

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2017054432703**

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

RE: RBC Capital Markets, LLC (Respondent)
Member Firm
CRD No. 31194

Pursuant to FINRA Rule 9216, Respondent RBC Capital Markets, LLC (RBC) 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 in this AWC.

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

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.¹

OVERVIEW

From July 2013 through June 2016, RBC failed to establish, maintain, and enforce a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with FINRA and MSRB rules with respect to representatives' recommendations of high-yield corporate and municipal bonds. As a result, the firm failed to identify for review more than 100 customer accounts with conservative profiles for potentially unsuitable concentration levels of high-yield bonds.

¹ For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

Therefore, RBC violated NASD Rules 3010(a) and (b)(1)² and FINRA Rules 3110(a), (b)(1) and 2010 with respect to the firm's supervision of high-yield corporate bonds, and MSRB Rules G-27(b) and (c) with respect to its supervision of high-yield municipal bonds.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a FINRA cycle examination of RBC.

FINRA Rule 3110(a) and its predecessor, NASD Rule 3010(a), require that FINRA members establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable FINRA rules. FINRA Rule 3110(b) and its predecessor, NASD Rule 3010(b), require that FINRA members establish, maintain, and enforce written procedures to supervise the types of business in which they engage and the activities of their associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable FINRA rules. FINRA Rule 2010 provides that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." A violation of FINRA Rule 3110 is a violation of FINRA Rule 2010.

MSRB Rule G-27(b) requires municipal dealers to establish and maintain a supervisory system that is reasonably designed to achieve compliance with applicable securities laws and regulations and MSRB Rules. Rule G-27(c) further requires each municipal dealer to adopt, maintain, and enforce written supervisory procedures that are reasonably designed to ensure that the conduct of municipal securities activities complies with MSRB Rules and the Exchange Act.

FINRA Rule 2111 requires member firms or their associated persons to have a reasonable basis to believe that a recommended securities transaction or investment strategy is suitable for a customer, based on information obtained through the reasonable diligence of the firm or associated person to ascertain the customer's investment profile. Similarly, MSRB Rule G-19 requires that a broker "in recommending to a customer any municipal security transaction . . . shall have reasonable grounds . . . for believing that the recommendation is suitable." A recommendation may be unsuitable, and thus violate FINRA Rule 2111 or MSRB Rule G-19, if it results in an undue concentration in a particular security or category of securities, and the correspondent risk of loss is inconsistent with the customer's investment profile.

Here, RBC's supervisory system did not function as intended and did not flag for supervisory review recommendations that resulted in potentially unsuitable concentrations of high-yield bonds in customers' accounts.

² FINRA Rule 3110 superseded NASD Rule 3010 on December 1, 2014.

High-Yield Bonds

Bonds are assigned credit ratings that are published by credit rating agencies. Bonds that receive lower credit ratings, indicating a higher risk of default, are known as “high-yield” or “junk” bonds. Because of the increased risks associated with high-yield bonds, FINRA has repeatedly reminded member firms of their sales practice obligations in connection with such products. For example, in Notice to Members 04-30, FINRA noted the “substantial” risks associated with high-yield bonds and reminded firms of their obligation to determine that such bonds are suitable for the customers to whom they are recommended. The Notice further provided that “[c]ertain high-yield, high-risk products may be suitable for recommending to only a very narrow band of investors capable of evaluating and being financially able to bear those risks.”³

RBC Did Not Have a Reasonably Designed Supervisory System with Respect to the Recommendation of High-Yield Bonds.

RBC’s supervision of representatives’ recommendations of high-yield bonds during the relevant period was not reasonable in two respects.

First, the firm’s policies and procedures did not sufficiently address the suitability factors that representatives should consider before recommending high-yield bonds. As to high-yield taxable bonds, the procedures simply stated that since “high yield securities generally involve a higher degree of risk, it is important that the Financial Advisor recommend such securities only to customers willing to risk loss of principal.” As to high-yield municipal bonds, the procedures stated only that “non-rated municipal securities may represent a higher level of risk to the investor” and that representatives should disclose such risks to customers at the time of purchase. Until 2015, the procedures did not include guidance as to how much of a customer’s portfolio should be invested in these products based on the customer’s investor profile.⁴

Second, during the relevant period, the firm used two automated alerts, a daily alert and a monthly alert, to identify potentially unsuitable concentrations of high-yield bonds in customer accounts. The daily alert calculated the concentration level of high-yield bonds at the time an account purchased a high-yield bond and flagged the account for supervisory review if, after the purchase, the account exceeded certain concentration thresholds. These thresholds were set by the firm based on the customer’s investment objective, with the threshold set lower for more conservative investors. The monthly alert evaluated concentration along with other suitability criteria and generated a risk score for the account. Accounts that generated risk scores above a certain threshold were flagged

³ See also FINRA Notice to Members 08-81 (reminding firms that they must adequately train and supervise employees who sell high-yield securities and “implement adequate supervisory controls to reasonably ensure compliance with FINRA and SEC sales practice rules”).

⁴ The firm has updated its WSP to prohibit the purchase of high-yield bonds in the most conservative accounts with limited exceptions and to provide guidance on how much of a customer’s portfolio should be invested in these products.

for a broader suitability review. During the relevant period, neither alert functioned as intended.

