

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2020066674001**

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

RE: First Horizon Advisors, Inc. (Respondent)
Member Firm
CRD No. 17117

Pursuant to FINRA Rule 9216, Respondent First Horizon Advisors, Inc. 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

First Horizon Advisors, Inc. has been a member of FINRA since July 1986. The firm conducts a general securities business and maintains its principal place of business in Memphis, Tennessee. The firm has 77 branch offices and approximately 320 registered individuals.¹

OVERVIEW

From July 2015 through November 2016, First Horizon failed to reasonably supervise a registered representative (the Representative), who engaged in an undisclosed business activity involving an investment club with two married couples who experienced significant losses through their participation.² The firm failed to take reasonable steps to investigate red flags that the Representative was engaged in an undisclosed business activity, in violation of FINRA Rules 3110 and 2010.

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

² One of the two married couples who invested and lost money were former customers of the Representative at First Horizon. They initiated a civil lawsuit against the Representative and First Horizon's parent company. The Representative settled the claims brought against him; the claims against the firm's parent company remain pending.

Additionally, from February 2014 through February 2017, First Horizon failed to reasonably supervise electronic communications that its registered representatives sent and received. This conduct violated NASD Rule 3010, FINRA Rule 3110, and FINRA Rule 2010.³

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's review of an amendment to a Uniform Termination Notice for Securities Industry Registration (Form U5) that First Horizon filed concerning the Representative.⁴

A. First Horizon Failed to Reasonably Supervise the Representative.

FINRA Rule 3110 requires that each member firm 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. The duty to supervise imposed by Rule 3110 also includes the responsibility to reasonably investigate red flags that suggest that misconduct may be occurring and act upon the results of such investigation. A violation of FINRA Rule 3110 also constitutes a violation of FINRA Rule 2010, which requires FINRA members to "observe high standards of commercial honor and just and equitable principles of trade" in the conduct of their business.

FINRA Rule 3270 prohibits registered persons from being "an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member."

The Representative was associated with First Horizon from March 2013 to October 2017. During that time, the Representative was engaged in an undisclosed outside business activity; specifically, the Representative controlled and operated an investment club, which was formed as a limited liability company. The Representative solicited individuals to invest funds in the investment club by claiming that he had earned annual returns of between 15 and 20 percent since 2005. The Representative used the funds from the investment club, in part, to trade options in a brokerage account held away from the firm (referred to below as the Outside Brokerage Account).⁵ Despite his promises,

³ FINRA Rule 3110 superseded NASD Rule 3010 on December 1, 2014.

⁴ The Representative is not currently registered or associated with any FINRA member firm.

⁵ FINRA Rule 3280 states, "[n]o person associated with a member shall participate in any manner in a private securities transaction except in accordance with the requirements of this Rule." FINRA Rule 3280(e)(1) excludes from the definition of private securities transaction, "transactions subject to the notification requirements of FINRA Rule 3210." Although the Representative participated in securities transactions away from First Horizon, he did so in an account that was subject to FINRA Rule 3210.

investors in the Representative's investment club, including the married couple who were former customers of the Representative at First Horizon, experienced significant losses.

From July 2015 through November 2016, First Horizon failed to investigate red flags that the Representative was engaged in an undisclosed, investment-related, outside business activity.

First Horizon Failed to Investigate Red Flags in the Representative's Outside Brokerage Account Activity.

In May 2014, while associated with First Horizon, the Representative opened a brokerage account at another FINRA member firm in the name of his investment club, a limited liability company (the Outside Brokerage Account). The Representative did not disclose the Outside Brokerage Account to First Horizon until December 2015 and did not disclose that it was an investment club. When the Representative ultimately disclosed the account to First Horizon, the firm did not question when the account was opened or why the Representative had failed to disclose the account in a timely manner, even though the account statements received by the firm indicated activity in the account throughout 2015. The firm also failed to review statements for the period when the Outside Brokerage Account was open but not disclosed. Further, although the Representative told the firm that he had opened the Outside Brokerage Account with proceeds from land he had sold and that the account was held in the name of a limited liability company of which he was the sole owner, the firm failed to ask the Representative about the nature of the limited liability company's ongoing business or the Representative's activities in connection with the business.

The Representative maintained the Outside Brokerage Account until he closed it in November 2016, and the firm monitored the Outside Brokerage Account, pursuant to its written supervisory procedures (WSPs), from the time the account was disclosed in December 2015 until November 2016. During that time, First Horizon received and reviewed regular account statements for the Outside Brokerage Account.

