

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2021070875201**

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

RE: Park Avenue Securities LLC (Respondent)
Member Firm
CRD No. 46173

Pursuant to FINRA Rule 9216, Respondent Park Avenue Securities LLC 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

Park Avenue Securities (PAS) has been a FINRA member since 1999 and is headquartered in New York, New York. The firm conducts a general securities business across approximately 400 branch offices with approximately 2,500 registered representatives.

In July 2019, PAS entered into an AWC with FINRA through which the firm consented to findings that, between January 2011 and August 2018, it (i) disadvantaged certain retirement plan and charitable organization customers who were eligible to purchase Class A mutual fund shares without a front-end sales charge by selling them Class A shares with a front-end sales charge or Class B or C shares with back-end sales charges and higher ongoing costs and (ii) failed to establish and maintain a supervisory system and procedures reasonably designed to ensure that customers who purchased mutual fund shares received the benefit of applicable sales charge waivers. It was censured and ordered to pay restitution in the amount of \$640,552 based on violations of NASD Rule 3010 and FINRA Rules 3110 and 2010.

In March 2019, PAS consented to the entry of an Order Instituting Administrative and Cease-and-Desist Proceedings by the Securities and Exchange Commission. Pursuant to the Order, the SEC found that, from January 2014 through October 2018, PAS inadequately disclosed its mutual fund share class selection practices and certain fees it received for mutual fund sales when it “advised clients to purchase or hold mutual fund

share classes that charged [these] fees when lower-cost share classes of those same funds were available to clients.” It was censured, ordered to pay disgorgement and interest totaling \$564,267, and ordered to, among other things, review and correct as necessary all relevant disclosure documents concerning mutual fund share class selection and fees and update its procedures relating to mutual fund share class selection based on violations of the Investment Advisers Act of 1940.¹

OVERVIEW

From January 2019 through July 2021, PAS failed to establish, maintain, and enforce a supervisory system, including written supervisory procedures (WSPs), reasonably designed to achieve compliance with the suitability requirements of FINRA Rule 2111 and the Care Obligation of Rule 15l-1 of the Securities Exchange Act of 1934 (Reg BI)² with respect to its registered representatives’ mutual fund share class recommendations to retirement plan customers, in violation of FINRA Rules 3110 and 2010. As of June 30, 2020, and continuing through July 2021, PAS also failed to comply with Reg BI’s Compliance Obligation by failing to establish, maintain, and enforce WSPs reasonably designed to achieve compliance with Reg BI, in violation of Exchange Act Rule 15l-1(a)(1) and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a FINRA cycle exam of PAS.

A. Mutual Fund Share Classes

Mutual funds often offer investors different types of shares or “share classes.” Each share class represents a similar interest in the same portfolio of securities. The primary difference among the share classes is the structure and amount of both sales charges paid directly by shareholders and continuous, asset-based fees assessed on each shareholder’s investment.

Class A shares typically impose a front-end sales charge and annual fund expenses, including ongoing distribution and service fees, that are usually lower than other share classes. Class C shares typically do not impose a front-end sales charge but have higher distribution and service fees than Class A shares and may be subject to a contingent deferred sales charge. Some mutual funds offer a waiver of the front-end sales charge associated with Class A shares purchased by certain retirement plans or offer these plans the opportunity to purchase retirement shares called Class R shares. Class R shares typically do not impose a front-end sales charge but have higher operating fees than Class A shares and lower operating fees than Class C shares.

¹ For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

² The compliance date for Reg BI was June 30, 2020. Also, effective June 30, 2020, FINRA amended Rule 2111 to state that Rule 2111 will not apply to recommendations subject to Reg BI.

The sales charges and fees associated with different share classes affect mutual fund investors' returns. For example, if a retirement plan customer qualifies for a waiver of the front-end sales charge associated with Class A shares and purchases those shares, the customer will not pay a front-end sales charge and will be subject to lower ongoing fees than Class C and R shares. In this circumstance, there usually would be no reason for the customer to purchase any other share class. However, if a retirement plan customer does not qualify for a Class A sales charge waiver and is eligible to purchase Class R shares, it may be better for the customer to purchase Class R shares because the customer would not pay a front-end sales charge and the ongoing fees associated with those shares are typically less than those associated with Class C shares.

