

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2020067626001**

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

RE: Charles Bonilla (Respondent)
Former General Securities Representative
CRD No. 2572107

Pursuant to FINRA Rule 9216, Respondent Charles Bonilla 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

Bonilla first became registered with FINRA through his association with a member firm in 1994. From December 2015 through May 2018, Bonilla was registered as a General Securities Representative (GS) through his association with David Lerner Associates, Inc. (BD No. 5397). From May 2018 through February 25, 2019, Bonilla was registered with FINRA as a GS through his association with another member firm.

Bonilla is not currently registered or associated with a FINRA regulated broker-dealer. Pursuant to Article V, Section 4 of the FINRA By-Laws, FINRA retains jurisdiction over Bonilla. Respondent does not have any relevant disciplinary history.

OVERVIEW

Between December 2015 and December 2017, while associated with David Lerner Associates, Bonilla recommended that his customers invest in energy sector securities without having a reasonable basis to believe those investments were suitable. Due to Bonilla's failure to conduct reasonable diligence, there were potential risks and costs of the investments, among other things, that Bonilla did not adequately understand. Accordingly, Bonilla violated FINRA Rules 2111 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a customer complaint.

FINRA Rule 2111 requires that a registered representative have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer. 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 general, what constitutes reasonable diligence will vary depending on, among other things, the complexity of and risks associated with the security or investment strategy and the member’s or associated person’s familiarity with the security or investment strategy. A member’s or associated person’s reasonable diligence must provide the member or associated person with an understanding of the potential risks and rewards associated with the recommended security or strategy.”

1. Bonilla Lacked a Reasonable Basis to Recommend a Proprietary Mutual Fund

Between December 2015 and December 2017, Bonilla recommended investments in a mutual fund created for customers of David Lerner Associates. During that period, the fund’s investment objective was to provide shareholders long-term capital appreciation and current income. According to the fund’s prospectus, the fund sought to achieve its investment objective by investing at least 80% of its net assets in a combination of securities and other assets of energy and energy related companies. The fund sought to make monthly distributions to shareholders, which the prospectus states were expected to be return of capital distributions. The fund’s holdings are concentrated in energy related securities and the fund’s performance is largely dependent on the condition of the energy industry.

Bonilla did not perform reasonable diligence on the fund prior to recommending it to customers. Bonilla could describe little about the fund’s underlying holdings, beyond that some of the holdings were “midstream” energy companies. Bonilla did not know how the fund paid its monthly distributions. Further, Bonilla did not know what, if any, diligence David Lerner Associates performed on the fund or its holdings prior to offering shares of the funds to customers. Without sufficient understanding of these fundamental features or risks of the fund, Bonilla recommended that his customers HS, SK and AF collectively invest over \$250,000 in the fund, for which he received \$4,355.72 in commissions. During the period between the fund’s initial offering in July 2014 and December 2015, the fund’s net asset value declined by more than 40%.

2. Bonilla Lacked a Reasonable Basis to Recommend a Limited Partnership

Between December 2015 and January 2017, Bonilla recommended illiquid investments in a limited partnership sold to customers of David Lerner Associates. Limited partners invested in the partnership by purchasing common unit ownership interests in the partnership. The limited partnership was formed to acquire and develop oil and gas

properties located onshore in the United States. The partnership was a “blind pool”, meaning at the time of the initial offering the partnership had not identified any properties for acquisition. According to the prospectus, the partnership’s primary objectives included making distributions to limited partners, which could be sourced from operations, offering proceeds, borrowings and/or return of capital. Additionally, five to seven years after the termination of the offering, the partnership intended to engage in a liquidity transaction in which the partnership would sell its properties and distribute the net sales proceeds to the partners, merge with another entity or list its common units on a national securities exchange. The partnership’s ability to make return of capital distributions to limited partners and engage in a profitable liquidity event was substantially dependent on the performance of the properties in which the partnership invested.

Bonilla did not perform reasonable diligence on the partnership prior to recommending the common units to customers. Bonilla did not know how the partnership generated funds to pay investors monthly distributions. Bonilla did not know how the price of the common units reflected on customer account statements were calculated. Bonilla did not read the full prospectus nor did he review the partnership’s financial statements. Without a sufficient understanding of fundamental features and risks of the partnership, Bonilla recommended that his customers HS and AF collectively invest over \$650,000 in the partnership, for which he received \$18,061.31 in commissions. In March 2020, the partnership notified its common unit holders that it was suspending distributions until further notice.

Therefore, Bonilla violated FINRA Rules 2111 and 2010.

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

- a 5-month suspension from associating with any FINRA member in all capacities;
- a \$5,000 fine; and
- disgorgement of \$22,417.03 in selling commission compensation received 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.

Disgorgement of selling compensation received is ordered to be paid to FINRA in the amount of \$22,417.03 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 December 22, 2017 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 after the execution of this AWC, the monetary sanctions imposed in this matter.

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 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 testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

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.

January 29, 2021

Date

Charles Bonilla

Charles Bonilla
Respondent

Reviewed by:

Marc B. Minor, Esq.

Marc Minor, Esq.
Thompson Hine LLP
41 South High Street, Suite 1700
Columbus, Ohio, 43215

Accepted by FINRA:

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

February 8, 2021

Date

Meghan Rohan

Meghan Rohan
Counsel
FINRA
Department of Enforcement
200 Liberty Street
New York, New York, 10281