

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2021069376801**

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

RE: American Wealth Management, Inc. (Respondent)
Member Firm
CRD No. 25536

Pursuant to FINRA Rule 9216, Respondent American Wealth Management, Inc. 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

American Wealth Management became a FINRA member firm in 1990. The firm, which is headquartered in Atlanta, Georgia, has six branch offices and 19 registered representatives. American Wealth Management conducts a general securities business and provides investment advisory services to retail investors.¹

OVERVIEW

Since July 23, 2020, American Wealth Management has omitted required information from the firm's customer relationship summary (Form CRS). Most significantly, from July 23, 2020, to March 31, 2022, the firm failed to disclose on its Form CRS that it and six of its financial professionals had legal or disciplinary history. By filing and delivering to customers a Form CRS that omitted required information, American Wealth Management willfully violated Section 17(a)(1) of the Securities Exchange Act of 1934, Exchange Act Rule 17a-14, and FINRA Rule 2010.

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

FACTS AND VIOLATIVE CONDUCT

This matter originated from the 2021 Firm Examination of American Wealth Management.

On June 5, 2019, the Securities and Exchange Commission (SEC) adopted Form CRS and rules creating new requirements—which include requirements to prepare, file, and deliver the Form CRS—for SEC-registered broker-dealers offering services to a retail investor. The compliance date for Form CRS was June 30, 2020.

Form CRS provides customers with information about the types of services the firm offers; the fees, costs, conflicts of interest, and required standard of conduct associated with those services; whether the firm and its investment professionals have reportable legal or disciplinary history; and how to get more information about the firm.

Form CRS also includes required “conversation starters” to help begin a discussion with a broker-dealer about the relationship, including their services, fees, costs, conflicts, and disciplinary information.

Section 17(a)(1) of the Securities Exchange Act of 1934 requires registered broker-dealers to make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission deems “necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of” the Exchange Act. Exchange Act Rule 17a-14—titled “Form CRS, for preparation, filing and delivery of Form CRS”—requires broker-dealers offering services to a retail investor to prepare a Form CRS in accordance with the instructions in Form CRS, and to comply with requirements related to filing, amending, delivering, and posting the Form CRS to the firm’s public website.

A violation of Exchange Act § 17(a)(1) and Exchange Act Rule 17a-14 also is a violation of FINRA Rule 2010, which requires member firms to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

Form CRS contains the heading, “Do you or your financial professionals have legal or disciplinary history?” The instructions to Form CRS state that a firm must respond “Yes” if it or any of its financial professionals discloses, or is required to disclose, legal or disciplinary history on specified regulatory disclosure forms, such as Forms BD, U4, U5,

and U6.² Legal or disciplinary history that is required to be disclosed on those forms includes criminal history, regulatory actions, civil judicial actions, and specified financial events (*e.g.*, bankruptcies, judgments, and liens).

American Wealth Management failed to respond “Yes” to the question concerning legal or disciplinary history on the Form CRS that it filed on July 23, 2020, even though the firm and six of its registered representatives in fact had prior legal or disciplinary history. Without addressing whether it had disciplinary history, the firm stated: “Visit www.investor.com/CRS to research AWM and its financial advisors.”³ Before filing its Form CRS, American Wealth Management had already disclosed five disciplinary actions on its Form BD. These disciplinary actions, which occurred between 1995 and 2017, included violations such as allowing a registered representative whose registration had lapsed to transact a securities business; operating while under net capital; and engaging in a securities business in a state in which the firm was not registered. In addition, Form U4, U5, or U6 filings for six of the firm’s registered representatives, including the firm’s Chief Executive Officer, disclosed prior legal or disciplinary history. All of those filings, and the disclosures contained in the filings, were reflected in FINRA’s Central Registration Depository (CRD) and in BrokerCheck®, and were made by or were available to the firm. Despite having disclosed five disciplinary actions on its Form BD—and despite its knowledge of six of its registered representatives’ legal or disciplinary history—American Wealth Management failed to respond “Yes” to the Form CRS question concerning legal or disciplinary history.⁴

American Wealth Management likewise omitted from its Form CRS other required information. For example, the Instructions to Form CRS require the firm to include specific headings and disclosures about potential conflicts of interest, including the following language:

² These forms are submitted to the Central Registration Depository by member firms or regulators. Broker-dealers file Form BD (Uniform Application for Broker-Dealer Regulation) to become registered with the U.S. Securities and Exchange Commission, FINRA, other self-regulatory organizations, and jurisdictions (*e.g.*, U.S. states and territories); Form U4 (Uniform Application for Securities Industry Registration or Transfer) is used to elicit employment history, disciplinary, and other information about individuals, to register them with FINRA, other self-regulatory organizations, or jurisdictions; Form U5 (Uniform Termination Notice for Securities Industry Registration) is used to terminate individuals’ registrations with FINRA, other self-regulatory organizations, or jurisdictions, and to elicit details regarding the reasons for termination; and Form U6 is used by regulators to report disclosure events and disciplinary actions against individuals and organizations, and to report final FINRA arbitration awards against broker-dealers and associated persons.

