

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2020067348501**

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

RE: Brian Maguire (Respondent)
Former Research Analyst and General Securities Representative
CRD No. 5011014

Pursuant to FINRA Rule 9216, Respondent Brian Maguire 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

Maguire entered the securities industry in 2005 when he became associated with a FINRA member firm. Maguire became associated as a Research Analyst and General Securities Representative with Goldman Sachs & Co. LLC on July 12, 2010. Goldman Sachs filed a Uniform Termination for Securities Industry Registration (Form U5) terminating his registration on November 27, 2020, because of “concerns relating to trades placed by [Maguire] in an undisclosed account of a related individual and the possible use of confidential firm business information in connection with certain of those trades.”

Although Maguire is no longer registered or associated with a FINRA member firm, he remains subject to FINRA’s jurisdiction pursuant to Article V, Section 4 of FINRA’s By-Laws.

Respondent does not have any relevant disciplinary history.

OVERVIEW

Maguire was a research analyst at Goldman Sachs. During 2020, Maguire learned one of his fellow analysts was planning to upgrade the research ratings of two companies that analyst covered. Maguire purchased the securities of those companies while in possession of that material nonpublic information in two accounts. One account was a family member's individual account over which he had discretion and control (the individual account). The other account was a trust account over which he had discretion and control and in which a member of his household had a financial interest (the trust account). By trading on the basis of material nonpublic information, Maguire willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder and violated FINRA Rules 2020 and 2010.

Maguire executed other trades that also violated several provisions of FINRA Rule 2241, which addresses research analyst conflicts of interest. Specifically, Maguire (i) traded in securities of issuers he covered in contravention of his firm's written prohibition in violation of Rule 2241(b)(2)(J); (ii) traded in a manner inconsistent with his current recommendations in violation of Rule 2241(b)(2)(J)(ii); and (iii) published research without disclosing that a member of his household had a financial interest in the securities of the issuer and the nature of that interest in violation of Rule 2241(c)(4)(A).

In addition, during FINRA's investigation of this matter, Maguire lied to FINRA staff regarding his trading history, violating FINRA Rule 8210.

FACTS AND VIOLATIVE CONDUCT

Maguire joined Goldman Sachs in 2010. He covered issuers in the paper, packing, and waste sector of the research department's U.S. Industrials and Basic Materials business unit. As a research analyst, he had access to material nonpublic information, such as impending changes in research ratings. His firm's policies and procedures prohibited him from trading while in possession of material nonpublic information (including ratings changes) and trading the securities of issuers he and his business unit covered. He was required to disclose securities accounts in which he or a family member had a financial interest or in which he could exercise discretion. He also was required to preclear trades in those accounts. Maguire did not disclose the individual and trust accounts in which he traded to Goldman Sachs and did not preclear trades in those accounts.

A. Maguire Traded Based on Inside Information

Exchange Act Section 10(b) and SEC Rule 10b-5 prohibit the purchase or sale of a security of any issuer on the basis of material nonpublic information in breach of a duty of trust or confidence owed to the source of the material nonpublic information. Pursuant to SEC Rule 10b5-1, a person trades "on the basis" of material nonpublic information if the person making the purchase or sale was aware of the material nonpublic information at the time of the transaction. Information is material if a reasonable investor would view it as significantly altering the total mix of information available. An impending research analyst upgrade may be material and is nonpublic until the research report containing the

upgrade is published. FINRA Rule 2020, similar to Rule 10b-5, prohibits effecting any transaction in any security by means of any manipulative, deceptive, or other fraudulent device or contrivance. A violation of the federal securities laws or FINRA rules also constitutes a violation of FINRA Rule 2010, which requires associated persons to “observe high standards of commercial honor and just and equitable principles of trade” in the conduct of his or her business.

Maguire Purchases Shares of Company A After Learning of a Pending Research Rating Upgrade for that Company

On April 14, 2020, Maguire received an email from another research analyst in his business unit with the subject line “rating change heads up.” The email previewed ratings changes for several companies, including an upgrade of the rating for Company A from neutral to buy. The email attached a draft research report for Company A, which explained the bases for the upgrade. The analyst further noted that approval for the upgrade would be discussed during an April 17, 2020 meeting of the firm’s investment review committee.

On April 17, 2020, following approval of the upgrade, Maguire purchased 2,000 shares of Company A in the trust account for \$128,098. Before market open on Monday, April 20, 2020, Goldman Sachs published a research report upgrading the rating for Company A from neutral to buy. The upgrade was material. The research report was substantively identical to the draft report attached to the April 14 email. Before market close on April 20, 2020, Maguire sold the Company A shares, which closed at \$65.00, up from the prior day’s close of \$63.85.

Maguire Purchases Shares of Company B After Learning of a Pending Research Rating Upgrade for that Company

On May 27, 2020, Maguire received another email from the same research analyst in his business unit with the subject line “ratings changes.” The email again previewed ratings changes for several companies, including an upgrade of Company B from neutral to buy. The analyst further noted that approval for the upgrade would be discussed during a June 2, 2020 meeting of the firm’s investment review committee.

