

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015046652401**

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

RE: RBC Capital Markets, LLC, Respondent
CRD No. 31194

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, RBC Capital Markets, LLC ("RBC," 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 RBC alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. RBC 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

RBC has been a FINRA regulated broker-dealer since 1993 and is headquartered in New York City. The Firm has approximately 275 branch offices in the United States. RBC conducts a general securities business, self-clearing securities transactions for its own customers and clearing securities transactions for customers of its introducing broker-dealers. There are approximately 2,400 registered representatives associated with the Firm.

RELEVANT DISCIPLINARY HISTORY

In September 2007, in connection with New York Stock Exchange ("NYSE") Hearing Board Decision 07-127, RBC Dain Rauscher, Inc. ("RBC Dain"), a predecessor to the Firm, entered into a Stipulation of Facts and Consent to Penalty (the "NYSE Stipulation") consenting to a sanction and an undertaking for violating NYSE Rules 401(a), 1100(b), and 342. From July 2003 through October 2004, as set forth in the NYSE Stipulation, RBC Dain failed to ensure the delivery of prospectuses in connection with the sale of certain registered securities, failed to deliver product descriptions to customers that purchased

exchange-traded funds (“ETFs”), and failed to maintain reasonable supervisory systems and procedures related to the delivery of product descriptions and prospectuses.

Without admitting or denying any allegations or findings, RBC Dain agreed to a penalty of a censure, a fine of \$500,000, and an undertaking requiring RBC Dain to provide the NYSE with a written certification stating that its policies and procedures were reasonably designed to achieve compliance with the federal securities laws and NYSE rules applicable to the delivery of prospectuses and product descriptions. RBC Dain provided the required certification in December 2007.

OVERVIEW

From March 2008 to June 2016 (the “Relevant Period”), RBC failed to make the statutorily required delivery of prospectuses to customers who purchased approximately 165,000 ETFs and exchange-traded notes (“ETNs”), and at least hundreds of thousands of mutual funds. The Firm failed to design, implement, and enforce a reasonable supervisory system, procedures, and set of controls to comply with prospectus delivery rules for ETFs, ETNs and mutual funds and as a result, failed to discover the delivery failures until FINRA’s investigation into the matter.

During the Relevant Period, the Firm’s prospectus delivery process for ETFs and ETNs involved manually inputting coding for individual securities into third-party software to trigger the delivery of a prospectus when a customer purchased the security. During the Relevant Period, Firm customers purchased more than five million ETFs and ETNs. RBC relied on a single Firm employee to manually assign the trailer codes to ETFs and ETNs on a security-by-security basis, and had no supervisory systems or controls in place to monitor or supervise the employee’s performance of these duties. As a result, the Firm did not detect that he had inadvertently caused the system to overwrite the trailer codes that triggered prospectus delivery and failed to identify new ETFs and ETNs requiring a trailer code. Even after discovering the extent of the coding errors in June 2015, the Firm’s efforts to address the issues were not effective.

The Firm’s supervisory system related to prospectus delivery for mutual funds also was not reasonably designed. In March 2008, the Firm merged with an affiliate, and began using a new automated vendor system to identify mutual fund purchases requiring prospectus delivery. From March 2008 through June 2016, the vendor system did not correctly designate for prospectus delivery certain customer mutual fund orders placed through the Firm’s managed accounts platform.

The Firm’s supervisory system included a written procedure obligating RBC to designate an employee to conduct periodic supervisory reviews to determine

whether products were properly coded for prospectus delivery. However, with respect to mutual funds, the Firm failed to assign these supervisory duties, thereby failing to enforce this procedure, and thus these duties were not performed for more than eight years. As a result, the absence of appropriate coding for at least hundreds of thousands of mutual fund purchases was not discovered until FINRA's investigation in this matter.

By this conduct, RBC contravened Section 5(b)(2) of the Securities Act of 1933 (the "Securities Act"), and thereby violated NASD Rule 2110 and FINRA Rule 2010. By virtue of the aforementioned supervisory deficiencies, the Firm violated NASD Rules 3010(a) and (b), FINRA Rules 3110(a) and (b), NASD Rule 2110 and FINRA Rule 2010.

