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**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT**

NO. 2005001285201

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

RE: Gary Goldberg & Co., Inc., Respondent
Member Firm
BD No. 6482

Pursuant to NASD Rule 9216 of FINRA's Code of Procedure, Gary Goldberg & Co., Inc. 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 Gary Goldberg & Co., Inc. alleging violations based on the same factual findings described herein.

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

Gary Goldberg & Co., Inc. has been a member of FINRA (f/k/a National Association of Securities Dealers, Inc. or NASD) since June 1, 1973. The firm conducts a general securities business and employs 20 registered persons. The firm has no relevant disciplinary history.

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INTRODUCTION

Some mutual fund companies sell shares that charge front-end loads. These mutual fund companies typically offer discounts at certain pre-determined levels of investments, which are called "breakpoints." These discounts are commonly referred to as "breakpoint discounts."

In March 2003, FINRA required certain member firms that sold front-end load mutual funds to conduct a self-assessment of breakpoint compliance (the "Self-Assessment"). FINRA provided the firms with instructions and interpretative guidance on how to complete the Self-Assessment and report the results.

Based on its evaluation of the submitted Self-Assessment reports, FINRA directed about 450 member firms to send letters and claim forms to their customers who purchased front-end load mutual funds, notifying them that they might be due refunds as a result of the firms' failures to provide breakpoint discounts. In addition, FINRA directed approximately 175 of those firms with poor records of providing breakpoint discounts to complete a comprehensive review of transactions for possible missed breakpoints (the "Trade-by-Trade Review"). The level of remediation that FINRA required of member firms was based upon the data each firm reported in the Self-Assessment. In addition, FINRA commenced formal disciplinary action against those firms that had the most serious deficiencies in awarding breakpoint discounts to customers.

In August 2003, FINRA issued Notice to Members 03-47, which, in providing guidance to firms on the capital treatment of breakpoint refunds issued through the Self-Assessment and Trade-by-Trade Review processes, informed firms that FINRA expected that refunds would be made to customers expeditiously.

This matter grows out of a national examination that FINRA began conducting in 2005 ("the Breakpoint Self-Assessment Follow-Up Review"). The primary purpose of the Breakpoint Self-Assessment Follow-Up Review was to verify compliance with the instructions for the Self-Assessment and Trade-by-Trade Review and to assess whether firms timely and accurately completed remedial steps that FINRA required in 2003. The Breakpoint Self-Assessment Follow-Up Review also sampled firms' efforts between 2004 and 2005 to assure that customers received breakpoint discounts on an ongoing basis.

The Breakpoint Self-Assessment Follow-Up Review conducted for Gary Goldberg & Co., Inc. found that the firm failed to send timely notices to customers advising them that they may be entitled to refunds, and failed, in certain instances, to provide adequate or timely refunds to customers, as discussed below. By reason of the foregoing, Respondent violated NASD Conduct Rule 2110.

FACTS AND VIOLATIVE CONDUCT

- 1) FINRA required Gary Goldberg & Co., Inc. to provide written notifications to customers who had purchased Class A mutual fund shares stating that the firm had experienced a problem delivering breakpoint discounts and that, as a result, the customer may be entitled to a refund. Gary Goldberg & Co., Inc. was required to deliver these notices on or before January 15, 2004. The firm, however, did not provide timely notices to customers in 721 out of 721 instances.
- 2) FINRA required Gary Goldberg & Co., Inc. to provide refunds expeditiously in those cases where it was aware that customers had not received the appropriate breakpoint discount. In its review of refunds that Gary Goldberg & Co., Inc. issued in connection with the trade-by-trade review, FINRA found that the firm failed to provide timely refunds in 23 instances. Furthermore, in its review of refunds that Gary Goldberg & Co., Inc. issued in connection with the Self-Assessment, FINRA found that the firm failed to provide adequate refunds in 15 of 36 instances.

By reason of the aforementioned conduct, Gary Goldberg & Co., Inc. violated NASD Conduct Rule 2110.

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

- A censure and a fine in the amount of \$19,500.

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 Respondent 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

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

- A. To have a Formal Complaint issued specifying the allegations against it;
- B. To be notified of the Formal 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 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.

Respondent further specifically and voluntarily waives any right to claim that a person violated the *ex parte* prohibitions of NASD Rule 9143 or the separation of functions prohibitions of NASD 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 NASD Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against it;
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondent's disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; 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; and

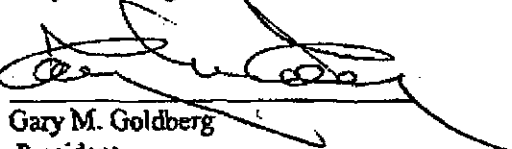
- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

Respondent certifies that it 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 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 Respondent to submit it.

Gary Goldberg & Co. Inc.

4/17/08
Date

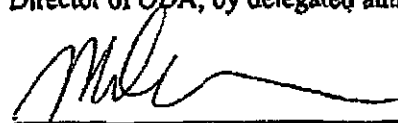
By:


Gary M. Goldberg
President

Accepted by FINRA:

3/17/09
Date

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



Michael J. Newman
Senior Regional Counsel
FINRA Department of Enforcement
581 Main Street, Suite 710
Woodbridge, NJ 07095
732-596-2030; 202-721-6557