The account statements contained several red flags warranting further investigation. For example, the Representative averaged approximately 100 trades per month in the Outside Brokerage Account, the majority of which were options trades, and incurred high margin balances—at times up to 140 percent of the account's value. The Representative also concentrated the Outside Brokerage Account in one or two securities per month and purchased multiple options contracts in those same securities each month. In addition, the Representative regularly made large cash transfers from the Outside Brokerage Account to another account in the name of the Representative's investment club—tens of thousands of dollars each month and as much as \$1.2 million in March 2016. Accordingly, the balance of the Outside Brokerage Account decreased from \$2.6 million in December 2015 (when First Horizon began monitoring the account) to \$730,000 in November 2016 (when the Representative closed the account). Although the firm's own WSPs characterized these activities as "possible concerns" of potential misconduct, First Horizon did not question the Representative about the trading activity

in the Outside Brokerage Account. Nor did anyone at First Horizon take any other steps to investigate what the limited liability company was or what was the Representative's involvement with the entity.

First Horizon Failed to Investigate Red Flags Contained in the Representative's Emails.

The firm also failed to identify or investigate red flags contained in emails sent to and from the Representative's firm email address, some of which concerned the Representative's participation in the investment club. For example:

- In July 2015, the Representative emailed a "Promissory Note" from his personal email address to his First Horizon email account. In the attached note, the Representative promised to pay one of the former First Horizon customers mentioned above more than \$300,000 plus interest. The promissory note contained a signature line for the Representative to sign as the "Managing Member" of the investment club. Although firm personnel reviewed the email, it was marked as "Compliant." As a result, no one at the firm took any steps to investigate the Representative's involvement as the "Managing Member" of a limited liability company or why he signed a promissory note with a former customer of the firm.
- In July 2016, the Representative forwarded an email to his First Horizon email address, in which he discussed an investment strategy with the same former First Horizon customer and represented that he could "easily manufacture one percent per month . . . and will personally guarantee that." Although the email contained search terms that, pursuant to the firm's WSPs, required the email to be reviewed, the firm failed to reasonably review or investigate the email.

Therefore, First Horizon violated FINRA Rules 3110 and 2010.

B. First Horizon Failed to Reasonably Supervise Electronic Communications.

FINRA Rule 3110(b), like its predecessor NASD Rule 3010(b), requires every 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. FINRA Rule 3110(b)(4) and its predecessor, NASD Rule 3010(d)(2), require member firms to establish, maintain, and enforce written procedures for, among other things, the review of electronic correspondence relating to its investment banking or securities business, and require that such review be evidenced in writing. The procedures must be appropriate for the firm's business, size, structure, and customers.

From February 2014 through February 2017, First Horizon failed to establish, maintain, and enforce a reasonable supervisory system, including WSPs, with respect to the review

of electronic communications. The firm's WSPs required the review of 100 percent of emails that contained specified search terms, which the firm selected to identify emails of concern. The WSPs also required review of three percent of all emails sent to or received by registered representatives of the firm. However, during this period, the firm reviewed only three percent of emails that contained a search term requiring review. Further, the firm's review of that three percent was generally limited to reviewing the subject line of the email, and not the body of the email.

As a result, the firm failed to review emails of its registered representatives that hit on specified search terms, including, for example, emails that the Representative sent and received concerning his involvement in his undisclosed, investment-related, outside business activity—including emails that contained specified search terms that required the emails to be reviewed in full by firm personnel pursuant to the firm's WSPs.⁶

Therefore, First Horizon violated NASD Rule 3010(d), FINRA Rule 3110(b), and FINRA Rule 2010.⁷

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

- a censure;
- a \$175,000 fine;⁸ and
- a certification signed by an officer and registered principal of the firm that, as of the date of the certification, First Horizon has established, maintains and enforces policies and written procedures reasonably designed to achieve compliance with FINRA Rule 3110(b)(4).

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.

Within 90 days of Notice of Acceptance of this AWC, First Horizon shall certify to FINRA in a submission signed by an officer and registered principal of the firm that, as of the date of certification, First Horizon has established, maintains, and enforces policies

⁶ In February 2017, the firm revised its supervisory system and procedures concerning its review of electronic communications.

⁷ FINRA Rule 3110 superseded NASD Rule 3010 on December 1, 2014.

⁸ Restitution is not ordered against First Horizon because, among other reasons, the married couple who were former customers of the Representative at the firm initiated a civil lawsuit against the firm's parent company seeking to recoup their losses.

and written procedures reasonably designed to achieve compliance with FINRA Rule 3110(b)(4). This certification shall be submitted by letter addressed to Alex Boudreau, Counsel, FINRA – Enforcement Department, 99 High St., Suite 900, Boston, MA 02110. Upon written request showing good cause, FINRA staff may extend the procedural dates set forth above.

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.

