FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2017053162102

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

RE: Peter D. Monson, Respondent
General Securities Representative
CRD No. 2203309

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Peter Monson 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 herein.

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

Peter Monson entered the securities industry in January 1992 as a General Securities Representative, and was associated with four broker-dealers between then and February 2014. Since February 2014, he has been associated with Van Clemens & Co., Inc., and registered with FINRA as a General Securities Representative and General Securities Principal.

RELEVANT DISCIPLINARY HISTORY

Monson does not have any disciplinary history with the Securities and Exchange Commission, any state securities regulators, FINRA, or any other self-regulatory organization.

OVERVIEW

Between June 1, 2015, and June 30, 2016, Monson engaged in excessive and unsuitable trading in the Individual Retirement Account ("IRA") of his customer, GC. Monson actively traded risky, microcap stocks in GC's account throughout that period, even though GC's account value had declined by more than 60% since its inception and GC was facing a serious illness. Through this conduct, Monson violated FINRA Rules 2111 and 2010.

When placing these trades in GC's account, Monson regularly exercised discretion without the required authorization from either GC or Van Clemens & Co., the broker-dealer for which he worked. During the same period, Monson also exercised discretion without written authorization when placing trades in the accounts of at least two other customers. Through this conduct, Monson violated NASD Conduct Rule 2510(b) and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Background

GC was 44 years old and had been Monson's customer for two years in March 2014, when she moved her IRA to Van Clemens from Monson's previous firm. Before becoming Monson's customer, GC had only invested in mutual funds and had never purchased individual stocks. GC's March 2014 account application stated that she planned to use the account to "partially fund [her] retirement" and gave her investment time horizon as longer than 20 years. At the time, GC's account value was approximately $429,000.

From the outset, Monson asserted control over GC's IRA, trading it actively and focusing the trading on microcap stocks. By June 2015, however, the account value had dropped by nearly 60%, to $176,304. This decline resulted not only from investment losses and commissions charged for trades, but also from more than $138,000 in withdrawals that GC used to help finance a family business. By this time, GC had also learned that she had advanced-stage cancer.

Quantitative and qualitative unsuitability

FINRA Rule 2111 provides that a member or an associated person must 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 determine the customer's investment profile. A customer's investment profile includes such factors as the customer's age, financial situation and needs, investment objectives, investment experience, and investment time horizon.

FINRA's suitability rule includes an obligation to adhere to standards of "quantitative suitability" – *i.e.*, whether the quantity of activity 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 has control over trading in an account and the level of activity in that account is inconsistent with the customer's financial circumstances and investment objectives.

FINRA Rule 2010 requires registered representatives to observe "high standards of commercial honor and just and equitable principles of trade." A violation of FINRA Rule 2111 also constitutes a violation of FINRA Rule 2010.

Monson knew, as of June 2015, that the account had declined significantly in value and that GC had taken large withdrawals from it to meet her family's expenses. From then

through June 2016, however, Monson continued his frequent trading of microcap securities in GC's account, including occasional in-and-out trades. Even after GC informed Monson of her cancer diagnosis in late 2015, he did not curtail the amount of trading in her account or seek to reduce her risk exposure.

Further, Monson failed to recognize that the commissions and other costs resulting from his aggressive trading strategy had a negative impact on GC's account. Between June 1, 2015, and June 30, 2016, Monson made 187 trades in GC's account at a total cost of $14,514.53. Given the account's average equity of $39,095.67 during that period, Monson's trading resulted in an annualized turnover rate of 9.07 and an annualized cost-equity ratio of 34.27%.[1] In other words, GC needed a 34% return across the entire 13-month period merely to break even. This level of activity was excessive, given GC's investment profile at that time.

