

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2022074025801**

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

RE: Joseph C. Desapio (Respondent)  
Former General Securities Representative  
CRD No. 5837553

Pursuant to FINRA Rule 9216, Respondent Joseph C. Desapio 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**

Desapio first registered as a General Securities Representative (GS) in August 2010. From August 2010 to May 2017, Desapio was registered with FINRA as a GS through various member firms. From May 2017 to July 2022, Desapio was registered as a GS through Spartan Capital Securities, LLC (CRD No. 146251).

On July 27, 2022, Spartan filed a Uniform Termination Notice for Securities Industry Registration (Form U5) terminating Desapio's registration through the firm. The Form U5 stated that an arbitration had been filed against Desapio alleging "that applicant borrowed money and executed promissory note for funds from customer" and that the "[a]pplicant owes Firm \$22,992.38." Although Desapio is no longer registered or associated with a FINRA member firm, he remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.<sup>1</sup>

**OVERVIEW**

From June 2017 through June 2021, Desapio recommended quantitatively unsuitable trades in four accounts held by three customers, one of whom was a senior. By this conduct, Desapio willfully violated the Best Interest Obligation under Rule 15c-1 of the

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<sup>1</sup> For more information about the respondent, including prior regulatory events, visit BrokerCheck® at [www.finra.org/brokercheck](http://www.finra.org/brokercheck).

Securities Exchange Act of 1934 (Regulation BI) (for the period June 30, 2020 through June 2021), and violated FINRA Rule 2111 (for the period June 2017 through June 29, 2020), and FINRA Rule 2010. In addition, Desapio borrowed \$20,000 from one of his customers in September 2019 without Spartan's prior approval, in violation of FINRA Rules 3240 and 2010.

### **FACTS AND VIOLATIVE CONDUCT**

This matter originated from FINRA's review of an arbitration statement of claim filed against Desapio by two of the customers at issue in this AWC alleging sales practice violations.

#### ***Desapio excessively traded four accounts held by three customers.***

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. Regulation BI's Best Interest Obligation 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. Regulation BI's Care Obligation, set forth at Exchange Act Rule 151-1 (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. A violation of Regulation BI 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.

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. FINRA Rule 2111 is still in effect, but as of June 30, 2020, it no longer applies to recommendations to retail customers that are subject to Reg BI. 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. A violation of FINRA Rule 2111 also is a violation of FINRA Rule 2010.

No single test defines when trading is excessive, but factors such as the turnover rate and the cost-to-equity ratio are relevant to determining whether a member firm or associated person has excessively traded a customer's account. 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. An annualized turnover rate of six or more or an annualized cost-to-equity ratio above 20 percent generally indicates that a series of recommended transactions was excessive.

From June 2017 through June 2021, Desapio engaged in quantitatively unsuitable trading in four accounts of three customers. His customers relied on his advice and routinely followed his recommendations and, as a result, Desapio exercised *de facto* control over the three customers' accounts. Desapio's trading resulted in high turnover rates and cost-to-equity ratios that were well above the traditional guideposts of six and 20 percent, respectively, as well as significant losses, as set forth below.

1. In October 2018 and September 2019, Customer A opened individual accounts at Spartan with Desapio. At the time she began investing with Desapio, Customer A was a 58-year-old paralegal. Customer A was a conservative investor who was not interested in high risk or speculative investments and had limited investment experience.
  - a. From September 2019 to March 2021, Desapio recommended 134 trades in one of Customer A's accounts, resulting in an annualized turnover rate of 33 and an annualized cost-to-equity ratio of 145%. Desapio's trading in this account generated total trading costs of \$82,626, including \$72,685 in commissions, and caused \$51,800 in realized losses.
  - b. From November 2018 to August 2020, Desapio recommended 48 trades in Customer A's other account, resulting in an annualized turnover rate of 12 and an annualized cost-to-equity ratio of 59% for this account. Desapio's trading in this account generated total trading cost of \$11,435, including \$8,280 in commissions, and caused \$8,193 in realized loss.
2. In February 2019, Desapio became the representative of record for Customer B's account. At the time she began investing with Desapio, Customer B was a 57-year-old widowed yoga instructor. Customer B was a conservative investor, and her investment objective was capital preservation and some growth. From February 2019 to June 2021, Desapio recommended 45 trades in Customer B's account resulting in an annualized turnover rate of 8 and an annualized cost-to-equity ratio of 44%. Desapio's trading in this account generated total trading costs of \$14,435, including \$11,055 in commissions, and caused \$8,099 in realized losses.<sup>2</sup>
3. In May 2017, Customer C opened an account at Spartan with Desapio. At the time, Customer C was a 71-year-old insurance agent. According to Customer C's new account documentation, his investment objective was speculation. From June 2017 through January 2021, Desapio recommended 131 transactions in Customer C's account, resulting in an annualized turnover rate of 12 and an annualized cost-

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<sup>2</sup> Customers A and B filed an arbitration against Spartan and Desapio alleging sales practice violations. Spartan settled with the two customers.

to-equity ratio of 72%. Desapio's trading in Customer C's account generated total trading costs of \$27,527, including \$19,778 in commissions, and caused \$24,454 in realized losses.

Desapio's trading in the four customer accounts was excessive, unsuitable, and not in the best interest of these three customers given their investment profiles.

Therefore, Desapio willfully violated Exchange Act Rule 15c-1 and violated FINRA Rule 2111 and FINRA Rule 2010.

***Desapio borrowed money from a customer.***

FINRA Rule 3240(a) prohibits registered representatives from borrowing from or lending money to a customer unless (1) their member firm employer has written procedures that permit the borrowing and lending of money between registered representatives and customers, and (2) the borrowing or lending arrangement meets at least one of the five circumstances specified in the rule. Even if these requirements are satisfied, Rule 3240(b) requires registered representatives to seek and obtain written approval from their member firm employer prior to entering into the borrowing or lending arrangement, unless the firm's procedures provide otherwise. A violation of FINRA Rule 3240 is also a violation of FINRA Rule 2010.

At all relevant times, Spartan's written supervisory procedures generally prohibited its registered representatives from entering into borrowing or lending arrangements with firm customers. However, Spartan permitted loans when "someone (or an entity) . . . has a personal relationship with the RR and the lending arrangement arises from the personal relationship rather than an RR/customer relationship." However, "[a]ny proposed loan with the RR's customer (other than a loan with a family member or financial institution . . .) requires the PRIOR review and approval by Compliance."

In September 2019, Desapio borrowed \$20,000 from Customer A, with whom he had a prior personal non-familial relationship.<sup>3</sup>

Desapio did not provide prior notice to or obtain written approval from Spartan for the loan from Customer A.

Therefore, Desapio violated FINRA Rules 3240 and 2010.

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

- a 15-month suspension from associating with any FINRA member in all capacities.

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<sup>3</sup> Customer A recovered funds from Spartan in connection with Customer A's settlement with the firm.



Respondent has submitted a statement of financial condition and demonstrated an inability to pay. In light of Respondent's financial status, no monetary sanctions have been imposed.

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 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 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 understands and acknowledges that FINRA does not represent or advise him and Respondent cannot rely on FINRA for legal advice. 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.

February 22, 2024

Date



Joseph C. Desapio  
Respondent

Accepted by FINRA:

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

March 8, 2024

Date



Alyssa Braver  
Counsel  
FINRA  
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