

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2021072000902**

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

RE: Union Capital Company (Respondent)  
Member Firm  
CRD No. 110301

Pursuant to FINRA Rule 9216, Respondent Union Capital Company 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 accepts and consents to the following findings by FINRA without admitting or denying them:

**BACKGROUND**

Union Capital became a member of FINRA in 2001. The firm is headquartered in Tucson, Arizona. The firm has three branch offices and approximately 20 registered representatives.<sup>1</sup>

**OVERVIEW**

From January 2019 through at least December 2021, Union Capital failed to establish, maintain, and enforce a supervisory system, including written supervisory procedures (WSPs), reasonably designed to achieve compliance with the suitability requirements of FINRA Rule 2111 and the Care Obligation of Rule 15c-1 of the Securities Exchange Act of 1934 (Reg BI)<sup>2</sup> with respect to its registered representatives' recommendations of leveraged and inverse exchange-traded funds and leveraged and inverse mutual funds (Non-Traditional Funds), in violation of FINRA Rules 3110 and 2010. As of June 30, 2020, and continuing through at least December 2021, Union Capital also failed to comply with Reg BI's Compliance Obligation by not establishing, maintaining, and

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<sup>1</sup> For more information about the firm, visit BrokerCheck® at [www.finra.org/brokercheck](http://www.finra.org/brokercheck).

<sup>2</sup> The compliance date for Reg BI was June 30, 2020. Also, effective June 30, 2020, FINRA amended Rule 2111 to state that Rule 2111 will not apply to recommendations subject to Reg BI.

enforcing WSPs reasonably designed to achieve compliance with Reg BI with respect to recommendations of Non-Traditional Funds, in violation of Exchange Act Rule 15c-1(a)(1) and FINRA Rule 2010.

### **FACTS AND VIOLATIVE CONDUCT**

This matter originated from a customer tip to FINRA.

#### **A. Non-Traditional Funds**

Non-Traditional Funds are complex financial instruments designed to return a multiple of the performance of an underlying index or benchmark (leveraged funds), the opposite of the daily performance of the index or benchmark (inverse funds), or both (leveraged-inverse funds), usually over the course of a single day. As such, Non-Traditional Funds typically rebalance their portfolios on a daily basis (also known as the daily reset), which means they are designed to achieve their stated objective on a daily basis. The prospectus for each product typically describes the product's intended holding period.

In June 2009, FINRA issued Regulatory Notice 09-31 to caution member firms that, due to the effect of compounding, the performance of leveraged and inverse products, like Non-Traditional Funds, for periods longer than the intended holding period "can differ significantly from the performance (or inverse of the performance) of their underlying index or benchmark during the same period of time" and therefore "typically are not suitable for retail investors who plan to hold them for more than one trading session." The Notice specified that this applies equally to leveraged and inverse exchange-traded funds and leveraged and inverse mutual funds, which raise many of the same issues. Non-Traditional Fund prospectuses typically provide similar warnings concerning the suitable holding period for retail investors.

Regulatory Notice 09-31 also reminded firms of their obligation to establish supervisory systems reasonably designed to achieve compliance with applicable FINRA and SEC rules when recommending Non-Traditional Funds. The Notice further advised that firms and their associated persons must understand the terms and features of Non-Traditional Funds, including the effect the customer's intended holding period will have on the products' performance, before recommending the purchase of the products. The notice instructed firms that they "must train registered persons about the terms, features and risks of all [funds] that they sell .... In the case of leveraged and inverse [funds], that training should emphasize the need to understand and consider the risks associated with such products, including the investor's time horizons, and the impact of time and volatility on the fund's performance."

In January 2012, FINRA issued Regulatory Notice 12-03 to remind firms of their heightened supervisory obligations regarding complex products, such as Non-Traditional Funds. This obligation requires firms to "periodically reassess" these products "to determine whether their performance and risk profile remain consistent with the manner in which the firm is selling them" and to consider developing procedures to evaluate how the products performed after the firm approved them.

