FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2011026098501

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

RE: J.P. Turner & Company, L.L.C. ("J.P. Turner" or the "Firm")
(BD No. 43177)

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, J.P. Turner 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-registered broker-dealer since 1997. The Firm is headquartered in Atlanta, Georgia and conducts a general securities business. J.P. Turner has approximately 421 registered representatives and over 185 active branch offices.

RELEVANT DISCIPLINARY HISTORY

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, 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: (l) 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 FINRA Rule IM-2440. The Firm violated FINRA 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

During the period from January 2008 through August 13, 2009 (the "ETF Relevant Period"), J.P. Turner failed to establish and maintain a supervisory system, including written procedures, reasonably designed to monitor transactions in leveraged, inverse, and inverse-leveraged Exchange-Traded Funds ("Non-Traditional ETFs"). Non-Traditional ETFs have certain risks that increase over time and in volatile markets, such as those associated with a daily reset, leverage and compounding. J.P. Turner violated NASD Rules 3010 and 2110 and FINRA Rule 2010[1] in that during the ETF Relevant Period, it failed to establish (1) a reasonable supervisory system and written procedures to monitor transactions in Non-Traditional ETFs; and (2) adequate formal training regarding Non-Traditional ETFs.

In addition, J.P. Turner violated NASD Rules 2310 and 2110 and FINRA Rule 2010 in that certain J.P. Turner registered representatives did not have an adequate understanding of Non-Traditional ETFs before recommending these products to retail brokerage customers. Moreover, certain J.P. Turner registered representatives made unsuitable recommendations of Non-Traditional ETFs to at least 27 retail brokerage customers. As a result, these customers sustained collective net losses of over $200,000 during the ETF Relevant Period.

Additionally, during the period from February 2008 through April 2010 (the "Mutual Fund Switching Period"), J.P. Turner, 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. Further, J.P. Turner violated NASD Rules 3010 and 2110 and FINRA Rule 2010 by failing to establish and maintain a supervisory system, including written

[1] On December 15, 2008, NASD Rule 2110 was changed to FINRA Rule 2010. Both rules require that a firm, in the conduct of its business, observe high standards of commercial honor and just and equitable principles of trade. For the period through December 14, 2008, the Firm's misconduct constituted a violation of NASD Rule 2110, and for the period after December 14, 2008, the Firm's misconduct constituted a violation of FINRA Rule 2010.

procedures, reasonably designed to prevent unsuitable mutual fund switching. As a result, 66 customers paid commissions in the amount of $445,291 and sales charges in the amount of $57,363 in connection with the unsuitable mutual fund switches.

FACTS AND VIOLATIVE CONDUCT

VIOLATIONS RELATING TO SALES OF NON-TRADITIONAL ETFS

Factual Background

Non-Traditional ETFs

As described in a FINRA Regulatory Notice issued in June 2009, ETFs are typically registered unit investment trusts (UITs) or open-end investment companies whose shares represent an interest in a portfolio of securities that track an underlying benchmark or index.[2] Shares of ETFs typically are listed on national securities exchanges and trade throughout the day at prices established by the market.

Leveraged ETFs seek to deliver multiples of the performance of the index or benchmark they track. Some Non-Traditional ETFs are "inverse" or "short" funds, meaning that they seek to deliver the opposite of the performance of the index or benchmark they track. Some funds are both inverse and leveraged, meaning that they seek to achieve a return that is a multiple of the inverse performance of the underlying index or benchmark. To accomplish their objectives, Non-Traditional ETFs use swaps, futures contracts and other derivative instruments. The Firm was not involved in the creation or initial structuring of these products.

Most Non-Traditional ETFs "reset" daily, meaning that they are designed to achieve their stated objectives only on a daily basis. FINRA noted in its June 2009 Regulatory Notice that "[d]ue to the effect of compounding, their performance over longer periods of time can differ significantly from the performance . . . of their underlying index or benchmark during the same period of time."[3] This effect can be magnified in volatile markets.

For example, between December 1, 2008 and April 30, 2009, the Dow Jones U.S. Oil & Gas Index gained two percent, while ProShares Ultra Oil and Gas (DIG), seeking to deliver twice the index's daily return fell *six* percent, and ProShares UltraShort Oil and Gas (DUG), seeking to deliver twice the inverse of the index's daily return fell *26* percent.

[2] See FINRA Regulatory Notice ("Notice") 09-31, *Non-Traditional ETFs* (June 2009).
[3] *Id.*, at 2.

