

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2015044939902**

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

RE: James E. Armstrong, Sr.  
Former General Securities Principal  
CRD No. 720549

James E. Armstrong, Jr.  
General Securities Principal  
CRD No. 4517907

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, James E. Armstrong, Sr. (“Armstrong Sr.”) and James E. Armstrong, Jr. (“Armstrong Jr.”) (collectively, “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**

Armstrong Sr. entered the securities industry in December 1980, when he associated with a FINRA member firm. Armstrong Sr. subsequently associated with Royal Alliance Associates, Inc. (“Royal Alliance” or the “Firm”) from November 18, 1989 to October 29, 2018. During the relevant period, Armstrong Sr. served as, among other things, a General Securities Principal and a General Securities Representative with Royal Alliance.

Although Armstrong Sr. is not currently associated with a member firm, he remains subject to the jurisdiction of FINRA until October 28, 2020, pursuant to Article V, Section 4(a) of FINRA’s By-Laws, which provides for a two-year period of retained jurisdiction over formerly-registered persons.

Armstrong Jr. entered the securities industry in March 2002, when he associated

with Royal Alliance, where he is currently registered as, among other things, a General Securities Principal and a General Securities Representative.

### **RELEVANT DISCIPLINARY HISTORY**

Respondents do not have any relevant disciplinary history.

### **OVERVIEW**

At various times from February 2012 through March 2015 (“Relevant Period”), Armstrong Sr. and Armstrong Jr. failed to reasonably supervise registered representative Mark Perry (“Perry”). Armstrong Jr. failed to reasonably supervise Perry by: (1) ignoring red flags, which indicated possible unsuitable trading by Perry; and (2) failing to review Perry’s email correspondence, which would have revealed that Perry received a customer complaint and alleviated another customer’s concerns by making misleading and promissory statements. Armstrong Sr. failed to reasonably supervise Perry by failing to appropriately address concerns elevated to him by Armstrong Jr., regarding Perry’s trading activity in customer accounts.

By virtue of the foregoing, Armstrong Jr. and Armstrong Sr. violated NASD Conduct Rule 3010(a) and FINRA Rules 3110(a)<sup>1</sup> and FINRA Rule 2010.

### **FACTS AND VIOLATIVE CONDUCT**

NASD Rule 3010(a) and FINRA Rule 3110(a) require members to establish and maintain a supervisory system that is reasonably designed to achieve compliance with applicable securities laws and regulations, and FINRA rules. There must be adequate follow-up and review when a firm’s own procedures detect irregularities or unusual trading.<sup>2</sup> A supervisor who is aware of red flags or irregularities cannot discharge his or her obligations by simply relying on the unverified representations of employees.<sup>3</sup> FINRA Rule 2010 requires FINRA members to observe high standards of commercial honor and just and equitable principles of trade.

During the Relevant Period, Armstrong Sr. and Armstrong Jr. were responsible for the supervision of registered representative Perry. Although Armstrong Sr. delegated day-to-day supervision of Perry to Armstrong Jr., Armstrong Sr. was ultimately responsible for the supervision of representatives at his branch office.

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<sup>1</sup> NASD Rule 3010 was replaced by FINRA Rule 3110 on December 1, 2014. Accordingly, Armstrong Sr. and Armstrong Jr.’s supervisory failures prior to December 1, 2014 are in violation of NASD Rule 3010 and their supervisory failures after that date are in violation of FINRA Rule 3110.

<sup>2</sup> *John H. Gutfreund, Thomas W. Strauss, and John W. Meriwether*, Exchange Act Release 34-31554 (citing *Prudential-Bache Securities, Inc.*, Exchange Act Release No. 227755 (Jan. 2, 1986)).

<sup>3</sup> *Shearson Lehman Hutton Inc.*, Exchange Act Release No. 25766 (April 28, 1989) and *Prudential-Bach Securities, Inc. Id.*

### **Underlying Misconduct**

During the Relevant Period, Perry made unsuitable investment recommendations to four elderly customers by over-concentrating their accounts in precious metal sector securities and by recommending that they purchase and hold leveraged mutual funds and/or ETFs in their accounts for extended periods of up to 963 days.<sup>4</sup> When one customer complained to Perry about the trading in his account, Perry responded by making misleading and promissory statements. In addition, Perry failed to report other customer complaints that alleged unsuitable trading. Finally, Perry misstated a customer's risk tolerance on several Royal Alliance new account forms.<sup>5</sup> Perry's unsuitable trading activity resulted in more than \$200,000 in trading losses across four customers' accounts.<sup>6</sup>

After FINRA learned of Perry's misconduct, it commenced an investigation into, among other things, the supervision of Perry.

### **Armstrong Jr.'s Failure to Supervise**

During the Relevant Period, Armstrong Jr. failed to reasonably supervise Perry's trading activity in customer accounts. Specifically, the Firm's written supervisory procedures ("WSP's") required a first line supervisor to review client transactions for suitability. Armstrong Sr. delegated first line supervisory responsibilities to Armstrong Jr. for Perry and others. Armstrong Jr. ignored red flags indicating possible unsuitable trading activity in customer accounts. He received numerous trade alerts regarding securities transactions that Perry executed in customer accounts. Instead of independently investigating the suitability of the underlying transactions that were the subject of the trade alerts, Armstrong Jr. relied exclusively on Perry's assurances that the customers understood and accepted the risk associated with the trading activity in their accounts. In several instances, Armstrong Jr. identified certain trades that Perry made in his customers' accounts that were inconsistent with the customer's stated risk tolerance. Rather than investigate the suitability of the transactions, and without contacting the customers, Armstrong Jr. allowed Perry to increase the customer's risk tolerance to match the trading activity.

