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

RE: NYLIFE Securities LLC (Respondent)  
Member Firm  
CRD No. 5167

Pursuant to FINRA Rule 9216, Respondent NYLIFE Securities LLC 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.  
ACCETPANCE 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

NYLIFE Securities is a retail broker-dealer that has been registered with FINRA since 1970. The firm has approximately 2,500 branch offices and 9,000 registered persons.¹

OVERVIEW

From January 2015 through March 2019, NYLIFE Securities failed to establish, maintain, and enforce a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with FINRA Rule 2111’s suitability requirements as it pertains to mutual fund and cross-product switches. As a result, NYLIFE Securities violated FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a disclosure on a Uniform Termination Notice for Securities Industry Registration (Form U5).

¹ For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.
FINRA Rule 3110(a) requires that FINRA members establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. FINRA Rule 3110(b) requires that FINRA members establish, maintain, and enforce written procedures to supervise the types of business in which they engage and the activities of their associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. 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.” A violation of FINRA Rule 3110 also is a violation of FINRA Rule 2010.

FINRA Rule 2111 requires member firms or their associated persons to have a reasonable basis to believe that a recommended securities transaction or investment strategy is suitable for the customer, based on information obtained through the reasonable diligence of the firm or associated person to ascertain the customer’s investment profile.

NYLIFE Securities failed to establish, maintain, and enforce a supervisory system reasonably designed to supervise mutual fund and cross-product switches.

Mutual funds are composed of several classes of shares. Class A shares usually include an initial or “front-end” sales charge levied upon the purchase of shares, as well as annual, ongoing distribution and service fees that are typically 0.25 percent. The majority of the front-end charge is paid to the selling broker-dealer as a concession. Class A mutual fund shares are intended to be held long-term because there are significant upfront costs associated with the purchase of these products. A recommendation that an investor engage in short-term trading in Class A shares is potentially unsuitable because of these significant upfront costs. Mutual fund switching occurs when a customer sells mutual fund shares and reinvests the proceeds in another mutual fund company, often incurring additional charges and commissions.

The firm’s supervisory system and procedures were not reasonably designed or enforced to detect and prevent unsuitable mutual fund switching.

From January 2015 through March 2019, NYLIFE Securities’ written supervisory procedures defined mutual fund switching as using the “proceeds from the redemption of one mutual fund to purchase one or more other mutual funds” and noted that mutual fund switching was problematic when the “benefit to the client does not justify the incidental costs.” The firm surveilled for mutual fund switches on a weekly basis, identifying transactions that the firm deemed “letterable,” such as a switch from an A share to A share where accounts incurred front-end sales charges. A letterable switch resulted in a letter to the customer that disclosed the mutual fund purchase and sale at issue, but did not disclose the sales charges incurred on either transaction.

When a registered representative had five or more letterable switches in a quarter, NYLIFE Securities’ system flagged the transactions on a quarterly mutual fund switching report for a quarterly switch review conducted, in part, by the firm’s compliance
department. NYLIFE Securities also tasked the flagged registered representative’s direct supervisor, known as the Managing Partner, with a review of the transactions through the completion of a mutual fund switch checklist that required the Managing Partner to determine whether the customer received an “overall benefit as a result of the transaction(s).” The Managing Partner could delegate the review of transactions to another supervisor but was responsible for making the final determination about the transactions.

The firm, however, did not have written supervisory procedures or adequately train supervisors on how to determine whether the clients benefitted from the mutual fund switch transactions or whether the transactions were suitable. The firm provided Managing Partners with the sales charges incurred on mutual fund purchase transactions. However, the firm did not provide Managing Partners with other critical information such as the holding periods and costs (such as front-end sales charges) associated with the mutual fund shares sold. The Managing Partners also could not readily access historic transaction information for the customers’ accounts. Without this information, the Managing Partners could not independently determine if short-term trading was taking place in the customer’s account or assess the overall financial impact of the transactions to the customer.

*The firm failed to reasonably supervise Broker A’s mutual fund trading.*

The firm failed to take reasonable steps to review Broker A’s recommended short-term trades of Class A mutual funds in ten customers’ accounts, many of which belonged to senior customers.² Specifically, on hundreds of occasions between January 2015 and March 2019, Broker A recommended that these ten customers buy and sell Class A mutual funds after holding the shares for short periods of time. As a result of these short-term trades, the ten customers paid approximately $175,000 in unnecessary front-end sales charges for Class A mutual fund shares, with Broker A earning approximately $116,000 in commissions.

To the extent NYLIFE Securities’ system flagged Broker A’s mutual fund switches for a quarterly switch review related to customers, his Managing Partner did not have adequate tools and was not properly trained to review the suitability of the transactions in order to determine whether a switch provided a benefit to the customer. The firm’s compliance department typically closed Broker A’s mutual fund switching flags largely on the basis of the Managing Partner’s unreasonable review.

In January 2017, the firm issued a letter of education to Broker A for mutual fund switching in two customer accounts and missed mutual fund breakpoints. The firm’s system continued to flag Broker A for mutual fund switch transactions in 2017 and 2018. Even then, the flags remained open for weeks without an adequate supervisory review. Further, although Broker A had multiple switch transactions in every quarter from 2015

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² Broker A entered into an AWC with FINRA relating to his misconduct. AWC No. 2017056197101 (Nov. 2019).
through 2018, for 11 quarters, the firm did not flag his trading for supervisory review because the firm’s threshold for review was five letterable switches in one quarter.

