

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2021069353201**

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

RE: John Wigmore Reilly III (Respondent)  
Former General Securities Representative  
CRD No. 2209377

Pursuant to FINRA Rule 9216, Respondent John Wigmore Reilly III 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**

Reilly first became registered with FINRA in 1992 as a General Securities Representative through an association with a FINRA member firm. From August 2000 to July 2022, Reilly was associated with Securities Research, through which he registered with FINRA as a General Securities Principal and a General Securities Representative, and then as an Operations Professional from December 2011 to July 2022. On July 28, 2022, Securities Research filed a Uniform Termination Notice for Securities Industry Registration (Form U5), disclosing that Reilly had voluntarily terminated his association with the firm.

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

**OVERVIEW**

Between July 2018 and September 2021, Reilly recommended and effected 25 short-term switches of Class A mutual funds, which are generally intended to be held long-term, in two senior customers' accounts, without having a reasonable basis to believe that his recommendations were suitable, or in his customers' best interest. By this conduct, Reilly

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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).

willfully violated the Care Obligation of Rule 15l-1(a)(1) of the Securities Exchange Act of 1934 (Regulation BI) (for the period June 30, 2020, through September 2021), and violated FINRA Rule 2111 (for the period July 2018 through June 29, 2020), and FINRA Rule 2010.

### **FACTS AND VIOLATIVE CONDUCT**

This matter originated from a cycle examination of the firm.

As of June 30, 2020, broker-dealers and their associated persons are required to comply with Regulation BI under the Securities Exchange Act of 1934. Rule 15l-1(a)(1) of Reg BI requires a broker, dealer, or a natural person associated with a broker or dealer, when making a recommendation of any securities transaction or investment strategy involving securities (including account recommendations) to a retail customer, to act in the best interest of that retail customer at the time the recommendation is made, without placing the financial or other interest of the broker, dealer, or associated person ahead of the interest of the retail customer.

Reg BI's Care Obligation, set forth at Exchange Act Rule 15l-1(a)(2)(ii), requires broker-dealers and their associated persons to exercise reasonable diligence, care, and skill to, among other things, have a reasonable basis to believe that the recommendation is in the best interest of a particular retail customer based on that retail customer's investment profile and the potential risks, rewards, and costs associated with the recommendation. Regulation BI defines a "retail customer investment profile" to include, but not be limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the member or associated person in connection with such recommendation.

Reg BI's Adopting Release provides that consideration of reasonably available alternatives offered by the broker-dealer is an inherent aspect of making a "best interest" recommendation.

Prior to June 30, 2020, FINRA Rule 2111 required members and associated persons to have a reasonable basis to believe that a recommendation of a transaction or investment strategy involving a security or securities to any customer is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer's investment profile. FINRA Rule 2111 is still in effect, but as of June 30, 2020, it no longer applies to recommendations that are subject to Reg BI. FINRA Rule 2111 defines a customer's investment profile to include the same information as under the Care Obligation.

In 2003, NASD Notice to Members 03-68 reminded members that the manner in which a recommended security is purchased can render an associated person's recommendation unsuitable if there is a lower cost alternative for purchasing the security.

A violation of Reg BI or FINRA Rule 2111 also is a violation of FINRA Rule 2010, which requires associated persons to “observe high standards of commercial honor and just and equitable principles of trade” in the conduct of their business.

Class A mutual fund shares typically include substantial upfront sales charges, known as “front-end loads.” They are generally suitable, or in the customer’s best interest, only as long-term investments and not for short-term trading because an investor usually must hold the Class A share for a long period of time to recoup the front-end load. Frequent short-term purchases and sales of Class A shares in a customer’s account may be unsuitable, or not in the customer’s best interest, because of the frequency of the transactions, the transaction costs incurred, or the customer’s financial situation, investment objectives and needs. Mutual fund switching occurs when a customer sells mutual fund shares and reinvests the proceeds in another mutual fund, often incurring additional charges and commissions.

Between July 2018 and June 29, 2020, Reilly recommended and effected 22 unsuitable short-term switches in Class A mutual fund shares in accounts held by two senior customers, with an average holding period of 229 days. Further, all 22 short-term switches were part of a pattern of mutual fund switching between different mutual fund families. Both customers were over the age of 65, retired, and had moderate risk tolerances. Reilly failed to consider the customers’ investment objectives and time horizons when recommending the transactions, and further failed to consider that the customers could have reduced their transaction costs by switching within the same fund family.

Between June 30, 2020, and September 2021, Reilly recommended and effected three short-term switches in Class A mutual fund shares that were not in the best interest of one of these customers. The average holding period of these transactions was 273 days. Further, the three short-term switches were also part of a pattern of mutual fund switching between different mutual fund families. In recommending these three switches, Reilly failed to exercise reasonable diligence, care, and skill to consider the customer’s investment objectives and time horizon, the costs associated with the recommendations, and reasonably available alternatives, including mutual funds in the same fund family as the customers’ existing holdings, or different mutual fund share classes, that may have achieved the customers’ objectives at a lower cost.

Reilly did not have a reasonable basis to believe that the recommended transactions, for which he received compensation, were suitable or in the best interest of the two senior customers. As a result of this conduct, two customers paid \$40,972.50 in excessive sales fees.

Therefore, Reilly willfully violated Exchange Act Rule 15c-1(a)(1) and violated FINRA Rule 2111 and FINRA Rule 2010.

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

- a three-month suspension from associating with any FINRA member in all capacities;
- a \$5,000 fine; and
- restitution of \$31,675.14,<sup>2</sup> plus interest as described below.

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.

Restitution is ordered to be paid to the customers listed on Attachment A to this AWC (Eligible Customers) in the total amount of \$31,675.14, 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 July 27, 2018, until the date the restitution plus interest are due and payable.

Restitution plus interest ordered pursuant to this disciplinary action are due and payable immediately upon reassociation with a member firm or upon submission of any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

Respondent shall submit satisfactory proof of payment of restitution and interest (separately specifying the date and amount of each paid to each Eligible Customer) or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted by email to 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 no later than 120 days after the date the restitution plus interest are due and payable.

The restitution amount plus interest to be paid to each 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 all Eligible Customers within 120 days after the restitution and interest are due and payable, Respondent shall submit to FINRA in the manner described above a list of the unpaid Eligible Customers and a description of Respondent's plan, not unacceptable to FINRA, to comply with the applicable escheatment, unclaimed property, abandoned property, or similar laws for each such 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.

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<sup>2</sup> The amount of restitution being paid to customers is equal to the total sales fees paid by customers less the amount of restitution paid to customers by Securities Research, Inc.

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.

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.

Respondent understands that this settlement includes a finding that he willfully violated Rule 15c-1 of the Securities Exchange Act of 1934 and that under Article III, Section 4 of FINRA's By-Laws, this makes him subject to a statutory disqualification with respect to association with a member.

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 understands and acknowledges that FINRA does not represent or advise him and Respondent cannot rely on FINRA for legal advice. 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.

July 9, 2024

Date

John Wigmore Reilly III

John Wigmore Reilly III

Respondent

Accepted by FINRA:

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

July 9, 2024

Date

Jamie P. Keesing

Jamie P. Keesing

Counsel

FINRA

Department of Enforcement

9509 Key West Avenue

Rockville, MD 20850

Schedule of Customer Restitution

Customer	Restitution (Excluding Interest)
Customer A	\$16,817.64
Customer B	\$14,857.50