³ This website address is incorrect. Per the Instructions to Form CRS, firms are required to direct the retail investor to visit www.investor.gov/CRS (not www.investor.com/CRS) for a search tool. Moreover, American Wealth Management failed to include in the Form CRS section concerning legal or disciplinary history the required conversation starter for that section: “As a financial professional, do you have any disciplinary history? For what type of conduct?” Instead of including this conversation starter under the Form CRS section for legal or disciplinary history, the firm moved all required conversation starters to the end of its Form CRS. The Instructions to Form CRS, however, require that conversation starters be “noticeable and prominent in relation to other discussion text.”

⁴ Following FINRA’s investigation, American Wealth Management updated its Form CRS, effective March 31, 2022, to respond “Yes” to the question concerning legal or disciplinary history.

When we provide you with a recommendation as your broker-dealer or act as your investment adviser, we have to act in your best interest and not put our interest ahead of yours. At the same time, the way we make money creates some conflicts with your interests. You should understand and ask us about these conflicts because they can affect the recommendations and investment advice we provide you. Here are some examples to help you understand what this means.

The firm's Form CRS omitted this required language.⁵ The firm also failed to include the required conversation starter, "How might your conflicts of interest affect me, and how will you address them?"⁶ And the firm has failed, in all of the versions of Form CRS it has filed,⁷ to disclose its potential conflicts of interest, which the Instructions to Form CRS require it to do. The instructions require the firm to summarize how its financial professionals are compensated, including both their cash and non-cash compensation, and the conflicts of interest created by those payments. The firm, however, has failed to explain how its representatives are compensated; it instead has only described certain types of compensation that its representatives do not receive.

Therefore, American Wealth Management willfully violated Exchange Act § 17(a)(1), Exchange Act Rule 17a-14, and FINRA Rule 2010.

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

- a censure;
- a \$35,000 fine; and
- an undertaking that, within 30 days of the date of the notice of acceptance of this AWC, a member of Respondent's senior management who is a registered principal of the firm shall certify in writing that, as of the date of the certification, the firm has reviewed and remediated the deficiencies in its Form CRS, and has filed, delivered, and posted to its website a Form CRS that complies with Exchange Act § 17(a)(1), Exchange Act Rule 17a-14, and FINRA Rule 2010. The certification shall include a narrative description and supporting exhibits sufficient to demonstrate Respondent's remediation and implementation. FINRA staff may request further evidence of Respondent's remediation and implementation, and Respondent agrees to provide such evidence. Respondent shall submit the certification to Rebecca Segrest, Senior Counsel, FINRA, Department of Enforcement, 303 Perimeter Center North, Suite 550, Atlanta, GA 30346, with a copy to Rebecca.Segrest@finra.org and EnforcementNotice@finra.org. Upon written request showing good cause, FINRA staff may extend this deadline.

⁵ The firm updated the Form CRS that it filed on March 31, 2023, to include this language.

⁶ The firm updated the Form CRS that it filed on March 31, 2022, to include this conversation starter.

⁷ The firm filed its initial Form CRS on July 23, 2020, and updated Forms CRS on August 14, 2020, October 15, 2020, March 31, 2022, March 31, 2023, and April 3, 2023.

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.

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.

Respondent understands that this settlement includes a finding that it willfully violated Exchange Act § 17(a)(1) and Exchange Act Rule 17a-14, and that under Article III, Section 4 of FINRA's By-Laws, this makes Respondent subject to a statutory disqualification with respect to membership.

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 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 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.

April 21, 2023

Date

Jerry Borzello

American Wealth Management, Inc.
Respondent

Print Name: Jerry Borzello

Title: president

Accepted by FINRA:

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

May 19, 2023

Date

Rebecca Segrest

Rebecca Segrest
Senior Counsel
FINRA
Department of Enforcement
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