

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2021070765201**

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

RE: Brendan Ercole (Respondent)
General Securities Representative
CRD No. 6391100

Pursuant to FINRA Rule 9216, Respondent Brendan Ercole 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

Ercole first became registered with FINRA in August 2020 as a General Securities Representative (GS) through an association with Sage, Ruttly & Co., Inc. (CRD No. 3254). On February 12, 2021, Sage Ruttly filed a Form U5 disclosing that Ercole had voluntarily terminated his registration through the firm as of February 11, 2021. Ercole became registered with FINRA as a GS through another member firm on February 11, 2021.¹ In March 2021, Sage Ruttly filed a Form U5 amendment disclosing that the firm had initiated an internal review of Ercole after receiving reports that customers “received in the mail from Mr. Ercole’s company . . . new [member firm] account forms that were pre-populated with non-public personal information.”

OVERVIEW

In anticipation of joining another FINRA member firm, Ercole improperly removed nonpublic personal customer information from Sage Ruttly, without Sage Ruttly or the customers’ knowledge or consent. Ercole subsequently used that information to transfer customer accounts to his new firm. As a result, Ercole failed to observe high standards of commercial honor and just and equitable principles of trade in violation of FINRA Rule 2010.

¹ For more information about the respondent, visit BrokerCheck® at www.finra.org/brokercheck.

FACTS AND VIOLATIVE CONDUCT

FINRA initiated this matter based upon a Form U5 amendment filed by Sage Rutty.

FINRA Rule 2010 requires registered persons, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade. Registered persons have a duty to maintain the confidentiality of customers' nonpublic personal information, and breaching this duty is a violation of Rule 2010.

Customers' nonpublic personal information, including dates of birth, social security and driver's license numbers, and account numbers, is protected under Regulation S-P. In addition, at all relevant times, Sage Rutty maintained policies and procedures that required its registered representatives to ensure the security and confidentiality of customers' nonpublic personal information, including a prohibition on transmitting such information using an employee's personal email address. These procedures also prohibited disclosure of customers' nonpublic personal information unless authorized by Sage Rutty's management.

In January and February 2021, in anticipation of joining another FINRA member firm, Ercole improperly removed nonpublic personal customer information from Sage Rutty, without Sage Rutty's or the customers' knowledge or consent. First, in January 2021, while associated with Sage Rutty, Ercole downloaded and sent to his personal email address unencrypted documents containing the nonpublic personal information of over 200 customers, including dates of birth, driver's license numbers, and social security numbers. Second, in January and early February 2021, while registered with Sage Rutty, Ercole saved several different types of Sage Rutty documents to a drive external to Sage Rutty. These documents also contained customer nonpublic personal information such as dates of birth and social security numbers. Ercole resigned from Sage Rutty on February 11, 2021 and joined a new firm that same day. Ercole used the customers' nonpublic personal information he removed from Sage Rutty to populate a separate customer information database for use at his new firm.

In January 2021, prior to resigning from Sage Rutty, Ercole also compiled pre-filled new account packets to be sent to existing Sage Rutty customers once Ercole registered with his new firm to transition the customers to the new firm. These packets included customer nonpublic personal information, including dates of birth, account numbers, social security numbers, and driver's license numbers. Ercole then caused these pre-filled forms to be saved on an electronic drive external to Sage Rutty's secure system in January 2021. The pre-filled forms were then disseminated to customers using email or physical mail once Ercole registered with the new firm.

By improperly removing customers' nonpublic personal information from Sage Rutty, Ercole failed to observe high standards of just and equitable principles of trade in violation of FINRA Rule 2010.

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

- a 15 business-day suspension from associating with any FINRA member in all capacities; and
- a \$7,500 fine.

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.

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 he 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.

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.

2/17/2023
Date

Brendan Ercole
Respondent

Reviewed by:

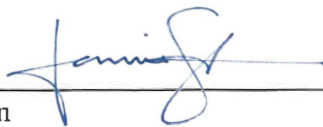
Steven A. Lucia
Steven A. Lucia
Counsel for Respondent
Pheterson Spatorico, LLP
45 Exchange Blvd.
3rd Floor
Rochester, NY 14614

Accepted by FINRA:

03/13/2023

Date

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

A handwritten signature in blue ink, appearing to read "Jamie Stinson", written over a horizontal line.

Jamie Stinson

Counsel

FINRA

Department of Enforcement

200 Liberty Street, 11th Floor

New York, NY 10281