

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019063686203**

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

RE: Russ Kory (Respondent)
Former General Securities Representative
CRD No. 5901185

Pursuant to FINRA Rule 9216, Respondent Russ Kory 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 accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

Kory first became registered with FINRA in 2011. Kory was registered as a General Securities Representative with David Lerner Associates, Inc. from August 2011 through September 2019. On April 6, 2021, the firm filed an amended Form U5 on Kory's behalf disclosing that Kory was named in an investment-related, customer-initiated arbitration relating to events that occurred while Kory was associated with the firm.

Although Kory is not currently registered or associated with a FINRA member firm, the April 2021 Form U5 amendment operates to extend FINRA's jurisdiction over him pursuant to Article V, Section 4 of the FINRA By-Laws.¹

OVERVIEW

Between August 2015 and September 2019, while associated with David Lerner Associates, Kory recommended that three firm customers invest in the firm's proprietary limited partnerships formed to acquire and develop oil and gas properties without having a reasonable basis to believe those illiquid investments were suitable for the customers. Therefore, Kory violated FINRA Rules 2111 and 2010.

¹ For more information about the respondent, visit BrokerCheck® at www.finra.org/brokercheck.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a customer complaint.

FINRA 2111(a) requires firms and associated persons 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.” A customer’s investment profile “includes, but is not limited to, the customer’s age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the member or associated persons in connection with such recommendation.”

FINRA Rule 2010 requires registered persons, in the conduct of their business, to observe “high standards of commercial honor and just and equitable principles of trade.”

Between August 2015 and September 2019, Kory recommended that three of his customers invest in one or both of two illiquid limited partnerships sold to customers of David Lerner Associates. Each limited partnership was formed to acquire and develop oil and gas properties located onshore in the United States. The partnerships were “blind pools,” meaning at the time of the initial offering the partnership had not identified any properties for acquisition. The partnerships’ objectives included making distributions to investors and, five-to-seven-years after the termination of the offering, to engage in a liquidity event. Each limited partnership’s ability to make return of capital distributions to its partners and to engage in a liquidity event was substantially dependent on the performance of the properties in which the partnerships invested. Additionally, according to the prospectuses, investments in the partnerships involve a “high degree of risk.”

Kory made unsuitable recommendations to three firm customers.

PH and SH, a retired married couple, held an investment account at the firm intended, in part, to provide for the long-term care for their disabled adult son. Kory recommended that they invest \$382,000 in one of the illiquid limited partnerships. Kory also recommended that senior customer AC invest in one of the limited partnerships. At the time of the recommendation, AC was 86, widowed, unemployed, and living with her daughter and on a fixed income. Kory recommended that AC invest approximately \$25,000 in one of the limited partnerships. The third customer, MC, was AC’s son-in-law. MC was over 60, nearing retirement, had limited investment experience, and one of his investment objectives was to preserve funds for retirement. Kory recommended that MC invest \$50,000 in one of the limited partnerships.

Kory’s recommendations that the three customers invest in the energy partnerships were not suitable given their investment profiles. Kory received \$7,203 in commissions from these investments.

Therefore, Kory violated FINRA Rules 2111 and 2010.

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

- a three-month suspension from associating with any FINRA member in all capacities;
- a \$5,000 fine; and
- disgorgement of \$7,203 plus interest as described below.

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 of commissions received is ordered to be paid to FINRA in the amount of \$7,203, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), from June 27, 2019 until the date this AWC is accepted by the National Adjudicatory Council (NAC). 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.

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 sanctions imposed in this matter.

Respondent understands that if he is barred or suspended from associating with any FINRA member, 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, he 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 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 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:

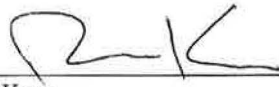
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not 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 right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.

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.

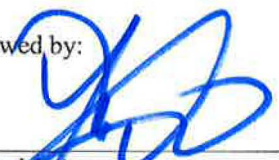
Respondent certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; Respondent has agreed to the AWC's provisions voluntarily; and no offer, threat, inducement, or promise of any kind, other than the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce him to submit this AWC.

8/29/2022
Date



Russ Kory
Respondent

Reviewed by:



Leonard J. Amoruso
Counsel for Respondent
Davis Wright Tremaine LLP
1185 Avenue of the Americas
21st Floor
New York, NY 10036

Accepted by FINRA:

9/2/2022

Date

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

Sincere D. Belton

Sincere D. Belton
Senior Attorney
FINRA
Department of Enforcement
Brookfield Place, 200 Liberty Street
New York, NY 10281