

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2017055977301**

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

RE: H.C. Wainwright & Co., LLC (Respondent)  
Member Firm  
CRD No. 375

John Wesley Chambers (Respondent)  
General Securities Representative, General Securities Principal, Investment Banking  
Representative, and Investment Banking Principal  
CRD No. 1863864

Robert Eugene Kristal (Respondent)  
Former General Securities Representative, General Securities Principal, Research  
Principal, Investment Banking Representative, and Investment Banking Principal  
CRD No. 4269940

Pursuant to FINRA Rule 9216, Respondents H.C. Wainwright & Co., LLC, John Wesley Chambers, and Robert Eugene Kristal submit 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 Respondents alleging violations based on the same factual findings described in this AWC.

**I.**

**ACCEPTANCE AND CONSENT**

A. Respondents accept and consent to the following findings by FINRA without admitting or denying them:

**BACKGROUND**

H.C. Wainwright has been a FINRA member since 1936. The firm has one branch office based in New York, New York, and has approximately 100 registered representatives. The firm provides investment banking services with a focus on life-sciences companies. The firm also publishes equity research reports and engages in sales and trading.<sup>1</sup>

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<sup>1</sup> For more information about each of the Respondents, including prior regulatory events involving H.C. Wainwright, visit BrokerCheck® at [www.finra.org/brokercheck](http://www.finra.org/brokercheck).

Chambers entered the securities industry in 1988, when he became registered with FINRA as a General Securities Representative (GSR) through his association with a FINRA member firm. Chambers was registered through several other member firms before becoming registered through H.C. Wainwright as a GSR, General Securities Principal (GSP), and Investment Banking Representative (IBR) in January 2017. In 2018, he became registered through H.C. Wainwright as an Investment Banking Principal (IBP). Since January 2017, Chambers has served as H.C. Wainwright's head of investment banking and president.

Kristal entered the securities industry in 2000, when he became registered with FINRA as a GSR through his association with a FINRA member firm. Kristal was registered through several other member firms before becoming registered through H.C. Wainwright as a GSR, IBR, GSP, and Research Principal in 2016. In 2018, he became registered through H.C. Wainwright as an IBP. Between 2016 and September 2020, Kristal served as H.C. Wainwright's director of research. On October 15, 2020, H.C. Wainwright filed a Uniform Termination Notice for Securities Industry Registration (Form U5) disclosing that Kristal's registrations were terminated. Although Kristal 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.

## **OVERVIEW**

Between September 2017 and September 2020, H.C. Wainwright failed to preserve and reasonably supervise its employees' business-related text messages.

During that period, at least 24 firm employees communicated about firm business in text messages outside of the firm's approved communications platforms on their personal cellphones. The firm did not obtain, and thus did not preserve, these communications at the times they were exchanged; the firm first obtained certain of these communications in the course of, and as a consequence of, the investigations that led to this AWC. The failure to preserve these communications prevented FINRA from fully investigating matters in two FINRA investigations. As a result of the firm's failure to preserve business-related communications, the firm violated § 17(a) of the Securities Exchange Act of 1934, Exchange Act Rule 17a-4, and FINRA Rules 4511 and 2010.

Senior members of the firm's management were among the employees who communicated about firm business in text messages on their personal cellphones. Chambers (the firm's president and head of its investment banking department) and Kristal (the firm's director of research) routinely exchanged text messages about firm business with each other on their personal cellphones outside of the firm's approved communications platforms. Chambers and Kristal exchanged these text messages despite the firm's prohibition on business-related written communication between investment banking and research personnel. The firm did not obtain, and thus did not preserve, any of these text messages at the times they were exchanged. Nearly all of these text messages were deleted before FINRA requested them and thus could not be provided to FINRA staff in connection with an investigation into whether the firm's investment banking personnel improperly influenced the firm's research coverage. By

communicating about firm business in text messages that the firm did not preserve, Chambers and Kristal violated FINRA Rules 4511 and 2010.

While the firm's written supervisory procedures (WSPs) prohibited employees from using text messaging for business-related communications, and the firm's compliance department discussed this prohibition with employees several times each year, the firm's management knew that firm employees were using text messaging for business-related communications, because they themselves were texting each other and others about firm business. But the firm did not take reasonable steps to prevent those communications. The firm therefore failed to enforce its WSPs prohibiting the use of text messaging for business-related communications. In addition, the firm took no steps to preserve or review its employees' text messages so it could reasonably supervise them. Therefore, the firm violated FINRA Rules 3110(a), (b)(1), and (b)(4) and 2010.

Between March 2019 and September 2020, the firm also failed to reasonably supervise its employees' email communications. The firm's WSPs, for example, did not reasonably describe or address the type or scope of reviews to be conducted, who at the firm was responsible for conducting the reviews, and how and under what circumstances any concerning email should be escalated. As a result, the scope and substance of the firm's email review was unreasonable and, in many instances, the review did not occur for more than a year after an email was sent or received. Therefore, the firm violated FINRA Rules 3110(a), (b)(1), and (b)(4) and 2010.