Not only was the trading in GC's account excessive, but it also consisted nearly entirely of risky "microcap" stocks, many of them issued by companies with minimal operating histories, companies domiciled in jurisdictions with opaque markets and limited disclosure obligations, or both. The U.S. Securities and Exchange Commission advises investors that microcap stocks are more volatile and less liquid than the stocks of larger companies, and that the scarcity of publicly available information makes microcap stocks particularly susceptible to fraud. Thus, the SEC states, microcap stocks are "among the most risky" investments.[2]

Monson exacerbated the already high risk associated with microcap stocks by repeatedly concentrating GC's account heavily in individual securities. High concentration in specific stocks exposes an account to risk of substantial loss in the event of volatility in those stock prices or industries.

For example, on June 30, 2015, when GC's total account value was $95,412, a $24,604 position in Alpha Natural Resources, Inc. (ANR) constituted 25.7% of GC's account. At the time, ANR stock traded at $0.302 per share. Two days later, Monson purchased an additional $10,062 of shares in ANR. Over the following month, however, ANR's price dropped nearly 85%, to $0.046 per share. Thus, Monson's decision to acquire a concentrated position in a single microcap stock caused GC's account to lose nearly a third of its value in less than a month.

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1 In the excessive-trading context, "turnover" compares the dollar value of an account's trading activity with the amount of equity in the account. Here, an annualized turnover rate of 9.07 means that the trades in GC's account, averaged over a 12-month period, totaled more than nine times GC's average account balance.

"Cost-equity ratio" measures how expensive trading activity is by dividing the transaction costs of trades – *i.e.*, commissions, ticket charges, and any other fees assessed above the purchase price – by the account's average monthly equity. Here, an annualized cost-equity ratio of 34.27% means that the trading activity in GC's account cost her 34.27% of her average monthly account equity.

2 "Microcap Stock: A Guide for Investors," U.S. Securities and Exchange Commission (Sept. 18, 2013), available at https://www.sec.gov/reportspubs/investor-publications/investorpubsmicrocapstockhtm.html.

As noted above, GC's health and financial profile had all changed significantly by June 2015. Given these factors, Monson did not have a reasonable basis for believing that the microcap-securities transactions that he recommended and executed were suitable for GC.

Through the foregoing conduct, Monson violated FINRA Rules 2111 and 2010.

Exercising discretion without written authorization

NASD Conduct Rule 2510(b) states:

> No member or registered representative shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the member, as evidenced in writing by the member or the partner, officer or manager, duly designated by the member, in accordance with Rule 3010.

Monson only spoke with GC a handful of times between June 1, 2015, and June 30, 2016. For the trading in her account, Monson used discretion to decide what to trade, when to trade it, and at what prices on more than 100 occasions during that period. Monson also used discretion to trade the accounts of at least two other customers, MH and DS, on hundreds of occasions during the same period.

Monson never obtained written authorization from any of these three customers to exercise discretion in their accounts between June 1, 2015, and July 31, 2016. Further, Monson never received Van Clemens' approval to exercise discretion in any customer accounts during that period.

Through the foregoing conduct, Monson violated NASD Conduct Rule 2510(b) and FINRA Rule 2010.

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

- A suspension from associating with any FINRA member firm in any capacity for six months, and
- A fine of $7,500.[3]

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.

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3 This AWC does not include a restitution component because the beneficiary of GC's account previously entered into a settlement with Monson and Van Clemens regarding the conduct described here.

Respondent specifically and voluntarily waives any right to claim an inability to pay, now or at any time hereafter, the monetary sanction 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 herein shall be effective on a date set by FINRA staff.

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(s) specifically and voluntarily waive(s) 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.

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 FINRA may consider it in any future action brought by FINRA or any other regulator against Respondent;

2. FINRA will make this AWC available through its 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. 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: (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. 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 or its staff.

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; he has agreed to the AWC's provisions voluntarily; and 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 him to submit this AWC.

02/03/2020
Date

Peter D. Monson
Respondent

Reviewed by:

Matthew T. Boos
Counsel for Respondent
Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, Minnesota 55402

Accepted by FINRA:

2/4/2020
Date

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

Adam B. Walker
FINRA
Department of Enforcement
120 W. 12th Street, 8th floor
Kansas City, Missouri 64105