

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2020069039301**

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

RE: William Donovan Ard (Respondent)
Former General Securities Representative
CRD No. 1133673

Pursuant to FINRA Rule 9216, Respondent William Donovan Ard 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

Ard entered the securities industry in 1983, when he became registered with FINRA as a General Securities Representative (GSR) through a FINRA member firm. Ard was registered through several other member firms before he became registered as a GSR through Morgan Stanley in 2009. On October 26, 2021, Morgan Stanley filed a Uniform Termination Notice for Securities Industry Registration (Form U5) disclosing that Ard's registration was terminated voluntarily. Although Ard is not currently registered or associated with any FINRA member firm, he remains subject to FINRA's jurisdiction pursuant to Article V, Section 4(a) of FINRA's By-Laws.¹

OVERVIEW

In May 2018, Ard forwarded a promissory, unwarranted, and misleading communication to his customer (Customer A) about investing in a publicly traded biopharmaceutical company in violation of FINRA Rules 2210(d) and 2010.

In July 2020, Ard made a false statement to Morgan Stanley compliance personnel about Customer A's use of borrowed funds in violation of FINRA Rule 2010.

Between April 2018 and May 2020, Ard mismarked as unsolicited at least 49 orders in the brokerage accounts of three customers, causing Morgan Stanley's records to be

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

inaccurate. In addition, between at least June 2019 and November 2020, Ard used an unapproved platform for business-related communications, which the firm was unable to preserve. Both by mismarking orders as unsolicited and by communicating about firm business in text messages the firm was unable to preserve, Ard violated FINRA Rules 4511 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA’s review of a customer-initiated arbitration.

1. Ard forwarded a promissory, unwarranted, and misleading communication to a customer.

FINRA Rule 2210 addresses communications with the public by FINRA members and their associated persons and includes, among other things, content standards that apply to such communications. FINRA Rule 2210(d)(1)(B) prohibits making any false, exaggerated, unwarranted, promissory, or misleading statement or claim in any communication. A violation of FINRA Rule 2210 also constitutes a violation of FINRA Rule 2010, which requires member firms and associated persons to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

On May 31, 2018, Ard forwarded an email to Customer A about investing in a publicly traded biopharmaceutical company. The email described predictions for the company’s stock performance—including “bear,” “base,” and “bull” cases, which varied depending on the results of a drug trial involving a drug the company had developed.

The email contained promissory, unwarranted, and misleading statements. For example, the email stated that the company’s stock price would hold its current levels and rise in the future even under one of the worst-case scenarios, and that, if the company’s drug trial was successful, “Big Pharma” would want to purchase the company at an “outrageous[ly]” high price. In addition, the email misleadingly suggested that the International Trade Commission (ITC) “should begin an investigation” of the company’s competitors, even though, at the time, the company was appealing the ITC’s decision not to initiate such an investigation.

By forwarding an email to a customer that contained promissory, unwarranted, and misleading statements, Ard violated FINRA Rules 2210(d)(1)(B) and 2010.

2. Ard made a false statement to firm compliance personnel about a customer’s use of borrowed funds.

A registered representative who makes a false statement or fails to disclose material information to a member firm violates FINRA Rule 2010.

Liquidity Access Line (LAL) accounts enabled Morgan Stanley customers to borrow funds from the firm’s affiliate bank based on the value of eligible securities held as

collateral. Morgan Stanley's policies prohibited customers from using LAL account funds to purchase "margin stock," including publicly traded stocks and options.² This prohibition was designed to comply with Regulation U, 12 C.F.R. § 221, which places limits on lenders (other than broker-dealers) that extend loans secured by margin stock.

In June 2018, Customer A opened an LAL account at Morgan Stanley. Contrary to firm policy, Customer A used LAL funds to purchase publicly traded stocks and options. Customer A made these purchases in accounts held outside of Morgan Stanley.

In July 2020, a Morgan Stanley compliance officer sent an email to Ard asking, among other things, why Customer A had withdrawn funds from his LAL account. In response, Ard denied knowing the purpose of Customer A's withdrawals. This response was intentionally false because Ard knew at the time that Customer A had used LAL funds to purchase publicly traded stock.

By making a false statement to Morgan Stanley compliance personnel about Customer A's use of LAL funds, Ard violated FINRA Rule 2010.

3. Ard mismarked orders and used an unapproved platform for business-related communications.

FINRA Rule 4511(a) requires member firms to "make and preserve books and records as required under the FINRA rules, the [Securities Exchange Act of 1934] and the applicable Exchange Act rules." Exchange Act § 17(a) and Rule 17a-3(a)(6) thereunder require broker-dealers to make and preserve "[a] memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of a security." Inherent in the obligation to make and preserve books and records is the requirement that they be accurate.

In addition, under Exchange Act § 17(a) and Rule 17a-4(b)(4) thereunder, broker-dealers are required to preserve for a period of at least three years the originals of all communications received, and copies of all communications sent, relating to their business, including text messages. A violation of FINRA Rule 4511 is also a violation of FINRA Rule 2010.

A registered representative violates FINRA Rule 4511 by causing a firm to create an inaccurate record. A registered representative also violates FINRA Rule 4511 by causing a firm to fail to preserve required records.

Between April 2018 and May 2020, Ard mismarked at least 49 orders in the brokerage accounts of three customers as unsolicited that were in fact solicited, causing the firm's records to be inaccurate. The vast majority of these transactions were purchases of call options in Customer A's brokerage account.

² "Margin stock" includes any equity security registered on a national securities exchange, such as the New York Stock Exchange or the American Stock Exchange; any over-the-counter security trading in the Nasdaq Stock Market's National Market; any debt security convertible into a margin stock; and most mutual funds. Publicly traded options qualify as margin stock.

Morgan Stanley's policies prohibited firm personnel from using personal devices to conduct firm business unless they were using firm-approved applications. Between at least June 2019 and November 2020, however, Ard communicated about firm business on his personal phone outside of a firm-approved application. The firm did not obtain or preserve copies of these communications when they were sent. These communications included text messages with customers about securities transactions.

In addition, Ard submitted at least two annual compliance questionnaires that falsely indicated that he did not use unapproved mobile applications to communicate with customers about trade-related matters. By communicating about firm business outside of a firm-approved application, Ard prevented FINRA staff from obtaining relevant evidence, hindering FINRA's investigation.

By mismarking orders as unsolicited and communicating about firm business in text messages that the firm was unable to preserve, Ard violated FINRA Rules 4511 and 2010.

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

- a four-month suspension from associating with any FINRA member in all capacities and
- a \$15,000 fine.

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.

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 sanction imposed in this matter.

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.

September 21, 2023

Date



William Donovan Ard
Respondent

Reviewed by:

Adam Kauff
Adam Kauff
Counsel for Respondent
Kauff Laton Miller LLP
950 Third Avenue, 15th Floor
New York, NY 10022

Accepted by FINRA:

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

September 22, 2023
Date

Adam Stern
Adam N. Stern
Principal Counsel
FINRA
Department of Enforcement
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