

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019061187802**

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

RE: Madison Avenue Securities, LLC (Respondent)
Member Firm
CRD No. 23224

Pursuant to FINRA Rule 9216, Respondent Madison Avenue Securities, 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

Madison Avenue has been a FINRA member since December 1988. The firm is headquartered in San Diego, California. The firm has over 240 registered representatives and operates 98 branch offices. The firm conducts a general securities business. From 2016 through 2022, the firm derived less than 10% of its annual revenue from mutual fund transactions.

In May 2022, Madison Avenue agreed to a settlement with the Securities and Exchange Commission regarding allegations that the firm (1) breached its fiduciary duty by failing to provide full and fair disclosures regarding conflicts of interest associated with its receipt of third-party compensation based on advisory client investments; (2) breached its duty to seek best execution by causing advisory clients to invest in share classes of mutual funds when share classes of the same funds were available to clients that presented a more favorable value for these clients; (3) breached its duty of care by failing to undertake an analysis to determine whether the particular mutual fund share classes and money market funds it recommended were in the best interests of its advisory clients; and (4) failed to adopt and implement written compliance policies and procedures reasonably designed to prevent these breaches of the firm's duties.¹ The firm agreed to

¹ See *Madison Avenue Securities, LLC*, SEC Order Imposing Sanctions, Admin. Proc. File No. 3-20872 (May 31, 2022).

pay a \$150,000 fine, disgorgement of \$579,523.76 and prejudgment interest of \$73,649.93, and to an undertaking.²

OVERVIEW

From January 2016 through December 2018, Madison Avenue failed to establish, maintain, and enforce a supervisory system, including written supervisory procedures, reasonably designed to supervise the suitability of mutual fund transactions executed through its clearing firm, particularly with respect to potential available sales charge discounts. Based on the foregoing, Madison Avenue violated FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a January 2019 customer complaint to FINRA.

Madison Avenue failed to reasonably supervise the availability of potential sales charge discounts for mutual fund transactions submitted through its electronic order entry system.

FINRA Rule 3110(a) requires a 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) requires a member firm 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 also constitutes a violation of FINRA Rule 2010, which requires a member, in the conduct of its business, to observe high standards of commercial honor and just and equitable principles of trade.

Mutual funds are sold in different share classes. The share class features, including fees and expenses and available sales charge discounts, are typically described in a mutual fund's prospectus. Class A shares of mutual funds commonly include an initial sales charge levied upon the purchase of shares, as well as annual, ongoing distribution and service fees. Class A shares commonly offer sales charge discounts at specified investment dollar amounts, known as "breakpoint levels." A mutual fund issuer can offer a range of different mutual funds subject to the same breakpoint levels and other common features, known as a "mutual fund family." Generally, an investor can reach a breakpoint level through a single purchase large enough to reach a breakpoint amount or through purchases of different mutual funds within the same mutual fund family. An investor may also aggregate current

² For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

purchases with prior purchases in the same mutual fund or mutual funds within a single mutual fund family, including purchases with other firms, to reach a breakpoint level, a process known as “rights of accumulation.” In addition, mutual funds issuers commonly allow investors to reach a breakpoint level by aggregating purchases of the same mutual fund or in the same mutual fund family in multiple accounts owned by the customer, or persons related to the customer, known as “householding” accounts.

From January 2016 through December 2018, Madison Avenue’s registered representatives had two options for the purchase of mutual funds: they could buy via direct application to the mutual fund company, or they could purchase the mutual funds for the customer’s brokerage account at Madison Avenue through an electronic order entry system offered by Madison Avenue’s clearing firm.³ For direct application business, the firm required its representatives to prepare and submit a customer-signed application, which included a “breakpoint worksheet.” The reviewing principal then used these documents to assess whether there were any available sales charge discounts.

For mutual fund purchases made through the electronic order entry system, the firm relied on its representatives to ensure that customers received the appropriate breakpoints and received annual certifications from its representatives acknowledging their responsibility in this regard. The firm did not require use of the application form and breakpoint worksheet, and representatives did not otherwise memorialize the customer information needed to assess potential sales charge discounts. Instead, from January 2016 to February 2018, principals manually reviewed mutual fund transactions submitted through the electronic order entry system the day after the transaction. This process was called a “T-plus-1” review. From February 2018 through December 2018, the firm used an electronic trade monitoring program for the firm’s suitability review of transactions entered into the electronic order entry system, along with a principal’s review of the trade monitoring program’s surveillance alerts, including for “Fund Family Diversification.”

