

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2016048675901**

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

RE: H. Beck, Inc., Respondent
FINRA-Member Firm
CRD No. 1763

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, Respondent H. Beck, Inc. (“H. Beck” 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 the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. H. Beck 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

H. Beck is a full-service brokerage firm based in Bethesda, Maryland. The Firm has approximately 742 registered persons in 435 branch offices. It has been a FINRA member since 1954.

RELEVANT DISCIPLINARY HISTORY

In March 2015, the Firm was censured and fined \$425,000 for failing to properly supervise the sale of unit investment trusts, failing to properly supervise the preparation of consolidated account reports sent to customers, and failing to enforce its written supervisory procedures relating to registered persons’ outside email accounts.¹

¹ AWC No. 2012031552601 (Mar. 2015).

OVERVIEW

Between 2008 and 2011, H. Beck's registered representative James Dresselaers recommended to the Firm's customer, EB, investments in several nontraditional exchange-traded funds ("ETFs") and stocks issued by companies in the metals and mining sector. These recommendations were unsuitable for EB, a professional athlete with no investment experience, a moderate risk tolerance, and an investment objective of long-term growth. EB suffered losses of more than \$1.1 million on these investments. Additionally, from at least July 2008 until June 2013, H. Beck failed to properly supervise the sale of nontraditional ETFs and failed to properly supervise the recommendations made by its registered representative to EB. As a result, H. Beck violated NASD Rules 2310, 3010(a)-(b), and 2110, and FINRA Rules 2111, 3110(a)-(b), and 2010.

FACTS AND VIOLATIVE CONDUCT

Customer EB was a professional athlete when he opened an account with H. Beck in 2004. At the time, EB had no investment experience. On his new account form, EB stated that he had a moderate risk tolerance and that his investment objective was long-term growth. EB told Dresselaers that he needed his earnings as an athlete to last the rest of his life.

H. Beck Recommends Nontraditional ETFs to EB. Between 2008 and 2010, Dresselaers recommended that EB invest in several nontraditional ETFs. Nontraditional ETFs differ from traditional ETFs in that they seek to deliver multiples of the performance of the underlying index or benchmark, the inverse of that performance, or both. To accomplish their objectives, nontraditional ETFs use swaps, futures contracts, and other derivative instruments. In addition, nontraditional ETFs are designed to achieve their stated objectives over the course of one trading session. Between one trading session and the next, the fund manager must rebalance the fund's holdings in order to meet its objective. For most nontraditional ETFs, this happens on a daily basis, and is known as the "daily reset."

For each day's trading session, a nontraditional ETF may come close to achieving its intended return. However, the correlation between a nontraditional ETF and its linked index or benchmark is inexact, and there is typically at least a small difference, or "tracking error," between a fund and its benchmark, which may compound over longer periods of time. This effect becomes more pronounced during periods of volatility in the underlying index or benchmark. FINRA advised its membership in June 2009 in FINRA Regulatory Notice 09-31 concerning nontraditional ETFs 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." FINRA Regulatory Notice 09-31 further advised broker-dealers that

nontraditional ETFs “are typically not suitable for retail investors who plan to hold them for more than one trading session, particularly in volatile markets.”

Notwithstanding EB’s investment profile, between July 2008 and August 2011, Dresselaers recommended that EB invest more than \$2.3 million in nontraditional ETFs, including leveraged, inverse ETFs. Dresselaers then recommended that EB hold these investments for extended periods of time, some for more than five years. These recommendations were unsuitable and EB lost a total of \$851,175 on these investments.

H. Beck Recommends Metals and Mining Stocks to EB. In addition to recommending nontraditional ETFs, in February and August 2011, Dresselaers recommended that EB invest approximately \$500,000 in several different equities, including approximately \$375,000 in stocks issued by companies in the metals and mining sector. As a result of these and other recommendations by Dresselaers, as of August 2011, approximately 65% of EB’s portfolio was invested in the metals and mining sector. This concentration exposed EB to the risk of significant losses when the metals and mining market declined. These recommendations were unsuitable and EB lost a total of \$264,618 on these investments.

H. Beck’s Recommendations to EB Were Unsuitable. NASD Rule 2310 and FINRA Rule 2111 require that, when recommending the purchase, sale, or exchange of any security, a FINRA-member firm and its registered person must have reasonable grounds for believing that the recommendation is suitable for the customer upon the basis of the facts, if any, disclosed by the customer as to his other security holdings and as to his financial situation and needs.²

H. Beck’s recommendations, through its registered representative Dresselaers, of nontraditional ETFs and metals and mining stocks were not suitable for EB. These securities were not consistent with EB’s stated investment objective of long-term growth and moderate-risk tolerance.

