

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2019064776201**

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

RE: Gary Mark Goldberg (Respondent)  
Former General Securities Representative  
CRD No. 223919

Pursuant to FINRA Rule 9216, Respondent Gary Mark Goldberg 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**

Goldberg first registered with FINRA in 1970. From March 2015 until October 21, 2019, Goldberg was registered as a General Securities Representative, among other capacities, through an association with a member firm that was known as Bruderman Brothers, LLC during the relevant period in this matter (“Bruderman Brothers” or the firm, CRD No. 47957). On October 21, 2019, the firm filed a Uniform Termination Notice for Securities Industry Registration (Form U5) disclosing that it had discharged Goldberg because he was “subject to a current investigation regarding the violation of firm policies and procedures and FINRA rules.”

From May 2020 through May 2022, Goldberg was registered with FINRA through an association with another FINRA member firm. Goldberg is not currently registered or associated with a FINRA member but remains subject to FINRA’s jurisdiction pursuant to Article V, Section 4 of FINRA’s By-Laws.

In July 2000, Goldberg entered into an AWC with FINRA through which he consented to findings that he (and his member firm) conducted a securities business while failing to maintain the minimum required net capital. That AWC censured Goldberg and required that he pay, jointly and severally with his firm, a \$4,000 fine.

In May 1989, Goldberg entered into an AWC with FINRA through which he consented to the entry of findings that “customer monies received in connection with a[n] . . . offering were withdrawn from the trust account and invested in certificates of a bank

holding company.” That AWC censured Goldberg and required that he pay, jointly and severally with his firm, a \$2,000 fine.

In October 1975, the Securities and Exchange Commission issued an order finding that Goldberg had “willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5” and suspending Goldberg from association with a broker, dealer, investment adviser or investment company for a period of three months.”<sup>1</sup>

## **OVERVIEW**

From July 2018 through June 2019, Goldberg made unsuitable recommendations to customers who held both brokerage and advisory accounts. In particular, he recommended that customers purchase variable annuities (VAs) in their brokerage accounts when nearly identical but lower-cost advisory shares were available to be purchased in their advisory accounts—and then subsequently transfer those positions to the customers’ advisory accounts, causing the customers to unnecessarily pay both higher product costs and advisory fees. As a result, Goldberg violated FINRA Rules 2111, 2330, and 2010.

## **FACTS AND VIOLATIVE CONDUCT**

This matter originated from an examination of Bruderman Brothers.

FINRA Rule 2111(a) requires member firms and their associated persons to have a reasonable basis to believe that a recommended securities transaction or investment strategy is suitable for a customer, based on information obtained through the reasonable diligence of the firm or associated person to ascertain the customer’s investment profile. A customer’s investment profile includes, but is not limited to, the customer’s age, other investments, financial situation and needs, investment objectives, investment experience, investment time horizon, liquidity needs, and risk tolerance. FINRA Rule 2111 Supplementary Material .05(a) (Rule 2111.05(a)) defines the reasonable-basis obligation to require “a member or associated person to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least *some* investors.”

In addition to the general suitability requirements imposed under FINRA Rule 2111, FINRA Rule 2330(b) requires associated persons who recommend the purchase of deferred variable annuities to have a reasonable basis to believe that the variable annuity transaction is suitable in accordance with Rule 2111 and, in particular, that there is a reasonable basis to believe, among other things, that (a) the customer would benefit from certain features of deferred variable annuities, such as tax-deferred growth, annuitization, or a death or living benefit and (b) the particular deferred annuity as a whole is suitable for the particular customer.

FINRA Rule 2010 requires associated persons to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

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<sup>1</sup> For more information about the respondent, including prior regulatory events, visit BrokerCheck® at [www.finra.org/brokercheck](http://www.finra.org/brokercheck).

Violations of FINRA Rules 2111 and 2330 also constitute violations of FINRA Rule 2010.

FINRA has advised that conflicts of interest may arise when representatives make securities recommendations to customers holding both brokerage and advisory accounts. In 2003, NASD Notice to Members 03-68 reminded members that the manner in which a recommended security is purchased can render an associated person's recommendation unsuitable if there is a lower cost alternative for purchasing the security.

**Goldberg made unsuitable recommendations that customers who held brokerage and advisory accounts concerning their purchases of VAs.**

During the relevant period, Goldberg was dually registered as an investment advisor with Bruderman Brothers' affiliated investment advisory firm, and many of his customers had both brokerage and advisory accounts. Customers with advisory accounts paid an annual fee of 1.875% for assets managed in those accounts.

Between July 2018 and June 2019, Goldberg recommended that 54 customers who had or were in the process of establishing advisory accounts purchase B-shares of a particular VA in their brokerage accounts. During that time, advisory shares of the VA were available for Goldberg's customers to purchase. The advisory shares provided living and death benefits, sub-account investment options, and other features that were virtually identical to the B-shares, but at a lower cost to customers. Specifically, customers' annual fee for the advisory shares was 0.95 percent lower than the annual fee for the B-shares. In addition, customers who purchased advisory shares were not subject to a surrender fee, but customers who purchased B-shares were subject to a surrender fee for seven years. Goldberg and the firm earned a seven percent commission in connection with sales of B-shares of the VA, but Goldberg and the firm did not earn any commissions for sales of advisory shares of the VA.