Between September 2017 and January 2020, the firm failed to enforce written policies and procedures designed to achieve compliance with provisions of FINRA Rule 2241 relating to the firm's obligation to manage conflicts of interest related to the interaction between research analysts and those outside of the research department. Specifically, H.C. Wainwright prohibited business-related written communications between the firm's research and investment banking personnel and prohibited business-related phone calls between research and investment banking personnel unless chaperoned by compliance department personnel. Nevertheless, Chambers and Kristal often communicated with each other about firm business in text messages and on unchaperoned phone calls using their personal cell phones. Therefore, the firm violated FINRA Rules 2241(b)(1), 2241(b)(2)(G), and 2010.

## **FACTS AND VIOLATIVE CONDUCT**

### **1. H.C. Wainwright, through Chambers, Kristal, and others, failed to preserve business-related text messages.**

FINRA Rule 4511 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." Under Exchange Act § 17(a) and Exchange Act Rule 17a-4(b)(4), member firms 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 the member firm's business, including text messages. A violation of Exchange Act § 17(a), Exchange Act Rule 17a-4, and FINRA Rule 4511 is also 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.

Between September 2017 and September 2020, H.C. Wainwright required its employees to use only firm-approved platforms for business-related communications and prohibited the use of text messaging for business-related communications.

During that period, however, at least 24 firm employees, including some of the most senior officers of the firm, communicated about firm business through text messages using their personal cellphones. These text messages included communications between firm employees, as well as with third parties, including issuers and firm clients. The firm did not obtain or preserve copies of these communications at the times they were exchanged. The firm's failure to preserve business-related communications sent outside of the firm's approved communications platforms prevented FINRA from fully investigating matters in two FINRA investigations.

For example, Chambers and Kristal routinely exchanged business-related text messages with each other. The firm did not obtain, and thus did not preserve, any of these text messages at the times they were exchanged. Nearly all of the text messages between Chambers and Kristal were deleted before FINRA requested them and thus could not be provided to FINRA staff in connection with an investigation into whether the firm's investment banking personnel improperly influenced the firm's research coverage.

As a result of the firm's failure to preserve business-related communications, the firm violated Exchange Act § 17(a), Exchange Act Rule 17a-4, and FINRA Rules 4511 and 2010. In addition, by communicating about firm business in text messages that the firm did not preserve, Chambers and Kristal violated FINRA Rules 4511 and 2010.

## **2. H.C. Wainwright failed to reasonably supervise its employees' business-related text messages and its employees' email communications.**

FINRA Rule 3110(a) requires that a member firm "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)(1) requires that a member firm "establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules."

FINRA Rule 3110(b)(4) provides that the firm's supervisory procedures "shall include procedures for the review of incoming and outgoing written (including electronic) correspondence and internal communications relating to the member's investment banking or securities business."

A violation of FINRA Rule 3110 is also a violation of FINRA Rule 2010.

- a. H.C. Wainwright failed to reasonably supervise its employees' business-related text messages.*

Between September 2017 and September 2020, the firm maintained a supervisory system and WSPs relating to the supervision of electronic communications sent or received through firm-approved platforms, such as firm-issued email accounts. The firm's WSPs prohibited its employees from using text messaging for business-related communications, and the firm's compliance department discussed this prohibition with employees several times each year. In addition, the firm required its personnel to periodically attest that they did not use unapproved platforms for business-related communications. Accordingly, the firm's WSPs did not require a review of text messages.

Notwithstanding the prohibition against using text messaging for business-related communications, at least 24 firm employees, including some of the most senior officers of the firm, used text messaging for business-related communications. Although the firm's management knew that firm employees were using text messaging for business-related communications, the firm did not take reasonable steps to enforce its WSPs prohibiting the use of text messaging for such communications. At the same time, the firm took no steps to preserve or review its employees' text messages and therefore failed to reasonably supervise such communications. H.C. Wainwright therefore violated FINRA Rules 3110(a), (b)(1), and (b)(4) and 2010.

- b. H.C. Wainwright failed to reasonably supervise its employees' email communications.*

Between March 2019 and September 2020, the firm failed to carry out its supervisory obligations with respect to its review of email communications.

The firm's WSPs, for example, failed to designate who would conduct and supervise the reviews, when the reviews were to be conducted, what the reviewers would be reviewing for, and how and under what circumstances any potentially concerning email should be escalated by the reviewer to a supervisor. As a result, the firm reviewed a small percentage of the emails sent or received during the review period; did not, in many instances, conduct the review until more than a year after an email was sent or received; and elevated a de minimis number of emails for supervisory review.

As a result of the foregoing, H.C. Wainwright violated FINRA Rules 3110(a), (b)(1), and (b)(4) and 2010.