On June 2, 2020, following approval of the upgrade, Maguire purchased 29,000 shares of Company B in the individual and trust accounts for \$721,810. Before market open the next day, June 3, 2020, Goldman Sachs published a research report upgrading the rating for Company B from neutral to buy. The upgrade was material. Maguire could not sell the Company B shares because the trust and individual accounts were locked by the firm at which those accounts were held because the size of the purchases in relation to the total value of the accounts triggered an alert. On the day of the upgrade, Company B’s shares closed at \$26.04, up from the prior day’s close of \$24.04.

Maguire possessed material nonpublic information regarding impending research reports for Companies A and B. Maguire breached his duty to Goldman Sachs by trading while in possession of that material nonpublic information. Maguire knew that the impending

ratings changes were material nonpublic information and that he was not permitted to trade while in possession of that information. By virtue of the foregoing, Maguire willfully violated Exchange Act Section 10(b) and Rule 10b-5 promulgated thereunder and violated FINRA Rules 2020 and 2010.

B. Other Trading by Maguire Violated FINRA's Research Analyst Conflict of Interest Rules

FINRA Rule 2241(b)(2)(J) requires a member's written policies and procedures restrict or limit research analyst account trading in securities covered by the research analyst, including by prohibiting a research analyst account from trading in a manner inconsistent with the analyst's current recommendation. FINRA Rule 2241(c)(4)(A) requires that members disclose in research reports if the research analyst or a member of the research analyst's household has a financial interest in the securities of the subject company and the nature of such interest. Supplementary Material .09 to FINRA Rule 2241 states that it shall be a violation of the rule for an associated person to engage in the restricted or prohibited conduct to be addressed through the establishment, maintenance, and enforcement of the policies and procedures required by FINRA Rule 2241.

Between March 17 and April 8, 2020, Maguire purchased the securities of three issuers he covered on nine occasions in the trust account in contravention of his firm's written policy prohibiting such purchases. By virtue of the foregoing, Maguire violated FINRA Rules 2241(b)(2)(J) and 2010.

On February 27, 2020, Maguire authored a research report published by Goldman Sachs in which he had a buy recommendation for Company C. Inconsistent with that recommendation, Maguire sold Company C shares in the trust account on March 26, 2020. On March 11, 2020 Maguire authored a research report published by Goldman Sachs in which he had a buy recommendation for Company D. That recommendation was reiterated in reports he authored that were published on April 6 and April 8, 2020. Inconsistent with that recommendation, Maguire sold Company D shares in the trust account on April 6 and April 8, 2020. By virtue of the foregoing, Maguire violated FINRA Rules 2241(b)(2)(J)(ii) and 2010.

On seven occasions between April 6 and October 14, 2020, Maguire authored research reports on Company C published by Goldman Sachs that did not disclose that a member of his household had a financial interest in the equity securities of Company C and the nature of that interest. Likewise, on April 6, 2020, Maguire authored a research report on Company D published by Goldman Sachs that did not disclose that a member of his household had a financial interest in the equity securities of Company D and the nature of that interest. By virtue of the foregoing, Maguire violated FINRA Rules 2241(c)(4)(A) and 2010.

C. Maguire's Rule 8210 Violations

FINRA Rule 8210 prohibits registered individuals from lying to FINRA during testimony provided pursuant to FINRA Rule 8210.

On November 12, 2020, Maguire gave testimony to FINRA staff pursuant to FINRA Rule 8210. Maguire testified that, prior to March 2020, he never placed trades in the trust account when, in fact, he had placed 21 trades in that account prior to March 2020. Maguire likewise testified that, prior to March 2020, he never placed trades in the securities of issuers that he or his business unit covered when, in fact, he had effected 16 trades in the securities of seven issuers he covered and five trades in the securities of two issuers covered by his business unit prior to March 2020. By providing the false testimony described above, Maguire violated FINRA Rules 8210 and 2010.

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

- a bar from associating with any FINRA member in all capacities

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 understands that this settlement includes a finding that he willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder and that under Article III, Section 4 of FINRA's By-Laws, this makes him subject to a statutory disqualification with respect to association with a member.

The sanctions imposed in this AWC shall be effective on a date set by FINRA. A bar or expulsion shall become effective upon approval or acceptance of this AWC.

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 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.

4/6/21
Date

Brian Maguire
Brian Maguire
Respondent

Reviewed by:

Samuel J. Louis
Samuel J. Louis
Counsel for Respondent
Holland & Knight LLP
1100 Louisiana Street, Suite 4300
Houston, TX 77002

Accepted by FINRA:

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

April 20, 2021
Date

Edwin Aradi
Edwin Aradi
Senior Counsel
FINRA
Department of Enforcement
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