

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019064776202**

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

RE: Gary Goldberg & Co., LLC, formerly known as Bruderman Brothers LLC (Respondent)
Former Member Firm
CRD No. 47957

Pursuant to FINRA Rule 9216, Respondent Gary Goldberg & Co., 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

Gary Goldberg & Co., LLC became a FINRA member in February 2000. On December 22, 2022, the firm filed a Form BDW terminating its registration with FINRA, which became effective on February 22, 2023. Although the firm is no longer a FINRA member, it remains subject to FINRA's jurisdiction pursuant to Article IV, Section 6 of FINRA's By-Laws.¹

OVERVIEW

From July 2018 through June 2019, the firm failed to establish and maintain a supervisory system, and failed to establish, maintain, and enforce written supervisory procedures (WSPs), that were reasonably designed to supervise the suitability of sales of variable annuities (VAs) to customers who held both brokerage and advisory accounts. As a result, the firm failed to detect that several representatives recommended that customers purchase VAs in their brokerage accounts—when nearly identical but lower-cost advisory shares were available to be purchased in their advisory accounts held at the firm's affiliated investment advisory firm—and subsequently transferred those positions to the customers' advisory accounts. These transfers were usually within one day of the initial purchase, and they resulted in the customers unnecessarily paying both higher

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

product costs and advisory fees. As a result the firm violated FINRA Rules 3110, 2330, and 2010.

Additionally, between January 2015 and September 2022, the firm conducted a securities business while failing to maintain its minimum required net capital. As a result, the firm violated Section 15(c) of the Securities Exchange Act of 1934, Exchange Act Rule 15c3-1, and FINRA Rules 4110 and 2010. During that same period, the firm failed to timely file with the SEC and FINRA a notice of its net capital deficiency, filed inaccurate Financial and Operational Combined Uniform Single (FOCUS) reports with FINRA, and failed to maintain books and records reflecting an accurate computation of its aggregate indebtedness and net capital. As a result, the firm violated Exchange Act § 17(a), Exchange Act Rules 17a-3, 17a-5, and 17a-11, and FINRA Rules 4511 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a routine firm examination.

A. The firm failed to reasonably supervise sales of VAs to customers with brokerage and advisory accounts.

FINRA Rule 3110(a) requires member firms 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 member firms 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.”

FINRA Rule 2111(a) requires member firms and associated persons to have a reasonable basis to believe that a recommended transaction or investment strategy is suitable for the customer. Rule 2111 Supplementary Material .05 provides that firms and associated persons must have “an understanding of the potential risks and rewards associated with [a] recommended security or strategy,” and the “lack of such an understanding when recommending a security or strategy violates the suitability rule.”

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 2330(d) provides that in addition to the general supervisory requirements of FINRA Rule 3110, “a member must establish and maintain specific written supervisory procedures reasonably designed to achieve compliance with the standards set forth in [Rule 2330].” FINRA Rule 2330(e) provides that a member shall “develop and document specific training policies or programs reasonably designed

to ensure that associated persons who effect ... transactions in deferred variable annuities comply with the requirements of [Rule 2330].”

Violations of FINRA Rules 2330 and 3110 also constitute violations of FINRA Rule 2010, which requires member firms to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

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.

1. The firm sold VAs to customers with both brokerage and advisory accounts.

From July 2018 through June 2019, many of the firm’s registered representatives were dually registered as investment advisors with the firm’s affiliated investment advisory firm and many of the firm’s customers held both brokerage and advisory accounts. Customers with advisory accounts paid an annual fee of up to 1.875% for assets managed in those accounts.

In April 2018, the firm amended its selling agreement with a VA issuer to allow it to sell advisory shares of a particular VA to customers who had advisory accounts. At that time, the firm already had an agreement with the issuer authorizing it to sell B-shares of the VA to customers with brokerage accounts. The issuer paid the firm a seven percent commission in connection with sales of B-shares of the VA, but the firm did not earn any commissions for sales of advisory shares of the VA.

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.

2. The firm failed to establish and maintain a supervisory system, and failed to establish, maintain, and enforce WSPs, reasonably designed to supervise the suitability of VA sales to customers with both brokerage and advisory accounts.

