FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019062526201

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

RE: B. Riley Wealth Management (Respondent)
Member Firm
CRD No. 2543

Pursuant to FINRA Rule 9216, Respondent B. Riley Wealth Management (BRWM) 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

BRWM has been a FINRA member firm since March 1984.[1] The firm is a full-service broker-dealer with approximately 285 registered representatives and 53 branch locations. The firm's main office is in Memphis, Tennessee. BRWM does not have any relevant disciplinary history.

OVERVIEW

From January 1, 2013 through June 30, 2018, BRWM failed to establish and maintain a supervisory system reasonably designed to supervise representatives' recommendations to customers to purchase particular share classes of 529 savings plans in violation of MSRB Rule G-27. Specifically, BRWM's supervisory system was not reasonably designed in that the firm did not: (1) provide adequate guidance to registered representatives regarding the importance of considering share-class differences when recommending 529 plans; (2) provide supervisors with adequate guidance or information to properly evaluate the suitability of 529 share-class recommendations; (3) establish controls designed to ensure consistent supervisory review at account opening; and (4)

[1] Prior to 2017, the firm conducted business as Wunderlich Securities, Inc.

supervise 529 share-class recommendations executed through transactions made directly with plan fund companies.

BRWM voluntarily self-reported potential issues with its supervisory system to FINRA as part of FINRA's 529 Plan Share Class Initiative announced in Regulatory Notice 19-04 and proposed a plan to remediate affected customers. Accordingly, this AWC includes an order for restitution and interest in the total amount of $252,740 and a censure, but no fine.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's 529 Plan Share Class Initiative.

Background—529 Plans

529 plans are tax-advantaged municipal securities that are designed to encourage saving for the future educational expenses of a designated beneficiary.[2] 529 plans are sponsored by states, state agencies, or educational institutions. States offer 529 plans either directly, through designated broker-dealers, or both.

Shares of 529 plans are sold in different classes with different fee structures.[3] Class A shares typically impose a front-end sales charge but charge lower annual fees compared to other classes.[4] Class C shares typically impose no front-end sales charge but impose higher annual fees than Class A shares. Because of their higher annual fees, Class C shares may be more expensive over extended holding periods and, consequently, Class A shares are frequently the suitable option for accounts with younger beneficiaries and longer investment horizons.[5]

The cost of a Class A share versus a Class C share can be meaningful for an investor. For example, applying the fee structure of one 529 plan commonly sold by BRWM during the relevant period, a customer who initially invested $10,000 in Class C shares and held those shares for eighteen years would pay approximately $1,300 more in fees and expenses than if the customer had invested the same amount in Class A shares. Moreover,

[2] 529 plans are named after Section 529 of the Internal Revenue Code (26 U.S.C. § 529), which grants tax-exempt status to qualified tuition programs.
[3] A 529 plan is structured as a trust. A customer purchases "units" in the trust. For purposes of this AWC, the terms "unit class" and "share class" are used interchangeably.
[4] Additionally, some 529 plans reduce front-end sales charges if the aggregate amount invested meets certain thresholds-known as breakpoint discounts. Some 529 plans may also have rights of accumulation, which entitle investors to breakpoint discounts based on aggregated holdings across households or other related investments.
[5] Class C shares may be suitable for accounts with younger beneficiaries based on the customers' particular facts and circumstances. Additionally, as of January 1, 2018, amendments to the United States tax code permit 529 plan customers to withdraw tax-free up to $10,000 per beneficiary, per year, for tuition in connection with enrollment or attendance at a public, private, or religious elementary or secondary school. The majority of the misconduct addressed in this AWC occurred prior to January 2018.

the customer's 529 plan account for this period would be worth approximately $1,500 less than an account that instead was invested in Class A shares.[6]

MSRB Rules Relating to 529 Plan Share-Class Recommendations

Because 529 plans are municipal securities, the sales of 529 plans are governed by the rules of the Municipal Securities Rulemaking Board (MSRB). MSRB Rule G-19 requires a broker, dealer or municipal securities dealer to have a reasonable basis to believe that a recommended transaction involving a municipal security is suitable for the customer, based on the information it obtained through reasonable diligence to ascertain the customer's investment profile. A customer's investment profile includes, among other factors, the customer's investment objectives.

The MSRB has stated that information regarding a 529 plan's designated beneficiary should be treated as information relevant to the customer's investment objectives for purposes of MSRB Rule G-19. Specifically, the MSRB has stated that information such as the age of the beneficiary and the number of years until the funds will be needed to pay the beneficiary's education expenses generally would be relevant in weighing the investment objectives of the customer.[7]

MSRB Rule G-27(a) requires each broker, dealer, and municipal securities dealer to supervise the conduct of its municipal securities activities to ensure compliance with MSRB rules and federal securities laws. MSRB Rule G-27(b) and (c) require each firm to establish and maintain a system, and to establish, maintain and enforce written supervisory procedures, to supervise its municipal securities activities in a manner that is reasonably designed to achieve compliance with MSRB rules and the federal securities laws.

