

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019060648801**

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

RE: Craig J. Sherman (Respondent)
Former General Securities Principal, Operations Professional, and General Securities
Representative
CRD No. 5670193

Pursuant to FINRA Rule 9216, Respondent Craig J. Sherman 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

Sherman first registered with FINRA in 2011. Sherman registered as a General Securities Principal (GSP), Operations Professional (OS), and General Securities Representative (GSR) through an association with Wynston Hill Capital, LLC (CRD No. 103811) in June 2017. He remained registered as a GSP and OS until August 2020, and as a GSR until October 2020, when Wynston Hill filed a Uniform Termination Notice for Securities Industry Registration (Form U5) stating that he had voluntarily resigned from the firm. Sherman is currently associated in a non-registered capacity with another FINRA member firm.¹

OVERVIEW

From October 2018 through June 2019, Sherman failed to reasonably discharge supervisory responsibilities specifically assigned to him by Wynston Hill's written supervisory procedures (WSPs), including to reasonably investigate potentially excessive trading by Wynston Hill's registered representatives and to review representatives' emails. As a result, Sherman violated FINRA Rules 3110 and 2010.

¹ For more information about the Respondent, visit BrokerCheck® at www.finra.org/brokercheck

FACTS AND VIOLATIVE CONDUCT

FINRA Rule 3110(a) requires each member firm to “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)(1) provides that “[e]ach member shall 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.” The duty to supervise under Rule 3110 also includes the responsibility to reasonably investigate red flags that suggest that misconduct may be occurring and act upon the results of such investigation.

A violation of FINRA Rule 3110 also constitutes a violation of FINRA Rule 2010, which requires members and associated persons, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.

FINRA Rule 2111 requires, in pertinent part, that member firms or their associated persons “have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer’s investment profile.” Recommended securities transactions may be unsuitable if, when taken together, they are excessive, the level of trading is inconsistent with the customer’s investment profile, and the registered representative exercises actual or de facto control over the customer’s account.

No single test defines when trading is excessive, but factors such as the turnover rate and the cost-to-equity ratio are considered in determining whether a firm or associated person has violated FINRA’s suitability rule. Turnover rate represents the number of times that a portfolio of securities is exchanged for another portfolio of securities. The cost-to-equity ratio is the percentage of return on the customer’s average net equity needed to pay commissions and other expenses. A turnover rate of six or a cost-to-equity rate above 20 percent generally indicates that an account has been excessively traded.

Wynston Hill’s WSPs identified Sherman as the individual responsible for two periodic reviews of registered representatives’ activities. First, the WSPs required Sherman to conduct monthly reviews of the trades recommended by the firm’s registered representatives to identify and investigate “activity that may constitute churning.” Second, the WSPs required Sherman to conduct monthly reviews of at least five percent of emails sent by the firm’s representatives to current or prospective customers. Sherman failed to reasonably discharge both responsibilities, as described below.

First, between October 2018 and June 2019, Sherman did not conduct any reviews to identify potential churning or excessive trading. As a result, Sherman did not identify that two of the firm’s registered representatives (Representatives A and B) were excessively

trading two customers' accounts, ultimately charging those customers more than \$300,000 in excess commissions and fees in less than six months.²

Moreover, Sherman failed to reasonably investigate red flags of excessive trading even when they were specifically presented to him. For example, in February 2019, the branch manager of Wynston Hill's New York City office told Sherman that one of the customers referenced above had been charged nearly \$100,000 in commissions in less than three weeks. Sherman did not take reasonable steps to investigate whether such trading was suitable for the customer, such as calculating the cost-to-equity or turnover ratio or speaking with the customer. In fact, the trades recommended by Representative A resulted in an annualized cost-to-equity ratio in excess of 100 percent, meaning that the accounts would have had to grow by more than 100 percent per year just to cover the commissions and other costs charged to the accounts. Moreover, the customer did not understand the amount of commissions that he had been charged, and the level of trading in the account was inconsistent with the customer's investment profile.

Second, Sherman did not conduct any reviews of representatives' emails. In failing to do so, Sherman failed to discover red flags that Representatives A and B were recommending securities transactions in those same two accounts despite not being registered in the customers' home states, and that a third representative (Representative C) falsified the firm's books and records to reflect that he was the customers' registered representative of record when he was not the one making securities recommendations to them.³

Moreover, Sherman failed to investigate red flags that Representatives A and B were recommending securities transactions to customers located in states where they were not registered. Sherman knew that Representatives A and B had not been able to obtain registrations in many states after they joined Wynston Hill and that Representative C, who was only 20 years old, had virtually no experience as a registered representative, and was recruited to Wynston Hill by Representative A, became registered in many of those same states shortly after Representatives A and B were unable to do so. Nonetheless, Sherman did not take any steps to investigate these red flags, such as reviewing the representatives' emails or contacting the customers in question. A review of their emails would have revealed that Representatives A and B – and not Representative C (the representative of record) – were communicating with the customers, sent them new account forms, and asked the customers to deposit funds into their Wynston Hill accounts. Had Sherman contacted the customers, he would have learned that Representatives A and B – and not Representative C – were making securities recommendations to the two customers in question.

As a result of the foregoing, Sherman violated FINRA Rules 3110 and 2010.

² FINRA has barred Representatives A and B from associating with any FINRA member firm in all capacities.

³ FINRA has suspended Representative C from associating with any FINRA member firm in all capacities for four months and fined him \$5,000.

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

- a four-month suspension from associating with any FINRA member in all principal capacities;
- a \$5,000 fine; and
- a requirement that within 60 days of the Notice of Acceptance of this AWC, Sherman will attend and satisfactorily complete 40 hours of continuing education concerning supervisory responsibilities by a provider not unacceptable to FINRA. Sherman will notify Gabrielle Hirz, Principal 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, Sherman will submit written proof that the continuing education program has been satisfactorily completed to Gabrielle Hirz by email to Gabrielle.Hirz@finra.org. All correspondence must identify the respondent and matter number.

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

Respondent understands that if he is barred or suspended from associating with any FINRA member in a principal capacity, he 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 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 is subject to a statutory disqualification during the suspension, if he remains associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

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 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 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 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.

Respondent certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; Respondent understands and acknowledges that FINRA does not represent or advise him and Respondent cannot rely on FINRA for legal advice. Respondent has agreed to the AWC's provisions voluntarily; and 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 him to submit this AWC.

November 3, 2021

Date

Craig Sherman

Craig J. Sherman
Respondent

Accepted by FINRA:

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

November 12, 2021

Date

Gabrielle Hirz

Gabrielle Hirz
Principal Counsel
FINRA
Department of Enforcement
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