

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2018057226601**

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

RE: Kurt Jason Gunter, Respondent
General Securities Representative
CRD No. 2747789

Pursuant to FINRA Rule 9216, Respondent Kurt Jason Gunter 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 in this AWC.

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

Gunter first became registered with FINRA in 1996. Gunter was registered as a General Securities Representative and Investment Company and Variable Contracts Products Representative through an association with Stifel, Nicolaus & Company, Inc. (CRD No. 793) from June 2013 until August 2017, when he voluntarily resigned from firm. Gunter is currently associated as a General Securities Representative through an association with another FINRA member firm.

Respondent does not have any relevant disciplinary history.

OVERVIEW

From July 2013 through December 2016, Gunter engaged in an unsuitable pattern of short-term trading of Unit Investment Trusts in customer accounts. Based on the foregoing, Gunter violated FINRA Rules 2111 and 2010.

In addition, during the same period, Gunter signed switch letters that were sent to customers that contained inaccurate or missing information about the costs that they incurred as a result of early rollovers of Unit Investment Trusts, in violation of FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

A. Unit Investment Trusts

A Unit Investment Trust (UIT) is a SEC-registered investment company that offers investors shares or “units” in a fixed portfolio of securities via a one-time public offering. A UIT terminates on a specified maturity date, often after 15 or 24 months, at which point the underlying securities are sold and the resulting proceeds are paid to the investors. A UIT’s portfolio is not actively managed between the trust’s inception and its maturity date.

UIT sponsors often offer UIT product lines in successive “series,” with the offering periods for new series typically coinciding with the maturity date of prior series. Successive series of UITs often have the same or similar investment objectives and investment strategies as the prior series, even if the portfolio of securities held by the UIT changes from series to series.

UITs impose a variety of upfront sales charges. For example, during the relevant period, a typical 24-month UIT contained three separate charges: (1) an initial sales charge, which was generally 1% of the purchase price; (2) a deferred sales charge, which was generally up to 2.5% of the offering price; and (3) a creation and development fee (C&D fee), which was generally 0.5% of the offering price.¹ If the proceeds from the sale of a UIT were “rolled over” to fund the purchase of a new UIT, UIT sponsors often waived the initial sales charge, but still applied the deferred sales charge and C&D fee.

A registered representative who recommended the sale of a customer’s UIT before its maturity date and used the sale proceeds to purchase a new UIT would cause the customer to incur greater sales charges than if the customer had held the UIT until maturity. For example, a hypothetical customer who purchased a 24-month UIT and held it until maturity would have paid a sales charge of about 3.95%. However, if after six months, the customer rolled over the UIT into a new UIT, he or she would have paid an additional 2.95% in sales charges. And, if the customer repeatedly rolled over the existing UIT into a new UIT every six months, he or she would have paid total sales charges of approximately 12.8% over a two-year period.

Because of the long-term nature of UITs, their structure, and their costs, short-term trading of UITs may be improper.

B. Gunter Engaged in an Unsuitable Pattern of Early Rollovers of UITs

From July 2013 through December 2016, Gunter recommended that his customers roll over UITs more than 100 days prior to maturity on more than 270 occasions.

¹ In addition to these charges, most UITs charged annual operating expenses that are paid to the sponsor out of the assets of the UIT.

Indeed, although his customers' UITs typically had a 24-month maturity period, Gunter recommended that they sell their UITs after holding them for, on average, only 297 days, and use the proceeds to purchase a new UIT.

Of the more than 270 early rollovers recommended by Gunter, more than 120 were "series-to-series" rollovers. In other words, on more than 120 occasions, Gunter recommended that his customers roll over a UIT before its maturity date to purchase a subsequent series of the same UIT, which, as noted above, generally had the same or similar investment objectives and strategies as the prior series.

As one example of a recommended "series-to-series" rollover, Gunter recommended in October 2013 that a customer purchase a UIT issued in the third quarter of 2013 that had an investment strategy of seeking "above-average capital appreciation" and held a portfolio of "well capitalized" stocks in companies with "strong market positions" (the CS 22 Series). Although the CS 22 Series had a 24-month maturity period, Gunter recommended that his customer sell it after only 76 days and use the proceeds to purchase a later series of the same UIT issued in the fourth quarter of 2013 (the CS 23 Series). The CS 23 Series had the identical investment strategy and objectives of the CS 22 Series and held similar stocks. Gunter's recommendation that his customer sell the CS 22 Series approximately 22 months prior to its maturity and use the proceeds to purchase the CS 23 Series caused his customer to incur increased sales charges to purchase what was, essentially, the same investment.

Gunter's recommendations caused his customers to incur unnecessary sales charges,² and were unsuitable in view of the frequency and cost of the transactions.

Therefore, Gunter violated FINRA Rules 2111 and 2010.

C. Gunter Signed Switch Letters That Were Sent to Customers Containing Inaccurate Information about the Costs They Incurred as a Result of Early UIT Rollovers

FINRA Rule 2010 requires a member firm and its associated persons to "observe high standards of commercial honor and just and equitable principles of trade." A negligent misstatement or omission of material fact to a customer violates FINRA Rule 2010.

From July 2013 through December 2016, Gunter signed 127 switch letters in connection with early UIT rollovers. The switch letters were intended to provide customers with necessary information about the switch transaction, including its costs. Customers were required to sign and return the letters to Stifel acknowledging the switch transaction.

² Gunter's customers received reimbursement of these excess sales charges from Stifel in connection with FINRA's separate settlement with the firm. *See Stifel, Nicolaus & Co., Inc.*, AWC No. 2016050948201 (May 2020).

Although Gunter verbally notified customers of the costs of UITs, 96 of the UIT switch letters that Gunter signed and that were sent to customers during this period either contained inaccurate information about the costs customers incurred in connection with their early UIT rollovers or failed to specify the costs. Specifically, 75 of the UIT switch letters understated the sales charges associated with the switch by at least 25%, and 21 of the letters did not list any sales charge associated with the new UIT purchased by the customer, even though the switches had resulted in customers incurring new sales charges. On average, the switch letters that contained inaccurate information understated the sales charges that the customers incurred by approximately \$2,500.

Therefore, Gunter violated FINRA Rule 2010.

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

- a three-month suspension from associating with any FINRA member in any capacity; and
- a \$10,000 fine.

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.

Respondent specifically and voluntarily waives any right to claim an inability to pay, now or at any time after the execution of this AWC, 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 in this AWC shall be effective on a date set by FINRA.

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 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 its acceptance or rejection.

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 may be considered in any future action brought by FINRA or any other regulator against Respondent;
 - 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. 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 testimonial obligations or 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.

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; Respondent has agreed to the AWC's provisions voluntarily; and no offer, threat, inducement, or promise of any kind, other than the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce him to submit this AWC.

11/3/2020
Date

Kurt J. Gunter
Kurt Jason Gunter
Respondent

Reviewed by:

Bradley M. Kirklín
Bradley M. Kirklín, Esq.
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11/20/2020

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

Michael J. Newman

Michael J. Newman

Senior Counsel

FINRA

Department of Enforcement

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