In adopting Reg BI, the SEC cited Regulatory Notices 09-31 and 12-03 in its discussion of inverse and leveraged exchange-traded products, cautioning that, “broker-dealers recommending such products should understand that inverse and leveraged exchange-traded products that are reset daily may not be suitable for, and as a consequence also not in the best interest of, retail customers who plan to hold them for longer than one trading session, particularly in volatile markets.” Emphasizing the importance of understanding the terms, features, and risks of such products in order to form a reasonable basis to recommend them to retail customers, the SEC further stated that “these products may not be in the best interest of a retail customer absent an identified, short-term, customer-specific trading objective.”<sup>3</sup>

**B. Union Capital failed to establish, maintain, and enforce a supervisory system, including WSPs, reasonably designed to achieve compliance with SEC and FINRA rules regarding Non-Traditional Fund recommendations.**

As of June 30, 2020, broker-dealers and their associated persons are required to comply with Reg BI. Rule 15l-1(a)(1) of Reg BI requires a broker, dealer, or a natural person associated with a broker or dealer, when making a recommendation of any securities transaction or investment strategy involving securities (including account recommendations) to a retail customer, to act in the best interest of that retail customer at the time the recommendation is made, without placing the financial or other interest of the broker, dealer, or associated person ahead of the interest of the retail customer.

Reg BI’s Care Obligation, set forth at Exchange Act Rule 15l-1(a)(2)(ii), requires broker-dealers and their associated persons to exercise reasonable diligence, care, and skill to, among other things, understand the potential risks, rewards, and costs associated with a recommendation.

Reg BI’s Compliance Obligation, set forth at Exchange Act Rule 15l-1(a)(2)(iv), requires broker-dealers to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Reg BI. The Adopting Release provides that broker-dealers should consider the nature of that firm’s operations and how to design such policies and procedures to prevent violations from occurring, to detect violations that have occurred, and to correct promptly any violations that have occurred.<sup>4</sup>

Prior to June 30, 2020, FINRA Rule 2111 required members and associated persons to have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities to any customer is suitable for the customer. FINRA Rule 2111 is still in effect, but as of June 30, 2020, it no longer applies to recommendations that are subject to Reg BI.

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<sup>3</sup> *Regulation Best Interest: The Broker-Dealer Standard of Conduct*, Exchange Act Release No. 86031, 84 FR 33318 at 33376 (July 12, 2019) (Reg BI Adopting Release).

<sup>4</sup> Reg BI Adopting Release at 33397.

FINRA Rule 3110 requires member firms to establish, maintain, and enforce a supervisory system, including written procedures, to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws, regulations, and FINRA rules.

A violation of Reg BI or FINRA Rule 3110 also is a violation of FINRA Rule 2010, which requires members to “observe high standards of commercial honor and just and equitable principles of trade” in the conduct of their business.

From January 2019 through at least December 2021, Union Capital failed to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with the suitability requirements of FINRA Rule 2111 and the Care Obligation of Reg BI with respect to recommendations of Non-Traditional Funds and to supervise such recommendations. For example, during this period, Union Capital’s WSPs did not include any specific policies or procedures for the supervision of Non-Traditional Funds. The firm’s WSPs did not state whether representatives were permitted to recommend Non-Traditional Funds or under what circumstances the products should or should not be recommended. The WSPs also provided no guidance to supervisors regarding how to identify and address potentially unsuitable Non-Traditional Fund recommendations. Union Capital did not provide any training to its representatives or supervisors regarding the terms, features, and risks of Non-Traditional Funds. Union Capital did not establish a supervisory system reasonably designed to ensure compliance with the requirement that its representatives have a reasonable basis to recommend Non-Traditional Funds, including that they consider the intended holding periods identified in the products’ prospectuses.

As a result of these supervisory failures, Union Capital failed to detect and address several occasions during the relevant period in which the firm’s representatives recommended that customers buy Non-Traditional Funds without a reasonable basis to recommend them. Some of the affected customers were seniors who had a moderate risk tolerance. For example, a 98-year-old customer with a moderate risk tolerance purchased a daily-reset Non-Traditional Fund and held it for 19 days, resulting in a realized loss of approximately \$700. The firms’ representatives recommended 14 daily-reset Non-Traditional Fund positions that were held in four customers’ accounts for periods ranging from 14 to 407 days. Those customers suffered \$28,237.85 in total net realized losses.