Accordingly, investors were subjected to the risk that the performance of their investments in Non-Traditional ETFS could differ significantly from the performance of the underlying index or benchmark when held for longer periods of time, particularly in the volatile markets that existed during the ETF Relevant Period.

Non-Traditional ETFs Dramatically Increased in
Popularity After 2006

In June 2006, a handful of Non-Traditional ETFs were listed and began trading on national securities exchanges after being registered with the U.S. Securities and Exchange Commission. Within nine months, over 40 additional Non-Traditional ETFs began trading on national securities exchanges. By April 2009, over 100 Non-Traditional ETFs were available in the marketplace, with total assets under management of approximately $22 billion.

As the number of Non-Traditional ETFs grew, so did the number of transactions by customers at J.P. Turner. During the ETF Relevant Period, J.P. Turner customers bought and sold a total of over $185 million of Non-Traditional ETFs.

Certain J.P. Turner Customers Held Non-Traditional ETFs
For Longer Periods of Time

Despite the risks associated with holding Non-Traditional ETFs for longer periods, numerous J.P. Turner customers held Non-Traditional ETFs for extended time periods during the ETF Relevant Period. In fact, many J.P. Turner customers held Non-Traditional ETFs for longer periods of up to several months. For example:

- A 73-year old customer with a primary investment objective of capital preservation, a conservative risk tolerance, and a net worth of under $200,000 held Non-Traditional ETFs that were purchased on a solicited basis for 86 days and sustained losses of over $7,300; and

- A 74-year old customer with a primary investment objective of capital preservation and net worth of $500,000 – $1 million held Non-Traditional ETFs that were purchased on a solicited basis for 115 days and sustained losses of over $11,000.

J.P. Turner Failed to Establish and Maintain a Reasonable Supervisory System, including Written Procedures, in Violation of NASD Rules 3010 and 2110 and FINRA Rule 2010

NASD Rule 3010(a) states in part that each member shall establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD and FINRA Rules. Final responsibility for proper supervision shall rest with the member.

NASD Rule 3010(b)(1) states in part that each member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable NASD and FINRA Rules.

As described below, J.P. Turner violated NASD Rules 3010 and 2110 and FINRA Rule 2010 in that during the ETF Relevant Period: (1) the Firm failed to establish and maintain a supervisory system, including written procedures, reasonably designed to achieve compliance with NASD and FINRA Rules in connection with the sale of Non-Traditional ETFs to certain retail brokerage customers; and (2) the Firm failed to provide adequate formal training and guidance to its registered representatives and supervisors regarding Non-Traditional ETFs.

J.P. Turner Failed to Establish a Reasonable Supervisory System
In Connection with the Sale of Non-Traditional ETFs

The Firm supervised Non-Traditional ETFs the same way it supervised traditional ETFs until after FINRA issued the Regulatory Notice in June 2009. The Firm relied on its general supervisory procedures to supervise transactions in Non-Traditional ETFs during the ETF Relevant Period. However, the general supervisory system the Firm had in place during the ETF Relevant Period was not sufficiently tailored to address the unique features and risks involved with these products. For example, during the ETF Relevant Period, the Firm did not create a procedure to address the risks associated with longer-term holding periods in Non-Traditional ETFs. Thus, during the ETF Relevant Period, the Firm failed to establish a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with applicable NASD and/or FINRA rules in connection with the sale of Non-Traditional ETFs.

J.P. Turner Failed to Provide Adequate Training
Regarding Non-Traditional ETFs

During the ETF Relevant Period, from January 2008 through August 13, 2009, J.P. Turner failed to provide adequate formal training to registered representatives and supervisors regarding the features, risks, and characteristics of Non-Traditional ETFs. For example, during the ETF Relevant Period, the Firm failed to establish adequate guidance or tools to educate registered representatives and supervisors about Non-Traditional ETFs. Although the Firm had a mandatory continuing education program, it did not include educational material regarding Non-Traditional ETFs until August 2009, after the issuance of FINRA's June

2009 Notice to Members 09-31, which reminded firms of their sales practice obligations relating to Non-Traditional ETFs.

J.P. Turner Made Unsuitable Recommendations Regarding Non-Traditional ETFs, in Violation of NASD Rules 2310 and 2110 and FINRA Rule 2010

NASD Rule 2310(a)[4] states that in recommending a purchase, sale or exchange of any security, a member must have a reasonable basis for believing that the recommendation is suitable for a customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs. Fulfilling this obligation requires two types of analyses: a reasonable-basis suitability analysis and a customer-specific suitability analysis. First, the reasonable basis suitability analysis requires "determining whether the product is suitable for any customer, an analysis that requires firms and associated persons to fully understand the products and transactions they recommend." [5] Second, the customer-specific suitability analysis requires that "[o]nce a determination is made that a product is generally suitable for at least some investors, a firm must also determine that the product is suitable for the specific customers to whom it is recommended."[6] J.P. Turner failed to fulfill either of these obligations during the ETF Relevant Period.

