

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2014042566601**

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

RE: J.P. Turner & Company, L.L.C., Respondent  
FINRA Member Firm  
BD No. 43177

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, J.P. Turner & Company, L.L.C. ("J.P. Turner" or the "Firm") 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 J.P. Turner alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. J.P. Turner 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**

J.P. Turner has been a FINRA member since July 21, 1997. J.P. Turner conducts a general securities business and has over 360 registered representatives and over 150 branch offices located nationwide.

**RELEVANT DISCIPLINARY HISTORY**

In December 2013, in connection with FINRA Matter No. 2011026098501, pursuant to a Letter of Acceptance, Waiver and Consent, J.P. Turner consented to a sanction consisting of a censure and restitution in the amount of \$707,559.53. From January 2008 through August 2009, the Firm failed to establish and maintain a supervisory system reasonably designed to monitor transactions in leveraged, inverse, and inverse-leveraged Exchange-Traded Funds ("Non-Traditional ETFs") in violation of NASD Rules 3010 and 2110 and FINRA Rule 2010. In addition, the Firm violated NASD Rules 2310 and 2110 and FINRA Rule 2010, through certain of its registered representatives, by making unsuitable recommendations of Non-Traditional ETFs to its customers. In addition, from February 2008 through April 2010, the Firm, through certain registered representatives, violated NASD Rules 2310 and 2110, IM-2310-2, and FINRA Rule 2010 by engaging in a pattern of unsuitable mutual fund switching, and the Firm violated NASD Rules 3010 and 2110 and FINRA Rule 2010 by failing to establish and maintain a supervisory system reasonably designed to prevent unsuitable mutual fund switching.

In June 2009, in connection with FINRA Matter No. 2007007138003, pursuant to a Letter of Acceptance, Waiver and Consent, J.P. Turner consented to a sanction consisting of: (1) a fine in the amount of \$525,000; and (2) an undertaking for violating NASD Conduct Rules 2110 and 3011(a), and MSRB Rule G-41. From March 2005 through September 2006, J.P. Turner, acting through the

Firm's designated AML Compliance Officer, among other violations including violations of NASD Conduct Rule 3010, failed to establish and implement policies and procedures reasonably designed to detect and cause the reporting of suspicious transactions under 31 U.S.C. 5318(g) and the implementing regulations thereunder.

In October 2008, in connection with FINRA Matter No. SAF2004026601, pursuant to a Letter of Acceptance, Waiver and Consent, J.P. Turner consented to a sanction consisting of: (1) a censure; (2) a fine in the amount of \$250,000; and (3) an undertaking to retain an independent consultant to conduct a comprehensive review of the Firm's policies, systems, procedures, and training relating to NASD Conduct Rule 2440 and IM-2440. The Firm violated NASD Conduct Rules 2110 and 3010 in that it failed to have a supervisory system reasonably designed to ensure that its registered representatives charged its customers reasonable markups and commissions on equity securities transactions.

### **OVERVIEW**

From April 1, 2009 to April 30, 2014, (the "Relevant Period") J.P. Turner failed to apply volume discounts to certain customers' eligible purchases of non-traded real estate investment trusts ("REITs") and business development companies ("BDCs") in violation of FINRA Rule 2010. In addition, J.P. Turner failed to have in place an effective supervisory system and written supervisory procedures reasonably designed to ensure that its customers received appropriate volume discounts on eligible purchases of non-traded REIT and BDCs in violation of NASD Conduct Rule 3010(a) and 3010(b) and FINRA Rule 2010.

### **FACTS AND VIOLATIVE CONDUCT**

#### **Background on Non-Traded REITs and BDCs**

A REIT is a corporation, trust or association that owns or manages income-producing real estate. There are two types of public REITs: those that trade on a national securities exchange and those that do not trade on a national securities exchange. REITs in this latter category, are generally referred to as publicly registered non-exchange traded REITs, or simply, non-traded REITs.

A BDC is a closed-end investment company that invests in private or thinly traded public companies. As with non-traded REITs, non-traded BDCs are not traded on a national securities exchange.

Non-traded REITs and BDCs may offer volume discounts to investors. A volume discount is a discounted price per share received by the investor when the investor reaches an accumulated level of investment. The manner in which an investor can obtain a volume discount is set forth in the offering's prospectus. The discount is funded by reducing the selling commission paid by the investment product's wholesaler to the broker-dealer.

#### **FIRM'S Supervisory Failures with Respect to Non-Traded REITs and BDCs**

During the Relevant Period, J.P. Turner failed to identify and apply volume discounts to certain customers' eligible purchases of non-traded REITs and BDCs, resulting in customers paying excessive sales charges of \$21,230.

Also during the Relevant Period, J.P. Turner failed to establish, maintain and enforce a supervisory system and written supervisory procedures with respect to the sale of non-traded REITs and BDCs. During the Relevant Period, J.P. Turner did not have procedures in place reasonably designed to

identify accounts that would be eligible for volume discounts.

J.P. Turner relied on its associated persons to ensure its customers received the volume discounts to which they were entitled, but failed to provide adequate guidelines, instructions or policies for its associated persons and supervisors to follow to determine whether a customer's purchase qualified for a volume discount and to ensure that the customer was made aware of the available discount.

