FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
No. 2020065599101

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

RE: SW Financial (Respondent)
Member Firm
CRD No. 145012

Pursuant to FINRA Rule 9216, Respondent SW Financial 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

SW Financial has been a FINRA member since January 2008. The firm's main office is located in Melville, New York. SW Financial has 38 registered representatives and four branch offices, primarily in the New York metropolitan area. SW Financial is an introducing broker-dealer that generates most of its revenue from commissions charged in connection with buying and selling equities for its retail customers.

In February 2018, SW Financial entered into an AWC and consented to findings that it violated FINRA Rules 3110, 3230, and 2010. From June 2014 through June 2015, the firm failed to establish and maintain a supervisory system and written supervisory procedures reasonably designed to (1) supervise registered representatives' mutual fund recommendations and (2) ensure that representatives did not contact individuals on the firm's do-not-call list and the national do-not-call registry. SW Financial consented to a censure, a $35,000 fine, an order to pay restitution in the amount of $49,687.44 plus interest, and an undertaking to review and revise the firm's systems and procedures regarding the supervision of mutual fund transactions and telemarketing activities.

In April 2014, SW Financial entered into an AWC and consented to findings that it violated NASD Rules 3010, 2110, and 2310(a), and FINRA Rule 2010. From July 2008 through November 2009, SW Financial: (1) failed to establish a reasonable supervisory system and written procedures to monitor transactions in non-traditional exchange-traded funds; (2) failed to provide reasonable formal training regarding non-traditional ETFs;

and (3) allowed its registered representatives to recommend to customers non-traditional ETFs without performing reasonable due diligence to understand the risks and features associated with the products. SW Financial consented to a censure and a fine of $30,000.

In September 2011, SW Financial entered into an AWC and consented to findings that it violated NASD Rules 2430 and 2110, FINRA Rule 2010, and Rule 10b-10 of the Securities Exchange Act of 1934. From July 2008 through September 2011, SW Financial improperly imposed a "handling fee" on customer transactions that was not reasonably related to any direct handling-related services or expenses incurred by the firm. SW Financial consented to a censure, a fine of $60,000, and an undertaking to: (1) identify all transaction-based renumeration as commissions, mark-ups, or mark-downs; (2) fully and accurately disclose service fees, services performed, and fee amounts on confirmations and all fee-related communications with customers and the public; (3) retain detailed records to substantiate services and fee amounts; and (4) revise the firm's written procedures and provide training to the firm's registered representatives regarding fees, disclosures, and retention of related records.

In March 2011, SW Financial entered into a Consent Order with the State of Connecticut and consented to findings that it willfully violated Connecticut law by failing to disclose to Connecticut customers that a transactional "handling fee" included a profit to the firm, that certain customers paid lower fees, and that the fee was not based on the costs of handling a particular transaction. SW Financial agreed to cease and desist from engaging in this conduct and pay a $12,500 fine. SW Financial also agreed to reimburse each Connecticut customer the difference between the handling fee and the actual amount of SW Financial's ticket, clearing, and postage charges, and to amend its Connecticut customers' trade confirmations to adequately describe the handling fee.[1]

OVERVIEW

SW Financial engaged in two types of misconduct that harmed the customers discussed below.

First, between January 2018 and December 2021, SW Financial made material misrepresentations and omissions to investors in connection with the sale of private placement offerings of pre-initial public offering (pre-IPO) funds (the Offerings). SW Financial misrepresented to investors that it would receive only a ten percent sales commission from its sale of the Offerings when, in fact, SW Financial had entered into an agreement with the issuer to receive an additional five percent in selling compensation as well as half of any carried interest. SW Financial never disclosed this agreement or the additional compensation it would receive to investors. SW Financial also made misrepresentations to FINRA about the amount of compensation it would receive in connection with the Offerings. As a result, SW Financial violated FINRA Rule 2010, both independently and by virtue of violating Sections 17(a)(2) and (3) of the Securities Act of 1933. SW Financial, for its misconduct occurring on or after June 30, 2020, also

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

willfully violated the Disclosure Obligation of Regulation BI, set forth at Rule 15*l*-1(a)(2)(i)(B) under the Exchange Act and violated FINRA Rule 2010.