In July 2013, RBC changed the tax coding of municipal bonds in its system. This coding change inadvertently disabled the ability of the high-yield bond alerts to identify potential concentration issues for further assessment. As a result, the firm did not review more than 100 conservative customer accounts for potentially unsuitable concentrations in high-yield corporate and municipal bonds.

RBC did not detect that these alerts were not working, in part, because the firm did not test its alerts during the relevant period. RBC first discovered that the alerts were defective in September 2015. The firm did not fix the alerts until July 2016. During this ten-month period, the firm did not adopt alternate measures to identify potentially unsuitable concentrations in high-yield bonds. The firm also did not notify supervisors that the alerts were not working as intended and that they could not rely on the alerts for their reviews.

As a result, the firm failed to review more than 100 customer accounts with conservative profiles for potentially unsuitable concentrations of high-yield bonds; in a number of those accounts the holdings in high-yield bonds were more than six times the thresholds set by the firm. For example, Customer M, who was over 100 years old, was a trustee for two trust accounts, both of which had the most conservative investment objectives. By June 2015, 86 percent of one trust account, and 100 percent of the second trust account, consisted of high-yield municipal bonds, well above the threshold the firm set for conservative investors. Similarly, Customer B, who was over 70 years old, had a joint account with a conservative investment objective that, at times, consisted of as much as 92 percent in high-yield bonds. Because of the failure of the high-yield bond alerts, the firm did not review Customer M's and Customer B's accounts for potentially unsuitable concentrations of high-yield bonds.

Therefore, RBC failed to establish, maintain, and enforce a supervisory system, including written procedures, reasonably designed to achieve compliance with FINRA and the MSRB suitability rules. By virtue of the foregoing, RBC violated NASD Rule 3010(a) and 3010(b) and FINRA Rules 3110(a) and (b) and 2010 with respect to the firm's supervision of high-yield corporate bonds and MSRB Rules G-27(b) and (c) with respect to high-yield municipal bonds.

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

- A censure;
- A \$550,000 fine, (\$280,500 of which pertains to the violations of MSRB Rules G-27(b) and (c));
- Restitution of \$456,155 plus interest as described below.

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 an inability to pay, now or at any time after the execution of this AWC, the monetary sanction imposed in this matter.

Restitution is ordered to be paid to the customers listed on Attachment A to this AWC in the total amount of \$456,155, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), from July 1, 2016, until the date this AWC is accepted by the National Adjudicatory Council (NAC).

A registered principal on behalf of Respondent shall submit satisfactory proof of payment of restitution and prejudgment interest (separately specifying the date and amount of each paid to each customer listed on Attachment A) or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted by email to EnforcementNotice@FINRA.org from a work-related account of the registered principal of Respondent. The email must identify Respondent and the case number and include a copy of the check, money order, or other method of payment. This proof shall be provided by email to EnforcementNotice@FINRA.org no later than 120 days after the date of the notice of acceptance of the AWC.

If for any reason Respondent cannot locate any customer identified in Attachment A after reasonable and documented efforts within 120 days after the date of the notice of acceptance of the AWC, or such additional period agreed to by FINRA in writing, Respondent shall forward any undistributed restitution and interest to an appropriate escheat account. Respondent shall follow the standard escheatment process, adhering to each state's required timeframes based on the state in which the customer is last known to have resided. Respondent shall provide satisfactory proof of such action to FINRA in the manner described above, within 14 calendar days of forwarding the undistributed restitution and interest to the appropriate state authority.

The imposition of a restitution order or any other monetary sanction in this AWC, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

Restitution payments to customers shall be preceded or accompanied by a communication, not unacceptable to FINRA, describing the reason for the payment and the fact that the payment is being made pursuant to a settlement with FINRA and as a term of this AWC.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent 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
- D. To appeal any such decision to the 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 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 its acceptance or rejection.

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 Respondent; and
- C. If accepted:
 - 1. This AWC will become part of Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;

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 its subject matter 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 Respondent's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.

- 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.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's 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 Respondent has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

December 14, 2021

Date

Peter J. Bado

RBC Capital Markets, LLC
Respondent

Print Name: Peter J. Bado

Title: Head of U.S. Litigation & Regulatory Enforcement

Reviewed by:

Ariel Gursky

Ariel Gursky
Ben Indek
Counsel for Respondent
Morgan Lewis & Bockius LLP
101 Park Avenue
New York, NY 10178

Accepted by FINRA:

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

December 15, 2021

Date

Karen Cherrington

Karen Cherrington
Senior Counsel
FINRA
Department of Enforcement
Brookfield Place
200 Liberty Street, 11th Floor
New York, NY 10281

ATTACHMENT A – RESTITUTION SCHEDULE

Customer #	Restitution Amount (Exclusive of Interest)
1	\$60,923.23
2	\$143,439.21
3	\$12,007.31
4	\$23,895.89
5	\$14,445.75
6	\$24,612.27
7	\$9,292.99
8	\$3,159.87
9	\$426.91
10	\$4,408.80
11	\$16,259.42
12	\$16,259.42
13	\$56,995.31
14	\$13,134.35
15	\$13,774.50
16	\$23,910.99
17	\$7,725.00
18	\$1,021.50
19	\$2,174.04
20	\$8,289.08