Moreover, Goldberg recommended that each of the 54 customers referenced above transfer the B-shares of the VA from their brokerage account to their advisory account—usually within one business day of the initial purchase of the B-shares. As a result, the customers were required (and continue to be required) to pay annual advisory fees of 1.875%, as well as annual fees for the VAs that are 0.95 percent higher than if the customers had purchased advisory shares. In addition, the customers are subject to a surrender fee for seven years as a result of purchasing the B-shares.

Goldberg's customers who held the B-shares have collectively paid approximately \$594,590 in unnecessary fees as a result of the higher annual fees imposed by the B-shares.

As a result of the foregoing, Goldberg violated FINRA Rules 2111, 2330, and 2010.

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

- an eighteen-month suspension from associating with any FINRA member in all capacities;

- a \$25,000 fine; and
- restitution of \$594,590 plus interest as described below.

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.

Restitution is ordered to be paid to the customers listed on Attachment A to this AWC (Eligible Customers) in the total amount of \$594,590, 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 July 31, 2019, until the date the restitution plus interest are due and payable.

Restitution plus interest ordered pursuant to this disciplinary action are due and payable immediately upon reassociation with a member firm or upon submission of any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

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](mailto:EnforcementNotice@FINRA.org). The email must identify Respondent and the case number and include a copy of the check, money order, or other method of payment. This proof shall be provided by email to [EnforcementNotice@FINRA.org](mailto:EnforcementNotice@FINRA.org) no later than 120 days after the date the restitution plus interest are due and payable.

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 restitution and interest are due and payable, 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 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.

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 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

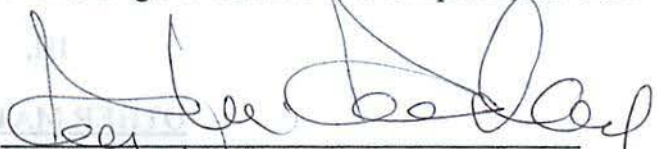
C. If accepted:

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.

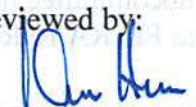
D. Respondent may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that he may not deny the charges or make any statement that is inconsistent with the AWC in this statement. This statement 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 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.

2/16/2023  
Date

  
Gary Mark Goldberg  
Respondent

Reviewed by:

  
Joshua Horn

Counsel for Respondent  
Fox Rothschild LLP  
2000 Market Street  
20th Floor  
Philadelphia, PA 19103-3222

Accepted by FINRA:

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

Michael Newman

March 9, 2023

Date \_\_\_\_\_

Michael Newman  
Senior Counsel  
FINRA  
Department of Enforcement  
581 Main St., Suite 710  
Woodbridge, NJ 07095

**ATTACHMENT A**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. 2019064776201**

| <b><u>Customer Initials</u></b> | <b><u>Restitution Amount</u></b> |
|---------------------------------|----------------------------------|
| Customer A                      | \$12,825.00                      |
| Customer B                      | \$5,343.16                       |
| Customer C                      | \$2,137.50                       |
| Customer D                      | \$25,691.67                      |
| Customer E                      | \$22,028.13                      |
| Customer F                      | \$2,162.44                       |
| Customer G                      | \$2,075.92                       |
| Customer H                      | \$24,545.63                      |
| Customer I                      | \$3,866.22                       |
| Customer J                      | \$8,391.67                       |
| Customer K                      | \$1,831.92                       |
| Customer L                      | \$20,583.33                      |
| Customer M                      | \$1,914.41                       |
| Customer N                      | \$4,037.50                       |
| Customer O                      | \$2,826.25                       |
| Customer P                      | \$4,536.58                       |
| Customer Q                      | \$9,686.83                       |
| Customer R                      | \$62,764.98                      |
| Customer S                      | \$1,939.58                       |
| Customer T                      | \$2,510.03                       |
| Customer U                      | \$10,013.40                      |
| Customer V                      | \$39,565.50                      |
| Customer W                      | \$41,117.33                      |
| Customer X                      | \$3,411.42                       |
| Customer Y                      | \$1,520.00                       |
| Customer Z                      | \$1,953.68                       |
| Customer AA                     | \$11,892.48                      |
| Customer BB                     | \$4,553.84                       |
| Customer CC                     | \$2,894.30                       |
| Customer DD                     | \$10,232.29                      |
| Customer EE                     | \$9,392.56                       |
| Customer FF                     | \$14,312.72                      |
| Customer GG                     | \$6,978.05                       |
| Customer HH                     | \$2,217.05                       |
| Customer II                     | \$2,549.17                       |

**Attachment A (Cont. sheet ) – AWC No. 2019064776201**

| <b><u>Customer Initials</u></b> | <b><u>Restitution Amount</u></b> |
|---------------------------------|----------------------------------|
| Customer JJ                     | \$9,019.99                       |
| Customer KK                     | \$62,818.75                      |
| Customer LL                     | \$1,609.85                       |
| Customer MM                     | \$21,850.00                      |
| Customer NN                     | \$2,185.00                       |
| Customer OO                     | \$2,051.14                       |
| Customer PP                     | \$15,096.38                      |
| Customer QQ                     | \$3,477.11                       |
| Customer RR                     | \$7,707.68                       |
| Customer SS                     | \$9,095.48                       |
| Customer TT                     | \$9,618.75                       |
| Customer UU                     | \$24,937.50                      |
| Customer VV                     | \$2,440.94                       |
| Customer WW                     | \$9,931.86                       |
| Customer XX                     | \$14,534.56                      |
| Customer YY                     | \$1,718.67                       |
| Customer ZZ                     | \$238.29                         |
| Customer AAA                    | \$5,667.94                       |
| Customer BBB                    | \$6,287.57                       |