In approximately June 2014, Armstrong Jr. became concerned about Perry's aggressive trading style and the concentration of high-risk securities in Perry's customers' accounts. Armstrong, Jr. subsequently elevated his concerns to his supervisor, Armstrong Sr., and ultimately recommended that Armstrong Sr.

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<sup>4</sup> Non-Traditional ETFs, and similarly leveraged mutual funds, are designed to return a multiple of an underlying index or benchmark, the inverse of that benchmark, or both, over only the course of one trading session—usually a single day. As a result, the performance of Non-Traditional ETFs over periods of time longer than a single trading session “can differ significantly from the performance . . . of their underlying index or benchmark during the same period of time.” FINRA Regulatory Notice 09-31.

<sup>5</sup> FINRA suspended Perry for eighteen months in all capacities for the above-described misconduct. See AWC No. 2015044939901 (Sept. 7, 2017).

<sup>6</sup> Royal Alliance paid customers for their losses as a result of Perry's unsuitable trading.

terminate Perry from Royal Alliance. As discussed below, Armstrong Sr. declined to take any supervisory action against Perry. Notwithstanding the concerns he raised to Armstrong Sr., Armstrong Jr. continued to approve Perry's high-risk trading activity in customer accounts.

From July 2013 to May 2014, Armstrong Jr. also failed to reasonably supervise Perry's email correspondence. Royal Alliance's automated email review system selected emails for supervisory review based on keyword searches and random sampling. Pursuant to the Firm's WSPs, Armstrong Jr. was supposed to review selected emails for such things as customer complaints, promissory language, and other potential sales practice violations. Instead of reviewing each of the selected emails as required by the Firm's WSPs, Armstrong Jr. never even opened any of the emails. Because Armstrong Jr. failed to review the selected emails, he did not detect an unreported customer complaint against Perry or that Perry had alleviated another customer's concerns about the trading activity in his account by making misleading and promissory statements.

**Armstrong Sr.'s Failure to Supervise**

From June 2014 to March 2015, Armstrong Sr. failed to reasonably supervise Perry by failing to address concerns raised to him by Armstrong Jr. regarding Perry's trading activity in customer accounts. As previously noted, Armstrong Jr. elevated concerns to Armstrong Sr. regarding the aggressive trading style and the concentration of high-risk securities in Perry's customers' accounts. Armstrong Jr. recommended that Armstrong Sr. terminate Perry. Without conducting any investigation regarding Perry's trading activities or making a determination about whether the trading was suitable for the customers, Armstrong Sr. dismissed Armstrong Jr.'s concerns, refused to take any action against Perry, and did not take any action to curtail Perry's unsuitable trading. Although Armstrong Sr. had delegated day-to-day supervisory responsibility for Perry to Armstrong Jr., he was ultimately responsible for the supervision of the representatives in his branch office. When Armstrong Jr. raised concerns to him about the Perry's activities, Armstrong Sr. failed to ensure that Perry's trading activity was suitable for his customers or to take any other supervisory action in response to Armstrong Jr.'s concerns. Due to Armstrong Sr.'s failure to respond in a reasonable manner, Perry's unsuitable trading activity continued unabated for several more months until he was terminated for failing to report a customer complaint.

By virtue of the foregoing, Respondents Armstrong Jr. and Armstrong Sr. violated NASD Conduct Rule 3010(a) and FINRA Rules 3110(a) and 2010.

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

Armstrong Jr.: a three month suspension in all principal capacities and a \$7,500 fine.

Armstrong Sr.: a two month suspension in all principal capacities and a \$5,000 fine.

Respondent Armstrong Jr. agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable.

Respondent Armstrong Sr.'s fine shall be due and payable either immediately upon his 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.

Respondents have each submitted an Election of Payment form showing the method by which each proposes to pay the fines 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.

Respondents understand that if they are barred or suspended from associating with any FINRA member in a principal capacity, they 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, Respondents 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). Furthermore, because Respondents are subject to a statutory disqualification during the suspension, if Respondents remain associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

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**

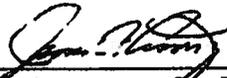
Respondents understand that:

- 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 Respondents; 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 Respondents;
  - 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

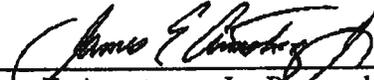
statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

Respondents certify that they each have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that they each 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.

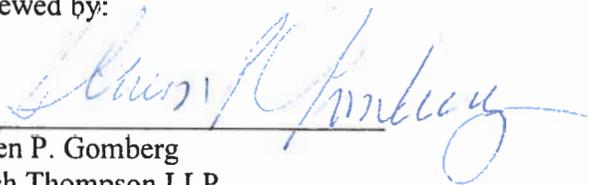
11/08/2018  
Date

  
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James E. Armstrong, Sr., Respondent

11/08/2018  
Date

  
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James E. Armstrong, Jr., Respondent

Reviewed by:



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Accepted by FINRA:

12/4/2018  
Date

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



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