Moreover, prior to recommending and selling the Offerings, SW Financial failed to confirm that the issuer of the Offerings had possession of or access to the pre-IPO shares identified in the offering documents or that the issuer's markups were reasonable and not excessive. SW Financial therefore lacked a reasonable basis to believe that the Offerings were suitable for, or in the best interests of, at least some customers. As a result, SW Financial violated FINRA Rules 2111 and 2010, and willfully violated the Care Obligation of Regulation BI, set forth at Rule 15*l*-1(a)(2)(ii)(A) under the Exchange Act.[2]

Second, between January 2016 and May 2019, SW Financial, acting through two former registered representatives, churned nine customer accounts, causing the customers to incur more than $350,000 in total trading costs and realized losses of more than $465,000. As a result, SW Financial willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and also violated FINRA Rules 2020, 2111, and 2010.

In connection with both types of misconduct, SW Financial also violated FINRA Rule 3110. Specifically, from January 2018 through December 2021, SW Financial failed to establish, maintain, and enforce a reasonably designed supervisory system and procedures with respect to the firm's sale of private placement offerings. And, from January 2016 through November 2019, SW Financial failed to establish, maintain, and enforce a supervisory system and procedures reasonably designed to achieve compliance with the Exchange Act and FINRA rules relating to excessive trading and churning. Therefore, SW Financial violated FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

The matters covered by this AWC arose from a review of SW Financial's pre-IPO offerings, as well as from examinations of registered representatives associated with SW Financial.

A. SW Financial made material misrepresentations and omissions to customers in connection with the sale of the Offerings.

Section 17(a) of the Securities Act provides that:

> It shall be unlawful for any person in the offer or sale of any securities . . . by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly . . .

[2] FINRA Rule 2111 applies to recommendations made before June 30, 2020, and for recommendations made to non-retail customers on or after June 30, 2020. Reg BI applies to recommendations made to retail customers on or after June 30, 2020.

> (2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
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> (3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

As of June 30, 2020, broker-dealers and their associated persons are required to comply with Reg BI under the Exchange Act. Reg BI's Best Interest Obligation, set forth at Exchange Act Rule 15*l*-1(a), 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 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 Disclosure Obligation, set forth at Exchange Act Rule 15*l*-1(a)(2)(i), requires broker-dealers and associated persons to provide retail customers full and fair written disclosure, prior to or at the time of the recommendation, of all material facts relating to conflicts of interest that are associated with the recommendation.[3] Regulation BI defines a "conflict of interest" to be an interest that might incline a broker-dealer or an associated person—consciously or unconsciously—to make a recommendation that is not disinterested.

FINRA Rule 2010 requires that FINRA members observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. It is a violation of FINRA Rule 2010 to act in contravention of Section 17(a) of the Securities Act or to violate Reg BI. In addition, making a material misrepresentation or omitting a material fact to customers independently violates FINRA Rule 2010, as it is inconsistent with just and equitable principles of trade. Providing false or misleading information to FINRA is also inconsistent with just and equitable principles of trade and constitutes a violation of FINRA Rule 2010.

In January 2018, SW Financial agreed to act as a placement agent for the Offerings.[4] The Offerings purportedly provided investors with the opportunity to own interests in privately held companies before their anticipated IPOs. Shares in these private companies were the Offerings' sole purported asset. The written agreement between the issuer of the Offerings (the Issuer) and SW Financial stated that SW Financial was entitled to a ten

[3] Reg BI's Adopting Release states that a fact is "material" if there is a substantial likelihood that a reasonable retail customer would consider it important. *Regulation Best Interest: The Broker-Dealer Standard of Conduct*, Exchange Act Release No. 86031, 84 FR 33318 at 33347 (July 12, 2019).