**3. H.C. Wainwright failed to reasonably supervise interactions between research and non-research personnel.**

FINRA Rule 2241(b)(1) requires that member firms establish, maintain, and enforce written policies and procedures reasonably designed to identify and effectively manage conflicts of interest related to, among other things, the interaction between research analysts and those outside of the research department, including investment banking personnel.

FINRA Rule 2241(b)(2) requires that a member firm's written policies and procedures be reasonably designed to, among other things, "prevent the use of research reports or research analysts to manipulate or condition the market or favor the interests of the member or a current or prospective customer or class of customers." Under FINRA Rule 2241(b)(2)(G), such policies and procedures must "establish information barriers or other institutional safeguards reasonably designed to ensure that research analysts are insulated from the review, pressure or oversight by persons engaged in investment banking services activities or other persons ... who might be biased in their judgment or supervision[.]"

A violation of FINRA Rule 2241 is also a violation of FINRA Rule 2010.

Between September 2017 and January 2020, the firm's written policies prohibited business-related written communications between research and investment banking personnel and prohibited business-related phone calls between research and investment banking personnel that were not chaperoned by compliance staff. These information barrier policies were designed to achieve compliance with FINRA Rules 2241(b)(1) and 2241(b)(2)(G).

The firm's information barrier policies applied to communications between Chambers and Kristal, who were the head of investment banking and the director of research, respectively. Nevertheless, between September 2017 and January 2020, Chambers and Kristal breached the firm's information barrier, often exchanging business-related text messages with each other using their personal cellphones. In addition, during the same period, Chambers and Kristal made numerous, unchaperoned, business-related phone calls to each other using their personal cell phones.

Some of these text messages and calls occurred during a period in which the firm's research department was preparing research coverage of particular issuers while investment banking personnel were simultaneously seeking investment banking business from the same issuers. These unsupervised communications created a risk that the firm's interest in attracting and maintaining investment banking business could inappropriately influence its research analysts.

By failing to enforce its written policies prohibiting business-related written communications, and unchaperoned business-related telephone communications, between research and investment banking personnel, the firm violated FINRA Rules 2241(b)(1), 2241(b)(2)(G), and 2010.

B. Respondents also consent to the imposition of the following sanctions:

- H.C. Wainwright consents to:
  - a censure;
  - a \$1,500,000 fine; and

- within 60 days of FINRA's issuance of its notice of acceptance of this AWC, an officer of H.C. Wainwright shall submit to Adam N. Stern, at the address set forth below, a signed, written certification that the firm has revised its supervisory systems, policies, procedures, and trainings relating to the firm's compliance with Exchange Act § 17(a), Exchange Act Rule 17a-4, and FINRA Rules 4511, 3110(a) and (b), and 2241(b)(1) and (b)(2)(G), so as to avoid future violations of these provisions.
- Chambers consents to:
  - a 30 calendar-day suspension from associating with any FINRA member firm in all capacities; and
  - a \$15,000 fine.
- Kristal consents to:
  - a 30 calendar-day suspension from associating with any FINRA member firm in all capacities; and
  - a \$15,000 fine.

Each Respondent agrees to pay the monetary sanction imposed on such Respondent upon notice that this AWC has been accepted and that such payment is due and payable. Each Respondent has submitted an Election of Payment form showing the method by which such Respondent proposes to pay the fine imposed.

Each 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 on such Respondent in this matter.

Respondents Chambers and Kristal each understand 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 Exchange Act § 3(a)(39). 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**

Respondents specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a complaint issued specifying the allegations against them;

- 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, Respondents specifically and voluntarily waive 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.

Respondents further specifically and voluntarily waive 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**

Respondents understand 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 Respondents; and
- C. If accepted:
  - 1. this AWC will become part of Respondents' permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondents;
  - 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



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4. Respondents 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. Respondents 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 Respondents' 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 Respondents' testimonial obligations in any litigation or other legal proceedings.
- D. Respondents may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they 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 H.C. Wainwright, certifies that a person duly authorized to act on H.C. Wainwright'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 H.C. Wainwright 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 H.C. Wainwright to submit this AWC.

Respondents Chambers and Kristal each certify 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; he 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 16, 2022

Date

Kenneth J. Kirsch

H.C. Wainwright & Co., LLC  
Respondent

Print Name: Kenneth J. Kirsch

Title: Chief Financial Officer

September 16, 2022

Date

John Wesley Chambers

John Wesley Chambers  
Respondent

September 16, 2022

Date

Robert Eugene Kristal

Robert Eugene Kristal  
Respondent

Reviewed by:

Aari Itzkowitz

Jay S. Auslander

Aari Itzkowitz

Counsel for Respondents

Wilk Auslander LLP

825 Eighth Avenue

Suite 2900

New York, NY 10019

Accepted by FINRA:

September 23, 2022

Date

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

*Adam Stern*

Adam N. Stern

Counsel

FINRA

Department of Enforcement

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