

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2016049817701**

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

RE: Frederick A. Schwarb, Respondent
Former Registered Representative
CRD No. 6420837

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Frederick A. Schwarb ("Schwarb" or "Respondent") 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 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

Frederick Schwarb became registered with Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "Merrill Lynch" or the "Firm") in March 2015. He has Series 7 and Series 66 licenses.

On April 29, 2016, Merrill Lynch filed a Form U5 terminating Schwarb's registration and disclosing the reason for Schwarb's termination as "conduct including using personal email for business communication and sending unapproved marketing material to firm prospects, resulting in a loss of management's confidence."

Following his association with Merrill Lynch, Schwarb was registered with different FINRA member firms until October 4, 2017. Schwarb is not currently associated with any FINRA member, but remains subject to FINRA jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

Schwarb has no prior disciplinary history.

OVERVIEW

While employed by Merrill Lynch, Schwarb sent business-related e-mail from his personal e-mail accounts and used his personal cell phone to send business-related text messages in violation of FINRA Rules 4511 and 2010. During the same period, Schwarb also sent communications with the public to prospective clients in violation of FINRA Rules 2210(d) and 2010.

FACTS AND VIOLATIVE CONDUCT

Schwarb's Use of Personal E-mail and Text Messages

FINRA Rule 4511 requires each member to make and preserve books and records in conformity with Section 17 of the Securities Exchange Act of 1934 and Rules 17a-3 and 17a-4 thereunder. Rule 17a-4(b)(4) requires each member to preserve for a period of three years the originals of all communications received and copies of all communications sent by the member relating to its business.

In March 2016, Schwarb sent an e-mail from his personal e-mail account to a prospective customer in violation of the Firm's procedures requiring business-related e-mails to be sent through Firm-approved systems or devices. Schwarb used his personal e-mail account to evade the Firm's detection. In addition, Schwarb communicated with prospective customers via text message on his personal cell phone without the Firm's authorization. Schwarb's business-related communications sent from his personal e-mail account and personal cell phone were not retained by the Firm. Accordingly, Schwarb caused the Firm to fail to comply with its recordkeeping obligations under Exchange Act and FINRA rules.

By virtue of the foregoing, Schwarb violated FINRA Rules 4511 and 2010.

Schwarb's E-mail Communications with the Public

FINRA Rule 2210 addresses FINRA member communications with the public and includes certain content standards that apply to all member communications. FINRA Rule 2210(d)(1)(A) provides that all member communications must be "based on principles of fair dealing and good faith," must be "fair and balanced," and must "provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service." FINRA Rule 2210(d)(1)(B) prohibits making any "false, exaggerated, unwarranted, promissory or misleading statement or claim," or that the "member knows or has reason to know contains any untrue statement of material fact or is otherwise false or misleading."

While employed at Merrill Lynch, Schwarb sent a number of e-mails to prospective customers. Those e-mails included a flier, not approved by the Firm, as an attachment describing services that Schwarb claimed to be able to provide to customers. In the cover e-mails, Schwarb falsely stated that he works as part of a team and made a promissory statement claiming to "mitigate [] investment risk." The attached flier also touted his use of a particular investment evaluation tool, which had not been approved for use by Merrill Lynch.

By virtue of the foregoing, Schwarb violated FINRA Rules 2210(d) and 2010.

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

- A fine in the amount of \$2,000;
- A 30-day suspension from associating with any FINRA member firm in any capacity.

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.

Respondent specifically and voluntarily waives any right to claim that he is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

Respondent understands that if he is barred or suspended from associating with any FINRA member, he will 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, Respondent may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rules 8310 and 8311).

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

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against him;
- 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 prejudice 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.

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 him; and
- 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 him;
 - 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. 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 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.

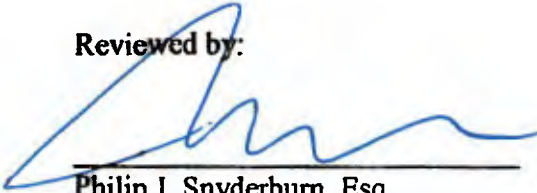
- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understand that he may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement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

Respondent certifies that he has read and understands all of the provisions of this AWC and have 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 him to submit it.

10/12/2017
Date (mm/dd/yyyy)

Frederick A. Schwarb
Frederick A. Schwarb

Reviewed by:


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Accepted by FINRA:

11/6/17
Date

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



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