

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2019062271501**

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

RE: Harry Rosenberg, Respondent
Former Investment Company and Variable Contracts Products Representative
CRD No. 2682841

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Harry Rosenberg 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 herein.

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

Respondent entered the securities industry in 1995. In January 2011, Respondent became registered with FINRA as an Investment Company and Variable Contracts Products Representative through an association with Voya Financial Advisors, Inc. On May 17, 2019, the firm filed a Form U5 stating that it had discharged Respondent, effective May 6, 2019, because he "failed to disclose his involvement in a securities transaction conducted outside of the Firm's supervision, and did not report a judgment to which he was subject as a named defendant."

Respondent is not currently associated with a FINRA member, but remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

Respondent does not have any disciplinary history with the Securities and Exchange Commission, any state securities regulators, FINRA, or any other self-regulatory organization.

OVERVIEW

By June 2, 2015, Respondent knew that he was named as a defendant in an investment-related civil litigation. However, Respondent failed to amend his Uniform Application for Securities Industry Registration or Transfer (Form U4) to disclose that litigation until FINRA made inquiries about the litigation in April 2019, in violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

FACTS AND VIOLATIVE CONDUCT

A. Respondent Failed to Amend His Form U4 to Disclose a Civil Litigation in Violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

Article V, Section 2(c) of FINRA's By-Laws requires that associated persons keep their Form U4 "current at all times," and that amendments be filed "not later than 30 days after learning of the facts or circumstances giving rise to the amendment." FINRA Rule 1122 states that "[n]o . . . person associated with a member shall file with FINRA information with respect to . . . registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof." A violation of Rule 1122 also violates Rule 2010.

At all relevant times, the firm's written supervisory procedures (WSPs) required "each Registered Representative to keep current all information in his or her Form U4." The WSPs stated that "[c]hanges to the Form U4 must be made no later than 30 calendar days after discovery of the facts and circumstances giving rise to a reporting event[,]" and noted that "FINRA defines 'discovery' as the date that any Registered Representative becomes aware of an event that requires disclosure on the Form U4." The WSPs also listed examples of events that had to be disclosed, including "[a]rbitrations, civil litigations or customer complaints."

At all relevant times, Question 14I(1) of the Form U4 asked: "Have you ever been named as a respondent/defendant in an *investment-related*, consumer-initiated arbitration or civil litigation which alleged that you were *involved* in one or more *sales practice violations* and which (a) is still pending, or; . . . (d) was settled, on or after 5/18/2009, for an amount of \$15,000 or more?" (emphasis in original).

On April 23, 2015, an investor in a gold mining company, Investor A, who was not a customer of the firm, filed a complaint in New York State court against Respondent, the company, and other defendants, alleging, *inter alia*, that Respondent and the other defendants made fraudulent misstatements regarding Investor A's investments in the company. Respondent obtained notice of the complaint by June 2, 2015, the date on which the Respondent's legal counsel filed an Answer on the Respondent's behalf, jointly with the other defendants. Respondent did not amend his Form U4 to disclose the litigation in response to Question 14I(1), nor did he inform the firm that he had been sued.

During July 2016, Respondent falsely responded “no” to a question contained in the Firm’s annual business questionnaire that asked, among other things, whether, Respondent had been the subject of any litigation during 2015 or 2016.

During April 2018, Investor A entered into a settlement agreement that required the gold mining company to compensate Investor A. Respondent was not required to compensate Investor A and the litigation was dismissed.

Respondent did not amend his Form U4 to disclose the litigation until FINRA inquired with the firm about it in April 2019. By virtue of the foregoing, Respondent violated FINRA Rules 1122 and 2010 and Article V, Section 2(c) of FINRA’s By-Laws.

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

- A two-month suspension in all capacities; and
- An \$8,000 fine.

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 hereafter, the monetary sanction imposed in this matter.

Respondent understands that if he is barred or suspended from associating with any FINRA member, 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, he may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. See FINRA Rules 8310 and 8311.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

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 acceptance or rejection of this AWC.

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 the subject matter thereof 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,

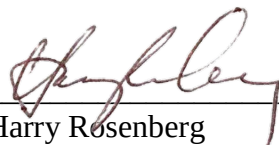
directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondent's: (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. 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 or its staff.

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 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 him to submit this AWC.

09-16-2020

Date



Harry Rosenberg
Respondent

Reviewed by:



Mark J. Astarita, Esq.
Counsel for Respondent
Sallah Astarita Cox LLC
60 Pompton Avenue
Verona, New Jersey 07044

Accepted by FINRA:

September 22, 2020
Date

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



Carolyn O'Leary
Senior Counsel
FINRA
Department of Enforcement
Brookfield Place
200 Liberty Street, 11th Floor
New York, New York 10281