

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019064308401**

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

RE: Acorns Securities, LLC (Respondent)
Member Firm
CRD No. 168172

Pursuant to FINRA Rule 9216, Respondent Acorns 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 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 has been a FINRA member since March 2014. Respondent is an introducing broker-dealer for its affiliate, Acorns Advisers LLC, which provides a mobile trading platform allowing customers to invest in a portfolio of exchange traded funds (ETFs). Respondent is headquartered in Irvine, California, and has 27 registered representatives and one branch office.

On July 11, 2017, FINRA accepted AWC No. 2016052098301 with findings that Respondent: (1) failed to maintain electronic broker-dealer records in non-erasable and non-rewritable format, known as WORM format, as required by Section 17(a) of the Exchange Act of 1934, Exchange Act Rule 17a-4(f), and FINRA Rules 4511 and 2010; and (2) experienced related notice and audit deficiencies affecting its ability to adequately retain and preserve electronic records in violation of Exchange Act Rule 17a-4(f) and FINRA Rules 4511 and 2010. The firm was censured and fined \$175,000 for these violations.¹ FINRA imposed a lower fine in consideration, among other things, of the firm's revenues and financial resources.

¹ For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

OVERVIEW

Between July 2017 and December 2021, Respondent sent to approximately 25,000 customers approximately 56,000 account statements containing inaccurate information about their cash balances and securities holdings in violation of FINRA Rules 2210(d)(1)(B) and 2010. During the same period, in addition to inaccurate account statements, the firm also maintained internal books and records that contained inaccurate information about customers' securities holdings and cash balances in violation of FINRA Rules 4511 and 2010. Additionally, throughout the period, the firm failed to establish, maintain, and enforce a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with FINRA Rules 2210 and 4511 in violation of FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's examination program.

A. Respondent sent inaccurate account statements to customers.

FINRA Rule 2210 governs communications, including any form of correspondence, with retail or institutional customers. In pertinent part, FINRA Rule 2210(d)(1)(B) prohibits a member firm from "distribut[ing] any communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading." A violation of FINRA Rule 2210 also is a violation of FINRA Rule 2010, which requires member firms, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.

Respondent acts as the introducing broker-dealer for Acorns Advisers LLC, an affiliated investment adviser which allows retail customers to frequently invest small sums of money through a mobile trading platform. Specifically, customers may link a debit or credit card to their Acorns account and elect to have Acorns round up the amounts of their purchases they make through that card. Customers agree to have the difference between their purchase amounts and the rounded-up amounts withdrawn from their bank account and transferred to their Acorns account. Customers may also invest through automatic recurring transfers from a bank account and through manual transfers of lump sum amounts. Customer funds are then invested in one of five predesigned portfolios of ETFs. Respondent serves as the custodian of the customer accounts, maintains account and transaction records, and provides customers monthly account statements.

Between July 2017 and February 2020, despite receiving three warnings from FINRA and another regulator in July 2017, June 2018, and August 2019, the firm sent to approximately 24,000 customers (the "Customers") approximately 53,000 account statements that contained an "Asset Allocation" section that inaccurately stated that the Customers held a negative quantity of shares in particular ETFs with a negative value, which created the potential misimpression that the customers held short positions in those ETFs. In actuality, short selling is not a feature that is available on Acorns' platform and these Customers did not hold any positions in the ETFs. Rather, the Customers had

withdrawn more cash from their Acorns accounts than they had deposited. This typically occurred because the Customers withdrew cash from their accounts before certain cash deposits previously made to the accounts were reversed. Reversals of deposits to a customer's Acorns account could occur due to a lack of sufficient funds for those deposits in the bank account that the customer had linked to their Acorns account. Therefore, the Customers had negative cash balances in their Acorns accounts, rather than negative positions in an ETF. The account statements did not contain those negative cash balances, which ranged from as little as \$0.01 to as high as approximately \$9,500, and which the firm did not pursue customers to collect. The account statements for the Customers also contained an inaccurate "Change in Investments Value" pertaining to investments in ETFs that the Customers did not hold at the time of the relevant account statements. These misstatements created the potential misimpression that the Customers could sustain additional losses or gains depending upon the value of the ETFs, even though they did not hold any current investments in these ETFs.

In March 2020, Respondent initiated a remediation process. However, between March 2020 and December 2021, when the firm completed certain steps to enhance its procedures, the firm sent approximately 3,000 additional account statements to approximately 600 customers that either inaccurately stated that the customers' accounts contained negative balances of ETF shares or alternatively reflected inaccurate cash balances.

By virtue of the foregoing, Respondent violated FINRA Rules 2210 and 2010.

