

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015043645101**

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

RE: Gary B. Weiss, Respondent
General Securities Principal
CRD No. 1800295

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Gary B. Weiss ("Weiss" or "Respondent"), submit 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 me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. I hereby accept and consent, without admitting or denying the findings, and solely for the purpose 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 on any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

Weiss entered the securities industry in 1988. Weiss was registered through thirteen different FINRA member firms before associating with SW Financial ("SWF" or the "Firm") in December 2011. From December 2011 through December 2015, Weiss was registered through SWF in several capacities, including as a General Securities Representative, General Securities Principal and Limited Representative – Investment Banking. Weiss also functioned as SWF's Chief Operating Officer and Chief Compliance Officer. Weiss has not been associated with any FINRA member since his termination from SWF in December 2015. In July 2016, SWF filed a Form U5 amendment for Weiss disclosing for the first time a settlement of a customer arbitration claim, which alleged "unsuitability, failure to supervise, churning, and unauthorized trading," against Weiss and the Firm. Pursuant to Article V, Section 4 of FINRA's By-Laws, FINRA retains jurisdiction over him.

RELEVANT DISCIPLINARY HISTORY

Weiss has no disciplinary history with the Securities and Exchange Commission,

FINRA, any other self-regulatory organization or any state regulator.

OVERVIEW

Weiss failed to reasonably supervise the activities of a registered representative who recommended unsuitable mutual fund transactions to a customer. As a result, Weiss violated FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

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

FINRA Rule 2010 requires associated persons to observe high standards of commercial honor and just and equitable principles of trade.

From December 2011 through December 2015, Weiss was responsible for supervising SWF registered representative LF. Among other things, Weiss was responsible for approving LF's mutual fund recommendations.

LF's Unsuitable Mutual Fund Recommendations

In April 2015, customer HR opened an IRA account at SWF with LF. The new account form listed HR's investment objective as "Preservation of Capital" and his investment time horizon as "short-term (1-3) years." The new account form noted that the "investment purpose" for the account was to "save for retirement."

In May 2015, HR transferred mutual funds he held at another firm to his IRA account at SWF. All of the mutual funds were Class A shares from the same fund family. Three days later, based on LF's recommendations, HR sold the mutual funds and used the proceeds, totaling approximately \$865,000, to purchase Class A shares of 14 different mutual funds from 12 different fund families (collectively, the "New Mutual Funds").

LF's recommendation to switch to the New Mutual Funds was unsuitable because: (i) the New Mutual Funds' investment objectives, which were described as "capital appreciation," "capital growth," or "total return," were not consistent with HR's investment objective of capital preservation; (ii) Class A shares, which are generally appropriate for investors with long-term investment horizons, were not consistent with HR's shorter investment horizon; and (iii) by purchasing mutual funds from 12 different mutual fund families, HR did not receive available breakpoint discounts.

Weiss' Supervisory Failures

While reviewing LF's recommendations, Weiss failed to consider and ensure: (i) that the investment objectives of the New Mutual Funds were consistent with HR's investment objective of preservation of capital; (ii) that Class A shares were appropriate for HR in light of his short-term investment horizon; and (iii) that HR received the benefit of available breakpoint discounts. In addition, Weiss failed to ensure that mutual fund switch letters sent by LF to HR included critical information, including the amount of the sales charges for the New Mutual Funds.

Finally, Weiss lacked a reasonable understanding of mutual funds to properly discharge his supervisory responsibilities. For instance, he did not know what breakpoint discounts were and did not know how front-end sales charges impacted the suitability review of mutual fund transactions.

By virtue of the foregoing, Weiss violated FINRA Rules 3110 and 2010.

B. I also consent to the imposition of the following sanctions:

- A \$5,000 fine;
- A suspension from association with any FINRA member firm in any principal capacity for thirty business days.

The fine shall be due and payable either immediately upon reassociation with a member firm, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

I understand that if I am barred or suspended from associating with any FINRA member in a principal capacity, I become 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, I may not be associated with any FINRA member in any principal capacity, during the period of the bar or suspension (see FINRA Rules 8310 and 8311). Furthermore, because I am subject to a statutory disqualification during the suspension, if I remain associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

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

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against me;
- 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, I specifically and voluntarily waive 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.

I further specifically and voluntarily waive 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

I understand 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 me; and
- C. If accepted:
 - 1. this AWC will become part of my permanent disciplinary record and may

be considered in any future actions brought by FINRA or any other regulator against me;

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. I 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. I 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 my: (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. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I 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.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I understand and acknowledge that FINRA does not represent or advise me and I cannot rely on FINRA or FINRA staff members for legal advice; that I have 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 me to submit it.

11/9/2017
Date (mm/dd/yyyy)


Gary B. Weiss, Respondent

Accepted by FINRA:

12/15/2017
Date

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



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