The Firm also failed to establish, maintain or enforce supervisory controls to test and verify that it was delivering ETF, ETN and mutual fund prospectuses where required. By virtue of this conduct, the Firm violated NASD Rule 3012(a)(1), FINRA Rule 3120(a)(1), NASD Rule 2110 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

RBC Failed to Establish and Maintain a Reasonable Supervisory System Governing the Delivery of Prospectuses for ETFs, ETNs, and Mutual Funds and Failed to Enforce Its Written Supervisory Procedures

This matter arose out of firm examinations referred to FINRA's Department of Enforcement by FINRA's Department of Member Supervision.

NASD Rule 3010(a) and FINRA Rule 3110(a) require each FINRA regulated broker-dealer to establish and maintain a supervisory system, including written procedures, that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable FINRA Rules.¹

NASD Rule 3010(b) and FINRA Rule 3110(b) require each FINRA regulated broker-dealer to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of their associated persons that are reasonably designed to achieve compliance with applicable securities laws and FINRA Rules.

A violation of these Rules is a violation of NASD Rule 2110 and FINRA Rule 2010, which require the observance of high standards of commercial honor and just and equitable principles of trade.²

¹ FINRA Rule 3110 superseded NASD Rule 3010 effective December 1, 2014.

² FINRA Rule 2010 superseded NASD Rule 2110 effective December 15, 2008.

ETFs and ETNs

During the Relevant Period, RBC's supervisory system was not reasonably designed to achieve compliance with prospectus delivery requirements for customers who purchased ETFs or ETNs.

RBC used third-party software to code individual securities for prospectus delivery. When a security was coded with the appropriate trailer code, a purchase of the security would be followed by the delivery of a prospectus. During the Relevant Period, RBC relied on a manual process to code ETFs and ETNs within the software for prospectus delivery, and assigned the responsibility for manual coding to a single individual. Notwithstanding that fact, the Firm had no supervisory controls in place to review that ETF and ETN securities were being correctly coded by that individual.

The Firm failed to accurately code certain ETF and ETN securities for prospectus delivery. Specifically, the Firm employee who was responsible for manually coding the ETFs and ETNs inadvertently caused the system to overwrite trailer codes requiring prospectus delivery for ETFs/ETNs, failed to identify newly listed ETF/ETN securities to which the trailer code should be applied, and failed to identify corporate actions such as a split or reverse split that created an additional security record to which a trailer code should have been applied. During the Relevant Period, Firm customers purchased more than 5 million ETFs and ETNs. Given the volume of ETF/ETN sales occurring through the Firm, the Firm's lack of supervisory oversight was unreasonable.

The Firm did not discover the ETF/ETN manual coding errors until June 2015, more than seven years after the prospectus delivery failures had commenced, and after FINRA became aware of this issue. After RBC discovered the manual coding errors, the Firm failed to take reasonable measures to address the problem. The Firm employee responsible for manually coding ETF/ETN securities for prospectus delivery left the Firm in July 2015 on short notice. However, the Firm failed to transition his coding duties to anyone until three months later, even though the Firm was aware of the manual coding errors by this time. This led to additional failures to code ETF and ETN securities for prospectus delivery between July 2015 and October 2015.

In July 2015, in response to the prospectus delivery coding errors, the Firm developed a surveillance procedure to identify prospectus delivery coding issues, but the Firm failed to properly implement the surveillance. The new procedure required the Firm's Compliance Department to send a list of ETF and ETN transactions that were missing the appropriate coding to the Equity Purchase and Sales ("P&S") Group, which was responsible for fixing the coding error and ensuring that the affected customers received a prospectus. Due to the Firm's failure to put the procedure in writing and inform the responsible Firm employees of their respective duties, no surveillance to identify prospectus delivery coding

issues was performed until March 2016.

In October 2015, RBC instituted a new procedure for coding ETF and ETN securities for prospectus delivery whereby a Firm employee would send ETF/ETN coding requests to the Firm's Equity P&S Group, which would perform the coding. Although the Firm introduced the new coding procedure in October 2015, no coding requests were sent at that time because the Firm assigned this responsibility to a Firm employee who was not sufficiently trained on the Firm's processes in this area. As a result, the Firm did not send any coding requests to the Equity P&S Group until February 2016.