By virtue of the foregoing, H. Beck violated NASD Rules 2310 and 2110 and FINRA Rules 2111 and 2010.³

H. Beck Failed to Properly Supervise the Sale of Nontraditional ETFs and Dresselaers’s Recommendations to EB. NASD Rule 3010(a)-(b) and FINRA Rule 3110(a)-(b) require every FINRA-member firm to establish and maintain a system and procedures to supervise the activities of its registered representatives that is reasonably designed to achieve compliance with securities laws and regulations and applicable NASD/FINRA rules.⁴ In April 2005, in Notice to Members 05-26, FINRA reminded firms of the need to review and improve their

² NASD Rule 2310 applies to conduct occurring before July 9, 2012.

³ NASD Rule 2110 applies to conduct occurring before December 15, 2008

⁴ NASD Rule 3010 applies to conduct occurring before December 1, 2014.

procedures for developing and vetting new products. Among other things, FINRA stated that, before offering any new product, a firm should consider (a) whether the product is proposed for limited or general retail distribution, and, if limited, how its distribution will be controlled (and, conversely, “to whom should this product NOT be offered”); (b) whether the product’s complexity impacts suitability considerations and/or the training requirements associated with the product; (c) whether the product necessitates the development or refinement of in-firm training programs for registered representatives and their supervisors; and (d) whether the firm’s current systems support the product. In June 2009, in Regulatory Notice 09-31, FINRA reminded firms that “inverse and leveraged ETFs typically are not suitable for retail investors who plan to hold them for more than one trading session, particularly in volatile markets,” and that firms “should establish an appropriate supervisory system to ensure that their associated persons comply with all applicable FINRA and SEC rules when recommending any product, including leveraged and inverse ETFs.” In particular, firms should train their registered representatives on the unique aspects of inverse and/or leveraged ETFs, including “the factors that would make such products either suitable or unsuitable for certain investors,” and “risks associated with such products, including the investor’s time horizons, and the impact and volatility of the fund’s performance. Training for all persons should emphasize that, due to the complexity and structure of these funds, they may not perform over time in direct or inverse correlation to their underlying index.”

Notwithstanding FINRA’s rules and guidance, from at least July 2008 until June 2013, H. Beck allowed its registered representatives to recommend nontraditional ETFs to their customers without establishing and maintaining a supervisory system reasonably designed to ensure that these recommendations were suitable. The Firm failed to reasonably tailor its systems and procedures to address the unique risks involved with investing in nontraditional ETFs. The Firm did not provide specific guidance to assist its brokers and supervisors in assessing the factors that would make a nontraditional ETF suitable or unsuitable for a particular investor. It did not provide any special training relating to the suitability of nontraditional ETFs. And the Firm reviewed transactions involving nontraditional ETFs in the same manner it reviewed transactions involving standard ETFs and equities. For example, although the Firm used a trade surveillance system to monitor trading in its customers’ accounts, it did not implement any parameters to flag transactions involving nontraditional ETFs for further review.

As a result of its failure to establish and maintain a supervisory system reasonably designed to address the unique risks associated with leveraged and inverse ETFs, H. Beck failed to ensure that the securities Dresselaers recommended to EB were consistent with EB’s investment profile and therefore suitable. EB was an inexperienced investor with a moderate risk tolerance and a long-term growth investment objective. Dresselaers’s recommendations of nontraditional ETFs were inconsistent with EB’s investment profile. Nevertheless, the Firm failed to identify and investigate these transactions to determine whether these investments

were suitable for EB. Indeed, the Firm's trade surveillance system did not flag for suitability review any of Dresselaers's sales of nontraditional ETFs to EB.

By virtue of the foregoing, H. Beck violated NASD Rules 3010(a)-(b) and 2110 and FINRA Rules 3110(a)-(b) and 2010.

B. H. Beck consents to the imposition of the following sanctions:

- Censure; and
- \$50,000 fine.⁵

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 it proposes to pay the fine imposed.

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

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

II.

WAIVER OF PROCEDURAL RIGHTS

H. Beck specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against it;
- 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.

⁵ Before executing this AWC, H. Beck paid EB \$1.5 million to settle EB's arbitration claims against the Firm, which arose, in part, from Dresselaers's recommendations. As a result, H. Beck is not required to make restitution as part of this settlement.

Further, H. Beck 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.

H. Beck 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

H. Beck understands that:

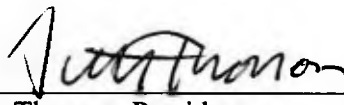
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will 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 its 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 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. H. Beck 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. H. Beck 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 H. Beck'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. H. Beck may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. H. Beck 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.

07/20/2017
Date (mm/dd/yyyy)

H. Beck, Inc.

By: 
Scott Thorson, President

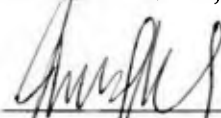
Reviewed by:


Olga Greenberg
Counsel for Respondent
Eversheds Sutherland (US) LLP
999 Peachtree Street NE, Suite 2300
Atlanta, GA 30309
(404) 853-8274

Accepted by FINRA:

9/27/17
Date

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


James E. Day
Vice President and Chief Counsel
FINRA Department of Enforcement
15200 Omega Drive, Suite 300
Rockville, MD 20850
(301) 258-8520