**FINANCIAL INDUSTRY REGULATORY AUTHORITY**
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**
**NO. 2015045984002**

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

RE: Vanderbilt Securities, LLC, Respondent
CRD No. 5953

Barry Champney, Respondent
General Securities Principal
CRD No. 731205

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Vanderbilt Securities, LLC ("Vanderbilt" or the "Firm") and Respondent Barry Champney ("Champney," and together with Vanderbilt, "Respondents"), 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 Respondents alleging violations based on the same factual findings described herein.

## I.

## ACCEPTANCE AND CONSENT

A. Respondents 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

Vanderbilt has been a FINRA member firm since September 1965 (when it was known as Richardt-Alyn & Co.). The Firm employs approximately 150 registered individuals in approximately 37 branch offices. Its principal place of business is Woodbury, NY. The Firm's primary lines of business include corporate equity securities over the counter, corporate debt securities, underwriting, and mutual funds.

Champney entered the securities industry in 1981 as a registered representative and has since been associated with several FINRA regulated broker-dealers. Champney became associated with Vanderbilt in May 2005 and became the Firm's Chief Compliance Officer in July 2007. In addition, he was responsible for directly supervising certain registered representatives.

Champney obtained his Series 24 in March 1992 and holds the following additional licenses: Series 52 (May 1981) (Municipal Securities Representative); Series 6 (July 1984) (Investment Company & Variable Products Representative); Series 63 (April 1992) (Uniform Securities Agent State Law); Series 8 (March 1993) (General Securities Sale Supervisor); Series 66 (April 2013) (Uniformed Combined State Law); and Series 53 (August 2015) (Municipal Securities Principal).

## RELEVANT DISCIPLINARY HISTORY

Respondents do not have any relevant disciplinary history with the Securities and Exchange Commission, FINRA, any other self-regulatory organization, or any state securities regulator.

## OVERVIEW

Between March 2011 and March 2015 (the "Relevant Period"), Vanderbilt failed to establish and maintain a supervisory system, including written procedures, reasonably designed to identify and prevent unsuitable excessive trading and churning in customer accounts.

Vanderbilt, through Champney, failed to reasonably supervise Mark Kaplan, a registered representative who engaged in churning and unsuitable excessive trading in the brokerage accounts of a senior customer.

Accordingly, Respondents violated NASD Rule 3010 (for conduct before December 1, 2014), FINRA Rule 3110 (for conduct on and after December 1, 2014), and FINRA Rule 2010.

## FACTS AND VIOLATIVE CONDUCT

NASD Rule 3010(a) required that firms establish and maintain a supervisory system reasonably designed to achieve compliance with applicable securities laws and regulations. NASD Rule 3010(b) required firms to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of its registered representatives.

FINRA Rule 3110(a) provides that firms "shall 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." FINRA Rule 3110(b) provides that firms "shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules."

**Churning And Excessive Trading By Mark Kaplan**

Customer BP, a 93-year-old retired clothing salesman, opened accounts at Vanderbilt with Mark Kaplan during March 2011. During the Relevant Period, Kaplan exercised de facto control over BP's accounts. Customer BP relied on Kaplan to direct investment decisions in his accounts, contacting Kaplan frequently (usually daily). In addition, Customer BP was experiencing a decline in his mental health. In January 2014, Customer BP was diagnosed with dementia and in April 2015, a Court granted an application by BP's nephew to act as Customer BP's legal guardian and manage his financial affairs.

During the Relevant Period, Kaplan effected more than 3,500 transactions in Customer BP's accounts, which resulted in approximately $723,000 in trading losses and generated approximately $735,000 in commissions and markups for Kaplan and the Firm.

During the Relevant Period, the average annualized cost-to-equity ratios, or the percentage return on the customer's average net equity needed to pay sales charges and other account expenses over a given period of time, in Customer BP's two primary accounts were 31.7% and 301.6%, respectively. The annual cost-to-equity ratios in the accounts ranged from 16.50% to 814.41%. For the same period, the annual turnover rates in these accounts, or the rates at which the securities were sold and replaced within a given period of time, ranged from 2.34 to 118.65.

On April 4, 2016, the Firm and Kaplan made a settlement payment totaling $470,000 to the guardian for Customer BP's accounts. On March 7, 2018, Kaplan entered into a Letter of Acceptance, Waiver and Consent with FINRA (AWC No. 2015045984001) in which he consented to a bar from associating with any FINRA member in any capacity.

**Vanderbilt's Supervisory System**

During the Relevant Period, Vanderbilt failed to establish and maintain a supervisory system, including written supervisory procedures, reasonably designed to identify and prevent unsuitable excessive trading and churning.

Although the Firm's written supervisory procedures acknowledged that frequent transactions in the same security could be unsuitable, they did not provide any guidance for detecting or preventing excessive trading or churning.

Vanderbilt did not systemically track the turnover rates and cost-to-equity ratios in customer accounts. The Firm performed these calculations manually, on an ad-hoc basis, generally when a customer complained. Accordingly, the Firm had no reasonable system to detect unsuitable excessive trading based on turnover rates or cost-to-equity ratios.

Rather, the Firm prepared a monthly report ("Activity Report") that identified accounts in which there were more than 40 trades in that particular month. The Firm's written supervisory procedures did not address the Activity Report or provide any guidance about how to use it. In addition, the Activity Report did not capture patterns of activity across multiple months.

During the Relevant Period, Champney reviewed the monthly Activity Report and determined, in his discretion, whether the appearance of a customer account on the report warranted action.[1] The Firm's WSPs did not provide any guidance about how to determine whether further action was warranted. The Firm's procedures did not require that any action be taken when a customer's account appeared on the Activity Report.

