

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2013035817702**

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

RE: Daniel J. Hushek III, Respondent ("Hushek")  
General Securities Principal  
CRD No. 4250117

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I submit 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 me alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. I hereby accept and consent, 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**

At various times since 2001, Hushek was associated with several FINRA members. Most recently, from August 2005 until January 2017, Hushek was registered with FINRA as a General Securities Representative and General Securities Principal through his association with G.F. Investment Services, LLC ("GIS"). He was also registered as an Operations Professional from December 2011 through January 2017 through GIS. On January 27, 2017, GIS filed a Form U5 terminating Hushek's registrations and association with the firm.

Hushek is not currently registered with FINRA or associated with a FINRA member firm, but remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA By-Laws.

**RELEVANT DISCIPLINARY HISTORY**

Hushek has no relevant disciplinary history in the securities industry.

## **OVERVIEW**

Hushek failed to adequately supervise the sales practice of RM, a registered representative who recommended and engaged in unsuitable trading of non-traditional exchange traded funds ("ETFs"). As a result of the foregoing, Hushek violated NASD Rule 3010 (for conduct prior to December 1, 2014), FINRA Rule 3110 (for conduct on or after December 1, 2014), and FINRA Rule 2010.

## **FACTS AND VIOLATIVE CONDUCT**

FINRA Rule 3110, which became effective on December 1, 2014, and similarly NASD Rule 3010, which was in effect prior to December 1, 2014, require member firms (and their supervisory personnel) to establish maintain and enforce supervisory procedures that are reasonably designed to achieve compliance with applicable securities laws and regulations. In addition, these rules require that a supervisor take reasonable steps to ensure that securities transactions are in compliance with applicable securities laws and regulations, and that he or she investigate red flags of potential misconduct and take appropriate action when misconduct has occurred.

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 NASD Rule 3010 and FINRA Rule 3110 also constitutes a violation of FINRA Rule 2010.

### **Background on Non-Traditional ETFs**

Non-traditional ETFs are complex products that seek to return a multiple of the performance of the underlying index or benchmark, the inverse of the performance, or both, and use swaps, futures contracts, and other derivative instruments to achieve these objectives. Most non-traditional ETFs "reset" daily, meaning they are designed to achieve their stated objectives only on a daily basis and thus typically are inappropriate as an intermediate or long-term investment in a brokerage account. Additionally, due to the effect of compounding, the performance of non-traditional ETFs can differ significantly from the performance of their underlying index or benchmark, an effect that can be magnified in volatile markets.

In June 2009, FINRA issued Regulatory Notice 09-31, which dealt specifically with non-traditional ETFs. Among other things, Regulatory Notice 09-31 reminded firms and associated persons of their obligation "to fully understand the products and transactions they recommend. With respect to leveraged and inverse ETFs, this means that a firm must understand the terms and features of the funds, including how they are designed to perform, how they achieve that objective, and

the impact that market volatility, the ETF's use of leverage, and the customer's intended holding period will have on their performance." The Notice further noted that "[w]hile the customer-specific suitability analysis depends on the investor's particular circumstances, inverse and leveraged ETFs typically are not suitable for retail investors who plan to hold them for more than one trading session, particularly in volatile markets."

### RM's Misconduct

From at least March 2011 through July 2015 (the "Relevant Time Period"), RM was a registered representative who was associated with GIS.

During the Relevant Time Period, RM engaged in unsuitable trading in 44 customer accounts (comprised of 41 customers) by recommending that these customers invest almost exclusively in and hold for lengthy periods of time non-traditional ETFs, despite the enormous risks associated with holding non-traditional ETFs for more than one trading session.<sup>1</sup> Many of RM's customers held the products for more than five years after their purchase. As part of RM's investment strategy, RM recommended to his customers that they hold the non-traditional ETFs until an apocalyptic crash in the financial markets, which never occurred. During the Relevant Time Period, the prospectuses for these non-traditional ETFs indicated that the funds sought investment results for a single day only and did not seek to achieve its stated investment objective over a period of time greater than one day. As a result of RM's misconduct, these customers incurred realized and unrealized losses of more than \$ 2.4 million.

### Hushek Failed to Appropriately Supervise RM

Throughout the Relevant Time Period, Hushek was a supervisor of RM. Hushek failed to reasonably supervise RM's sales of non-traditional ETFs in several respects. Hushek failed to supervise RM's sales of these products to ensure they were suitable, which included a failure to ensure that RM had a reasonable basis to recommend RM's customers' transactions in non-traditional ETFs for long term holding, and at least one of the customers, SA, had a conservative risk tolerance listed in her new account forms at the time of the sale of these significantly risky products.

At the time of the transactions and while the products continued to be held in the customers' accounts, Hushek, as a supervisor of RM, failed to ensure that reasonable supervisory action was taken and also ensure that the risks were adequately disclosed to customers of continuing to hold these products long term.

In April 2011, after Hushek consulted with others, RM's customers' accounts

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<sup>1</sup> On April 24, 2017, RM was barred from association with any FINRA member in all capacities in relation to RM's misconduct concerning non-traditional ETFs. See Order Accepting Offer of Settlement, FINRA No. 2013035817701(Apr. 24, 2017).

were restricted from any trading, including liquidations of the non-traditional ETFs held in these accounts which continued to sustain substantial losses. Hushek did not make any attempts to contact the customers directly or to ensure that the risks of continuing to hold these products were disclosed to the customers. Rather, Hushek simply caused GIS to send a letter to certain RM customers confirming their account objectives without any reference to or discussion of the attendant risks of holding these products long term. Hushek failed to respond appropriately to red flags of which he was aware of (customers continuing to hold the products that were only intended to be held one trading day), and failed to appropriately supervise the activities of RM. This supervisory failure facilitated RM's ongoing sales practice violations, which continued during the Relevant Time Period. As a consequence, RM's customers' accounts sustained significant losses.

By virtue of the foregoing, Hushek violated NASD Rule 3010 (for conduct prior to December 1, 2014), FINRA Rule 3110 (for conduct on or after December 1, 2014), and FINRA Rule 2010.

B. I also consent to the imposition of the following sanctions:

- A fifteen-month suspension from association with any FINRA member in a principal capacity, and
- A \$10,000 fine.

The fine shall be due and payable either immediately upon reassociation with a member firm, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

I understand that if I am barred or suspended from associating with any FINRA member in a limited capacity or principal capacity, I become 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, I 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 I am subject to a statutory disqualification during the suspension, if I remain associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

## **WAIVER OF PROCEDURAL RIGHTS**

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against me;
- 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, I specifically and voluntarily waive 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 acceptance or rejection of this AWC.

I further specifically and voluntarily waive 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**

I understand 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 me; and
- C. If accepted:

1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
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 the subject matter thereof in accordance with FINRA Rule 8313; and
4. I 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. I 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 my: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.


D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I 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 or its staff.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

6-22-17  
Date (mm/dd/yyyy)

  
Daniel T. Hushek III, Respondent

Reviewed by:

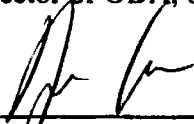
  
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Accepted by FINRA

7-14-17

Date

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



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