B. Respondent maintained inaccurate books and records.

FINRA Rule 4511 requires member firms to "make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules." Exchange Act Rule 17a-3(a)(3) requires firms to maintain ledger accounts or other records itemizing all credits and debits to each customer account. Implicit in the obligation to make and preserve records is the requirement that they be accurate. A violation of FINRA Rule 4511 also is a violation of FINRA Rule 2010.

Between July 2017 and December 2021, in addition to inaccurate customer account statements, Respondent also created and maintained internal cash and securities reports that stated inaccurately that customers' accounts contained negative balances of ETF shares, rather than stating that customers had negative cash balances, or reflecting inaccurate cash balances. The firm was on notice of the inaccuracies based on warnings received from FINRA and another regulator in 2017, 2018, and 2019, but did not take prompt steps to remediate.

By virtue of the foregoing, Respondent violated FINRA Rules 4511 and 2010.

C. Respondent failed to establish, maintain, and enforce a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with FINRA Rules 2210 and 4511.

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.

Between July 2017 and December 2021, Respondent did not have a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with FINRA Rules 2210 and 4511 regarding accurate customer communications and internal cash and securities reports.

Between July 2017 and July 2019, Respondent prepared multiple, distinct reports to record various types of customer cash movements. For example, one report reflected daily customer cash deposits received by the firm and pending investment in ETFs, while another report reflected customer cash withdrawals pending payment to the customer. These reports required manual compilation to accurately identify the amount of cash held by the firm for a customer on a given day. Acorns maintained accounts for at least 2 million customers during the period at issue. The firm did not begin producing a combined cash positions report that reflected multiple types of cash activity until July 2019. Further, this combined report included only accounts with positive cash balances. Accounts with negative cash balances appeared on a separate “negative balance report” that inaccurately stated that these accounts had negative balances of ETF shares.

Despite being aware that its internal records inaccurately reported negative cash balances and negative ETF share balances, the firm did not create or maintain an internal report recording cash owed by customers to the firm until March 2020. The firm’s process for recording cash movements in multiple reports, and its failure to record negative cash balances in any internal report, was not reasonable given the firm’s business, which involves frequent and recurring customer cash transfers.

Further, between July 2017 and March 2020, the firm lacked a system, including written supervisory procedures, for reviewing or confirming the accuracy of customer account statements or for correcting any errors in those statements.

In March 2020, after additional warnings from FINRA, the firm implemented an automatic process to correct internal records that inaccurately reported that customers’ accounts contained negative balances of ETF shares. Additionally, the firm initiated a monthly review for accuracy of a sample of account statements that the firm prepared for customer accounts with negative balances. However, the review process was not

reasonably designed to prevent the firm from continuing to deliver some account statements that inaccurately reported negative ETF share balances. The firm did not require the review of more than two statements with negative balances per month, despite having sent an average of approximately 1,500 customer statements reporting negative ETF share balances per month between July 2017 and February 2020. The firm's written procedures did not identify the criteria to be used to select statements for review or the steps to be taken to identify and correct inaccurate information in account statements.

By April 2020, the firm was aware that it was continuing to provide certain customers with inaccurate account statements, including some that inaccurately stated that customers with a positive cash balance had a negative cash balance. Nevertheless, the firm did not conduct additional reviews. Further, until December 2021, when the firm completed certain steps to enhance its procedures, the firm continued to issue account statements to customers containing inaccurate cash balances and inaccurately stating that customers' accounts contained negative balances of ETF shares.

By virtue of the foregoing, Respondent violated FINRA Rule 3110 and 2010.

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

- a censure;
- a \$200,000 fine; and
- a certification as described below.

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

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 further agrees to the following undertaking:

Certification Regarding Implementation of Reasonably Designed Procedures

Within 120 days of the date this AWC is accepted, a registered principal of Acorns Securities, LLC shall certify in writing to FINRA that the firm has implemented supervisory systems and written supervisory procedures reasonably designed to achieve compliance with the FINRA Rules cited in this AWC. This certification shall be submitted by letter addressed to Frank Mazzarelli, Director, FINRA – Enforcement Department, 15200 Omega Drive, Third Floor, Rockville MD 20850, frank.mazzarelli@finra.org.

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.

August 15, 2022

Date

Seth Wunder

Acorns Securities, LLC
Respondent

Print Name: Seth wunder

Title: Chief Executive Officer

Reviewed by:

John J. Sikora Jr.

John J. Sikora Jr.
Counsel for Respondent
Latham & Watkins LLP
330 North Wabash Avenue, Suite 2800
Chicago, IL 60611

Accepted by FINRA:

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

September 2, 2022

Date

Katherine M. Wyman

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