

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2018056490325**

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

RE: Nicholas J. Schiano (Respondent)
General Securities Representative
CRD No. 4429212

Pursuant to FINRA Rule 9216, Respondent Nicholas J. Schiano 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

Schiano first entered the securities industry in 2001. Since August 2017, Schiano has been registered with FINRA as a General Securities Representative through an association with Spartan Capital Securities, LLC (CRD No. 146251).¹

OVERVIEW

Between September 2017 and March 2022, Schiano recommended to two retail customers a series of trades that were excessive. As a result, Schiano willfully violated the Best Interest Obligation under Rule 15c-1(a)(1) of the Securities Exchange Act of 1934 (Regulation BI or Reg BI) and violated FINRA Rules 2111 and 2010. For these violations, Schiano is suspended for six months in all capacities, fined \$5,000, and ordered to pay partial restitution of \$55,770 plus interest.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a FINRA cycle examination of Spartan.

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 15c-1(a)(1) of Reg BI requires a broker, dealer, or a natural person associated with a broker or dealer, when

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

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 15c-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 a series of recommended transactions, even if in the retail customer's best interest when viewed in isolation, is not excessive and is in the retail customer's best interest in light of the retail customer's investment profile.

No single test defines when trading is excessive, but factors such as the turnover rate, the cost-to-equity ratio, and the use of in-and-out trading in a customer's account are relevant to determining whether an associated person has excessively traded a customer's account in violation of Reg BI. The turnover rate represents the number of times that a portfolio of securities is exchanged for another portfolio of securities. The cost-to-equity ratio measures the amount an account has to appreciate just to cover commissions and other expenses. In other words, it is the break-even point where a customer may begin to see a return. A turnover rate of six or more, or a cost-to-equity ratio above 20 percent, generally indicates that a series of recommended transactions was excessive.

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. Under Rule 2111.05(c), members and associated persons with actual or *de facto* control over an account were required to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer in light of 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, and the element of control was removed from the quantitative suitability component.

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.

Between September 2017 and March 2022, Schiano excessively traded the accounts of two retail customers, both of whom were seniors and had an investment objective of speculation. Schiano recommended frequent in-and-out trading to the customers even when the price of his recommended securities did not materially change. The customers relied on Schiano's advice and routinely followed his recommendations and, as a result, Schiano exercised *de facto* control over the accounts. Schiano's trading resulted in high turnover rates and cost-to-equity ratios that exceeded the traditional guideposts of six and 20 percent, respectively, as well as significant losses, as set forth below.

- In September 2017, Customer A, then a 67-year-old small business owner, opened an account at Spartan with Schiano. Between September 2017 and March

2022, Schiano recommended 102 transactions in Customer A's account, which resulted in an annualized turnover rate of 14 and an annualized cost-to-equity ratio of 65 percent. Customer A paid \$40,515 in commissions and suffered \$13,349 in realized losses.

- In October 2017, Customer B, then a 70-year-old retiree, opened an account at Spartan with Schiano and another registered representative.² Between October 2017 and December 2018, Schiano and the other registered representative recommended 31 transactions in Customer B's account, which resulted in an annualized turnover rate of 18 and an annualized cost-to-equity ratio of 76 percent. Customer B paid \$30,510 in commissions and suffered \$48,895 in realized losses.

The level of trading that Schiano recommended in the two customers' accounts was excessive.

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

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

- a six-month suspension from associating with any FINRA member in all capacities;
- a \$5,000 fine; and
- partial restitution of \$55,770 plus interest as described below.³

Respondent agrees to pay the monetary sanctions 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 he proposes to pay the fine imposed.

Restitution is ordered to be paid to the customers listed on Attachment A to this AWC (Eligible Customers) in the total amount of \$55,770 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 April 1, 2022 until the date this AWC is accepted by the National Adjudicatory Council (NAC).

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

² FINRA barred the other registered representative in November 2024 for refusing to produce information and documents in violation of FINRA Rules 8210 and 2010.

³ The amount of restitution is equal to the total commissions charged to Customers A and half of the commissions charged to Customer B, to whom Schiano and another registered representative both made recommendations and shared commissions.

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 of the notice of acceptance of the AWC.

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 date of the notice of acceptance of the AWC, 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.

The imposition of a restitution order or any other monetary sanctions 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 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 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.

5/5/25
Date

Nicholas J. Schiano
Nicholas J. Schiano
Respondent

Reviewed by:

Michael C. Farkas
Michael C. Farkas
Counsel for Respondent
Michael C. Farkas, Esq. PLLC
32 Court Street, Suite 408
Brooklyn, NY 11201

Accepted by FINRA:

05/08/2025

Date

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



Jeffrey E. Baldwin
Senior Counsel
FINRA
Department of Enforcement
1601 Market Street
Suite 2700
Philadelphia, PA 19103

Attachment A

Eligible Customer	Restitution Amount (exclusive of interest)
A	\$15,255
B	\$40,515