

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20130353695 02**

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

**RE: American Portfolios Financial Services, Inc., Respondent
BD No. 18487**

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent, American Portfolios Financial Services, Inc. ("American Portfolios," the "Firm" or "Respondent"), 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 herein.

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

American Portfolios has been a FINRA member firm since February 1987. The Firm is headquartered in Holbrook, New York, and conducts a general securities business. The Firm currently has approximately 850 registered persons operating out of approximately 380 branch offices, located throughout the United States.

RELEVANT DISCIPLINARY HISTORY

American Portfolios does not have any relevant disciplinary history with the Securities and Exchange Commission, any self-regulatory organization, or any state securities regulator.

OVERVIEW

From May 2011 through May 2013 (the "Relevant Period"), American Portfolios, through two of its registered representatives, violated NASD Conduct Rule 2310, IM-2310-2, and FINRA Rules 2111 and 2010 by engaging in unsuitable mutual

fund switching.¹ Further, American Portfolios additionally violated NASD Conduct Rule 3010 and FINRA 2010 by failing to establish and enforce a supervisory system, including written supervisory procedures ("WSPs"), reasonably designed to detect and prevent unsuitable mutual fund switching.

FACTS AND VIOLATIVE CONDUCT

1. IM-2310-2 provides that "[i]mplicit in all member and registered representative relationships with customers and others is the responsibility for fair dealing." In addition, it states that trading in mutual fund shares, particularly on a short-term basis, may constitute a violation of the responsibility for fair dealing. Mutual fund shares generally are suitable only as long-term investments and are not a proper vehicle for short-term trading because the repeated buying and selling of mutual fund shares may harm customers by causing them to incur unsuitable transaction fees and commissions. Additionally, FINRA Rule 2111 and NASD Conduct Rule 2310 both require that a member have reasonable grounds for believing that a recommended securities transaction is suitable for the particular customer.

During the Relevant Period, the Firm, through two registered representatives, engaged in unsuitable mutual fund switching. During the Relevant Period, the two registered representatives recommended 78 unsuitable switch transactions in 15 customer accounts. In connection with these unsuitable mutual fund switches, their customers incurred approximately \$91,000 in unnecessary sales charges. The Firm has returned that amount to the customers.

By virtue of the foregoing, the Firm violated NASD Conduct Rule 2310, IM-2310-2, and FINRA Rules 2111 and 2010.

2. NASD Conduct Rule 3010(a) requires each member to "establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD" and FINRA rules. NASD Conduct Rule 3010(b) further requires each member to "establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of NASD" and FINRA.

During the Relevant Period, the Firm lacked adequate systems and

¹ NASD Conduct Rule 2310 and IM-2310-2 apply to conduct that occurred prior to July 9, 2012, and FINRA Rule 2111 applies to conduct that occurred on or after July 9, 2012.

procedures to monitor for unsuitable mutual fund switching. While the Firm put in place a switch alert in 2012, it did not ensure that supervisors took appropriate steps to investigate those alerts. Thus, although many of the transactions effected by the two registered representatives triggered switch alerts during the Relevant Period, the Firm did not follow up on those alerts.

Additionally, the Firm, through its designated supervising principals, approved all of the mutual fund switches effected by the two registered representatives, despite the presence of a number of red flags. These red flags included that the two registered representatives placed their customers exclusively into Class A mutual fund shares with significant upfront costs to customers; the commissions earned by the two registered representatives were high; many of the customers to whom one of the registered representatives recommended switch transactions were elderly; and neither of the two registered representatives obtained switch letters from customers acknowledging their understanding of the consequences of the above switch transactions.

By virtue of the above-described conduct, the Firm violated NASD Conduct Rule 3010 and FINRA Rule 2010.

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

1. A censure; and
2. A \$50,000 fine.

Respondent agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are 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 that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

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 acceptance or rejection of this AWC.

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 it; and

C. If accepted:

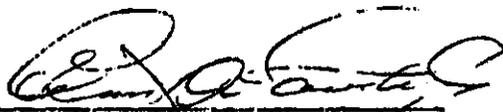
1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
3. FINRA may make a public announcement concerning this agreement and the subject matter thereof 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: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- 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 or its staff.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its 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 the Firm has agreed to its 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 the Firm to submit it.

12/7/2015
Date (mm/dd/yyyy)

American Portfolios Financial Services, Inc.
Respondent

By: 

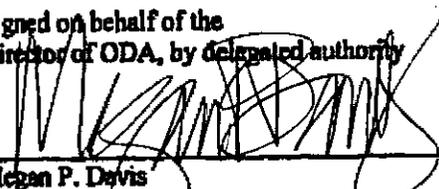
Name: FRANK A. TAUCHES, JR.

Title: EXECUTIVE VICE PRESIDENT
GENERAL COUNSEL

Accepted by FINRA:

December 31, 2015
Date

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



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