

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2018057161001**

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

RE: Cabrera Capital Markets, LLC (Respondent)
Member Firm
CRD No. 10081

Pursuant to FINRA Rule 9216, Respondent Cabrera Capital Markets, LLC 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 accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

Cabrera has been a FINRA member since August 1981. The firm is headquartered in Chicago, Illinois and has approximately 50 registered representatives at seven branch offices. Cabrera's business primarily includes investment banking and brokerage services for institutional customers.¹

OVERVIEW

From October 2016 through September 2021, Cabrera failed to provide written trade confirmations to institutional customers that disclosed markups and markdowns in preferred securities transactions and in a number of instances provided confirmations to institutional customers that incorrectly identified single executions as average price or block transactions in violation of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-10 thereunder, and FINRA Rules 2232 and 2010. During that period, the firm also failed to establish, maintain, and enforce a supervisory system, including written

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

supervisory procedures (WSPs), reasonably designed to achieve compliance with Section 10(b) of the Exchange Act, Rule 10b-10 thereunder, and FINRA Rule 2322 regarding disclosures on customer trade confirmations, in violation of FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter began in 2018. It originated from FINRA Market Regulation Examination Nos. 20180571610 and 20200659724.

Disclosure requirements for trade confirmations.

Section 10(b) of the Exchange Act, and Rule 10b-10 thereunder, require broker-dealers to disclose certain information to customers in writing at or before the completion of the transaction. Rule 10b-10(a)(2)(ii)(A) applies to certain transactions where a broker-dealer acts in a principal capacity and requires the broker-dealer to disclose the difference between the price the customer received and the broker-dealer's contemporaneous purchase price (the markup) or sale price (the markdown). Rule 10b-10(a)(1) requires broker-dealers to disclose in writing to customers whether the price of a transaction was the average price of multiple transactions, or the result of a single execution.

FINRA Rule 2232(a) requires member firms, at or before the completion of any transaction in any security effected for or with an account of a customer, to provide such customer with written confirmation disclosures that conform with the requirements of Exchange Act Rule 10b-10.

FINRA Rule 2010 requires member firms, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade. A violation of Section 10(b) of the Exchange Act, Rule 10b-10 thereunder, or FINRA Rule 2232 is also a violation of FINRA Rule 2010.

Cabrera failed to disclose certain required information on trade confirmations.

From October 2016 through September 2021, Cabrera executed preferred securities transactions with institutional customers on a principal basis, which constituted as much as 5.5% of the firm's trade volume.

During that period, Cabrera failed to disclose to institutional customers certain information on written trade confirmations as required by Exchange Act Rule 10b-10 and FINRA Rule 2232.

First, the firm failed to disclose in written trade confirmations to customers markups and markdowns on principal transactions in preferred securities at or before the completion of the transactions. After receiving an institutional customer order to buy preferred securities, typically, Cabrera purchased the shares from another broker-dealer (or broker-

dealers) to offset the contemporaneous sale to the customer, and it retained the resulting markup. Similarly, after receiving a customer order to sell preferred securities, typically, Cabrera sold the shares to another broker-dealer (or broker-dealers) to offset the contemporaneous purchase from the customer, and it retained the resulting markdown. Cabrera did not identify the markup or markdown on written customer trade confirmations for such principal transactions as required by Exchange Act Rule 10b-10(a)(2)(ii)(A). For example, during the period October 2016 through June 2020, Cabrera executed approximately 3,400 principal transactions in preferred securities for institutional customers,² but it did not disclose on customer confirmations related to those transactions as much as \$864,500 in markups and markdowns, which constituted approximately 1.5% of Cabrera's total revenue during this period.

Second, in a number of instances between October 2017 and April 2018, Cabrera incorrectly identified single executions as average price or block transactions on customer trade confirmations.

Therefore, Cabrera violated Section 10(b) of the Exchange Act, Rule 10b-10 thereunder, and FINRA Rules 2232 and 2010.

Supervision for compliance with trade confirmation rules.

FINRA Rule 3110(a) requires FINRA members to establish and maintain a supervisory system, including written procedures, reasonably designed to achieve compliance with applicable securities laws and regulations. FINRA Rule 3110(b) requires members to "establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules." A violation of FINRA Rule 3110 is also a violation of FINRA Rule 2010.

Cabrera failed to supervise reasonably for compliance with trade confirmation rules.

From October 2016 through September 2021, the firm lacked WSPs regarding customer trade confirmations and failed to enforce a supervisory system reasonably designed to achieve compliance with Section 10(b) of the Exchange Act, Rule 10b-10 thereunder, and FINRA Rule 2232. As a result of these supervisory failures, Cabrera's trade confirmations violated Exchange Act and FINRA rules, as described above.

Therefore, Cabrera violated FINRA Rules 3110 and 2010.

² Cabrera's principal transactions often involved allocations to multiple customers, so the number of required confirmations relating to those 3,400 transactions was significantly higher.

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

- a censure,
- a \$50,000 fine, and
- the following undertaking: Within no later than 90 calendar days of Notice of Acceptance of this AWC, or such additional period as agreed to by a FINRA Enforcement staff member in writing, Cabrera's Chief Operating Officer, on behalf of the firm, shall submit a written, signed and dated certification to FINRA that Cabrera's policies, systems and procedures (including written procedures) and training, concerning compliance with Section 10(b) of the Exchange Act, Rule 10b-10 thereunder, and FINRA Rule 2232, are in effect and reasonably designed to ensure that customer confirmations accurately disclose required transaction information. The certification must identify Cabrera and FINRA Case No. 2018057161001 and be provided to EnforcementNotice@FINRA.org. from a work-related account of the firm.

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.

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 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 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 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 10, 2021

Date

Robert Luis Aguilar

Cabrera Capital Markets, LLC
Respondent

Print Name: Robert Luis Aguilar

Title: Chief Operating Officer

Reviewed by:

Michael J. Diver, Esq.

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Accepted by FINRA:

December 23, 2021

Date

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

Gary Chodosh

Gary A. Chodosh
Senior Counsel
FINRA
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