

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2021071945201**

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

RE: David S. Lerner (Respondent)
General Securities Representative and Investment Banking Representative
CRD No. 1883553

Pursuant to FINRA Rule 9216, Respondent David S. Lerner 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

Lerner first registered with FINRA in 1989. Lerner was registered with FINRA as a General Securities Representative and an Investment Banking Representative through an association with Network 1 Financial Securities Inc. (CRD No. 13577) from August 2014 through December 2022.

Since December 2022, Lerner has been registered with FINRA as a General Securities Representative and an Investment Banking Representative through an association with another FINRA member.¹

OVERVIEW

Between June and September 2021, Lerner used a personal email account, which was not permitted under Network 1's Electronic Systems Telecommunication Policy, to send and receive securities-related business communications without providing copies to the firm. As a result, Network 1 did not preserve the communications as required by Section 17(a) of the Securities Exchange Act of 1934 and Exchange Act Rule 17a-4(b)(4) thereunder.

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

By causing Network 1 to maintain incomplete books and records, Lerner violated FINRA Rules 4511 and 2010.

FACTS AND VIOLATIVE CONDUCT

FINRA Rule 4511 requires each member to make and preserve books and records in conformity with, among others, Section 17(a) of the Exchange Act and Exchange Act Rule 17a-4(b)(4), which requires member firms to maintain for a period of not less than three years the originals of all communications received, and copies of all communications sent, by the member relating to the member's business, including emails and other electronic messages. A registered representative who causes his or her member firm to fail to comply with these recordkeeping obligations violates FINRA Rule 4511.

A violation of FINRA Rule 4511 is also a violation of FINRA Rule 2010, which requires associated persons to "observe high standards of commercial honor and just and equitable principles of trade" in the conduct of their business.

Network 1 prohibited its registered representatives from transmitting electronic business communications through channels not approved by the firm. At all relevant times, Network 1 had not approved the use of personal email addresses to conduct securities business, unless the outside communication was also contemporaneously sent to or from the representative's firm email account.

While he was registered through Network 1, Lerner used his personal email account to send and receive communications regarding his securities business. For example, between June and September 2021, Lerner used his personal email account to send and receive at least 125 communications about securities-related business. Certain of these communications included discussions with customers about potentially high-risk investments, including private investments in public equity (PIPE) deals. Lerner did not send these communications contemporaneously to his firm email account. Lerner's misconduct therefore caused Network 1 not to capture or maintain these communications, which the firm was required to do under the Exchange Act and FINRA Rules. Therefore, Lerner violated FINRA Rules 4511 and 2010.

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

- a one-month suspension from associating with any FINRA member in all capacities and
- a \$5,000 fine.

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

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

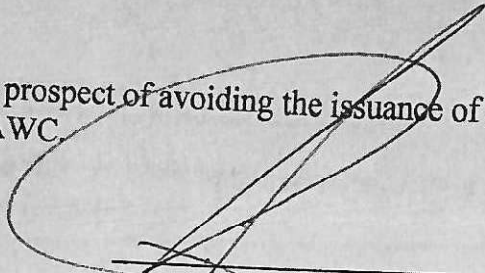
Respondent understands that:

- 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

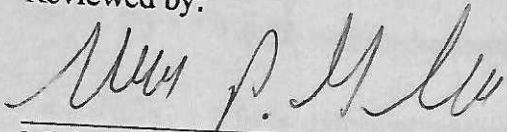
terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce him to submit this AWC.

7/15/2024
Date



David S. Lerner
Respondent

Reviewed by:



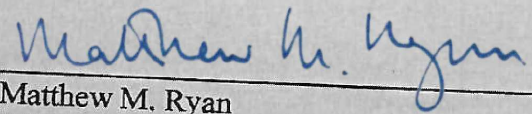
Michael P. Gilmore
Counsel for Respondent
Moss & Gilmore LLP
129 Third St.
Mineola, NY 11501

7/15/2024

Accepted by FINRA:

July 25, 2024
Date

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



Matthew M. Ryan
Principal Counsel
FINRA
Department of Enforcement
1601 Market St., Suite 2700
Philadelphia, PA 19103-2339