NYLIFE Securities failed to maintain a reasonable surveillance system for mutual fund and cross-product switches.

NYLIFE Securities’ procedures defined “cross-product switching activity” as switching activity amongst products (e.g., mutual fund to annuity/life, and/or vice versa) and a “purchase and sale, or a combination of such transactions, occurring within a 90-day period.” The firm’s system flagged registered representatives’ cross-product switch activity on a cross-product switching report, similar to the quarterly mutual fund switching reports, for supervisory review when multiple switch transactions met one or more tests during one quarter.

Starting in approximately April 2016, as the result of a software upgrade, a database connectivity issue caused incomplete information to flow to the firm’s mutual fund switching reports and cross-product switching reports. While the firm conducted limited spot checks for mutual fund switching activity in the ninety days following the software upgrade to check whether the system was properly functioning, the firm did not continue to monitor the system. Further, the firm did not conduct any tests on its cross-product switching surveillance system from January 2015 through March 2019. Notably, in 2017, the first full year after the software upgrade, the number of representatives flagged for quarterly mutual fund and cross-product switching reviews declined by approximately 80% and 69%, respectively, compared to 2015, the last full year before the software upgrade. Still, despite this significant decline, the firm failed to identify red flags of potential system issues during this period and only discovered the cause of the software failure in March 2019 during FINRA’s investigation. As a result of the firm’s failure to identify this system error, the firm failed to capture approximately 5,700 mutual fund transactions (22% of all mutual fund transactions) for supervisory review, resulting in the failure to supervise 326 mutual fund switch transactions, including those of Broker A, and 1,229 cross-product switch transactions that should have been elevated to a quarterly switching report, according to the firm’s procedures.

During FINRA’s review, NYLIFE Securities voluntarily enhanced the firm’s procedures and controls concerning mutual fund and cross-product switching; conducted extensive lookback reviews over multiple years to identify potentially overlooked switching activity; and paid restitution of $271,182 to Broker A customers, primarily consisting of front-end sales charges incurred by customers following the April 2016 software failure.

Therefore, Respondent violated FINRA Rules 3110 and 2010.

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

- a censure;
- a $200,000 fine;
restitution of $63,347;\(^3\) and

- an undertaking to review and update the Managing Partner Field Supervision Guide (Guide) and the training module of Managing Partners and their delegates, relating to the firm’s mutual fund and cross-product switching supervision. Within no later than 120 days of the date of the notice of acceptance of the AWC, a senior officer and principal of NYLIFE Securities shall certify in writing to FINRA that the firm has updated the Guide and the training module to address unsuitable short-term trading of mutual funds and cross-product switching, with training to commence after the 120 day period identified herein. This certification shall be submitted by letter addressed to Jackie Wells, Senior Counsel, FINRA Department of Enforcement, 200 Liberty Street, New York, NY 10281.

Respondent agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payment is 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 an inability to pay, now or at any time after the execution of this AWC, the monetary sanctions imposed in this matter.

Restitution is ordered to be paid to the customers listed on Attachment A to this AWC in the total amount of $63,347.

A registered principal on behalf of Respondent shall submit satisfactory proof of payment of restitution (separately specifying the date and amount paid to each customer listed on Attachment A) or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted by email to EnforcementNotice@FINRA.org from a work-related account of the registered principal of Respondent. The email must identify Respondent and the case number and include a copy of the check, money order, or other method of payment. This proof shall be provided by email to EnforcementNotice@FINRA.org no later than 120 days after the date of the notice of acceptance of the AWC.

If for any reason Respondent cannot locate any customer identified in Attachment A after reasonable and documented efforts within 120 days after the date of the notice of acceptance of the AWC, or such additional period agreed to by FINRA in writing, Respondent shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property, or abandoned property fund for the state in which the customer is last known to have resided. Respondent shall provide satisfactory proof of such action to FINRA in the manner described above, within 14 calendar days of forwarding the undistributed restitution and interest to the appropriate state authority.

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\(^3\) The additional restitution ordered under this AWC includes front-end sales charges incurred by Broker A customers from January 2015 to April 2016 and sales charges that were inadvertently omitted from the prior restitution payments.
The imposition of a restitution order or any other monetary sanction in this AWC, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

Restitution payments to customers shall be preceded or accompanied by a letter, not unacceptable to FINRA, describing the reason for the payment and the fact that the payment is being made pursuant to a settlement with FINRA and as a term of this AWC.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

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 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 right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent’s testimonial obligations in any litigation or other legal proceedings.

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.
The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent’s 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 Respondent has agreed to the AWC’s provisions voluntarily; and that 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 Respondent to submit this AWC.

September 30, 2021

______________________________
Date

NYLIFE Securities LLC
Respondent

Print Name: John Boccio
Title: CEO, NYLIFE Securities LLC

Reviewed by:

______________________________
Timothy Burke

Timothy Burke
Counsel for Respondent
Morgan, Lewis & Bockius LLP
One Federal Street
Boston, MA 02110-1726

Accepted by FINRA:

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

October 25, 2021

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Date

Jackie A. Wells
Senior Counsel
FINRA
Department of Enforcement
200 Liberty Street
New York, NY 10281
## Attachment A

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