

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2016051014801**

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

RE: Bhenoy (“Ben”) Dembla, Respondent
Former General Securities Representative
CRD No. 4357042

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, I 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

Dembla first became associated with a FINRA member firm in 2001 when he joined Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch” or the “Firm”) as a general securities representative. In September 2016, Merrill Lynch filed a Form U5 for Dembla reporting that he had been discharged for “circumventing Firm limitations on the accumulation of mutual fund shares in customer accounts resulting in a loss of management’s confidence.” On February 16, 2017, the Firm amended Dembla’s Form U5 to disclose a customer complaint against him alleging unsuitable investment recommendations. Dembla is no longer associated with a FINRA member firm, but remains subject to FINRA’s jurisdiction pursuant to Article V, Section 4(a)(i) of FINRA’s By-Laws.

RELEVANT DISCIPLINARY HISTORY

Dembla has no disciplinary history in the securities industry.

OVERVIEW

Between December 2015 and April 2016, Dembla entered and later canceled 41 fictitious mutual fund sell orders to circumvent restrictions placed by his firm and mutual fund providers on the amount of Class B shares an investor can own. Dembla also made false entries on firm databases as to why the clients wanted to sell Class B shares. By so doing, Dembla violated FINRA Rules 2010 and 4511.

FACTS AND VIOLATIVE CONDUCT

Falsification of Documents

Merrill Lynch's written policies prohibited orders to buy Class B share mutual funds if the client's accumulated household holdings of Class B shares within the fund family exceeded \$100,000. Similarly, the prospectuses for the mutual funds that Dembla sold contained a similar limitation on Class B shares for all investments by a household within the fund. These limitations are in place to limit ownership of Class B shares in light of those shares' ongoing 12b-1 distribution fees and contingent deferred sales charges that are higher than other share classes.

Merrill Lynch's electronic order system prevented the entry of a purchase order for Class B shares if it would cause the client to accumulate shares above the accumulation limit. In order to circumvent this safeguard, Dembla entered one or more fictitious sell orders a few minutes prior to buying additional Class B shares. After the system accepted the new purchase order, Dembla canceled the fictitious sell order, resulting in the customer exceeding the Firm and fund imposed thresholds for Class B shares. From December 2015 through April 2016, Dembla placed and then later cancelled 41 fictitious sell orders in order to execute 29 purchases of Class B shares that caused the accounts of 18 customers to exceed the accumulation limit by a total of \$863,000. Dembla also provided false entries on each order regarding why the customer purportedly wanted to sell the fund. Merrill Lynch subsequently provided \$31,801 in restitution to these customers.

FINRA Rule 2010 provides that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." Falsifying documents in order to circumvent a firm's controls violates FINRA Rule 2010.

By entering and then canceling 41 fictitious sell orders, and entering false information into the Firm's order entry system regarding the reasons for the sell orders, in order to circumvent the Firm's accumulation limits for Class B shares, Dembla acted unethically in violation of FINRA Rule 2010.

Books and Records Violation

FINRA Rule 4511 provides that “[m]embers shall make and preserve books and records as required under the FINRA rules, the Exchange Act, and the applicable Exchange Act rules.” Exchange Act Rule 17a-3 requires every broker-dealer to make and keep current “[a] memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted.” Implicit in the record-keeping rules is the requirement that the firm’s books and records must be accurate. Entering false information into a firm’s order entry system causes the firm to maintain inaccurate records in violation of FINRA Rule 4511.

By virtue of the foregoing, Dembla caused the Firm to maintain inaccurate books and records in violation of FINRA Rules 2010 and 4511.

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

- A bar from associating with a FINRA member firm in any capacity

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. A bar or expulsion shall become effective upon approval or acceptance of this AWC.

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 prejudice 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.

I 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 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.

Jan 18, 2019
Date (mm/dd/yyyy)


Respondent Bhenoy Dembla

Reviewed by:

Text


Nicholas P. Iavarone
Counsel for Respondent
The Iavarone Law Firm
33 N. LaSalle Street, Suite 1400
Chicago, Illinois 60602
(312) 637-9466

Accepted by FINRA:

FEB. 5, 2019
Date

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


Robert D. H. Floyd, Senior Counsel
FINRA Department of Enforcement
15200 Omega Drive, Third Floor
Rockville, Maryland 20850
Phone: (301) 258-8578
Facsimile: (202) 721-7526