FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement, Complainant, v. Kelly Clayton Althar (CRD No. 2666723), Respondent.	DISCIPLINARY PROCEEDING No. 2014041137501

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between April 2011 and March 2014 (the "Relevant Period") Respondent Kelly Clayton Althar made unsuitable recommendations and engaged in excessive trading in two accounts held by an elderly customer, CN. Althar engaged in high volume trading to generate commissions and over concentrated CN's accounts in risky securities, despite the fact that CN was close to retirement and wanted only low risk investments. Althar's trading decimated CN's accounts, which constituted the bulk of her net worth and retirement savings.

2. By making unsuitable recommendations and engaging in excessive trading, Althar violated NASD Rule 2310 (for transactions before July 8, 2012), FINRA Rule 2111 (for transactions on and after July 9, 2012), and FINRA Rule 2010.

RESPONDENT AND JURISDICTION

3. Althar entered the securities industry in January 1996, when he became registered as a General Securities Representative through an association with a FINRA member firm. In

April 2011, Althar became registered with Financial West Group ("FWG"), where he worked throughout the Relevant Period. In December 2015, Althar joined another FINRA member firm. Althar voluntarily terminated his FINRA registrations on May 27, 2016.

4. Although Althar is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (i) the Complaint was filed within two years after the effective date of termination of Althar's registration with a member firm, namely, May 27, 2016, and (ii) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

FACTS

5. Enforcement realleges and incorporates by reference paragraphs 1–4 above.

6. CN was referred to Althar in early 2011. At that time, CN was 68 years old and had hoped to retire in approximately five years. Her net worth consisted largely of approximately $161,000 held in an Individual Retirement Account ("IRA") in growth- and income-oriented mutual funds, plus approximately $100,000 of equity in her primary residence.

7. In April 2011, Althar opened two accounts at FWG on behalf of CN—an individual brokerage account and an IRA. Both accounts were commission-based accounts.

8. CN funded her IRA at FWG in April 2011 by transferring her securities holdings directly from her prior brokerage firm to her IRA at FWG. CN did not fund her individual brokerage account until November 2012 when she received an inheritance of cash and blue-chip securities valued at approximately $147,000.

9. Because she was hoping to retire within several years, CN did not want a risky strategy employed in either of her FWG accounts. Prior to April 2011, consistent with her risk tolerance and investment objectives, CN did not engage in active trading in her IRA.

10. After CN opened her accounts with Althar at FWG, Althar exercised *de facto* control over both her accounts. He frequently placed trades in her accounts without consulting with CN prior to trades.

11. During the Relevant Period, Althar often purchased, sold, and subsequently repurchased the same security in CN's accounts within a short period of time. For example, on December 26, 2012, Althar purchased 696 shares of American Capital Agency Corp. ("AGNC"), a REIT, for $21,559.09 and sold those shares, at a loss, two months later on February 28, 2013, for $21,298.50. He then re-purchased 782 shares of AGNC two months later after the price had risen, for $26,756.36, and then sold those shares, at a significant loss, six weeks later for $18,619.03. On those four trades, on which CN lost over $8,000 in a matter of months, Althar generated over $3,000 in commissions.

12. Althar also over-concentrated CN's accounts in risky securities. During the Relevant Period, Althar purchased securities issued by one business development company until that position represented approximately 60% of CN's total portfolio value.

13. During the Relevant period, Althar executed 155 trades in CN's IRA, generating commissions of approximately $91,000. The turnover ratio was approximately 3.5. The commission-to-equity ratio was approximately 22%, meaning that CN's IRA would have had to achieve a return of 22% simply to break even on the investments Althar made. By March of 2014, Althar's trading caused losses in CN's IRA of approximately $103,000, or 56% of the total account value.

14. Between November 2012 and March 2014, Althar executed 91 trades in CN's individual account—including liquidating all of the blue-chip securities CN received as part of her inheritance—generating commissions of approximately $48,000. The turnover ratio was approximately 4.88. The commission-to-equity ratio was approximately 32%, meaning that CN's individual account would have had to achieve a return of 32% simply to break even on the investments Althar made. By March of 2014, Althar's trading caused losses in CN's individual account of approximately $84,000 or 48% of the total account value.

CAUSE OF ACTION
Excessive and Unsuitable Trading
(NASD Rule 2310 and FINRA Rules 2111 and 2010)

15. Enforcement realleges and incorporates by reference paragraphs 1–14 above.

16. FINRA Rule 2111 and its predecessor NASD Rule 2310[1] provide that an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy is suitable for the customer, based on the customer's financial circumstances and investment objectives. Among the obligations under the suitability rule is "quantitative suitability" which focuses on whether the number of transactions within a given timeframe is suitable in light of the customer's financial circumstances and investment objectives. A broker must have a reasonable basis to believe that the number of recommended transactions within a particular period is not excessive. Excessive trading occurs when a registered representative has control over trading in an account and the level of activity in that account is inconsistent with the customer's investment objectives, financial situation and needs. Excessive trading violates FINRA's suitability standards by representing an unsuitable frequency of trading.

[1] FINRA Rule 2111 replaced NASD Rule 2310 on July 9, 2012.

17. Althar exercised control over CN's accounts at FWG. Althar rarely consulted CN about the transactions in her accounts and made the investment decisions for her, including what to buy and sell, the quantities, and when each transaction would occur. Althar learned about most of these transactions after the fact. Prior to opening her accounts at FWG, CN had not engaged in active trading in her IRA.

18. He used this control to excessively trade these accounts in a manner that was inconsistent with her investment objectives, financial situation and needs. The level of trading was excessive because the trading strategy resulted in costs so high the possibility of profit was remote. By requiring a minimum return of over 20% just to break even in either account, Althar's strategy was unsuitable for these accounts.

19. As a result of Althar's excessive trading in CN's accounts, she suffered extensive losses and the value of her two accounts, which represented the majority of her net worth, dropped by over 50%.

20. As a result of the foregoing conduct, Respondent Althar violated NASD Rule 2310, NASD IM-2310-2 and FINRA Rule 2010 (for transactions before July 8, 2012) and FINRA Rules 2111 and 2010 (for transactions on or after July 9, 2012).

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;

B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed;

C. order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: January 6, 2017

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