B. PAS failed to establish, maintain, and enforce a supervisory system and WSPs reasonably designed to achieve compliance with SEC and FINRA rules regarding mutual fund share class recommendations.

As of June 30, 2020, broker-dealers and their associated persons are required to comply with Reg BI. 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, understand the potential risks, rewards, and costs associated with a recommendation.

Additionally, Reg BI's Compliance Obligation, set forth at Exchange Act Rule 15l-1(a)(2)(iv), requires broker-dealers to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Reg BI. The Adopting Release provides that broker-dealers should consider the nature of that firm's operations and how to design such policies and procedures to prevent violations from occurring, to detect violations that have occurred, and to correct promptly any violations that have occurred.³

Prior to June 30, 2020, FINRA Rule 2111 required members and associated persons to have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities to any customer is suitable for the customer. 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 3110 requires member firms to establish, maintain, and enforce a supervisory system, including written procedures, to supervise the activities of each

³ *Regulation Best Interest: The Broker-Dealer Standard of Conduct*, Exchange Act Release No. 86031, 84 FR 33318 at 33397 (July 12, 2019).

associated person that is reasonably designed to achieve compliance with applicable securities laws, regulations, and FINRA rules.

A violation of Reg BI or FINRA Rule 3110 also is a violation of FINRA Rule 2010, which requires members to “observe high standards of commercial honor and just and equitable principles of trade” in the conduct of their business.

From January 2019 through July 2021, PAS’s supervisory system and WSPs were not reasonably designed to achieve compliance with FINRA Rule 2111 or the Care Obligation of Reg BI as they pertain to mutual fund share class recommendations to retirement plan customers.⁴ Specifically, where these customers did not qualify for a Class A sales charge waiver from a mutual fund, the WSPs failed to describe the steps the firm should take to evaluate whether recommendations to purchase Class A shares or Class C shares were in their best interest or suitable for them when they were eligible to purchase Class R shares. In this situation, the firm did not assess whether it would have been better for certain retirement plan customers to purchase Class R shares, and the firm did not provide supervisors with guidance or information necessary to make this assessment.

As a result of these supervisory weaknesses, PAS did not reasonably supervise mutual fund share class recommendations to certain retirement plan customers and failed to identify 355 retirement plan customers that purchased Class A or C shares when they were eligible to purchase—and would have benefitted by purchasing—Class R shares. These purchases caused the customers to incur \$91,344.52 in either additional operating fees (for those customers who purchased Class C shares) or front-end sales charges (for those customers who purchased Class A shares). PAS has already paid this amount in restitution to these customers.

As a result of its misconduct, from January 2019 through July 2021, PAS violated FINRA Rules 3110 and 2010, and from June 30, 2020, through July 2021, PAS also violated Exchange Act Rule 15l-1(a)(1).

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

- a censure; and
- a \$125,000 fine.

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

⁴ By August 2021, PAS had revised its supervisory system and its supervision of mutual fund share class recommendations to retirement plan customers.

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 sanction imposed in this matter.

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 it;
- 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 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:

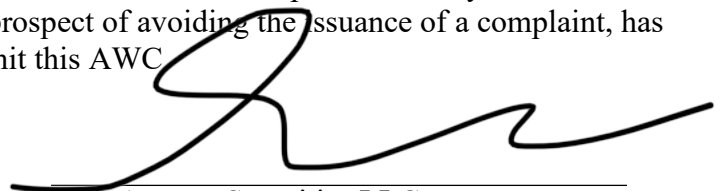
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA), pursuant to FINRA Rule 9216;

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

9/5/24

Date



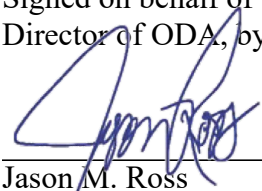
Park Avenue Securities LLC
Respondent

Print Name: Marianne Caswell

Title: President

Accepted by FINRA:

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



9/24/2024

Date

Jason M. Ross
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