

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2016049316301**

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

**RE: Joseph Leigh Cotter, Respondent  
General Securities Principal, Municipal Fund Securities Principal,  
and General Securities Representative  
[CRD No. 1263122]**

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, I, Joseph Leigh Cotter (“Cotter” or “Respondent”), 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**

Cotter first became registered with FINRA in May 1984, as a General Securities Representative of a member of FINRA. From July 27, 2008 through March 18, 2016, Cotter was associated with NEXT Financial Group, Inc. (“NEXT”) and was registered with FINRA under Article V of the By-Laws as a General Securities Principal, a Municipal Fund Securities Principal, and a General Securities Representative. From March 23, 2016 through May 2, 2017, Cotter was associated with another FINRA member firm and registered with FINRA. Cotter is not currently associated with a FINRA member firm or registered with FINRA, but remains subject to the jurisdiction of FINRA, pursuant to Article V, Section 4 of FINRA’s By-Laws, which provides for a two-year period of retained jurisdiction over formerly registered persons. Cotter has no prior disciplinary history.

## **OVERVIEW**

While registered with NEXT, Cotter engaged in excessive, unsuitable trading in the accounts of one customer, in violation of FINRA Rules 2111 and 2010.

## **FACTS AND VIOLATIVE CONDUCT**

FINRA Rule 2111 requires a registered representative to “have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer’s investment profile.”

Supplementary Material 2111.05(c) states: “Quantitative suitability requires a member or associated person who has actual or de facto control over a customer account to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer’s investment profile, as delineated in Rule 2111(a). No single test defines excessive activity, but factors such as the turnover rate, the 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.”

A violation of FINRA Rule 2111 also constitutes a violation of FINRA Rule 2010, which requires a member, in the conduct of his business, to observe high standards of commercial honor and just and equitable principles of trade.

Between January 1, 2014 and December 31, 2015, Cotter exercised de facto control over an IRA account and a second account of LC. De facto control existed because Cotter solicited all the transactions in the accounts, LC routinely accepted his recommendations, and LC was an unsophisticated investor. Cotter used this control to excessively trade the accounts in a manner that was inconsistent with LC’s investment objectives, financial situation, and needs. During this two-year period, Cotter’s trading resulted in a turnover rate of 9.84 and a cost-to-equity ratio of 23.2% (converted to a percentage) in the IRA account. For the second account the trading resulted in a turnover rate of 5.3 and a cost-to-equity ratio of 20.02% (converted to a percentage). The trading generated net commissions of \$100,549.42. During this same period, LC’s accounts experienced losses of \$391,893.

The customer was in her sixties, had a desire to earn income for retirement, had annual income of \$60,000, and had a conservative risk tolerance. As reflected by the cost-to-equity ratios, the IRA account would need to return 23.2% for her to break even, and the second account would need to return 20.02% for her to avoid losses. Given the customer’s age and her conservative risk tolerance, requiring a minimum return of 20 to 23% was unsuitable for these accounts.

By virtue of the foregoing, Cotter violated FINRA Rules 2111 and 2010.

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

- A suspension from association with any FINRA member, in any and all capacities, for a period of nine months;
- A fine of \$15,000; and
- Disgorgement of commissions received, which is ordered to be paid to FINRA in the amount of \$100,549.42, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621, from December 31, 2015, until the date this AWC is accepted by the NAC.

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.

Disgorgement 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 sanctions imposed in this matter.

I understand that if I am barred or suspended from associating with any FINRA member, 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 any capacity, including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rules 8310 and 8311).

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 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 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:

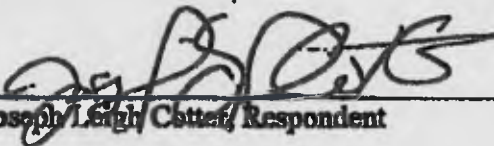
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will 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 understand and acknowledge that FINRA does not represent or advise me and I cannot rely on FINRA or FINRA staff members for legal advice; 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.

9-25-2017  
Date (mm/dd/yyyy)

  
Joseph Leigh Cottet, Respondent


Reviewed by:

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Counsel for Respondent

Accepted by FINRA:

October 17, 2017  
Date

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

  
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