FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019062569501

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

RE: Kevin Marshall McCallum (Respondent)
Former General Securities Representative
CRD No. 2222586

Pursuant to FINRA Rule 9216, Respondent Kevin Marshall McCallum 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 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

McCallum first registered with FINRA as a General Securities Representative (GS) through an association with a FINRA member firm in 1993. From 1993 to 2012, McCallum associated with three different FINRA member firms and registered with FINRA in different capacities, including as a GS, and at times as a General Securities Principal (GP), Municipal Securities Representative (MR), and Municipal Securities Principal (MP).

In May 2012, McCallum associated with LPL Financial LLC (LPL or the firm), a FINRA member firm, and registered with FINRA as a GS, GP, MR, and MP. On July 5, 2019, LPL filed a Uniform Termination Notice of Securities Industry Registration (Form U5) on McCallum's behalf disclosing that McCallum had voluntarily terminated his association with the firm as of June 30, 2019. Subsequently, LPL filed six amended Forms U5 disclosing five arbitrations and one civil court action brought by customers of McCallum against LPL, concerning McCallum's conduct while associated with the firm.

Although McCallum is not currently associated with a FINRA member, FINRA retains

jurisdiction over him pursuant to Article V, Section 4(a) of FINRA's By-Laws.[1]

OVERVIEW

From May 2017 through June 2019, McCallum made unsuitable recommendations to 12 customers, resulting in their overconcentration in a high-risk, publicly-traded business development company (BDC). Therefore, McCallum violated FINRA Rules 2111 and 2010.

Additionally, during the same period, McCallum sent emails to certain of these and other customers about the BDC that contained unwarranted and exaggerated claims, opinions and forecasts, did not provide a fair and balanced treatment of the risks and benefits of the investment, and contained promissory statements in violation of FINRA Rules 2210 and 2010.

FACTS AND VIOLATIVE CONDUCT

McCallum's unsuitable recommendations of a Business Development Company

FINRA Rule 2111 requires that "an 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 the information obtained through the reasonable diligence of the member or associated person to ascertain the customer's investment profile." FINRA Rule 2111 provides that a "customer's investment profile includes, but is not 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."

A recommendation may be unsuitable if it results in an undue concentration in a particular security and the correspondent increased risk of loss is inconsistent with the customer's investment profile.

By recommending unsuitable transactions, a registered representative acts inconsistently with the high standards of commercial honor and just and equitable principles of trade, and thereby also violates FINRA Rule 2010.

From May 2017 through June 2019, McCallum recommended concentrated investments to 12 customers in a high-risk and highly speculative publicly-traded BDC that exhibited signs of financial distress, even though his customers had low or moderate risk tolerances and investment objectives and lacked any prior experience investing in BDCs. BDCs are a type of closed-end investment fund. BDCs typically invest in debt and equity of small and medium-sized companies that do not have ready access to public capital markets or other forms of conventional financing. The companies may be in their early stages of

[1] For more information about the respondent, visit BrokerCheck® at www.finra.org/brokercheck.

development or may be distressed companies that are not able to obtain bank loans or raise money from other investors. BDCs are required to distribute 90% of their taxable ordinary income as dividends to shareholders in return for favorable tax treatment.

The BDC that McCallum recommended held first and second lien secured loans, unsecured loans, and equity in small and medium-sized companies in a variety of industries, including construction, banking, telecommunications, pharmaceutical, and oil and gas companies. The risk of loss for investments in this BDC was magnified because it borrowed money. Additionally, the illiquidity of the BDC's investments presented risk that it would be difficult for the BDC to sell such investments if required, causing it to realize significantly less than the value at which the BDC recorded the investments. Further, the BDC was exposed to interest rate risk that could affect its investment returns. From May 2017 through June 2019, the BDC's net asset value (NAV) declined steadily as a result of write downs to its loan portfolio. Likewise, the BDC's share price and the percentage of NAV at which it traded declined throughout the period.

During the period between May 2017 and June 2019, McCallum's recommendations resulted in the 12 customers concentrating as much as approximately 17% to over 60% their liquid net worth in the BDC. Four of the customers were over the age of 60 and seven of the customers invested retirement funds in the BDC. McCallum's recommendations generated commissions to LPL totaling $37,492.78, $14,231.61 of which was paid to McCallum.

