

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015048141902**

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

RE: Donald G. Padilla, Respondent
Former General Securities Representative
CRD No. 3053711

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Donald G. Padilla ("Padilla" or "Respondent") 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 herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

Respondent entered the securities industry in February 1998 and was associated with two FINRA-regulated broker-dealers. In April 2009, Respondent became associated with LPL Financial LLC ("LPL" or the "Firm"), a FINRA-regulated broker-dealer, as a General Securities Representative, and in February 2010 Respondent became associated with the Firm as a General Securities Principal. Respondent remained associated with LPL until December 2015.

Since December 2015, Respondent has been associated with two different FINRA-regulated broker-dealers. Respondent was last registered with a FINRA member in September 2018. Respondent is not currently associated with a FINRA-regulated broker-dealer, but FINRA retains jurisdiction over Respondent pursuant to Article V, Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

Respondent does not have any disciplinary history with the Securities and Exchange Commission, any state securities regulators, FINRA, or any other self-regulatory organization.

OVERVIEW

From February 2011 to November 2015 (the “Relevant Period”), while associated with LPL, Respondent set up and used unapproved email accounts to correspond with Firm customers about securities business and circumvented LPL’s supervision of his business in violation of FINRA Rule 2010. Respondent’s use of unapproved email accounts to conduct Firm business also violated NASD Rule 3110 and successor FINRA Rule 4511 by causing his member firm to fail to comply with its recordkeeping obligations.¹

FACTS AND VIOLATIVE CONDUCT

Communication with Firm Customers Using Unapproved Email Accounts

FINRA Rule 2010 requires associated persons to “observe high standards of commercial honor and just and equitable principles of trade.” Using unapproved email accounts to communicate with Firm customers regarding firm business violated FINRA Rule 2010.

The Firm’s written supervisory procedures (“WSPs”) prohibited registered representatives from using unapproved email accounts for communication related to Firm securities-related business. The Firm’s WSPs also required electronic business-related correspondence to be sent through Firm-approved email accounts so the Firm could monitor such communications for recordkeeping and compliance purposes.

During the Relevant Period of more than four and a half years, Respondent sent numerous electronic communications via two unapproved email accounts to Firm customers regarding Firm business such as, among other things, account funding confirmations, portfolio recommendations, fee summaries, and trade confirmations. Respondent hid the unapproved email accounts from the Firm during branch audits.

By using unapproved email accounts to communicate with customers regarding Firm business, Respondent violated FINRA Rule 2010.

Books and Records Violations

NASD Rule 3110 and its successor rule, FINRA Rule 4511, require member firms to make and preserve books and records in conformity with FINRA Rules, the Securities Exchange Act of 1934 (the “Exchange Act”), and applicable Exchange Act Rules.

SEA Rule 17a-4 requires that member firms preserve records of all communications concerning the firm’s business. A violation of NASD Rule 3110 and FINRA Rule 4511 also violates FINRA Rule 2010.

Respondent corresponded with Firm customers regarding Firm business from two email accounts that the Firm did not approve. Respondent’s use of these unapproved email accounts to conduct Firm-related securities business prevented the Firm from preserving

¹ FINRA Rule 4511 replaced NASD Rule 3110 on December 5, 2011.

records of these communications. These emails included, among other things, account funding confirmations, portfolio recommendations, fee summaries, and trade confirmations.

By using unapproved email accounts to conduct Firm business, Respondent caused the Firm to fail to maintain all business-related communications, in violation of NASD Rule 3110 (before December 4, 2011), FINRA Rule 4511 (on and after December 5, 2011), and FINRA Rule 2010.

Additionally, Respondent made misrepresentations on multiple Firm annual compliance questionnaires indicating that he only used his LPL email address for securities business and client-related correspondence.

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

- A five-month suspension from associating with any FINRA member in any capacity; and
- A \$10,000 fine.

The fine shall be due and payable either immediately upon reassociation with a member Firm, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

Respondent specifically and voluntarily waives any right to claim an inability to pay, now or at any time hereafter, the monetary sanctions 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 herein shall be effective on a date set by FINRA staff.

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 acceptance or rejection of this AWC.

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 the subject matter thereof 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: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

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 or its staff.

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 herein and the prospect of avoiding the issuance of a Complaint, has been made to induce him to submit this AWC.

5/2/2020
Date



Donald G. Padilla
Respondent

Reviewed by:

/s/Patrick R. Mahoney
Patrick R. Mahoney, Esq.
Counsel for Respondent
The Law Offices of Patrick R. Mahoney, P.C.
9454 Wilshire Blvd., Suite 303
Beverly Hills, CA 90212

Accepted by FINRA:

June 2, 2020
Date

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



Andrew Cattell
Principal Counsel
FINRA
Department of Enforcement
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New York, NY 10281