessive trading and qualitatively unsuitable trading.

Therefore, Trujillo violated NASD Rule 3010(a), and FINRA Rules 3110(a), 2360(b)(20), and 2010.

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

- A bar from associating with any FINRA member in any principal capacity; and
- A \$20,000 fine.

Respondent agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are 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 hereafter, the monetary sanctions imposed in this matter.

Respondent understands that if he is barred or suspended from associating with any FINRA member in a principal capacity, he becomes 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, Respondent may not be associated with any FINRA member in a principal capacity, during the period of

the bar or suspension. See FINRA Rules 8310 and 8311. Furthermore, because Respondent is subject to a statutory disqualification during the principal bar, if he remains associated with a Member Firm in a non-barred capacity, an application to continue that association may be required.

The sanctions imposed herein shall be effective on a date set by FINRA staff. A bar or expulsion shall become effective upon approval or acceptance of this AWC.

## 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.

October 30, 2020

Date

*Efrain Trujillo*

Efrain B. Trujillo  
Respondent

Reviewed by:

*Jeffrey S. Kob*

Jeffrey S. Kob, Esq.  
Counsel for Respondent  
Jeffrey Kob Law  
1172 Orange Avenue, 2<sup>nd</sup> Floor  
Coronado, CA 92118

Accepted by FINRA:

11/17/2020

Date

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

*Jill L. Jablonow*

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