

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2018060577602**

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

RE: Concorde Investment Services, LLC, Respondent
Member Firm
CRD No. 151604

Kimberlee Elizabeth Levy, Respondent
General Securities Principal, Compliance Officer, Investment Banking Principal,
General Securities Representative, Investment Banking Representative, Investment
Company Products/Variable Contracts Principal, Investment Company and Variable
Contracts Products Representative, Registered Options Principal, Operations Professional
CRD No. 4065593

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondents Concorde Investment Services, LLC ("Concorde" or the "Firm") and Kimberlee Elizabeth Levy 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 Respondents alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondents hereby accept and consent, 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

Concorde has been a FINRA member since August 2010. The Firm, which is headquartered in Livonia, Michigan, has approximately 130 registered individuals and approximately 63 branch offices.

Levy first became registered with FINRA in July 2002. In April 2013, Concorde hired Levy as its Chief Compliance Officer, and she became registered through Concorde as a General Securities Representative, General Securities Principal, Investment Banking Representative, Investment Company and Variable Contracts Products Representative, Investment Company Products/Variable Contracts Principal, Registered Options Principal, and Operations Professional. Levy subsequently became registered through

Concorde as an Investment Banking Principal and Compliance Officer in October 2018. Levy remains registered in those capacities through Concorde.

RELEVANT DISCIPLINARY HISTORY

Neither Concorde nor Levy has any relevant disciplinary history with the Securities and Exchange Commission, any state securities regulators, FINRA, or any other self-regulatory organization.

OVERVIEW

From April 2013 to March 2014, Concorde and Levy failed to reasonably supervise JT, a former registered representative of the Firm, who permitted her then-husband, RC, to conduct a securities business with Concorde customers while RC was serving a one-year suspension imposed by FINRA. From March 2014, when Concorde hired RC upon the completion of his suspension, to July 2016, when Concorde and Levy terminated RC and JT, Concorde and Levy failed to reasonably supervise RC and, as a result, did not identify that he recommended unsuitable trades in several customers' accounts, among other things.

As a result of the foregoing, Concorde and Levy violated NASD Rule 3010 (for conduct before December 1, 2014), FINRA Rule 3110 (for conduct on or after December 1, 2014), and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

FINRA Rule 3110 and its predecessor, NASD Rule 3010, require that each member firm, through its supervisory personnel, take reasonable steps to ensure that the activities of each registered representative comply with applicable securities laws and regulations, investigate red flags of potential misconduct, and take reasonable action when misconduct has occurred. A violation of FINRA Rule 3110 or NASD Rule 3010 also constitutes a violation of FINRA Rule 2010.

Concorde hired Levy in April 2013. As set forth below, the Firm's written supervisory procedures ("WSPs") identified the Chief Compliance Officer (who at the time was Levy) as the principal responsible for the Firm's branch inspection program and heightened supervision program, among others. Moreover, from March 2015 through at least July 2016, all of the Firm's sales supervisors, including PM, the designated supervisory principal responsible for supervising RC, reported directly to Levy.

A. From April 2013 to March 2014, Concorde and Levy Failed to Reasonably Supervise JT, Who Permitted RC to Conduct a Securities Business With Firm Customers While He Was Suspended by FINRA

As noted, the Firm's WSPs identified Levy, or her designee, as the principal responsible for its branch inspection program. The WSPs provided that the Firm's branch inspections "be focused on and reasonably designed to assist in detecting and preventing violations

of, and achieving compliance with, applicable securities laws and regulations and with applicable FINRA rules.” The WSPs also provided that branch inspections “include, among other things, a review of any on-site customer account documentation and other books and records [and] meetings with individual Representatives to discuss the products they are selling and their sales methods ...” According to the WSPs, “[u]nnounced visits may be appropriate, particularly where there are indicators of misconduct or potential misconduct, or ‘red flags,’ such as receipt of significant customer complaints [or] personnel with disciplinary records ...”

The Firm hired JT¹ as a General Securities Representative in January 2013, shortly before her then-husband, RC,² began serving a one-year, all-capacities suspension imposed by FINRA for recommending unsuitable transactions involving complex products, sending customers misleading and unapproved account summaries, and failing to update his Uniform Application for Securities Industry Registration (“Form U4”) in a timely manner to disclose settlements of customer complaints, while registered through another FINRA member firm. When Concorde hired JT, individuals at the Firm understood that although JT entered the securities industry in 2001, she had never had any customers of her own. Concorde also knew that RC was about to begin serving a one-year suspension for the above-described violations. In fact, RC was personally involved in negotiations with Concorde over the hiring of JT, and RC explicitly told Concorde that he wanted JT to “tak[e] over the business” and service his customers while he was suspended, with the expectation that Concorde would hire him upon the conclusion of his suspension. Indeed, throughout her tenure at Concorde, all or nearly all of JT’s customers had been RC’s customers at his prior firm. JT worked, ostensibly alone (except for an administrative assistant), at a Concorde branch office in New Jersey, and was supervised by principals located in Concorde’s home office in Michigan.

