

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2021071491001**

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

RE: Brian F. Donnelly (Respondent)  
Former General Securities Representative  
CRD No. 4288121

Pursuant to FINRA Rule 9216, Respondent Brian F. Donnelly 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**

Donnelly entered the securities industry in 2000. In December 2015, he became registered with FINRA as a General Securities Representative and an Investment Company and Variable Contracts Products Representative through an association with First Allied Securities, Inc. (CRD No. 32444). On May 21, 2021, First Allied filed a Uniform Termination Notice for Securities Industry Registration (Form U5), terminating Donnelly's registrations with FINRA and disclosing that he "utilized prohibited forms of communication to communicate with a customer regarding securities offerings in violation of the Firm's policies and procedures."

Donnelly is not currently registered or associated with a FINRA member firm. However, he remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.<sup>1</sup>

**OVERVIEW**

From February 2020 through March 2021, Donnelly participated in a private securities transaction by facilitating the sale of \$250,000 of a security to a firm customer without providing prior written notice to his firm, in violation of FINRA Rules 3280 and 2010.

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<sup>1</sup> For more information about the Respondent, visit BrokerCheck® at [www.finra.org/brokercheck](http://www.finra.org/brokercheck).

Additionally, from February 2020 through April 2021, Donnelly used his personal email address to communicate with the firm customer about securities transactions and used text messaging on his personal cell phone to communicate with another firm customer about securities-related matters. In so doing, he caused his firm to fail to retain the emails and text messages among its books and records, in violation of FINRA Rules 4511 and 2010.

### **FACTS AND VIOLATIVE CONDUCT**

This matter originated from FINRA's review of the Form U5 filed by First Allied.

#### **Participation in a Private Securities Transaction**

FINRA Rule 3280 defines a private securities transaction as "any securities transaction outside the regular course or scope of an associated person's employment with a member[.]" FINRA Rule 3280(b) requires that prior to participating in a private securities transaction, an associated person shall provide written notice to his or her firm "describing in detail the proposed transaction and the person's proposed role therein[.]" 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.

From February 2020 through March 2021, Donnelly participated in a private securities transaction involving one of his First Allied customers (Customer A). In February 2020, Donnelly introduced Customer A to the president of a company seeking investments in limited partnership units. The limited partnership units were securities. After making the initial introduction, Donnelly provided to Customer A the private placement memorandum for the investment and a presentation about the company. Donnelly also discussed with the company how Customer A should make payment. Thereafter, in June 2020, Customer A invested \$250,000 in the company. Even after Customer A made his investment in the company, Donnelly continued to act as an intermediary between Customer A and the company. For example, in March 2021, Donnelly requested and received Customer A's account statement from the company, which he provided to Customer A. He also transmitted an updated private placement memorandum for the investment to Customer A, along with the accompanying acknowledgment. Donnelly did not receive any commissions or other compensation for his activities.

Donnelly failed to provide prior written notice to First Allied to participate in the company's sale of limited partnership units to Customer A. Donnelly's participation in the transaction was outside the regular course and scope of his employment with First Allied.

Therefore, Donnelly violated FINRA Rules 3280 and 2010.

## Use of Personal Communication Methods

FINRA Rule 4511 requires members to “make and preserve books and records as required under the FINRA rules, the [Securities Exchange Act of 1934 (Exchange Act)] and the applicable Exchange Act rules.” Section 17(a) of the Exchange Act and Rule 17a-4 thereunder require firms to preserve, for a period of not less than three years, “[o]riginals of all communications received and copies of all communications sent by the member ... (including inter-office memoranda and communications) relating to their business as such.” Accordingly, FINRA member firms are required to maintain records of business-related electronic communications, including emails and text messages with customers, and such records are required to be accurate. An individual violates FINRA Rules 4511 and 2010 when he or she causes a firm to fail to make or preserve accurate books and records.

From February 2020 through March 2021, Donnelly used his personal email account to communicate with Customer A about securities transactions. From October 2020 through April 2021, Donnelly also used text messaging on his personal cell phone to communicate with another First Allied customer (Customer B) about securities transactions, including the liquidation of several securities that Customer B held at First Allied. Donnelly did not forward his emails or text messages to First Allied for review or retention. As a result, Donnelly caused First Allied to fail to maintain those communications, as it was obligated to do under the Exchange Act and FINRA rules.

Therefore, Donnelly violated FINRA Rules 4511 and 2010.

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

- a four-month suspension from associating with any FINRA member in all capacities.

Respondent has submitted a statement of financial condition and demonstrated an inability to pay. In light of Respondent’s financial status, no monetary sanctions have been imposed.

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 sanction 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:

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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.

June 13, 2022

*Brian Donnelly*

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Date

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Brian F. Donnelly  
Respondent

Reviewed by:

*Joseph Allgor*

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Joseph P. Allgor  
Counsel for Respondent  
Herskovits PLLC  
120 Wall Street, 25<sup>th</sup> Floor  
New York, NY 10005

Accepted by FINRA:

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

June 21, 2022

*Rebecca Segrest*

\_\_\_\_\_  
Date

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