From July 2018 through June 2019, the firm provided no training, procedures, or other guidance regarding when it was appropriate for a representative to recommend the purchase of a variable annuity (or any other product) in a brokerage account versus an advisory account, or regarding the availability of lower cost advisory-class products in general. Similarly, the firm did not maintain any WSPs regarding the factors that should be considered in reviewing representatives’ recommendations to customers with both brokerage and advisory accounts. Moreover, the firm had no system to identify when its

representatives caused customers to pay both brokerage commissions and advisory fees for the same investment—i.e., when they “double-dipped.” For example, the firm had no system to identify when representatives recommended brokerage shares of products for which advisory shares were available, nor did the firm have any system to identify when representatives recommended that customers transfer securities from brokerage accounts to their advisory accounts.

3. The firm failed to identify recommendations that customers purchase VAs in their brokerage accounts and subsequently transfer those positions to the customers’ advisory accounts.

From July 2018 through June 2019, several firm registered representatives recommended on 109 occasions that customers who had or were in the process of establishing advisory accounts purchase B-shares of the VA in their brokerage accounts even though, as set forth above, advisory shares were available at a lower cost and without a surrender period.

In each of the 109 instances, the representatives recommended that the customers 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 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.

In total, customers who held the B-shares have collectively paid approximately \$966,000 in unnecessary fees as a result of the higher annual fees imposed by the B-shares.

Beginning in June 2019, the firm prohibited sales of B-shares to customers with both brokerage and advisory accounts.

As a result of the foregoing, the firm violated FINRA Rules 3110, 2330, and 2010.

B. The firm conducted a securities business while failing to maintain the required minimum net capital and failed to timely file a required notice of its net capital deficiency.

Exchange Act § 15(c) and Exchange Act Rule 15c3-1 require broker-dealers to maintain certain minimum levels of net capital. Exchange Act Rule 15c3-1c(d) states that “no broker or dealer shall guarantee, endorse or assume directly or indirectly any obligation or liability of a subsidiary or affiliate unless the obligation or liability is reflected in the computation of net capital and/or aggregated indebtedness pursuant to [Exchange Act Rule 15c3-1].” FINRA Rule 4110(b)(1) requires member firms to suspend all business operations during any period in which they are not in compliance with applicable net capital requirements as set forth in Exchange Act Rule 15c3-1.

Exchange Act § 17(a) and Exchange Act Rule 17a-11(a) require broker-dealers whose net capital declines below the minimum amount to give “notice of such deficiency that same day” to FINRA and the SEC.

Violations of Exchange Act § 15(c) and § 17(a), Exchange Act Rules 15c3-1 and 17a-11, and FINRA Rule 4110 also constitute violations of FINRA Rule 2010.

On January 2, 2015, the firm guaranteed an \$11 million loan taken out by an affiliated entity. The firm, however, failed to include the amount of the loan when calculating the amount of its aggregate indebtedness, required minimum net capital, and net capital, causing all three calculations to be inaccurate. The firm’s net capital fell below the required minimum while the guarantee was in effect, during which time the firm conducted a securities business. On August 8, 2022, the lender filed an action to enforce the guarantee, and the firm filed a notice of net capital deficiency on September 15, 2022. The firm was released from all liability under the guarantee effective September 19, 2022.

Based on the foregoing, the firm violated Exchange Act § 15(c) and § 17(a), Exchange Act Rules 15c3-1 and 17a-11, and FINRA Rules 4110 and 2010.

C. The firm failed to make and preserve accurate records of aggregate indebtedness and net capital and filed inaccurate FOCUS Reports.

FINRA Rule 4511 requires each FINRA member to make and preserve books and records in conformity with the Exchange Act and the applicable Exchange Act rules. Exchange Act § 17(a) and Exchange Act Rule 17a-3(a)(11) require broker-dealers to prepare aggregate indebtedness and net capital calculations “at least once a month.” Exchange Act § 17(a) and Exchange Act Rule 17a-5 require member firms to timely file Financial and Operational Combined Uniform Single (FOCUS) reports. Inherent in the obligation to make and preserve books and record is the requirement that they be accurate. Violations of Exchange Act § 17(a), Exchange Act Rules 17a-3 and 17a-5, and FINRA Rule 4511 also constitute violations of FINRA Rule 2010.

