

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019063442701**

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

RE: David Weisberg, Respondent
CRD No. 5610111

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, David Weisberg 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

Respondent entered the securities industry in 2008 and was registered with FINRA as a general securities representative from 2009 to 2014 and again from 2015 to 2019. After associating with five other members of FINRA between 2008 and 2016, Respondent associated with Worden Capital Management, LLC (Worden) (CRD No. 148366) from 2016 to 2019.

Respondent has not been registered with FINRA since July 22, 2019, when Worden filed a Form U5 for Weisberg. On August 1, 2019, Worden amended Weisberg's Form U5, disclosing a new complaint against him. Weisberg is subject to FINRA's jurisdiction under 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

From December 2016 to June 2018, Respondent engaged in excessive and unsuitable trading in the account of an elderly customer (Customer 1). Respondent made dozens of recommendations to buy stock—including some in-and-out trading—which Customer 1 accepted, relying on Respondent's advice. The annualized cost-to-equity ratio of Respondent's trading in Customer 1's account was more than 169%, and the trading generated commissions of approximately \$75,638 for Respondent while Customer 1 lost approximately \$55,627. By virtue of those unsuitable recommendations, Respondent violated FINRA Rules 2111 and 2010.

Respondent used discretion to place twenty-one of Customer 1's trades, even though neither Customer 1 nor Worden authorized Respondent to use discretion. Respondent also used discretion without written authorization to place seventeen trades for a second customer (Customer 2) in August 2018. By virtue of that unauthorized use of discretion, Respondent violated NASD Rule 2510(b) and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Quantitative unsuitability

FINRA Rule 2111 requires associated persons who control a customer's account to have a reasonable basis for believing that any series of recommended securities transactions, taken together, is not excessive and unsuitable for the customer in light of his or her investment profile, which includes factors such as risk tolerance and time horizon. While no single metric determines whether trading is excessive, trading has often been deemed excessive if its cost-to-equity ratio is greater than twenty percent.

In December 2016, Respondent cold-called Customer 1 and persuaded him to open a margin account at Worden. Customer 1 was seventy-three years old at that time and his investment horizon was 1–5 years. Customer 1 deposited approximately \$26,000 in securities and cash into his new account at Worden.

The day after Worden opened Customer 1's account, Respondent began soliciting stock trades, based on tips from a certain stock-picking website and other sources. Some of Respondent's recommendations involved in-and-out trading; for example, Respondent recommended buying shares of a certain stock on April 20, 2017, selling them four days later, repurchasing them on May 15, 2017, selling them one day later, repurchasing them one day later, selling them on June 9, 2017, repurchasing them on June 22, 2017, and selling them again on July 26, 2017. In all, from December 2016 to June 2018 Respondent recommended 152 stock trades to Customer 1, many of them using margin.

Customer 1 relied on Respondent's advice, accepting all of his recommendations. In virtually every case, Customer 1 purchased or sold exactly the quantity of shares that Respondent suggested. Customer 1 did not make any unsolicited purchases during the

period at issue. And, Respondent made at least twenty-one trades for Customer 1 using discretion without authorization, as discussed further below.

The costs of Respondent's trading in Customer 1's account were significant. From December 2016 to June 2018, Customer 1's account had an annualized cost-to-equity ratio of more than 169%—meaning that Customer 1's investments had to grow by 169% annually just to break even. The trading generated commissions for Respondent of approximately \$75,638, while Respondent lost approximately \$55,627. Respondent did not track Customer 1's trading costs or take them into consideration when making recommendations to Customer 1.

By making recommendations to Customer 1 that taken together were quantitatively unsuitable, Respondent violated FINRA Rules 2111 and 2010.

Exercising discretion without written authorization

NASD Rule 2510(b) prohibits registered persons from “exercis[ing] any discretionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the member....”

Neither Customer 1 nor Customer 2 authorized Weisberg in writing to use discretion in their accounts, and Worden never accepted their accounts for discretionary trading. On at least twenty-one occasions between December 2016 and June 2018, Weisberg used discretion to initiate stock trades in Customer 1's account. On seventeen occasions in August 2018, Weisberg used discretion to initiate stock trades in Customer 2's account. By virtue of that conduct, Respondent violated NASD Rule 2510(b) and 2010.

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

- Suspension of eleven months from associating in any capacity with any FINRA member
- Fine of \$7,500
- Disgorgement of \$75,638, plus interest as addressed below
- Ten hours of continuing education about excessive trading from a provider that is not unacceptable to FINRA

Respondent understands that if he is 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 suspension. See FINRA Rules 8310 and 8311.

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.

Disgorgement of ill-gotten gains in restitution is ordered to be paid to the customer listed on Attachment A to this AWC in the total amount of \$55,627, 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 June 30, 2018, until the date of payment. Restitution amounts ordered pursuant to this disciplinary action are due and payable 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. The imposition of a restitution order or any other monetary sanction 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. If for any reason Respondent cannot locate the customer identified in Attachment A after reasonable and documented efforts, within such period, or such additional period, as agreed to by the staff, Respondent 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.

Disgorgement of Respondent's commissions received in excess of the restitution ordered above is ordered to be paid to FINRA in the amount of \$20,011 plus interest at the rate set forth in 26 U.S.C. § 6621(a)(2) from June 30, 2018, until the date this AWC is accepted by the National Adjudicatory Council (NAC). Disgorgement 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 sanctions imposed in this matter. The sanctions imposed in this AWC 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 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 prejudice 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

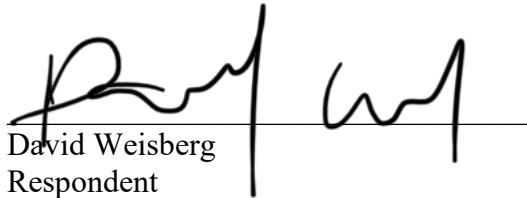
that the AWC is without factual basis. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondent's (i) testimonial obligations or (ii) right to take 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 in this AWC and the prospect of avoiding the issuance of a Complaint, has been made to induce him to submit this AWC. ' /

4/14/20

Date


David Weisberg
Respondent

Reviewed by:

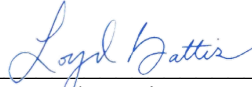

Michael Farkas
Counsel for Respondent
Michael C. Farkas, Esq., PLLC
32 Court Street, Suite 408
Brooklyn, New York 11201

Accepted by FINRA:

April 22, 2020

Date

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



J. Loyd Gattis
Senior Counsel
FINRA
Department of Enforcement
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Kansas City, Missouri 64105