

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT**

**NO. 2015044686701**

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

**RE:** Robert Charles Torcivia ("Torcivia")  
General Securities Representative  
CRD No. 700880

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Robert Charles Torcivia, submit 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 me alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. I hereby accept and consent, 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**

In May 1974, Torcivia first became registered with FINRA as a General Securities Representative ("GSR") through an association with a FINRA registered broker-dealer. Since then, he has been registered with FINRA through consecutive associations with other FINRA member firms.

In May 2004, Torcivia became registered as a GSR, a General Securities Principal ("GP"), and a Registered Options Principal ("OP"), among other registrations, through an association with Wachovia Securities, LLC (now known as Wells Fargo Clearing Services, LLC) ("Wells Fargo"). In September 2010, Torcivia resigned from Wells Fargo. That same month, he became registered as a GSR, GP, and OP through an association with Ameriprise Financial Services, Inc. ("Ameriprise"). On March 6, 2015, Ameriprise filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") reporting that Torcivia had been discharged on February 20, 2015. Torcivia worked for Wells Fargo in Surprise, Arizona, and for Ameriprise in Sun City, Arizona.

In March 2015, Torcivia became registered as a GSR, GP, and OP through an association with another FINRA regulated broker-dealer. On September 11,

2018, that broker-dealer filed a Form U5 stating that Torcivia was voluntarily terminated as of September 7, 2018. Torcivia is not currently associated with a FINRA regulated broker-dealer. Pursuant to Article V, Section 4 of the FINRA By-Laws, FINRA retains jurisdiction over Torcivia.

### **OVERVIEW**

Between December 2007 and February 2015 (the “Relevant Period”), Torcivia improperly accepted fiduciary and beneficiary designations from three separate senior customers contrary to the policies of the firms with which he was associated at the time. Each of these three customers had a longstanding friendship with Torcivia.

Specifically, Torcivia was a designated fiduciary on one health care Power of Attorney (“POA”) for one customer, and two health care POAs for a second customer. Torcivia’s wife was also designated as a beneficiary on the IRA account of the second customer, and Torcivia was designated as a beneficiary on a trust established by a third customer. Torcivia failed to inform his firm supervisors of these beneficiary listings, and did not request that the customers remove these beneficiary listings, as required by relevant firm policies. Ultimately, Torcivia’s wife inherited approximately \$133,000 from the second customer’s IRA account, and Torcivia inherited approximately \$30,000 from the third customer’s trust.

By virtue of the above, Torcivia violated NASD Rule 2110<sup>1</sup> and FINRA Rule 2010.

### **FACTS AND VIOLATIVE CONDUCT**

FINRA began an investigation into this matter after receiving a Form U5 filed by Ameriprise regarding Torcivia. The Form U5 reported the termination of Torcivia’s association with Ameriprise for failures to disclose fiduciary and beneficiary relationships with clients.

NASD Rule 2110 required, and its successor FINRA Rule 2010 requires, associated persons to observe “high standards of commercial honor and just and equitable principles of trade.” An associated person violates NASD Rule 2110 and/or FINRA Rule 2010 when he or she accepts fiduciary or beneficiary designations from customers contrary to the policies of his or her firm.

#### **Torcivia’s Accepted Fiduciary Designations on Three Health Care Power of Attorney Documents for Customers JS and VS**

Between December 2007 and February 2015, while Torcivia was associated with Wells Fargo and Ameriprise, both firms had policies prohibiting representatives from accepting fiduciary appointments from customers, except in limited

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<sup>1</sup> On December 15, 2008, FINRA Rule 2010 superseded NASD Rule 2110.

circumstances not applicable here.

In December 2007, Torcivia was designated as a successor agent on one health care POA executed by Wells Fargo customer JS, a senior, and also designated as a successor agent on a second health care POA executed by Wells Fargo customer VS, also a senior. Torcivia and his wife had been friends with JS and VS for over twenty years. Although Torcivia was aware of these fiduciary designations at the time these documents were executed, he failed to inform Wells Fargo or make any attempt to have himself removed as health care POA. In 2010, Torcivia moved to Ameriprise, and JS and VS became his customers at Ameriprise. Torcivia failed to notify Ameriprise of his fiduciary designations on the health care POAs and continued to service the customers' accounts.

