

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019061652402**

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

RE: David Charles Levine (Respondent)
General Securities Principal and General Securities Representative
CRD No. 2569418

Pursuant to FINRA Rule 9216, Respondent David Charles Levine 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

Levine first registered with FINRA in January 1995 as a General Securities Representative (GS) with a FINRA member firm. In January 2015, Levine registered with FINRA as a GS and a General Securities Principal (GP) through his association with National Securities Corporation (CRD No. 7569). By early 2016, Levine was serving as National's Sales Manager. In December 2016, Levine became National's Chief Executive Officer. In September 2017, Levine stepped down as CEO and resumed his prior role of Sales Manager. In October 2021, while associated with National, Levine registered as a GS and GP, through an association with another FINRA member firm that is an affiliate of National. Levine currently remains registered with FINRA through National and National's affiliate, in those capacities.

In April 2011, Levine entered into an Offer of Settlement with the Securities and Exchange Commission, through which he consented to findings that, while serving as a sales manager at a prior member firm, he downloaded non-public customer information onto a portable drive and brought that information with him to a new member firm, without properly notifying customers and affording them a reasonable opportunity to opt out of the transfer, in contravention of Rules 7(a), 10(a), and 30(a) of Regulation S-P. The SEC imposed sanctions of a censure and a \$20,000 fine.¹

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

OVERVIEW

Between August 2016 and October 2017, National acted as the lead underwriter or co-manager for three initial public offerings (IPOs) in which there was no penalty bid assessed on the syndicate. During that time, Levine, in his roles as National's CEO for one of the IPOs, and Sales Manager for the other two IPOs, directed the firm's "flipper" policies, pursuant to which the firm stated that it would recoup representatives' selling concessions if their customers sold shares in the 30 days following each IPO, in an attempt to discourage such selling. By attempting to recoup sales representatives' selling concessions—in the absence of a penalty bid applied to the entire syndicate—Levine violated FINRA Rules 5131(c) and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter arose out of the 2018 cycle examination of National.

FINRA Rule 5131 addresses potential misconduct in the allocation and distribution of new issues. FINRA Rule 5131(c) states, in relevant part, that no person associated with a member "may directly or indirectly recoup, or attempt to recoup, any portion of a commission or credit paid or awarded to an associated person for selling shares of a new issue that are subsequently flipped by a customer, unless the managing underwriter has assessed a penalty bid on the entire syndicate." A violation of FINRA Rule 5131(c) 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."

A "penalty bid" is an arrangement, typically contained in the syndicate selling agreement, that permits the managing underwriter to reclaim a selling concession from a syndicate member in connection with an offering when the securities originally sold by the syndicate member are sold by the syndicate member's customers within 30 days following the offering date (a practice known as "flipping"). Flipping creates downward pressure on the secondary market trading price, and therefore underwriters and selling group members may seek to discourage such sales by imposing a penalty bid.

FINRA Regulatory Notice 10-60 summarizes the requirements of FINRA Rule 5131, including with respect to the trading of new issues. The Notice explains that pursuant to FINRA Rule 5131(c), member firms are prohibited from attempting to recoup a sales representative's selling concession absent a uniform penalty bid because flipper policies—unlike penalty bids—do not require a firm to forfeit its compensation to the managing underwriter when a customer flips shares.

Between August 2016 and October 2017, National acted as the lead underwriter or co-manager for three IPOs. Prior to each offering, National or another co-manager filed a trading notification form with FINRA, disclosing that it did not intend to apply a penalty bid to the syndicate.²

² FINRA Rule 5190 sets forth the notice requirements applicable to all members participating in securities offerings.

Levine served as National's CEO during one of the IPOs and as National's Sales Manager during the other two IPOs. In connection with the three IPOs, Levine participated in the announcement of the terms of the offerings to National's sales force. Levine also directed members of National's syndicate department to send launch emails to the firm's sales force in connection with the three IPOs, which included flipper policies. Despite the absence of a syndicate penalty bid, in connection with each of the IPOs, Levine directed National's branch managers and sales representatives that the firm would be implementing a "flipper policy," pursuant to which the firm would track sales of the new issue for 30 days following each offering and recoup selling concessions from representatives whose customers flipped shares during that time frame.

Therefore, Levine violated FINRA Rules 5131(c) 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 \$10,000 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.

3/4/2022

Date



David Charles Levine
Respondent

Reviewed by:



Fred Knopf, Esq.

Counsel for Respondent
National Securities Corporation
200 Vesey Street, 25th Floor
New York, NY 10281

Accepted by FINRA:

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

May 31, 2022

Date



Abigail Shechtman
Principal Counsel
FINRA
Department of Enforcement
200 Liberty Street
New York, NY 10281-1003