After June 2019, the BDC's stock price continued to decline. In November 2019, McCallum's customers began to file arbitration claims against LPL concerning McCallum's recommendations of the BDC, which precipitated FINRA's investigation. One customer who realized losses from the sale of her positions obtained payment from LPL in connection with resolving her arbitration claims. Four other customers also sold their positions and realized losses totaling $1,222,092.29.

By virtue of the foregoing, McCallum violated FINRA Rules 2111 and 2010.

McCallum sent emails about the Business Development Company that violated the content standards for registered representative's communications with the public.

FINRA Rule 2210 governs communications by registered representatives with the public. FINRA Rule 2210(d)(1)(A) requires that all member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or industry. FINRA Rule 2210(d)(1)(B) provides that no member may make any false, exaggerated, unwarranted, promissory or misleading statement or claim. FINRA Rule 2210(d)(1)(F) provides that communications may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast.

A violation of FINRA Rule 2210 is also a violation of FINRA Rule 2010.

Between October 2015 and June 2019, McCallum sent seventeen emails about the BDC to 19 customers, including eight of the customers to whom he made the unsuitable recommendations, that violated the content standards of FINRA Rule 2210. All of the emails were unbalanced, in violation of FINRA Rule 2210(d)(1)(A) and 11 of the emails failed to provide a sound basis for evaluating the facts, also in violation FINRA Rule 2210(d)(1)(A). Thirteen of the emails contained unwarranted and promissory statements, in violation of FINRA Rule 2210(d)(1)(B). Finally, in 15 of the emails McCallum provided impermissible projections and/or exaggerated or unwarranted claims, opinions or forecasts in violation of FINRA Rule 2210(d)(1)(F).

For example, in a March 2018 email to a customer, McCallum discussed the customer's account performance, including the purported benefits of continuing to hold a position in the BDC, but failed to explain the associated risks, in violation of FINRA Rule 2210(d)(1)(A). McCallum also made statements that were promissory and unwarranted in violation of FINRA Rule 2210(d)(1)(B), by stating that the stock price of the BDC would increase to 80% to 90% of the NAV, stating that he did not anticipate further downside in the customer's portfolio, stating that he was confident that the portfolio would rise back to previous levels and higher, and predicting that the Federal Reserve would raise interest rates three times in the year, which would benefit the BDC. Finally, McCallum also included an impermissible projection of the anticipated 12-month dividend cashflow from the BDC, in violation of FINRA Rule 2210(d)(1)(F).

Therefore, McCallum violated FINRA Rule 2210 and 2010.

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

- A one-year suspension from associating with any FINRA member in all capacities
- A $25,000 fine
- Disgorgement of $14,231.61 plus interest as described below
- Restitution of $1,222,092.29 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.

Disgorgement of commissions received is ordered to be paid to FINRA in the amount of $14,231.61, 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 May 2017 until the date this AWC is accepted by the National Adjudicatory Council (NAC). Disgorgement 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 in the total amount of $1,222,092.29, 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 May 2017, until the date of payment. Restitution amounts ordered, pursuant to this disciplinary action, are due and payable 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. 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. If for any reason Respondent cannot locate any customer identified in Attachment A after reasonable and documented efforts, within such period, or such additional period, as agreed to by FINRA, Respondent shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property, or abandoned property fund for the state in which the customer is last known to have resided.

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.

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 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 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 testimonial obligations or 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.

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 11, 2021
Date

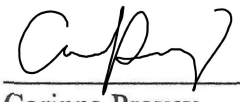
Kevin Marshall McCallum
Respondent

Reviewed by:

Peter S. Fruin
Counsel for Respondent
Maynard Cooper & Gale
1901 Sixth Avenue North
Suite 1700
Birmingham, AL 35203

Accepted by FINRA:

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



6/17/2021
Date

Corinna Provey
Counsel
FINRA
Department of Enforcement
200 Liberty Street, 11th Floor
New York, NY 10281

ATTACHMENT A

AWC NO. 2019062569501

CUSTOMER	RESTITUTION AMOUNT
TC & OC	$93,836.18
WH	$16,110.32
SH	$1,112,145.79
TOTAL	**$1,222,092.29**