In total, from March 2008 through April 2016, the Firm failed to deliver prospectuses in connection with approximately 165,000 customer purchases of ETFs and ETNs, a significant percentage of which involved the Firm's direct retail customers. After discovery of the issue in June 2015, the Firm voluntarily undertook a comprehensive review of its ETF and ETN prospectus delivery processes and disclosed its findings from that exercise to FINRA. In March 2016, the Firm implemented an updated surveillance procedure to monitor and detect the inaccurate coding of ETFs and ETNs for prospectus delivery. The Firm has also automated the ETF and ETN prospectus delivery coding process.

Mutual Funds

With respect to mutual funds, RBC relied upon third-party software to automatically code mutual fund purchases for prospectus delivery. In addition, the Firm's written supervisory procedures called for a person to be designated to oversee the prospectus delivery processes. The duties of this "product representative" included among other things, conducting periodic supervisory reviews to ensure that the automated system was properly coding mutual fund purchases for prospectus delivery. However, the Firm did not enforce this procedure, failing to designate a product representative for mutual funds, and no Firm employee performed the required oversight duties throughout the Relevant Period, rendering the automated process unsupervised. As a result, the Firm did not maintain a reasonable supervisory system and also failed to enforce the procedure mandating the designation of a product representative.

The Firm's systemic failures with respect to mutual funds led to significant coding and prospectus delivery errors. During the Relevant Period, RBC utilized vendor software to code mutual fund purchases for prospectus delivery. The software employed a three-step process to determine if a mutual fund purchase required a prospectus to be delivered. The software compared each Firm customer's mutual fund purchase to records showing whether the customer already owned the mutual fund. If the customer did not own the mutual fund, the software applied coding to indicate that a prospectus was required to be delivered. If the customer or an account in the customer's household had purchased the mutual fund within the prior twelve months, the software suppressed any coding

that would have resulted in a prospectus being delivered.

However, due to a design flaw, the software conducted these steps in an incorrect order for customer orders placed through a separate vendor system that supported the Firm's managed accounts platform. As a result, the software did not code these mutual fund purchases for prospectus delivery as required, and consequently, the Firm did not deliver any prospectuses for these purchases throughout the Relevant Period. The Firm's failure to enforce its procedure mandating the designation of a person to review this automated coding process contributed significantly to prospectuses not being delivered.

The Firm discovered the extent of its mutual fund prospectus delivery failures in connection with product testing undertaken as a result of FINRA's investigation of this matter. RBC was unable to determine the total number of mutual fund prospectuses that it failed to deliver due to the complexity involved in determining this information. During the Relevant Period, customers of the Firm and the Firm's introducing brokers effected approximately 10.5 million mutual fund purchases. From March 2008 to June 2016, the Firm failed to deliver prospectuses for at least hundreds of thousands of purchases of mutual funds, a significant percentage of which involved the Firm's direct retail customers.

In November 2016, the Firm corrected its vendor system to address the mutual fund coding issues described above. Additionally, the Firm added a surveillance procedure to identify mutual fund purchases missing the appropriate prospectus delivery coding.

As a result of its failure to establish, maintain and enforce a supervisory system reasonably designed to achieve compliance with the prospectus delivery rules for ETFs, ETNs, and mutual funds, RBC violated NASD Rules 3010(a) and (b), FINRA Rules 3110(a) and (b), NASD Rule 2110, and FINRA Rule 2010.

RBC Failed to Test and Verify Its Supervisory Procedures Governing Prospectus Delivery

NASD Rule 3012(a)(1) and FINRA Rule 3120(a)(1) require FINRA regulated broker-dealers to establish a system of supervisory control policies and procedures to test and verify that the member's supervisory procedures are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.³ The Rules require firm principals to test the firm's supervisory procedures to ensure that they are reasonable for the business being conducted, and to create additional procedures where necessary.

A violation of these Rules is also a violation of NASD Rule 2110 and FINRA Rule 2010, as applicable.

³ FINRA Rule 3120 superseded NASD Rule 3012 effective December 1, 2014.

During the Relevant Period, the Firm failed to perform any audit, review or other testing to verify that the Firm was delivering prospectuses as required. The absence of any testing by the Firm in this area was particularly problematic given the Firm's prior disciplinary history, the fact that the Firm added a new vendor system in March 2008 for mutual fund prospectus delivery, and the Firm's reliance on one individual to manually code ETFs and ETNs with no supervisory oversight. These failures prevented the Firm from detecting the significant ETF, ETN, and mutual fund prospectus delivery failures and related supervisory deficiencies that persisted during the Relevant Period.