Based on the foregoing, J.P. Turner violated NASD Conduct Rules 3010(a) and 3010(b) and FINRA Rule 2010.

B. J.P. Turner also consents to the imposition of the following sanctions:

- A censure;
- A fine of \$45,000;
- Restitution in the amount of \$21,230 (plus interest); and
- Certification that it has corrected its systems and procedures with respect to the sale of non-traded REITs and BDCs.

J.P. Turner agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. J.P. Turner has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

J.P. Turner specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

Restitution is ordered to be paid to customers listed in **Attachment A** in the total amount of \$21,230, 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 the date of the overcharge, until the date this AWC is accepted by the NAC.

J.P. Turner is ordered to review all non-traded REIT and BDC sales it made during the Relevant Period and certify that it has identified all transactions for which a customer did not receive the volume discount for which it was eligible. To the extent J.P. Turner identifies customers and/or transactions not identified on Attachment A, the Firm will provide restitution to that customer in the manner set forth in the previous paragraph.

A registered principal on behalf of J.P. Turner shall submit satisfactory proof of payment of restitution or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted to **William Brice La Hue at FINRA's Atlanta District Office located at One Securities Centre, Suite 500, 3490 Piedmont Road, N.E., Atlanta, Georgia 30305** either by letter that identifies **J.P. Turner, Case No. 2014042566601** or by e-mail from a work-related account of the registered principal of J.P. Turner to [EnforcementNotice@FINRA.org](mailto:EnforcementNotice@FINRA.org) and to [brice.lahue@finra.org](mailto:brice.lahue@finra.org). This proof shall be provided to the FINRA staff member listed above no later than 90 days after acceptance of the AWC.

If for any reason J.P. Turner cannot locate any customers identified in **Attachment A** or subsequently identified after reasonable and documented efforts within 120 days from the date the AWC is accepted, or such additional period agreed to by a FINRA staff member in writing, J.P. Turner shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property or abandoned property fund for the state in which the customer is last known to have resided. J.P. Turner shall provide satisfactory proof of such action to the FINRA staff member identified above

and in the manner described above, within 14 days of forwarding the undistributed restitution and interest to the appropriate state authority.

The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

Within 90 days of the acceptance of the AWC, a registered principal on behalf of J.P. Turner shall submit a report that explains how the Firm has corrected its systems and procedures with respect to the sale of non-traded REITs and BDCs to address the violations described in this AWC. Such report shall be submitted to **William Brice La Hue at FINRA's Atlanta District Office located at One Securities Centre, Suite 500, 3490 Piedmont Road, N.E., Atlanta, Georgia 30305** by letter that identifies **J.P. Turner, Case No. 2014042566601**. The report shall be accompanied by a copy of J.P. Turner's policies and procedures relating to the sale of non-traded REITs and BDCs. The Department of Enforcement may, upon a showing of good cause and at its sole discretion, extend the time for compliance with this provision.

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

## II.

### WAIVER OF PROCEDURAL RIGHTS

J.P. Turner specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against J.P. Turner;
- 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, J.P. Turner 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 acceptance or rejection of this AWC.

J.P. Turner 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

J.P. Turner 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 J.P. Turner; and
- C. If accepted:
  - 1. This AWC will become part of J.P. Turner's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against J.P. Turner;
  - 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. J.P. Turner 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. J.P. Turner 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 J.P. Turner'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. J.P. Turner may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. J.P. Turner understands that it 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.

The undersigned, on behalf of the Firm, 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; that the Firm has 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 the Firm to submit it.

J.P. Turner & Company, L.L.C.

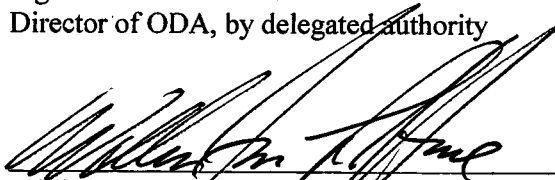
8/21/2015  
Date

By:   
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Accepted by FINRA:

8/25/15  
Date

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

  
William Brice La Hue, Senior Regional Counsel  
FINRA, Department of Enforcement  
One Securities Centre, Suite 500  
3490 Piedmont Road, N.E.  
Atlanta, Georgia 30305  
(404) 239-6111; Fax: (404) 264-1586  
E-Mail: [brice.lahue@finra.org](mailto:brice.lahue@finra.org)  
and [teresa.reich@finra.org](mailto:teresa.reich@finra.org) (senior paralegal)

**ATTACHMENT A**

| <b>CLIENT NAME</b>              | <b>RESTITUTION AMOUNT</b> |
|---------------------------------|---------------------------|
| T.J.G.                          | \$2,650.00                |
| G.R.P. & M.P. Tenants in Common | \$8,350.00                |
| D.R.B.                          | \$4,000                   |
| R.R.S. & D.S. TTEE              | \$300.00                  |
| R.C.B.                          | \$1,930.00                |
| R.C.B. IRA                      | \$3,000.00                |
| J.J.L. Revocable Trust          | \$250.00                  |
| G.A.T.                          | \$750.00                  |
| <b>TOTAL</b>                    | <b>\$21,230.00</b>        |