As a result of its misconduct, from January 2019 through at least December 2021, Union Capital violated FINRA Rules 3110 and 2010, and from June 30, 2020, through at least December 2021, Union Capital also violated Exchange Act Rule 15c-1(a)(1).

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

- a censure;
- restitution of \$28,237.85 as described below; and

- an undertaking that, within 120 days of the date of the notice of acceptance of this AWC, a member of Respondent's senior management who is a registered principal of the firm shall certify in writing that, as of the date of the certification, the firm has remediated the issues identified in the AWC and implemented a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with Reg BI and FINRA Rule 3110 regarding the issues identified in this AWC. The certification shall include a narrative description and supporting exhibits sufficient to demonstrate Respondent's remediation and implementation. FINRA staff may request further evidence of Respondent's remediation and implementation, and Respondent agrees to provide such evidence. Respondent shall submit the certification to Shane B. Kelly, Principal Counsel, 4600 S. Syracuse Street, Suite 1400, Denver, Colorado, 80237, or electronically to [shane.kelly@finra.org](mailto:shane.kelly@finra.org), with a copy to [EnforcementNotice@finra.org](mailto:EnforcementNotice@finra.org). Upon written request showing good cause, FINRA staff may extend this deadline.

Respondent has submitted a statement of financial condition and demonstrated a limited ability to pay. In light of Respondent's financial status, the sanctions do not include a monetary fine.

Restitution is ordered to be paid to the customers listed on Attachment A to this AWC (Eligible Customers) in the total amount of \$28,237.85.

A registered principal on behalf of Respondent shall submit satisfactory proof of payment of restitution (separately specifying the date and amount of each paid to each Eligible Customer) or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted by email to [EnforcementNotice@FINRA.org](mailto:EnforcementNotice@FINRA.org) from a work-related account of the registered principal of Respondent. The email must identify Respondent and the case number and include a copy of the check, money order, or other method of payment. This proof shall be provided by email to [EnforcementNotice@FINRA.org](mailto:EnforcementNotice@FINRA.org) no later than 120 days after the date of the notice of acceptance of the AWC.

The restitution amount to be paid to each Eligible Customer shall be treated by the Respondent as the Eligible Customer's property for purposes of state escheatment, unclaimed property, abandoned property, and similar laws. If after reasonable and documented efforts undertaken to effect restitution Respondent is unable to pay all Eligible Customers within 120 days after the date of the notice of acceptance of the AWC, Respondent shall submit to FINRA in the manner described above a list of the unpaid Eligible Customers and a description of Respondent's plan, not unacceptable to FINRA, to comply with the applicable escheatment, unclaimed property, abandoned property, or similar laws for each such Eligible Customer.

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.

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

Restitution payments to customers shall be preceded or accompanied by a letter, not unacceptable to FINRA, describing the reason for the payment and the fact that the payment is being made pursuant to a settlement with FINRA and as a term of this AWC.

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 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.

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 its subject matter 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 right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.
- 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 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.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's 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 Respondent has agreed to the AWC's

provisions voluntarily; and that 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 Respondent to submit this AWC.

November 22, 2024

\_\_\_\_\_  
Date

*Joseph Bodkin*

\_\_\_\_\_  
Union Capital Company  
Respondent

Joseph Bodkin

Print Name: \_\_\_\_\_

Title: principal

Reviewed by:

*Denis Dice*

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Denis Dice  
Counsel for Respondent  
Winget, Spadafora and Schwartzberg, LLP  
1528 Walnut Street, Suite 1502  
Philadelphia, PA 19102

Accepted by FINRA:

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

December 4, 2024

\_\_\_\_\_  
Date

*Shane Kelly*

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Shane B. Kelly  
Principal Counsel  
FINRA  
Department of Enforcement  
4600 S. Syracuse St., Suite 1400  
Denver, CO 80237



**Attachment A**

<b>Customer Name</b>	<b>Account Number</b>	<b>Restitution Amount</b>
Customer A	xxxx [REDACTED]	\$45.65
Customer B	xxxx [REDACTED]	\$26,959.28
Customer C	xxxx [REDACTED]	\$1,096.49
Customer D	xxxx [REDACTED]	\$136.43
	<b>Total</b>	<b>\$28,237.85</b>