J.P. Turner failed to fulfill its reasonable-basis suitability obligation. The reasonable-basis suitability obligation under NASD Rule 2310 requires a broker-dealer and its registered representatives to, among other things, perform reasonable diligence to understand the nature of a recommended security, as well as the potential risks and rewards. Thus, before recommending the purchase of a Non-Traditional ETF, a firm must understand the ETF's terms and features, including how they are designed to perform, how the ETFs achieve that objective and the impact that market volatility, the ETF's use of leverage, and the customer's intended holding period will have on the ETF's performance. Yet J.P. Turner allowed its registered representatives to recommend Non-Traditional ETFs during the ETF Relevant Period without performing reasonable diligence to understand the risks and features associated with the products. The Firm therefore violated NASD Rules 2310 and 2110 and FINRA Rule 2010.

J.P. Turner also failed to fulfill its customer-specific suitability obligation. J.P. Turner failed to determine that Non-Traditional ETFs were suitable for at least 27 customers who purchased the products, all of whom suffered actual losses. At least 18 of these customers had conservative investment objectives and/or risk tolerance profiles. The customer-specific suitability analysis required by NASD Rule 2310 includes making reasonable efforts to obtain information concerning

[4] Although FINRA Rule 2111 superseded NASD Rule 2310 effective February 4, 2013, NASD Rule 2310 was in effect throughout the ETF Relevant Period.
[5] See Notice 09-31, at 3.
[6] *Id.*

the customer's financial status, tax status, investment objectives and "such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer."[7] While the customer-specific suitability analysis depends on the investor's particular circumstances, Non-Traditional ETFs typically are not suitable for retail investors who plan to hold them for more than one trading session, particularly in volatile markets.

Yet Non-Traditional ETFs were held in the J.P. Turner accounts of at least 27 retail customers for extended time periods and subjected the customers to the risk of greater losses due to the effect of compounding and daily resets. The performance of the Non-Traditional ETFs differed significantly from the performance of the underlying index of benchmark, especially during a period of market volatility. These customers, including retired customers and customers with conservative investment objectives and/or risk tolerance profiles, sustained collective net losses of over $200,000 during the ETF Relevant Period. By failing to fulfill its customer-specific suitability obligation, J.P. Turner violated NASD Rules 2310 and 2110 and FINRA Rule 2010.

VIOLATIONS RELATING TO MUTUAL FUND SWITCHING

J.P. Turner Engaged in a Pattern of Unsuitable Mutual Fund Switching

NASD Rule IM-2310-2 states, in relevant part, that trading in mutual fund shares, particularly on a short term basis, may constitute a violation of the responsibility for fair dealing. Mutual fund shares generally are suitable only as long-term investments and not a proper vehicle for short-term trading because the repeated buying and selling of mutual fund shares may harm customers by causing them to incur unsuitable transaction fees and commissions.

J.P. Turner violated NASD Rules 2310 and 2110, IM-2310-2, and FINRA Rule 2010 in that the Firm, through its registered representatives, engaged in a pattern of unsuitable mutual fund switching during the Mutual Fund Switching Period from February 2008 through April 2010.

For example, during the Mutual Fund Switching Period, registered representative LG engaged in a pattern of unsuitable mutual fund switching in 66 customer accounts, without having reasonable grounds for believing that such transactions were suitable for those customers, in view of the nature of the recommended ~~transactions, the frequency of the transactions, and the transaction costs incurred.~~ On 537 occasions, LG recommended that customers sell mutual funds within only one to 12 months after purchasing them. LG then used the proceeds of those sales to purchase mutual funds in other fund families for those customers, causing the

[7] See NASD Rule 2310.

customers to pay sales charges and commissions. Further, LG recommended "Class A" mutual fund shares that required the payment of a sales charge with each new purchase, and the customers he solicited only purchased Class A shares. These recommendations resulted in 66 customers paying commissions in the amount of $445,291 and sales charges in the amount of $57,363.