Some Concorde employees began to question JT’s competence almost immediately after she joined the Firm in January 2013. Shortly after Levy joined Concorde in April 2013, Levy learned about RC’s suspension, and two Firm employees, including its Chief Operating Officer, approached Levy and told her that, based on their interactions with JT, they did not feel that she was competent to handle RC’s book of business. Moreover, a third-party consultant hired by Concorde specifically recommended that Levy schedule a surprise inspection of JT’s branch office to determine whether it was JT or RC who was acting as the registered representative for Concorde’s customers. Despite those specific warnings, Levy did not schedule a branch inspection for JT’s branch office until October 2013—more than ten months after JT had joined Concorde and approximately six months after the consultant had recommended it.

Concorde, in fact, conducted an inspection of JT’s branch in October 2013, which was the first time Concorde visited JT’s branch. Levy did not instruct the consultant who conducted the October 2013 inspection to tailor it in any way to assess the possibility that

¹ JT previously agreed to an AWC imposing a bar for permitting RC to engage in securities business while suspended, in violation of FINRA Rule 2010.

² FINRA previously barred RC from associating with any FINRA member firm in any capacity.

RC was conducting a securities business while suspended. For example, neither the consultant nor anyone associated with Concorde contacted customers during the first year JT was registered through Concorde to ask who was servicing their accounts. Nor did the consultant review emails or customer contact notes or any other documents to determine who was acting as the registered representative to Concorde's customers. Instead, the inspection was conducted using Concorde's standard branch inspection checklist.

Had Levy instructed the consultant or JT's supervisor to review the branch's emails, for example, they would have seen that RC routinely used a business email address to conduct a securities business while suspended—and that those emails were received and retained by Concorde on the same platform as Concorde's registered representatives' emails.

In fact, during his year-long suspension, RC sent or received more than 1,700 emails through his business email address, numerous of which contained explicit securities recommendations by RC to Concorde customers, and all of which were acquired and retained by Concorde through its email vendor. Numerous Concorde employees received emails from RC's business email address during his suspension and mistakenly assumed that it was JT that was sending the emails. Levy received at least five emails from RC's business email address during his suspension, but failed to take reasonable steps to determine whether RC was acting in a registered capacity during his suspension.

Concorde ignored other red flags that RC was conducting securities business for Firm customers during his year-long suspension. For example, on approximately August 21, 2013, Concorde's clearing firm notified Concorde that it had rejected a check from a customer that was made out to Concorde's clearing firm and RC, because RC was not a registered representative of the Firm or listed on the account. However, Concorde failed to take any steps—including calling the customer—to investigate why a customer would have written RC's name on the check.

In fact, RC conducted his securities business during the year of his suspension. Throughout that year, with JT's assistance, RC communicated with Concorde customers, made securities recommendations to them, and placed trades on their behalf. For the most part, Concorde customers were unaware that RC had been suspended; instead, they believed that RC continued to be their broker and that JT was his assistant.

B. From March 2014 to July 2016, Concorde and Levy Failed to Reasonably Supervise RC

Concorde hired RC in March 2014, after his one-year suspension had ended. From March 2014 until Concorde terminated RC in July 2016, PM³ was the designated supervisory principal responsible for supervising RC. PM had joined Concorde in January 2014, only two months before RC.

³ PM previously agreed to an AWC imposing a two-month, principal-capacity suspension and a \$5,000 fine for failing to reasonably supervise RC.

1. Concorde and Levy Failed to Place RC on Heightened Supervision

As noted, the Firm's WSPs identified the Chief Compliance Officer (who at that time, was Levy) as the principal responsible for its heightened supervision program. Concorde's WSPs required that if "the Firm engages a Representative or other associated person who has a disciplinary background ... the Chief Compliance Officer shall establish a control system which involves heightened supervision. Any Representative subject to heightened supervision shall have all transactions and correspondence reviewed on a daily basis."

Despite that directive, Concorde, and Levy decided not to place RC on heightened supervision, even though the Firm and Levy knew that RC had recently completed a one-year suspension imposed by FINRA. Concorde and Levy knew that their decision not to place RC on heightened supervision was contrary to Concorde's WSPs. Moreover, Concorde and Levy failed to specifically inform PM that RC had been suspended for one year by FINRA and that JT had been servicing RC's book of business while RC served his suspension. Concorde and Levy also failed to tell PM that they considered but ultimately decided against placing RC on heightened supervision.

