

**MEMO# 29150**

July 8, 2015

# **FINRA Sanctions Fund Distributors for Failing to Waive Fees in Accordance with Fund Prospectuses**

[29150]

July 8, 2015

TO: BROKER/DEALER ADVISORY COMMITTEE No. 31-15  
OPERATIONS MEMBERS No. 24-15  
PRINCIPAL UNDERWRITERS WORKING GROUP  
TRANSFER AGENT ADVISORY COMMITTEE No. 33-15 RE: FINRA SANCTIONS FUND  
DISTRIBUTORS FOR FAILING TO WAIVE FEES IN ACCORDANCE WITH FUND PROSPECTUSES

FINRA has announced that it has settled cases it brought against four distributors of mutual funds based upon their failure to provide available fee waivers to charitable and retirement accounts in accordance with the mutual funds' prospectuses. \* These violations occurred from approximately 2009 through 2014. Interestingly, according to each of the AWCs, each of the Respondents began an investigation of their sales practices in June 2014, and each self-reported their violations to FINRA. The findings against each firm are briefly summarized below.

According to the findings in the AWCs, each of the Respondents violated FINRA Rule 2010, relating to Standard of Commercial Honor and Principles of Trade, by disadvantaging certain retirement plan and charitable organization customers by failing to take advantage of available sale charge waivers. In particular, instead of selling such accounts Class A shares without a front-end sales charge, the customers were sold either Class A shares with a front-end load or Class B or C shares with back-end sales charges and higher ongoing fees and expenses. The Respondents were also found to have failed to establish and maintain a supervisory system and procedures reasonably designed to ensure that customers received the benefit of applicable sales charge waivers to which they were entitled. Such failure violated FINRA's supervisory Rule 3010 (for conduct before December 1, 2014) and FINRA Rule 3110 (for misconduct on or after December 1, 2014). The extent of each Respondents' violations as self-reported to FINRA was as follows:

LPL Financial – The firm estimated that it executed approximately 76,522 transactions in 6,556 accounts between July 1, 2009 and December 31, 2014 in which an available sales charge waiver was not applied. As a result, it is estimated that customers were overcharged by approximately \$5.72 million for

mutual fund purchases during this period. LPL agreed to pay restitution of approximately \$6.3 million to affected customers and to ensure that fee waivers are appropriately applied in the future.

Raymond James Financial Services, Inc. – Raymond James Financial Services self-reported to FINRA in November 2014 that it had identified approximately 59,056 transactions in 4,428 accounts in which available sales charges were not applied. As a result, customers were overcharged by over \$3.8 million for mutual fund purchases made from July 1, 2009 through December 31, 2014. Raymond James Financial Services agreed to pay restitution to impacted customers in excess of \$4.2 million and to ensure that fee waivers are appropriately applied in the future.

Raymond James & Associates – Raymond James & Associates self-reported to FINRA in November 2014 that it had identified approximately 59,831 transactions in 4,221 accounts in which available sales charges were not applied. As a result, customers were overcharged by over \$4.1 million for mutual fund purchases made from July 1, 2009 through December 31, 2014. Raymond James & Associates agreed to pay restitution to impacted customers of approximately \$4.5 million and to ensure that fee waivers are appropriately applied in the future.

Wells Fargo Advisors Financial Network, LLC – Based on its review, Wells Fargo Advisors self-reported to FINRA that from July 1, 2009 through September 12, 2014, it had failed to provide sales charge waivers to approximately 35,000 accounts that purchased mutual fund shares. As a result, customers were overcharged by approximately \$13 million. Wells Fargo Advisors agreed to pay eligible customers approximately \$15 million in restitution and to ensure that retirement and charitable fee waivers are appropriately applied to all future transactions.

According to FINRA, the total amount of restitution to be paid by the five respondents was in excess of \$30 million. In addition to paying such restitution, each of the above firms was censured by FINRA.

Tamara K. Salmon  
Associate General Counsel

#### **endnotes**

\*See LPL Financial LLC, FINRA Letter of Acceptance, Waiver and Consent (“AWC”) No. 2015045270901 (July 6, 2015); Raymond James Financial Services, Inc., AWC No. 2015044309501 (July 6, 2015); Raymond James & Associates, AWC No. 2015044309001 (July 6, 2015), and Wells Fargo Advisors Financial Network, AWC No. 2014042689901 (July 6, 2015). Copies of each of the AWCs is available through FINRA’s website at: <http://www.finra.org/newsroom/2015/finra-sanctions-wells-fargo-raymond-james-and-lpl-30-million>.

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