

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019061789202**

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

RE: Robert Gerstein (Respondent)
Former General Securities Representative
CRD No. 840752

Pursuant to FINRA Rule 9216, Respondent Robert Gerstein 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 accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

Gerstein entered the securities industry in 1977 when he became associated with Merrill Lynch, Pierce, Fenner & Smith Incorporated, and became registered as a General Securities Representative in September 1978. Gerstein voluntarily terminated from Merrill Lynch on February 28, 2022.¹

Gerstein is not currently associated with any FINRA member firm but remains subject to FINRA's jurisdiction pursuant to Article V, Section IV of FINRA's By-Laws.

OVERVIEW

From January 2014 to November 2017, Gerstein recommended short-term trading of securities generally intended to be held long-term, and mismarked solicited sale transactions as unsolicited. Accordingly, Gerstein violated FINRA Rules 2111(a), 4511, and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a prior FINRA investigation.

¹ For more information about the respondent, visit BrokerCheck® at www.finra.org/brokercheck.

A. Gerstein engaged in short-term trading in securities intended to be held long-term.

FINRA Rule 2111(a) requires that “an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer[.]” In 2003, NASD Notice to Members 03-68 reminded members that the manner in which a recommended security is purchased can render an associated person’s recommendation unsuitable if there is a lower cost alternative for purchasing the security.

FINRA Rule 2010 provides that associated persons in the conduct of their business “shall observe high standards of commercial honor and just and equitable principles of trade.” A violation of FINRA Rule 2111(a) also constitutes a violation of FINRA Rule 2010.

Class A mutual fund shares typically include substantial upfront sales charges, known as “front-end loads.” They are generally suitable only as long-term investments and not for short-term trading because an investor usually must hold the A share for a long period of time to recoup the front-end load. Nevertheless, between January 2014 and November 2017, Gerstein recommended and effected 234 unsuitable short-term trades in Class A mutual fund shares in four accounts held by three customers, with an average holding period of 198 days.

Gerstein also recommended that the customers engage in short-term trading of other products that Merrill considered should be held long-term, including Unit Investment Trusts (UITs)² and Market Linked Investments (MLIs).³ Gerstein recommended 14 UIT purchases in three customer accounts, and sold them prior to maturity, including three sold within one year, two in less than six months, and two in less than three months. He also recommended six MLI purchases in three customer accounts, and sold them prior to maturity, including two sold in less than six months and two in less than three months.

Gerstein did not have a reasonable basis to believe that the recommended transactions, for which he received total compensation of \$129,496, were suitable for the four customer accounts.

Therefore, Gerstein violated FINRA Rules 2111 and 2010.

B. Gerstein caused Merrill Lynch to maintain inaccurate books and records.

FINRA Rule 4511(a) 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.” Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-3 thereunder requires

² These are investment companies that offer investors shares, or “units,” in a fixed portfolio of securities in one-time public offerings terminating on a specific maturity date, often after 15 or 24 months. UITs typically have both initial and deferred sales charges and are generally intended to be long-term investments. Merrill required that its representatives consider whether a client had a “long-term buy and hold strategy (more than five years)” before recommending UITs.

³ These are fixed maturity financial products whose interest is determined by the performance of a reference asset or market measure such as an equity or commodity index over the term of the product. MLIs have limited liquidity and significant upfront fees. Merrill considered MLIs to be products generally intended to be held to maturity.

firms to make and keep books and records including “a memorandum of each brokerage order.” A registered representative violates FINRA Rules 4511 and 2010 by causing a member firm to maintain inaccurate books and records.

Gerstein marked as “unsolicited” order tickets for 150 sale transactions in the four customer accounts when, in fact, he had solicited each transaction.

Therefore, Gerstein violated FINRA Rules 4511 and 2010.

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

- a six-month suspension from associating with any FINRA member in all capacities;
- a \$5,000 fine; and
- restitution of \$129,496 plus interest as described below.

The fine shall be due and payable either immediately upon reassociation with a member firm 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.

Restitution is ordered to be paid to the customers listed on Attachment A to this AWC (Eligible Customers) in the total amount of \$129,496, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), from January 1, 2014, until the date the restitution plus interest are due and payable.

Restitution plus interest ordered pursuant to this disciplinary action are due and payable immediately upon reassociation with a member firm or upon submission of any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

Respondent shall submit satisfactory proof of payment of restitution and interest (separately specifying the date and amount of each paid to each Eligible Customer) or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted by email to EnforcementNotice@FINRA.org. 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 the restitution plus interest are due and payable.

The restitution amount plus interest to be paid to each Eligible Customer shall be treated by the Respondent as the Eligible Customer’s property for purposes of state escheatment, unclaimed property, abandoned property, and similar laws. If after reasonable and documented efforts undertaken to effect restitution Respondent is unable to pay all Eligible Customers within 120 days after the restitution and interest are due and payable,

Respondent shall submit to FINRA in the manner described above a list of the unpaid Eligible Customers and a description of Respondent's plan, not unacceptable to FINRA, to comply with the applicable escheatment, unclaimed property, abandoned property, or similar laws for each such Eligible Customer.

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.

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.

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.

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 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 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 he 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.

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.

June 29, 2023
Date



Robert Gerstein
Respondent


Reviewed by:


Jeff Kern
Counsel for Respondent
Sheppard Mullin
30 Rockefeller Plaza
New York, NY 10112-0015

Accepted by FINRA:

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

July 20, 2023
Date



Bruce M. Sabados
Senior Counsel
FINRA
Department of Enforcement
200 Liberty Street
New York, NY 10281-1003

Schedule of Customer Restitution

CUSTOMER	RESTITUTION AMOUNT
A (includes two accounts)	\$48,876
B	\$54,682
C	\$25,938