Had Levy placed RC on heightened supervision as required by the Firm's WSPs, the Firm might have learned that RC was conducting securities business for customers residing in states where he was not registered. For example, when RC joined Concorde in March 2014, the Firm applied for RC to be registered in Maryland, where his largest customer resided. Concorde withdrew the application after receiving preliminary indications from Maryland that the application would be denied on account of RC's disciplinary history. Even though Concorde withdrew the registration request, and RC was not registered to conduct securities business for any Maryland residents until he was eventually given a conditional registration in May 2015, RC, in fact, began acting as the registered representative of record on Maryland customers' accounts as early as April 2014. From that time, RC communicated with Concorde customers living in Maryland; he made securities recommendations to them; and he executed securities transactions in their accounts. Moreover, Concorde paid RC commissions on securities transactions executed for Maryland customers when RC was not registered by Maryland. Although other states refused to register RC, Concorde likewise paid RC commissions on securities transactions executed for customers residing in those states. In total, from at least April 2014 to July 2016, RC serviced at least eight Concorde customers residing in three states where he did not have the required state registrations, and Concorde paid him commissions on transactions executed in those customers' accounts.

Moreover, even though Concorde and Levy knew that RC's one-year suspension arose, in part, from findings that he made unsuitable recommendations involving complex products, no one at the Firm considered whether Concorde should have at least imposed heightened review over the suitability of RC's recommendations involving complex products.

2. Concorde Failed to Reasonably Supervise the Suitability of RC's Securities Recommendations

FINRA Rule 2111 requires member firms or their associated persons to have a reasonable basis to believe that a recommended securities transaction is suitable for the customer, based on information obtained through the reasonable diligence of the firm or associated person to ascertain the customer's investment profile. A customer's investment profile includes, but is not limited to, the customer's age, other investments, financial situation and needs, investment objectives, investment experience, investment time horizon, liquidity needs, and risk tolerance. A recommended securities transaction or investment strategy may be unsuitable if it results in a customer's account being unduly concentrated in a particular security or category of securities that is inconsistent with the customer's investment profile.

Concorde failed to reasonably supervise the suitability of RC's securities recommendations, including recommendations to purchase a private placement and certain fixed-to-floating rate securities.

First, between May and September 2014, RC recommended that several customers purchase shares in a private placement that was offered pursuant to Regulation D of the Securities Act of 1933. According to the private placement memorandum, the private placement was "speculative, involve[d] a high degree of risk," and was only suitable for "accredited investors who can bear the economic risks of their investment for an indefinite period of time and who can sustain a total loss of their investment." The subscription agreement for the private placement defined an "accredited investor" as, among other things, an individual with a net worth in excess of \$1,000,000 or an annual income of \$200,000 in each of the two most recent years.

Concorde required that a principal pre-approve registered representatives' recommendations that customers purchase private placements. Here, Concorde, through its designated supervisory principal, approved RC's recommendations that several customers invest in the private placement, despite red flags that the customers were not accredited investors and that the recommended investments were not suitable for them. For example, RC recommended that a 22-year old student whose account opening documents reflected investment objectives of "growth and income," a "moderate" risk tolerance, annual income of less than \$25,000, and a total net worth of between \$450,000 and \$550,000 invest in the private placement. Concorde approved the recommendation without verifying that the net worth claimed in the private placement application—between \$1,000,000 and \$1,100,000—was accurate, even though it was approximately double the net worth set forth in the customer's account opening documents and even though the private placement was inconsistent with the risk tolerance reflected on the customer's account opening documents. RC also recommended that an 85-year old widow whose account opening documents reflected investment objectives of "growth and income," a "moderate" risk tolerance, an annual income of \$70,000, and a total net worth of between \$300,000 and \$999,999 invest in the private placement. Concorde approved the recommendation without verifying that the net worth claimed in the private placement application—over \$1,000,000—was accurate, even though it conflicted with the net

worth set forth in the customer's account opening documents and even though the private placement was inconsistent with the risk tolerance reflected on the customer's account opening documents. As a result of these unsuitable recommendations, the two customers described above each suffered losses of approximately \$25,000.⁴

Second, between April 2014 and July 2016, RC recommended that several customers purchase unsuitable concentrations of fixed-to-floating rate securities in their accounts. The fixed-to-floating rate securities sold by RC were complex, structured products that typically paid interest at a fixed rate for several years and then paid interest subject to a floating interest rate based on the performance of various indices. In some cases, if the selected index values were less than an identified amount, the investor risked losing up to his or her entire principal investment.

