

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 20130353695-01**

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

**RE:** Ronald Benevento, Respondent  
General Securities Representative and  
Investment Company Products/Variable Contracts Representative  
CRD No. 2841848

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**

Respondent first became registered with FINRA in 1997 as an Investment Company Products/Variable Contracts Representative ("IR") through his association with a member firm. In 2005, Respondent additionally became registered as a General Securities Representative ("GSR"). In March 2010, after leaving his prior firm, Respondent began working at American Portfolios Financial Services, Inc. (the "Firm" or "American Portfolios") (BD No. 18487), where he continued to be registered as both a GSR and an IR. Respondent resigned from American Portfolios in March 2015. On March 9, 2015, American Portfolios filed a Uniform Termination Notice for Securities Industry Registration (Form U5) stating that Respondent's termination was voluntary. Respondent is not currently associated with a FINRA member firm. Pursuant to Article V, Section 4 of the By-Laws, however, FINRA retains jurisdiction over him.

## **RELEVANT DISCIPLINARY HISTORY**

Respondent does not have any disciplinary history with the Securities and Exchange Commission, any state securities regulators, FINRA or any other self-regulatory organization.

## **OVERVIEW**

This matter concerns Respondent's unsuitable mutual fund switching activity in three customer accounts during the period from September 2011 through April 2013 (the "Relevant Time Period"), in violation of NASD Conduct Rule 2310, IM-2310-2, and FINRA Rules 2111 and 2010.<sup>1</sup>

In addition, during the Relevant Time Period, Respondent mismarked 15 order tickets as "unsolicited" orders, thereby causing his employer, American Portfolios, to maintain inaccurate books and records, in violation of Rule 17a-3 of the Securities Exchange Act of 1934 (the "Exchange Act"). By reason of the foregoing, Respondent violated NASD Conduct Rule 3110, and FINRA Rules 4511(a) and 2010.<sup>2</sup>

## **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." That responsibility of fair dealing is violated by "[t]rading in mutual fund shares, particularly on a short-term basis" because "normally these securities are not proper trading vehicles." Short-term trading in mutual funds also violates FINRA Rule 2111 and NASD Conduct Rule 2310, both of which require that a member have reasonable grounds for believing that a recommended securities transaction is suitable for the particular customer.

During the Relevant Time Period, Respondent recommended 29 mutual fund switch transactions in three customer accounts without having reasonable grounds for believing that such transactions were suitable for those customers in light of the nature of the recommended transactions, the frequency of the transactions, and the transaction costs incurred. Respondent recommended that each of the three customers sell Class A mutual fund shares within as little as two to three months after purchasing them. He then recommended that the customers use the proceeds of the sales to purchase Class A mutual fund shares in different mutual funds

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<sup>1</sup> NASD Conduct Rule 2310 and IM-2310-3 apply to misconduct that occurred prior to July 9, 2012, and FINRA Rule 2111 applies to misconduct that occurred on or after July 9, 2012.

<sup>2</sup> NASD Conduct Rule 3110 applies to misconduct that occurred prior to December 5, 2011, and FINRA Rule 4511 applies to misconduct that occurred on or after December 5, 2011.

from different fund families, causing the customers to pay sales charges and commissions. In connection with those switch transactions, all of which involved the purchase and sale of Class A mutual fund shares that had front-end sales loads, Respondent's customers incurred approximately \$45,000 in losses. Respondent has returned that amount to the Firm, and the customers were fully compensated.

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

2. FINRA Rule 4511(a) (formerly NASD Conduct Rule 3110) requires member firms to "make and preserve books and records as required under the FINRA rules," the Exchange Act, and the applicable Exchange Act rules. Rule 17a-3 of the Exchange Act, in turn, requires member firms to make and keep, among other records relating to their business, a memorandum of each brokerage order that reflects "the terms and conditions of the order or instructions."

During the Relevant Time Period, Respondent mismarked 15 order tickets for mutual fund trades in customer accounts as "unsolicited" when, in fact, the trades were solicited, causing the Firm to maintain inaccurate books and records in violation of Rule 17a-3 of the Exchange Act.

By reason of the foregoing, Respondent violated NASD Conduct Rule 3110, and FINRA Rules 4511(a) and 2010.

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

1. A suspension for 60 calendar days; and
2. A fine of \$5,000.

The fine shall be due and payable either immediately upon reassociation with a member firm following the two-month suspension noted above, 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(s) 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 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.

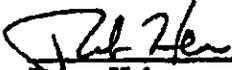
- D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute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

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.

6/22/15  
Date (mm/dd/yyyy)

  
Respondent

Reviewed by:

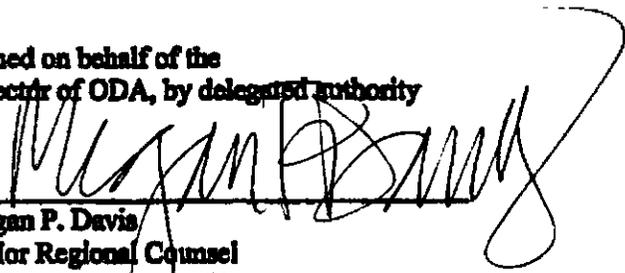


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Accepted by FINRA:

8/4/2015  
Date

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



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