J.P. Turner Failed to Establish and Maintain a Reasonable Supervisory System, including Written Supervisory Procedures, <u>Regarding Mutual Fund Switching</u>

J.P. Turner violated NASD Rules 3010 and 2110 and FINRA Rule 2010 in that the Firm failed to establish and maintain a supervisory system, including written procedures, reasonably designed to prevent unsuitable mutual fund switching during the Mutual Fund Switching Period.

For example, the Firm lacked sufficient reports and procedures for adequately monitoring for trends or patterns involving mutual fund switches, including reports that contained sufficient alerts that a registered representative was effecting multiple mutual fund switch transactions for a customer within a short period of time.

Further, the Firm's written procedures for the review of switch exception reports and switch disclosure forms did not provide guidance about certain relevant items, including the following:

- The steps supervisors should take to determine whether a registered representative may have engaged in unsuitable short-term and/or unsuitable mutual fund switching;
- The steps supervisors should take to determine if a pattern of mutual fund switching may exist;
- The steps supervisors should take to determine whether a registered representative recommended the appropriate share class in a mutual fund switch transaction; and
- The steps supervisors should take if a pattern of mutual fund switching is suspected or detected.

During the Mutual Fund Switching Period, the Firm failed to reject any of the more than 2,800 mutual fund switches that appeared on the Firm's switch exception reports. For example, HM, LG's supervisor from February 2009 through October 2011, did not reject any of the mutual fund switches that LG ~~recommended during this period, despite the presence of several red flags, such~~ as:

- The majority of LG's mutual fund switch transactions were marked unsolicited;

- The average holding period for LG's mutual fund switches was approximately five months;
- The majority of LG's mutual fund switches were placed into Class A shares; and
- The majority of the switch disclosure forms that LG submitted to the Firm regarding these transactions did not contain an adequate basis for the switch transactions.

For example, on February 25, 2008, LG recommended that an elderly customer, LR, sell two mutual funds for approximately $70,000. The next day, LG recommended the purchase of Class A shares in two mutual funds in other fund families using the proceeds from the foregoing sale. LG earned $3,500 in gross commissions from the transactions. On October 24, 2008, LG recommended the sale of these same funds and the purchase of another fund for an additional $1,500 in gross commissions. Similarly, in 25 other instances from February 2008 through April 2010, J.P. Turner, through LG, recommended that LR sell her positions in mutual funds less than one year after she purchased them and used the proceeds to purchase Class A shares of other mutual funds in other fund families, resulting in LR paying $31,000 in commissions. J.P. Turner failed to question LG about these transactions. Further, J.P. Turner did not reject LG's mutual fund switches for LR. Nor did J.P. Turner contact LR regarding the transactions, or take any other steps to prevent LG's unsuitable mutual fund switching in LR's account.

In summary, during the Mutual Fund Switching Period, the Firm (1) failed to have an adequate supervisory system, including written procedures, to prevent unsuitable mutual fund switching activity; and (2) failed to adequately supervise its registered representatives, including LG, in the context of mutual fund switch transactions. Such conduct constituted a violation of NASD Rules 3010 and 2110 and FINRA Rule 2010.

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

1. Censure; and
2. Restitution in the amount of $707,559.53.[8]

Restitution is ordered to be paid to the customers listed on Attachment A hereto in the total amount of $707,559.53. 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 Elena Kindler and Chun Li, Senior Counsel, Department of Enforcement, One

[8] In the interests of providing full restitution to customers, FINRA imposed no fine after considering, among other things, the Firm's revenue and financial resources.

World Financial Center, 200 Liberty Street, New York, NY 10281 either by letter that identifies J.P. Turner and the case number or by e-mail from a work-related account of the registered principal of J.P. Turner to EnforcementNotice@FINRA.org. This proof shall be provided to the FINRA staff members listed above no later than 120 days after acceptance of the AWC.

If for any reason J.P. Turner cannot locate any customer identified in Attachment A 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 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 to the appropriate state authority.

J.P. Turner has specifically and voluntarily waived any right to claim an inability to pay at any time hereafter the monetary sanctions imposed in this matter.

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.

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 the Firm;

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 General Counsel, 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 the Firm; and

C. If accepted:

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

2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the Firm's disciplinary record;

3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and

4. the Firm 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 the Firm'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 J.P. Turner, 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.

11/26/2013
Date (mm/dd/yyyy)

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

By: Dean Vernoia

Title: C.O.O.

Accepted by FINRA:

12/4/13
Date

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

Susan Light

Susan Light
Senior Vice President and Chief Counsel
FINRA Department of Enforcement
One World Financial Center
200 Liberty Street
New York, NY 10281
(646) 315-7333