Although Concorde required that a principal review and approve all sales of structured products, it did not do so with respect to RC because the Firm failed to identify that the fixed-to-floating rate securities sold by RC were complex, structured products. As a result, Concorde did not review the suitability of these securities recommendations, which caused several customers to unsuitably concentrate their account holdings in fixed-to-floating rate securities. For example, RC recommended that Customer A, a senior customer with a risk tolerance of "moderate" and an investment objective of "long-term growth" concentrate 80% of one of his accounts in fixed-to-floating rate securities. In total, RC's recommendations caused the accounts of five customers, including Customer A, to contain unsuitable concentrations of fixed-to-floating rate securities and to suffer total losses of approximately \$148,000.⁵

As a result of the foregoing, Concorde and Levy violated NASD Rule 3010 (for conduct prior to December 1, 2014) and FINRA Rules 3110 (for conduct on and after December 1, 2014) and 2010.

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

For Concorde:

- a censure;
- a fine of \$300,000; and
- restitution to Customer A, listed on Attachment A, in the total amount of \$76,344.20, plus interest as described further below;⁶ and

⁴ Concorde has reached settlements with the affected customers.

⁵ Concorde has reached settlements with four of the affected customers.

⁶ The amount of restitution Concorde is required to pay has been reduced by settlements that Concorde previously paid to affected customers.

For Levy:

- a four-month suspension from association with any FINRA member in any principal capacity;
- a fine of \$10,000; and
- a requirement that within 60 days of the Notice of Acceptance of this AWC, Levy will undertake to attend and satisfactorily complete 40 hours of continuing education concerning supervisory responsibilities by a provider not unacceptable to FINRA. Levy will notify Melissa Turitz, Senior Counsel, of the name and contact information of the provider who is providing the continuing education at least 10 days prior to attending the training. Within 30 days following completion of the 40 hours of continuing education, Levy will submit written proof that the continuing education program has been satisfactorily completed to Melissa Turitz, FINRA's Department of Enforcement, 581 Main Street, Suite 710, Woodbridge, New Jersey 07095 or by email to Melissa.Turitz@finra.org. All correspondence must identify the respondent and matter number.

Respondents agree to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. Respondents have submitted Election of Payment forms showing the method by which they propose to pay the fines imposed.

Respondents specifically and voluntarily waive any right to claim an inability to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

Restitution is ordered to be paid to the customer listed on Attachment A hereto in the total amount of \$76,344.20, 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 7, 2016, until the date this AWC is accepted by the National Adjudicatory Council (NAC).

A registered principal on behalf of Respondent Firm shall submit satisfactory proof of payment of restitution and pre-judgment 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 Firm. The email must identify the 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 acceptance of the AWC.

If for any reason Respondent Firm cannot locate the customer identified in Attachment A after reasonable and documented efforts within 120 days from the date the AWC is accepted, or such additional period agreed to by a FINRA staff member in writing, Respondent Firm shall forward any undistributed restitution and interest to the

appropriate escheat, unclaimed property or abandoned property fund for the state in which the customer is last known to have resided. Respondent Firm shall provide satisfactory proof of such action to the FINRA staff member identified above and 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 herein, 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 letter, not unacceptable to FINRA staff, 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.

Respondent Levy understands that if she is barred or suspended from associating with any FINRA member in a principal capacity, she becomes 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 Levy may not be associated with any FINRA member in a principal capacity during the period of the bar or suspension. See FINRA Rules 8310 and 8311. Furthermore, because Respondent Levy is subject to a statutory disqualification during the suspension, if she remains 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

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

- A. To have a Complaint issued specifying the allegations against them;
- 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, Respondents 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.

Respondents 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

Respondents 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 Respondents; and
- C. If accepted:
 - 1. this AWC will become part of Respondents' permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondents;
 - 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. Respondents 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. Respondents 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 Respondents': (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. Respondents may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they 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 the Respondent Firm, 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 it 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 herein and the prospect of avoiding the issuance of a Complaint, has been made to induce it to submit it.

On her own account, Respondent Levy certifies that she has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; Respondent Levy has agreed to the AWC's provisions voluntarily; and 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 her to submit this AWC.

June 26, 2020

Date

Concorde Investment Services, LLC
Respondent

By: Drew Jackson

Print Name: Drew Jackson

Title: President Concorde Investment Services, LLC

June 26, 2020

Date

Kimberlee Levy

Kimberlee Elizabeth Levy
Respondent

Reviewed by:

Andrew W. Davitt

Andrew W. Davitt, Esq.
Counsel for Respondents
Marshall Dennehey Warner Coleman & Goggin, P.C.
2000 Market St., Suite 2300
Philadelphia, PA 19103

Accepted by FINRA:

July 21, 2020

Date

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

Melissa J. Turitz

Melissa J. Turitz
Senior Counsel
FINRA
Department of Enforcement
581 Main Street, Suite 710
Woodbridge, NJ 07095