

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019064715701**

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

RE: Richard A. Hogan (Respondent)
Former General Securities Principal and General Securities Representative
CRD No. 1754577

Pursuant to FINRA Rule 9216, Respondent Richard A. Hogan, 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

Hogan entered the securities industry in February 1988 when he became registered as a General Securities Representative (GSR) through an association with a FINRA member. He became registered as a General Securities Principal (GP) through an association with that firm in July 1993. Hogan was then registered as a GSR and a GP through associations with two different FINRA members from August 1998 to December 2001. In February 2002, Hogan became registered as a GSR and a GP through an association with Merrill Lynch, Pierce, Fenner & Smith Inc. (Merrill Lynch), a FINRA member. On July 2, 2020, Merrill Lynch filed a Form U5 reporting the firm had discharged Hogan for, among other things, introducing “clients to third parties for the purpose of such clients making investments not offered or sponsored by the Firm” and “co-investing with such clients without disclosure to or approval by the Firm.” Merrill Lynch amended Hogan’s Form U5 on September 21, 2020 to report a customer complaint against Hogan alleging “[s]elling away.”

Hogan is not currently registered or associated with a FINRA member but remains subject to FINRA’s jurisdiction pursuant to Article V, Section 4(a) of FINRA’s By-Laws.¹

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

OVERVIEW

From October 2017 to August 2018, while associated with Merrill Lynch, Hogan participated in five private securities transactions in Asia-based funds, worth a total of approximately \$630,000, involving three different firm customers. Hogan failed to provide prior written notice to Merrill Lynch of his participation in these transactions. As a result, Hogan violated FINRA Rules 3280 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from the Form U5 filed by Merrill Lynch in July 2020 reporting that the firm had discharged Hogan.

FINRA Rule 3280 prohibits an associated person from “participat[ing] in any manner in a private securities transaction” without providing prior “written notice to the member with which he is associated describing in detail the proposed transaction and the person's proposed role therein and stating whether he has received or may receive selling compensation in connection with the transaction.”

A violation of FINRA Rule 3280 is also a violation of FINRA Rule 2010, which requires associated persons, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.

Merrill Lynch’s written supervisory procedures (WSPs) prohibited employees from soliciting customers or others to invest in private investment opportunities not offered by Merrill Lynch. The firm’s WSPs permitted employees to purchase investments away from the firm only if none of the employee’s customers were investing in the same entity. Prior to purchasing investments away from the firm, employees were required to disclose and obtain firm approval for the investments through the firm’s Associate Investment Monitoring (AIM) system, which required employees to attest that they did not co-invest with customers or solicit others in connection with the investment.

From October 2017 to August 2018, Hogan participated in five private securities transactions in Asia-based funds by three Merrill Lynch customers, who invested a total of \$630,000 in the funds. Hogan participated in the transactions by soliciting the investments from the customers and directing his assistants to process the investment documentation. Specifically, in October 2017, Hogan solicited Customer A to invest approximately \$220,000 in a Hong Kong equity fund and solicited Customer B to invest approximately \$110,000 in the same fund. Between June and August 2018, Hogan solicited Customer C to invest a total of \$300,000, in three separate transactions, in a Vietnam equity fund. Merrill Lynch did not offer these funds for investment by customers, and the customers’ investments were not custodied with the firm.

In December 2018, Hogan disclosed, on the firm’s AIM system, that he had personally invested in the Hong Kong equity fund but attested that he had not co-invested with customers or solicited others in connection with the investment. Contrary to this representation, Customers A and B had invested in the same fund, based upon Hogan’s

recommendation, prior to Hogan's AIM disclosure. Hogan did not provide written notice to Merrill Lynch prior to participating in private securities transactions by Customers A and B in the Hong Kong equity fund or by Customer C in the Vietnam equity fund.

Therefore, Hogan violated FINRA Rules 3280 and 2010.

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

- A 12-month suspension from associating with any FINRA member in all capacities; and
- a \$10,000 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 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 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.

July 25, 2022

Date

Richard Hogan

Richard A. Hogan
Respondent

Reviewed by:

Seth Levine

Seth L. Levine
Counsel for Respondent
Levine Lee LLP
1500 Broadway, Suite 2501
New York, NY 10036

Accepted by FINRA:

July 26, 2022

Date

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

Jasmine L. Abraham

Jasmine L. Abraham
Counsel
FINRA
Department of Enforcement
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