

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2017056432602**

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

RE: Jason P. Collichio (Respondent)
General Securities Principal
CRD No. 4727199

Pursuant to FINRA Rule 9216, Respondent Jason P. Collichio 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

Collichio first registered with FINRA as a General Securities Representative (GS) through a member firm in November 2003. From March 2009 to present, Collichio has been registered with FINRA through Worden Capital Management LLC (CRD No. 148366) (WCM) as a GS. From April 2012 to present, Collichio has also been registered with FINRA as a General Securities Principal through WCM.

Collichio does not have any relevant disciplinary history.

OVERVIEW

From January 2015 to August 2017, Collichio failed to reasonably supervise two former registered representatives at WCM, Registered Representatives 1 and 2, who engaged in a pattern of recommending unsuitable active trading strategies to customers and churned customer accounts. Collichio, the WCM principal responsible for supervising Registered Representatives 1 and 2, was aware of multiple red flags of excessive trading, unsuitable use of margin, and churning, including high cost-to-equity ratios and high turnover rates in customer accounts. Collichio did not reasonably investigate those red flags or otherwise take meaningful action to stop the misconduct. As a result, Collichio violated FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's 2017 examinations of former Registered Representatives 1 and 2.¹

FINRA Rule 3110(a) requires that FINRA members "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." To comply with Rule 3110, a firm's supervisors must reasonably investigate red flags of potential misconduct and take appropriate action when misconduct has occurred. A violation of FINRA Rule 3110 also constitutes a violation of FINRA Rule 2010.

FINRA Rule 2111, FINRA's suitability rule, imposes a "quantitative suitability" obligation that focuses on whether the number of transactions within a given timeframe is suitable in light of the customer's financial circumstances and investment objectives. Excessive trading occurs, and is unsuitable, when a registered representative, while exercising control over a customer's account, recommends a level of trading activity that is inconsistent with the customer's investment needs and objectives. The Supplementary Material to FINRA Rule 2111 at Rule 2111.05(c) states that, "[n]o single test defines excessive activity, but factors such as the turnover rate, cost-equity ratio, and the use of in-and-out trading in a customer's account may provide a basis for a finding that a member or associated person has violated the quantitative suitability obligation."² Excessive trading becomes churning when the registered representative acts with an intent to defraud or has a reckless disregard for the customer's interests.

From January 2015 to August 2017, Collichio was a WCM branch manager and was primarily responsible for supervising the trading activity of all representatives located in WCM's Rockville Centre branch in New York, including the branch's owners, Representatives 1 and 2. Representatives 1 and 2 solicited customers with speculative investment objectives and typically recommended costly short-term trading strategies to them. Notably, WCM placed Representatives 1 and 2 on heightened supervision in January 2015 because each had three or more customer complaints alleging sales practice abuses within the preceding two years.

¹ In January 2017, the SEC filed a civil complaint in the U.S. District Court for the Southern District of New York against Representatives 1 and 2 alleging fraud for excessively trading and churning customer accounts at their prior firm. Representative 1 admitted his misconduct, settled with the SEC prior to trial and was enjoined from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Exchange Act Rule 10b-5 (the antifraud provisions). FINRA has barred Representative 1 from associating with any FINRA member firm in any capacity. On June 21, 2019, a jury found Representative 2 liable for violations of the antifraud provisions. Representative 2 has appealed the jury verdict and that appeal is pending.

² Turnover rate represents the number of times that a portfolio of securities is exchanged for another portfolio of securities. The cost-to-equity ratio measures the amount an account must appreciate just to cover commissions and other expenses; in other words, it is the break-even point where a customer may begin to see a return. A turnover rate of six and cost-to-equity ratio above 20% indicate that excessive trading has occurred.

Collichio's responsibilities, among other things, included reviewing, on a daily basis, trading activity for excessive commissions or suitability issues. To facilitate his review, he used an account review log containing the customer's investment objective and age, daily transaction data, and rolling 12-month cost-to-equity ratio. The review log often reflected high cost-to-equity ratios. For example, the daily account review log from January 1, 2016 identified three accounts with cost-to-equity ratios exceeding 100%.

In addition to his daily review, Collichio received monthly emails containing extracts of information from the firm's active account report, which identified the most actively traded accounts. Like the daily account review logs, these emails, as well as the monthly active account reports, reflected accounts with high turnover rates, cost-to-equity ratios, and loss percentages—hallmarks of excessive trading and churning. For example, the November 2016 monthly report listed 17 customer accounts for Representatives 1 and 2 with cost-to-equity ratios and turnover rates indicative of potential excessive activity. Yet, Collichio did not reasonably investigate the red flags; rather, he generally assumed that such trading was reasonable for a customer with a high net worth and speculative investment objective.

Pursuant to the heightened supervision plans for Representatives 1 and 2, Collichio also was responsible for (i) verifying with customers new account information when an account was opened, (ii) contacting customers, and (iii) conducting a "monthly review of book and sales practices." Collichio used the emails containing the extracts of the monthly active account reports to identify ten customers, five per representative, to contact. On those calls, Collichio verified account information and confirmed that each customer was receiving trade confirmation emails and account statements. Collichio, however, did not investigate the suitability of the trading in the customers' accounts.

Between December 2014 and December 2017, Representative 1 churned and excessively traded seven customers' accounts. The seven customers incurred realized losses of \$1,834,834 from this trading, while paying \$529,056 in commissions.

Similarly, during the period January 2015 through at least December 2017, Representative 2 churned and excessively traded the accounts of four customers. The four customers incurred realized losses of \$1,170,635 from this trading, while paying \$940,705 in commissions.

As noted above, Collichio, as the direct supervisor for Representatives 1 and 2 during the period when the vast majority of their misconduct occurred, was aware that Representatives 1 and 2 were engaging in potentially unsuitable active trading and churning but did not reasonably supervise them. Although Collichio sometimes suggested that representatives reduce future commissions or lower margin balances, he did not otherwise limit the trading or margin use in the accounts or discipline the representatives.

Because he failed to reasonably supervise Representatives 1 and 2, Collichio violated FINRA Rules 3110 and 2010.

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

- a three-month suspension from associating with any FINRA member in any principal capacity;
- a \$5,000 fine; and
- an undertaking that within 90 days of notice that this AWC has been accepted, Collichio will attend and satisfactorily complete 20 hours of continuing education concerning supervisory responsibilities by a provider not unacceptable to FINRA. Collichio will notify Jackie Wells, Senior Counsel, 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, Collichio will submit written proof that the continuing education program was satisfactorily completed to Jackie Wells at Jackie.Wells@finra.org. All correspondence must identify the respondent and matter number 2017056432602. Upon written request showing good cause, FINRA staff may extend any of the deadlines related to the continuing education component of the sanction.

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.

Respondent understands that if he is barred or suspended from associating with any FINRA member in any 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 any 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 suspension, if he remains associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

Respondent understands that this settlement includes a finding that he failed to supervise an individual who violated Section 10(b) of the Securities Exchange Act of 1934 and that under Article III, Section 4 of FINRA's By-Laws, this makes him subject to a statutory disqualification with respect to association with a member.

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 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 prejudice 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.

12/17/2020
Date



Jason P. Collichio
Respondent

Reviewed by:

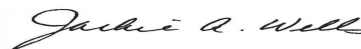


Michael Farkas
Counsel for Respondent
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32 Court Street
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Brooklyn, New York 11201

Accepted by FINRA:

December 31, 2020
Date

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



Jackie A. Wells
Senior Counsel
FINRA
Department of Enforcement
Brookfield Place
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New York, NY 10281