

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2020066078202**

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

RE: Emerson Equity, LLC (Respondent)
Member Firm
CRD No. 130032

Dominic Julio Baldini (Respondent)
General Securities Principal
CRD No. 3082081

Pursuant to FINRA Rule 9216, Respondents Emerson Equity, LLC and Dominic Julio Baldini 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

Emerson Equity, LLC has been a FINRA member since April 2004. The firm is headquartered in San Mateo, CA and has more than 200 registered representatives in approximately 50 branches. Emerson's primary business is private placement transactions.¹

Baldini first registered through an association with a FINRA member firm in 1999. Since January 2004, Baldini has been registered with FINRA through an association with Emerson in a variety of capacities, including General Securities Principal. Baldini founded Emerson and, in addition to owning the firm, he is the CEO, CFO, COO, CCO, AML CO, Chief Technology Officer, and FINOP. In 2001, while associated with a different member firm, Baldini was jointly and severally fined \$3,500 for engaging in

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

principal trading in contravention of his firm's membership agreement and for causing a net capital violation.²

OVERVIEW

From January 2015 through June 2020, Emerson and Baldini failed to establish, maintain, and enforce a supervisory system, including written procedures, reasonably designed to achieve compliance with FINRA's suitability rule as it pertains to short-term trading of mutual fund Class A and Class B shares, and further failed to reasonably supervise short-term mutual fund trading activity by one of the firm's registered representatives, Representative 1. Respondents' review of mutual fund transactions was limited to Baldini's manual review of a daily order/trade status report that lacked critical information such as the mutual fund share class, the mutual fund holding period, mutual fund sales charges, and investor profiles that would have allowed Respondents to detect that Representative 1 was engaged in unsuitable mutual fund trading. The firm did not use any exception reports or other tools to review mutual fund trading activity for suitability. As a result, Representative 1's unsuitable trading in his customers' accounts continued unabated for more than five years, causing them to incur more than \$1.6 million in unnecessary charges. Therefore, Emerson and Baldini violated FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's 2020 cycle exam of Emerson.

FINRA Rule 3110(a) requires a member firm to 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 FINRA rules. FINRA Rule 3110(b) requires a member firm to 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 FINRA Rules. A violation of FINRA Rule 3110 also constitutes a violation of FINRA Rule 2010, which requires members and associated persons, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.

Emerson's supervisory system, including written procedures, with respect to its review of short-term mutual fund transactions was not reasonably designed to achieve compliance with FINRA's suitability rule. FINRA Rule 2111 requires member firms and their associated persons to have a reasonable basis to believe that a recommended securities transaction or investment strategy is suitable for the customer, based on information obtained through the reasonable diligence of the firm or associated person to ascertain the customer's investment profile. The firm's written supervisory procedures provided that

² For more information about Baldini, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

Baldini was responsible for developing and enforcing Emerson's supervisory system concerning mutual fund trading. The written supervisory procedures tasked Baldini with analyzing "[a]ll mutual fund purchases and sales activity reports ... with reference to switching," and imposing disciplinary action in response to any "deviations from the required procedures." Baldini was also in charge of supervising the use of exception reports, which were supposed to be reviewed on a daily or monthly basis depending on the report, except that Emerson did not make use of any exception reports with respect to mutual fund trading.

Although mutual fund transactions made up a small part of the firm's overall business in terms of number of transactions and firm revenues, Representative 1's mutual fund trading was substantial and the firm's supervision of those and other mutual fund transactions was unreasonable. During Representative 1's association with the firm, Emerson relied solely on Baldini's manual review of a daily order/trade status report provided by Emerson's clearing firm. The order/trade status report, however, was not reasonably designed to supervise mutual fund trading because it lacked the information necessary to analyze potentially unsuitable mutual fund trading such as the mutual fund share class purchased or sold, the sales charges incurred, the source of funds for a purchase (whether the transaction involved a switch from one mutual fund family to another), the holding period for a mutual fund that was sold, and the investor's profile, such as age, investment objective, and risk tolerance. Respondents did not use standard exception reports available through Emerson's clearing firm, such as a monthly contingent deferred sales charge report, or any other tools that would have allowed Respondents to identify the pattern of mutual fund charges being incurred by Representative 1's customers. As a result, Respondents failed to detect Representative 1's misconduct for more than five years.³

From January 2015, when Representative 1's association with Emerson began, through June 2020, Representative 1 caused his customers to incur unwarranted charges by buying and selling Class A and Class B mutual funds on a short-term basis, even though such shares are generally intended to be held long-term due to their associated costs. Specifically, Representative 1 recommended and effected 667 unsuitable, short-term mutual fund transactions, including switches, in mutual fund Class A and Class B shares in 31 accounts owned by 22 customers, causing them to incur front-end loads and/or contingent deferred sales charges of \$1,641,929.94. Class A mutual fund shares are not suitable for short-term trading because they are front-end loaded, meaning there are significant upfront costs associated with the purchase of these products, and the shares are generally subject to a contingent deferred sales charge if the shares are redeemed during the first twelve months after their purchase. Class B mutual fund shares also are not suitable for short-term trading because they are back-end loaded. Customers incur significant contingent deferred sales charges for Class B shares if the shares are sold within a certain period after purchase, generally up to seven years after purchase.

