

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2019063749201**

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

RE: Todd Ray Anderson (Respondent)  
General Securities Representative  
CRD No. 1896352

Pursuant to FINRA Rule 9216, Respondent Todd Ray Anderson 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**

Respondent first registered with FINRA as an Investment Company Products/Variable Contracts Representative (IR) in December 1988 and subsequently registered as a General Securities Representative (GS) in July 2005. He was registered as an IR and GS through his association with Cetera Advisors LLC during the period in which the alleged violations occurred. On October 4, 2019, Cetera filed a Uniform Termination Notice for Securities Industry Registration (Form U5), disclosing that it had terminated Respondent in part for his failure to follow internal procedures regarding the sale of mutual funds.

Respondent currently is registered as a GS through his association with Benchmark Investments, LLC.<sup>1</sup>

**OVERVIEW**

During the period April 2014 through September 2019, Respondent recommended that a senior customer purchase over \$1 million in mutual funds across 31 fund families, without considering the availability of fee discounts that would have been available to the customer by investing in fewer fund families. As a result, the customer incurred unnecessary sales charges. Therefore, Respondent violated FINRA Rules 2111 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).

## FACTS AND VIOLATIVE CONDUCT

This matter originated from the Form U5 filing by Cetera Advisors LLC.

FINRA Rule 2111(a) requires that a member or associated person “must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on information obtained through reasonable diligence ... to ascertain the customer’s investment profile,” which includes, “the customer’s age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, [and] risk tolerance.” An associated person’s recommendation to purchase mutual funds may be unsuitable if it fails to consider and disclose available cost savings, including those provided through rights of accumulation and breakpoint discounts. A violation of FINRA Rule 2111 is also a violation of Rule 2010.

During the period April 2014 through September 2019, at Respondent’s recommendation, a senior customer invested over \$1 million in 34 mutual funds spread across 31 different fund families. Each of the funds offered volume discounts to sales fees, with the size of discount increasing as the size of the investment reached increasing “breakpoint” levels set by the fund. Breakpoints could be reached through a single investment in a fund or through “rights of accumulation,” whereby the fund would aggregate new investments with existing holdings within the fund family to calculate the breakpoint discount level. In making recommendations to the customer, Respondent failed to consider that the customer could have received a fee discount by reaching higher breakpoint levels, including through rights of accumulation, had the customer purchased funds in fewer fund families. Respondent’s recommendation that the customer invest in multiple fund families, without regard for available rights of accumulation and breakpoint discounts, caused the customer to incur \$20,867 in unnecessary sales charges.

Therefore, Respondent violated FINRA Rules 2111 and 2010.

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

- a 45-day suspension from associating with any FINRA member in all capacities;
- a \$5,000 fine; and
- restitution of \$20,867 plus interest as described below.

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

Restitution is ordered to be paid to the customer listed on Attachment A to this AWC (Eligible Customer) in the total amount of \$20,867, 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 September 30, 2019 until December 31, 2021.

Respondent shall submit satisfactory proof of payment of restitution and interest (separately specifying the date and amount of each paid to the Eligible Customer) or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted by email to [EnforcementNotice@FINRA.org](mailto:EnforcementNotice@FINRA.org). The email must identify Respondent 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](mailto:EnforcementNotice@FINRA.org) no later than 120 days after the date of the notice of acceptance of the AWC.

The restitution amount plus interest to be paid to the Eligible Customer shall be treated by the Respondent as the Eligible Customer's property for purposes of state escheatment, unclaimed property, abandoned property, and similar laws. If after reasonable and documented efforts undertaken to effect restitution Respondent is unable to pay the Eligible Customer within 120 days after the date of the notice of acceptance of the AWC, Respondent shall submit to FINRA in the manner described above a list identifying the unpaid Eligible Customer and a description of Respondent's plan, not unacceptable to FINRA<sup>2</sup>, to comply with the applicable escheatment, unclaimed property, abandoned property, or similar laws for the Eligible Customer.

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 sanctions imposed in this matter.

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.

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;

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<sup>2</sup> In order to be "not unacceptable," the plan must at least (i) state that the individual will follow the relevant escheatment laws, applicable timing, etc. and (ii) describe the steps that the individual will take to set the funds aside for the exclusive benefit of the Eligible Customers.

- 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 prejudice 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.

April 12, 2023

Date

*Todd Ray Anderson*

Todd Ray Respondent  
Respondent

Reviewed by:

*Ross Kartez*

Ross J. Kartez  
Counsel for Respondent  
Ruskin Moscou Faltischek P.C.  
1425 RXR Plaza  
East Tower, 15th Floor  
Uniondale, NY 11556

Accepted by FINRA

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

April 20, 2023

Date

*Brad Samuels*

Brad Samuels, Director  
FINRA, Department of Enforcement  
15200 Omega Drive  
Rockville, MD 20850

**Attachment A**

<b>Customer</b>	<b>Restitution Amount</b>	<b>Interest Period</b>
Customer	\$20,687	Sept. 30, 2019-Dec. 31, 2021