March 28, 2022

Date

Kendra Cain

First Horizon Advisors, Inc.
Respondent

Print Name: Kendra Cain

Title: Chief Compliance Officer

Reviewed by:

Lori Patterson

Lori H. Patterson
Counsel for Respondent
Baker Donelson Bearman, Caldwell & Berkowitz, PC
2000 First Horizon Building
165 Madison Ave.
Memphis, TN 38103

Accepted by FINRA:

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

April 13, 2022

Date

Alexandra Boudreau

Alex Boudreau
Counsel
FINRA
Department of Enforcement
99 High St., Suite 900
Boston, MA 02110

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March 28, 2022

Via Email

Alex Boudreau, Esq.
Counsel
FINRA – Department of Enforcement
99 High St., Suite 900
Boston, MA 02110

Re: FINRA Case No. 20200666740-01 | Corrective Action Statement

This Corrective Action Statement is submitted by First Horizon Advisors, Inc. It does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

Dear Ms. Boudreau:

On behalf of First Horizon Advisors, Inc. (“First Horizon”), we appreciate the opportunity to submit the following Corrective Action Statement with respect to the Letter of Acceptance, Waiver, and Consent (“AWC”) currently under consideration. We are attorneys who regularly advise clients on matters pertaining to federal securities laws and the rules of FINRA and other self-regulatory organizations.

The AWC identifies deficiencies that FINRA found with regard to First Horizon’s supervision of the registered representative at issue (“Representative”) from July 2015 through November 2016, specifically with regard to the review of the Representative’s outside brokerage account activity and emails. FINRA also alleges that, from February 2014 through February 2017, the firm failed to establish, maintain, and enforce a reasonable supervisory system, including written supervisory procedures (“WSPs”), with respect to the review of electronic communications.

Outside Brokerage Account Activity

Regarding the review of outside brokerage activity, the firm contracted with TerraNua in July 2017, for the monitoring of outside brokerage accounts of associated persons. The monitoring

is conducted through a system called MyComplianceOffice. The firm requires that outside personal brokerage accounts be maintained if at all at an approved outside brokerage firm (eleven firms approved). The separate FINRA firm at which the associated person has an account sends transactional data via a nightly feed to MyComplianceOffice. Once the data is in the system, a set of rules are run against the data. The rules that are run against the data include the following:

- Pre-Trade Approval Rule, which checks for pre-clearance and approval for trades of employees considered control person;
- News Headline Rule, which creates an alert for any news articles posted within 10 days of trade related to that specific security;
- Maximum Trade Rule, which creates an alert when a maximum number of trades is placed within a specific time period;
- Market Cap Value and % Rules, which creates an alert if a trade is placed for any security that has a market cap less than \$350 million or has a value greater than 10% of market cap;
- Outstanding Share/Quantity Rule, which compares a percentage of outstanding shares against the percentage of the quantity traded;
- Security Price/Volume Rules, which check for a security's price decreasing or increasing by greater than 20% within 10 calendar days of an employee trading the security;
- Market Volume Surge Rule, which checks to see if an employee places a trade just before a significant jump in volume;
- Size Exceeded Rule, which checks for trades where the size is greater than 10% of the average daily volume of the security being traded; and
- Trades with Excess Amount Rule, which creates an alert for any trades with a net amount greater than \$150,000.

If one or more of the rules are triggered, the system creates an exception for compliance to review and address. Compliance reviews the system for alerts on a daily basis. Any time an alert is created within MyComplianceOffice, the trade is reviewed to determine if the rule triggered was valid or a false positive. When the alert is resolved, a note describing how the matter was resolved is listed on the particular alert within MyComplianceOffice. The firm believes that this system fully corrects the deficiencies noted in the AWC regarding the firm's review of outside brokerage account activity.

Electronic Communications

Regarding the review of electronic communications, the firm has adopted the following procedures, which are memorialized in its WSPs. First Horizon's Principal Review Desk or

March 28, 2022

Page 3

designee is responsible for completing a post review of incoming and outgoing emails through the Firm's email retention and surveillance system. Reviews are conducted on a daily basis.

The firm utilizes a combination of lexicon and random review of electronic correspondence. This lexicon list is kept confidential and reviewed on an annual basis in order to remove outdated and/or ineffective terms and to add new terms identified as problematic during routine correspondence reviews or based on new terms in the industry, regulatory findings and/or customer complaints.

For random review, the system has been programmed to select a sample size of no less than 3% of the flagged emails, Bloomberg messages, instant messages, and Salesforce Chatter generated by the firm. The firm has a sample size of no less than 10% for LinkedIn flagged content. Electronic Communications selected by the system include a sampling from each registered person and each designated supervising principal. The firm believes that this system fully corrects the deficiencies noted in the AWC regarding the firm's review of electronic communications.

We appreciate the opportunity to submit this Corrective Action Statement on behalf of First Horizon Advisors, Inc.

Sincerely,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC

s/ Lori H. Patterson