Neither the T-plus-1 or surveillance alert review process allowed for reasonable review of the suitability of customers’ purchases of mutual funds in multiple different mutual fund families, either simultaneously or sequentially, resulting in missed sales charge discounts. Neither process included a review of customers’ mutual funds holdings purchased away from the firm that could have been used to achieve sales charge discounts through a right of accumulation.

From January 1, 2016 through December 2018, 12 firm customer households, identified in Attachment A, purchased mutual funds in multiple different mutual fund families, either simultaneously or sequentially, in transactions submitted through the electronic order entry system. These customers’ sales charges would have been reduced had they purchased mutual funds all within one mutual fund family, rather than among several fund families.

In addition to the customers identified in Attachment A, in June 2018 another firm customer simultaneously purchased six mutual funds in five different mutual fund families

³ In 2018, approximately 34% of the firm’s mutual fund-derived revenue resulted from purchases submitted through the electronic order entry system.

at the recommendation of a firm registered representative in transactions submitted via the firm's electronic order entry system. At the time, the customer already held mutual funds away from the firm. Although the strategy involved highly-rated funds, the customer's sales charges would have been reduced if he had purchased mutual funds in one mutual fund family, and reduced even further if he had invested in the mutual fund family of the funds he held away from the firm.⁴

Since December 2018, the firm has revised its supervisory system, including WSPs, regarding mutual fund supervision, including further describing the T-plus-1 and surveillance alert review processes for mutual fund transactions.

Therefore, Respondent violated FINRA Rules 3110 and 2010 by failing to establish, maintain, and enforce a supervisory system, including WSPs, reasonably designed to supervise mutual fund transactions that the firm's representatives effected through the electronic order entry system to confirm the suitability of the transactions regarding potential available sales charge discounts.

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

- a censure
- a \$50,000 fine, and
- restitution of \$63,296 for the 12 firm customer households identified in Attachment A, plus interest, as described below.⁵

Respondent agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Restitution is ordered to be paid to the customers listed on Attachment A to this AWC (Eligible Customers) in the total amount of \$63,296, 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 the date each mutual fund at issue was purchased 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 interest (separately specifying the date and amount of each paid to each Eligible Customer) 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,

⁴ This customer was compensated for the missed sales charges discounts through a separate settlement.

⁵ This restitution represents the difference between sales charges these 12 customers paid for their mutual funds and how much they would have paid if they had invested in a single mutual fund family.

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.

The restitution amount plus interest to be paid to each Eligible Customer shall be treated by the Respondent as the Eligible Customer's property for purposes of state escheatment, unclaimed property, abandoned property, and similar laws. If after reasonable and documented efforts undertaken to effect restitution Respondent is unable to pay all Eligible Customers within 120 days after the date of the notice of acceptance of the AWC, Respondent shall submit to FINRA in the manner described above a list of the unpaid Eligible Customers and a description of Respondent's plan, not unacceptable to FINRA, to comply with the applicable escheatment, unclaimed property, abandoned property, or similar laws for each such Eligible Customer.

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 sanctions imposed in this matter.

The imposition of a restitution order or any other monetary sanctions 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 letter, 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 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.

April 24, 2023

Date

Martin McNeas

Madison Avenue Securities, LLC
Respondent

Print Name: Martin McNeas

Title: President

Reviewed by:

Justin Chretien

Justin Chretien
Counsel for Respondent
Carlton Fields
1025 Thomas Jefferson Street, NW
Suite 400 West
Washington, DC 20007-5208

Accepted by FINRA:

May 1, 2023

Date

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

John Sheehan

John T. Sheehan
Principal Counsel
FINRA Department of Enforcement
100 Pine Street
Suite 1800
San Francisco, CA 94111

ATTACHMENT A

SCHEDULE OF RESTITUTION

Customer	Restitution (Exclusive of Interest)
Customer 1	\$22,481
Customer 2	\$16,485
Customer 3	\$6,400
Customer 4	\$5,188
Customer 5	\$3,615
Customer 6	\$2,945
Customer 7	\$1,231
Customer 8	\$1,167
Customer 9	\$1,159
Customer 10	\$1,019
Customer 11	\$989
Customer 12	\$617
Total:	\$63,296