BRWM's 529 Plan Business

During the relevant period, BRWM was a designated broker-dealer for 25 state-sponsored 529 plans. During this period, approximately $32.9 million in BRWM customer assets were held in 529 plan accounts. Registered representatives established all 529 plan accounts directly with 529 plan fund companies—i.e., it was a "direct application" business executed outside the firm's electronic order entry and account systems.

BRWM's Supervisory Systems Were Not Reasonable

BRWM's system for supervising representatives' 529 plan share-class recommendations during the relevant period was not reasonably designed for the 529 plan business it conducted.

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[6] This example assumes a 5% annual rate of return for both Class A and Class C shares, no enrollment fees or annual maintenance fees and no share-class auto-conversion feature.

[7] *Interpretation on Customer Obligations Related to Marketing of 529 College Savings Plans* (Aug. 7, 2006).

First, the firm did not provide adequate guidance to representatives regarding the importance of considering share-class differences when recommending 529 plans.

Second, although the firm's written supervisory procedures required a review of 529 plan applications at account opening, the procedures did not require supervisors to evaluate the suitability of share-class recommendations or provide adequate guidance to supervisors regarding the facts and factors relevant to such a suitability review.

Third, despite requiring supervisory review of 529 plan accounts at account opening, BRWM did not have any systems or controls designed to track accounts as they were opened to check that the required supervisory reviews were, in fact, conducted.

Fourth, the firm did not consistently maintain 529 plan account information or capture trade data for its 529 plan accounts, both of which were necessary for a reasonable supervisory review of trading activity, including with respect to the suitability of 529 plan share-class recommendations.

As a result of the deficiencies described above, the firm was unable to conduct a reasonable supervisory review of the activity in at least 3,119 accounts during the relevant period, including approximately 620 accounts with beneficiaries under 12 years old that held at least $4.6 million in Class C shares.

Therefore, BRWM violated MSRB Rule G-27(a), (b), and (c).

CREDIT FOR EXTRAORDINARY COOPERATION

In resolving this matter, FINRA has recognized BRWM's extraordinary cooperation through its participation in the 529 Plan Share Class Initiative. The firm provided substantial assistance to FINRA by voluntarily: (i) conducting a qualitative review of its supervision of 529 plan share-class recommendations; (ii) self-reporting, pursuant to the Initiative, areas where its supervision may not have been reasonable; (iii) providing additional information relevant to the firm's assessment of its supervisory system to assist FINRA in understanding the conduct at issue; (iv) providing information about the corrective actions taken with respect to the supervisory violations set forth in this AWC, including the development of supervisory controls relating to its 529 plan business conducted directly with plan fund companies; (v) engaging in a dialogue with FINRA about the appropriate way to identify the pool of affected customers and to calculate the amount of money to pay back customers; and (vi) establishing a plan to efficiently identify customers for restitution and meaningfully reduce the time it would have otherwise taken for customers to receive restitution.

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

- a censure, and

- restitution and interest in the total amount of $252,740.[8]

Respondent will identify customers who may incur or may continue to incur excess fees and expenses following acceptance of this AWC as the result of having purchased 529 plan Class C shares instead of Class A shares, where those Class C shares do not automatically convert to A shares under the applicable plan documents ("eligible 529 plan account holders"). Respondent will identify eligible 529 plan account holders, describe for them the difference in fees associated with Class C shares and Class A shares, along with the impact of those fees over time, and review with eligible 529 plan account holders their share class selection. Respondent will assist any eligible 529 plan account holder who requests that his/her Class C shares be converted to Class A shares, including effecting such conversion at no cost to the account holder where practical.

Not later than 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 certify completion of the steps identified in the preceding paragraph, including that conversion of share classes for any eligible 529 plan account holder who requested conversion occurred at no cost to the account holder where practical.

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.

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

[8] Prior to the effective date of this AWC, the firm paid full restitution, plus statutorily calculated interest, to the affected customers and provided proof of payment and documentation of the methodology used to determine restitution to FINRA.

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.

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.

December 15, 2020
Date

B. Riley Wealth Management, Inc.
Respondent

Print Name: Michael Markunas

Title: CCO

Accepted by FINRA:

December 30, 2020
Date

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

Jackie Wells
Senior Counsel
FINRA
Department of Enforcement
Brookfield Place
200 Liberty Street
New York, NY 10281