Between January 2, 2015, and September 15, 2022, the firm failed to include the amount of the guarantee described above when calculating its aggregate indebtedness. This caused the firm to prepare and maintain inaccurate aggregate indebtedness and net capital computations. During that period, the firm filed 31 FOCUS reports that inaccurately stated the firm’s aggregate indebtedness, minimum required net capital, net capital, and excess net capital.

Based on the foregoing, the firm violated Exchange Act § 17(a), Exchange Act Rules 17a-3 and 17a-5, and FINRA Rules 4511 and 2010.

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

- a censure; and

- partial restitution of \$500,000.²

Partial restitution is ordered to be paid to the customers listed on Attachment A to this AWC (Eligible Customers) in the total amount of \$500,000.

A registered principal on behalf of Respondent shall submit satisfactory proof of payment of restitution (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, 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 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 sanction 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.

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.

² Pursuant to the General Principles Applicable to all Sanction Determinations contained in FINRA's *Sanction Guidelines*, FINRA imposed only partial restitution, and no fine or pre-judgment interest on the restitution ordered, after it considered, among other things, Respondent's revenues and financial resources, the fact that Respondent terminated its registration with FINRA effective February 22, 2023, and Respondent's agreement to pay partial restitution.

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:

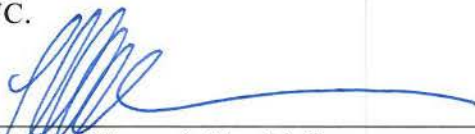
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not 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 herein and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

MARCH 28, 2023
Date



Gary Goldberg & Co., LLC
Respondent

Print Name: MATTHEW J. BRUDERMAN

Title: GENERAL MANAGER

Reviewed by:



Justin Joseph D'Elia
Counsel for Respondent
Duane Morris LLP
1540 Broadway
New York, NY 10036-4086

Accepted by FINRA:

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

April 12, 2023

Date

Michael Newman

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. 2019064776202

<u>Customer Number</u>	<u>Restitution Amount</u>
1	\$6,713.52
2	\$3,397.65
3	\$2,762.72
4	\$1,105.09
5	\$8,840.70
6	\$2,302.37
7	\$13,282.59
8	\$4,338.49
9	\$11,388.54
10	\$6,507.74
11	\$8,676.98
12	\$3,253.87
13	\$5,423.11
14	\$1,410.01
15	\$1,117.98
16	\$3,579.26
17	\$9,761.61
18	\$1,073.25
19	\$12,690.09
20	\$1,998.83
21	\$9,578.68
22	\$4,338.49
23	\$3,618.14
24	\$947.10
25	\$10,641.58
26	\$1,276.99
27	\$7,076.24
28	\$2,609.23
29	\$21,917.57
30	\$2,609.23
31	\$989.75
32	\$1,774.28
33	\$5,317.63
34	\$810.04
35	\$3,339.82
36	\$2,087.39
37	\$584.47

38	\$3,131.08
39	\$3,131.08
40	\$1,043.69
41	\$104.42
42	\$1,461.17
43	\$626.22
44	\$2,076.21
45	\$7,162.60
46	\$2,345.41
47	\$6,139.38
48	\$4,092.92
49	\$15,621.93
50	\$5,011.59
51	\$2,406.64
52	\$1,002.76
53	\$1,297.68
54	\$5,176.93
55	\$20,455.36
56	\$581.60
57	\$21,257.66
58	\$2,306.36
59	\$1,410.08
60	\$2,946.90
61	\$785.84
62	\$1,010.05
63	\$1,347.14
64	\$1,964.60
65	\$6,148.41
66	\$353.63
67	\$5,893.80
68	\$2,354.34
69	\$3,847.34
70	\$1,923.67
71	\$1,496.35
72	\$2,500.77
73	\$2,885.51
74	\$16,827.56
75	\$5,290.09
76	\$4,855.95
77	\$6,348.11
78	\$3,607.65
79	\$1,146.21
80	\$1,317.92
81	\$1,051.56
82	\$2,824.11

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