The Firm also failed to test the system modifications and surveillance procedures put in place to address the ETF and ETN coding errors discovered in June 2015. This lack of post-implementation testing prevented the Firm from identifying the failures that caused these new processes not to be implemented properly.

As a result of the foregoing, RBC violated NASD Rule 3012(a)(1), FINRA Rule 3120(a)(1), NASD Rule 2110, and FINRA Rule 2010.

RBC Failed to Deliver Prospectuses for ETFs, ETNs, and Mutual Funds

Section 5(b)(2) of the Securities Act prohibits the delivery of certain securities, including ETFs, ETNs, and mutual funds, to direct customers unless such delivery is accompanied or preceded by a copy of a prospectus, or an exemption applies.

A violation of Section 5(b)(2) of the Securities Act is a violation of NASD Rule 2110 and FINRA Rule 2010, as applicable.

Due to the Firm's failure to have reasonable supervisory systems and controls in place as described above, the Firm failed to deliver prospectuses where required for ETF, ETN, and mutual fund purchases. The Firm failed to deliver approximately 165,000 ETF/ETN prospectuses, and at least hundreds of thousands of mutual fund prospectuses to customers, a significant percentage of which were the Firm's direct retail customers. By this conduct, RBC contravened Section 5(b)(2) of the Securities Act, and thereby violated NASD Rule 2110 and FINRA Rule 2010.

SANCTIONS CONSIDERATIONS

In determining the appropriate sanction in this matter, FINRA considered, among other factors, (i) the Firm's prior disciplinary history for prospectus delivery and related supervisory violations, (ii) the fact that the Firm's violations extended over more than eight years, (iii) the extent of the Firm's supervisory deficiencies, and (iv) the absence of supervisory controls or testing by the Firm throughout the Relevant Period. FINRA also considered the Firm's corrective actions in this

matter, as described above.⁴

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

1. A censure;
2. A fine of \$2,900,000; and
3. To comply with the following undertaking:

RBC undertakes within 120 days of Notice of Acceptance of this AWC to provide a written certification to FINRA's Department of Enforcement by a duly authorized Senior Officer of the Firm that it has established and implemented a supervisory system and written procedures reasonably designed to achieve compliance with FINRA Rules and the federal securities laws applicable to prospectus delivery. The certification shall be submitted by letter addressed to Gerald Sawczyn, Senior Counsel, FINRA Department of Enforcement, Brookfield Place, 200 Liberty Street, 11th Floor, New York, NY 10281.

RBC agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. The Firm has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

RBC 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

RBC 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

⁴ The Firm undertook a review of its ETF and ETN prospectus delivery processes and shared with FINRA its findings.

- 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, RBC 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.

RBC 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

The Firm 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 the Firm’s 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. the Firm 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. The Firm 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 the Firm'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. The Firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm 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.

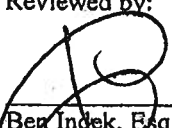
The undersigned, on behalf of RBC, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that RBC has agreed to its provisions voluntarily; and that no offer, threat, inducement, 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 RBC to submit it.

RBC Capital Markets, LLC

9/5/2019
Date (mm/dd/yyyy)

By: 
Name: Maria Danus
Title: Managing Director
RBC Capital Markets, LLC

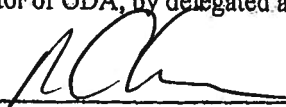
Reviewed by:


Ben Indek, Esq.
Counsel for Respondent
Morgan, Lewis & Bockius LLP
101 Park Avenue
New York, NY 10178
Telephone: (212) 309-6109
Facsimile: (212) 309-6001

Accepted by FINRA:

10/16/19
Date

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



Richard Chin, Chief Counsel
Eric Hansen, Director
Christina Stanland, Director
Gerald W. Sawczyn, Senior Counsel
FINRA Department of Enforcement
Brookfield Place
200 Liberty Street, 11th Floor
New York, NY 10281-1003
Telephone: (646) 315-7322
Facsimile: (202) 689-3415