In certain instances, Champney had the Firm send customers a "Satisfaction Letter" when their accounts appeared on the Activity Report. However, this form letter did not contain any information about the level of trading in the account or any losses or commissions associated with those transactions. Additionally, the Firm's WSPs did not provide guidance about whether any steps should be taken if a customer did not acknowledge a Satisfaction Letter, even though the letter requested that customers acknowledge receipt.

By virtue of the foregoing, Vanderbilt violated NASD Rule 3010(a) and (b) (for conduct before December 1, 2014), FINRA Rule 3110 (a) and (b) (for conduct on and after December 1, 2014), and FINRA Rule 2010.

**Vanderbilt, Through Champney, Failed To Reasonably Supervise Mark Kaplan**

At all times during the Relevant Period, Champney was Kaplan's direct business-line supervisor. In this capacity, Champney failed to reasonably supervise Kaplan. Champney observed numerous red flags indicating that Kaplan was engaging in misconduct in Customer BP's accounts and did not reasonably respond to these red flags.

When Kaplan joined the Firm in 2011, he brought with him the accounts of Customer BP, who was 86 at the time and who had been Kaplan's customer at his prior firm. Champney, who participated in the hiring process for Kaplan, was aware that at least two customers at Kaplan's prior firm had alleged that he traded excessively in their accounts. Champney was also aware that Kaplan had been terminated by that firm because of a client complaint and other concerns about the activity in his customers' accounts.

[1] Although Champney was the Firm's Chief Compliance Officer during the Relevant Period, his conduct in this role does not form the basis for the finding that Champney violated NASD Rule 3010(a) (for conduct before December 1, 2014), FINRA Rule 3110 (a) (for conduct on and after December 1, 2014), and FINRA Rule 2010. Rather, Champney's violations of these rules relate to his conduct as Kaplan's designated business-line supervisor.

Kaplan effected numerous trades in BP's accounts from the outset, effecting 43 trades in April 2011, 34 in May 2011, and 66 in June 2011. In September 2011, approximately six months after BP opened his accounts with the Firm, Champney sent Customer BP a Satisfaction Letter. The letter did not include any information about the level of activity in BP's accounts or the losses or commissions associated with that activity. At that point, BP's accounts had experienced a net loss of approximately $167,000 and generated commissions of almost $63,000. Champney did not discuss the activity, commissions, or losses with BP or take steps, as Kaplan's supervisor, to ensure that Kaplan did so.

As Kaplan's supervisor, Champney subsequently became aware of continued trading, losses, and commissions in Customer BP's accounts. Champney observed that Customer BP's accounts appeared on the Firm's Activity Report 23 out of 30 months of the Relevant Period and BP experienced heavy losses and paid significant commissions throughout the Relevant Period. During these four years, Champney met with Customer BP once, in July 2013, with BP's son, after BP misplaced his debit card. During this meeting, neither Kaplan nor Champney raised with Customer BP the extensive losses and commissions associated with the trading in his accounts. One day later, Champney sent a second Satisfaction Letter to Customer BP. Champney did not include any information about the level of activity in Customer BP's accounts or the losses or commissions associated with that activity in this letter or in any other communication with Customer BP during the Relevant Period.

As Kaplan's supervisor, Champney knew that Customer BP called Kaplan nearly every day, often multiple times a day, and he knew that BP relied on Kaplan for information about his accounts. Champney was also aware of an email that Customer BP's son, who lived with Customer BP, sent to Kaplan in February 2013, after Customer BP had sustained substantial losses, acknowledging the depth of his father's interest in the markets and in seeing his money grow, and urging him to be careful with his father's accounts. Neither Kaplan nor Champney followed up with Customer BP in response to his son's email.

By virtue of the foregoing, the Firm and Champney violated NASD Rule 3010(a) (for conduct before December 1, 2014), FINRA Rule 3110 (a) (for conduct on and after December 1, 2014), and FINRA Rule 2010.

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

- A censure and a $100,000 fine for Vanderbilt;
- A $5,000 fine for Champney;
- A suspension from association with any FINRA member firm in any principal capacity for three months for Champney; and,
- A requirement that Champney re-qualify as a principal by passing the

requisite examination or examinations before acting in any principal capacity with any FINRA member.

Respondents agree to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payments are due and payable. They have submitted an Election of Payment form showing the method by which they propose to pay the fine imposed.

Respondents specifically and voluntarily waive any right to claim that they are unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

Respondent Champney 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, as amended. Accordingly, Champney 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). Further, because Champney 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.

Respondents understand that this settlement includes a finding that they 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 Champney subject to a statutory disqualification with respect to association with a member, and makes Vanderbilt subject to a statutory disqualification with respect to membership.

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

## II.

## WAIVER OF PROCEDURAL RIGHTS

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

A. To have a Complaint issued specifying the allegations against them;

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, Respondents 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.

Respondents 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

Respondents 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 them; and

C. If accepted:

1. this AWC will become part of Respondents' permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against them;

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. Respondents 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. Respondents 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 Respondents': (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. Respondents may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. The Statement does not constitute factual or legal findings by FINRA, nor does it reflect the reviews of FINRA or its staff.

Vanderbilt certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; Champney 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; Respondents further certify that they 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 Respondents to submit it.

Vanderbilt Securities, LLC
Respondent

7/11/18
Date

By: _____

Name and Title:
STEPHEN A. DISTANTE, CEO

7/11/18
Date

_____
Respondent
Barry Champney

Reviewed by:

_____
Charles M. O'Rourke, Esq.
2 Swenson Drive
Woodbury NY 11797

Accepted by FINRA:

7/26/18
Date

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

Seth M. Kean
Senior Counsel
FINRA Department of Enforcement
Brookfield Place, 200 Liberty Street
New York, NY 10281
(212) 858-4298