Representative 1 also engaged in frequent mutual fund switching, which occurs when a customer sells mutual fund shares and reinvests the proceeds in another mutual fund

³ FINRA barred Representative 1 pursuant to FINRA Rule 9552 in July 2020.

family, thus incurring additional charges and commissions. Frequent short-term purchases and sales of A and B shares and switching in a customer's account may be unsuitable because of the frequency of the transactions, the transaction costs incurred, or the customer's financial situation, investment objectives and needs.

Therefore, Respondents violated FINRA Rules 3110 and 2010.

CREDIT FOR EXTRAORDINARY COOPERATION

In resolving this matter, FINRA took into account Emerson's extraordinary cooperation. Emerson, through Baldini, (1) voluntarily expanded the review period for Representative 1's trading to the entirety of his employment with Emerson and proactively alerted FINRA as to additional affected customers and charges, (2) retained an outside consultant to assist in analyzing trades and calculating restitution, (3) promptly paid restitution to Representative 1's customers who purchased mutual funds, and (4) provided substantial assistance to FINRA's investigation.

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

- For Emerson:
 - a censure;
 - a \$60,000 fine; and
 - restitution of \$1,641,929.94,⁴ plus interest;
- For Baldini:
 - a 20 business-day suspension from association with any FINRA member in a principal capacity; and
 - a \$5,000 fine.

Respondents agree to pay the monetary sanctions upon notice that this AWC has been accepted and that such payment is due and payable. Respondents have submitted an Election of Payment form showing the method by which they propose to pay the fine imposed.

Respondents specifically and voluntarily waive any right to claim an inability to pay, now or at any time after the execution of this AWC, the monetary sanctions imposed in this matter.

⁴ Emerson paid \$1,613,168.28 in restitution prior to the effective date of this AWC and provided proof of payment and documentation of the methodology used to calculate restitution to FINRA Staff.

Restitution is ordered to be paid to the customers listed on Attachment A to this AWC in the total amount of \$1,641,929.94, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), from the date of each instance of misconduct until the date this AWC is accepted by the National Adjudicatory Council (NAC).

A registered principal on behalf of Respondents shall submit satisfactory proof of payment of restitution and prejudgment interest (separately specifying the date and amount of each paid to each customer listed on Attachment A) or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted by email to EnforcementNotice@FINRA.org from a work-related account of the registered principal of Emerson. The email must identify Emerson and the case number and include a copy of the check, money order, or other method of payment. This proof shall be provided by email to EnforcementNotice@FINRA.org no later than 120 days after the date of the notice of acceptance of the AWC.

If for any reason Emerson cannot locate any customer identified in Attachment A after reasonable and documented efforts within 120 days after the date of the notice of acceptance of the AWC, or such additional period agreed to by FINRA in writing, Emerson shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property, or abandoned property fund for the state in which the customer is last known to have resided. Emerson shall provide satisfactory proof of such action to FINRA in the manner described above, within 14 calendar days of forwarding the undistributed restitution and interest to the appropriate state authority.

The imposition of a restitution order or any other monetary sanction in this AWC, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

Restitution payments to customers shall be preceded or accompanied by a letter, not unacceptable to FINRA, describing the reason for the payment and the fact that the payment is being made pursuant to a settlement with FINRA and as a term of this AWC.

Baldini understands that if he is barred or suspended from associating with any FINRA member in a principal capacity, 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, Respondent Baldini may not be associated with any FINRA member in a principal capacity during the period of the bar or suspension. *See* FINRA Rules 8310 and 8311. Furthermore, because Respondent Baldini is subject to a statutory disqualification during the suspension, if he remains associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

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 Respondent; 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 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. 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' testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

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 Emerson, certifies that a person duly authorized to act on Respondent Emerson'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 Respondent Emerson 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 Respondent Emerson to submit this AWC.

December 2, 2021

Date

Dominic Julio Baldini

Emerson Equity, LLC
Respondent

Print Name: Dominic Julio Baldini

Title: CEO

Respondent Baldini 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.

December 2, 2021

Date

Dominic Julio Baldini

Dominic Julio Baldini
Respondent

Reviewed by:

Brian L Rubin

Brian Rubin
Counsel for Respondent
Eversheds Sutherland (US) LLP
700 6th St NW
Washington, DC 20001

Accepted by FINRA:

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

December 22, 2021

Date

Ralph DeSena

Ralph DeSena
Director
FINRA
Department of Enforcement
Brookfield Place
200 Liberty Street
New York, New York 10281