In February 2014, Torcivia was designated as an attorney-in-fact on a third health care POA executed by customer VS. Although Torcivia was aware of this designation at the time this document was executed, he failed to notify Ameriprise of this fiduciary designation, and continued to service the customer's account.

Torcivia submitted compliance attestation forms to Ameriprise in 2010, 2011, and 2013. In each form, he inaccurately represented that he was not named in a fiduciary capacity at the time he completed the form.

#### Torcivia and His Wife Accepted Two Beneficiary Designations From Customers VS and HS

Between September 2010 and February 2015, while Torcivia was associated with Ameriprise, the firm had policies in place prohibiting representatives or members of their household from being listed as a beneficiary by or inheriting from customers, except in certain limited circumstances not applicable here. These policies further required representatives to attempt to get any such beneficiary listings removed, and to notify their supervisor of the beneficiary listings.

In January 2014, Ameriprise customer VS listed Torcivia's wife as the sole beneficiary on VS's Ameriprise IRA account. Although Torcivia was aware of the designation at the time, he failed to attempt to get this beneficiary listing removed; failed to notify his supervisor of the listing; and continued to service VS's account. In December 2014 VS passed away. In January 2015, Torcivia's wife received approximately \$133,000 from VS's account. However, in February 2015, and pursuant to a request from Ameriprise, Torcivia's wife returned the funds to Ameriprise. Then, in December 2015, after Torcivia was no longer associated with Ameriprise, and subsequent to the resolution of litigation involving Torcivia's wife and other beneficiaries of VS, Torcivia's wife ultimately received the approximately \$133,000 from VS's account.

In September 2005, Torcivia was listed as a beneficiary on a trust established by customer HS, a senior. Torcivia was designated as a residual beneficiary, and stood to inherit a portion of the trust's assets. Torcivia had been friends with HS

for many years. In April 2011, Torcivia learned he had been designated as a beneficiary on HS's trust. When the trust became a customer of Torcivia's at Ameriprise, Torcivia failed to attempt to get this beneficiary listing removed; failed to notify his supervisor of the listing; and continued to service the trust's account after learning of the designation. In June 2011, customer HS passed away. After HS's death in 2011, and while Torcivia was associated with Ameriprise, Torcivia inherited approximately \$30,000 from the trust.

In February 2015, after Ameriprise opened an investigation into Torcivia's fiduciary and beneficiary listings by customers, Torcivia disclosed to Ameriprise his and his wife's fiduciary and beneficiary status concerning customers JS, VS, and HS. During FINRA's subsequent investigation of this matter, however, Torcivia initially withheld that his wife had ultimately retained the money from VS's IRA account, which fact only came to light after additional investigation by FINRA.

By virtue of Torcivia's improper acceptance of fiduciary and beneficiary relationships contrary to the policies of his employing broker-dealers, Torcivia violated NASD Rule 2110 (for conduct between December 2007 and December 14, 2008), and FINRA Rule 2010 (for conduct between December 15, 2008 and February 2015).

B. I also consent to the imposition of the following sanctions:

- A suspension from association with any FINRA member in any capacity for 7 months.
- A \$10,000 fine.

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.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

I understand that if I am barred or suspended from associating with any FINRA member, I become 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, I 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 herein shall be effective on a date set by FINRA staff.

**II.**

### WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against me;
- 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, I specifically and voluntarily waive 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.

I further specifically and voluntarily waive 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

I understand that:

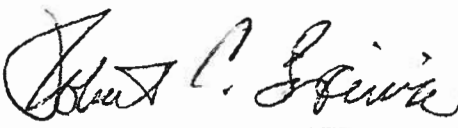
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and
- C. If accepted:
  - 1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;

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. I 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. I 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 my: (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. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. The Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

I, Robert Charles Torcivia, certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I understand and acknowledge that FINRA does not represent or advise me and I cannot rely on FINRA or FINRA staff members for legal advice; that I have 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 me to submit it.

(09/24/2018)  
September 24, 2018  
Date (mm/dd/yyyy)

  
Robert Charles Torcivia, Respondent

Accepted by FINRA:

9/26/2018  
Date

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



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Samir Ranade  
Senior Counsel  
FINRA Department of Enforcement  
Brookfield Place  
200 Liberty Street  
New York, NY 10281  
Tel: 646-315-7417