[4] The Issuer is a non-registered limited liability company that established multiple private funds. Each fund issued different series of investments offering pre-IPO shares of private companies.

percent sales commission and half of any carried interest collected by the Issuer.[5] Separately, SW Financial and the Issuer agreed that SW Financial would receive an additional five percent in selling compensation, for a total of 15 percent.

SW Financial never disclosed to investors that it was to receive an additional five percent in selling compensation or half of any carried interest. Indeed, SW Financial sent prospective investors offering documents—including a private placement memorandum, series investment letters, and subscription agreements—that falsely stated only that SW Financial was entitled to a ten percent sales commission. Customers who invested in the Offerings then received "welcome letters" from the Issuer, which repeated the false statement that SW Financial received only a ten percent commission. SW Financial's selling representatives were unable to identify and correct these misrepresentations and omissions because SW Financial never told them that SW Financial was to receive additional compensation. Additionally, on four occasions, SW Financial made filings with FINRA that falsely stated that SW Financial would receive only a ten percent sales commission.

From March 2018 to December 2021, SW Financial sold the Offerings to 171 investors, including 163 retail customers. The total principal amount of the investments was approximately \$21.3 million. SW Financial received approximately \$3.06 million in total selling compensation, of which approximately \$936,000 was attributable to the undisclosed five percent in selling compensation.[6] In addition, the Issuer transferred shares valued at over \$1.07 million to SW Financial and its owners to cover SW Financial's share of the carried interest. Therefore, the compensation arrangement SW Financial failed to disclose resulted in approximately \$2 million in compensation.

SW Financial's compensation arrangement was a material fact that the firm should have disclosed to its customers. Compensation from third parties like the Issuer represents a conflict of interest that could influence the broker-dealer's recommendations.[7]

By misrepresenting and omitting material information to prospective investors, SW Financial violated FINRA Rule 2010, both independently and by virtue of violating Sections 17(a)(2) and (3) of the Securities Act. For its misconduct occurring on or after June 30, 2020, SW Financial also willfully violated Exchange Act Rule 15*l*-1(a)(2)(i)(B), and violated FINRA Rule 2010.

By providing false and misleading information to FINRA, SW Financial violated FINRA Rule 2010.

B. SW Financial lacked a reasonable basis to recommend the Offerings.

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[5] Carried interest is a share of profits payable to investment managers rather than investors. Here, the Issuer retained as carried interest 20 percent of any profits following the IPOs of the private companies.

[6] For certain Offerings, despite the agreement, the Issuer in fact paid SW less than a total of 5% in additional compensation.

[7] *See* Exchange Act Release No. 86031, 84 FR at 33363.

As of June 30, 2020, Reg BI's Care Obligation, set forth at Exchange Act Rule 15*l*-1(a)(2)(ii), requires broker-dealers and their associated persons to exercise reasonable diligence, care, and skill to, among other things, understand the potential risks, rewards, and costs associated with a recommendation, and have a reasonable basis to believe that the recommendation could be in the best interest of at least *some* retail customers. Reg BI's Adopting Release provides that what constitutes "reasonable diligence, care, and skill" depends on, among other things, the complexity of, and risks associated with, the recommended security.[8] The Care Obligation requires broker-dealers and their associated persons to have a reasonable basis to believe that the recommendation could be in the best interest of at least *some* retail investors.

Prior to June 30, 2020, FINRA Rule 2111 required members and associated persons to have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer. FINRA Rule 2111 Supplementary Material .05(a) defined the reasonable-basis obligation to require members and their associated persons perform reasonable diligence to have an understanding of the potential risks and rewards associated with the recommended security or strategy and to have a reasonable basis to believe, based on that reasonable diligence, that the recommendation is suitable for at least *some* investors.

When a broker-dealer is engaged in selling a private placement, compliance with the Care Obligation and FINRA's suitability rule requires the broker-dealer to conduct a reasonable investigation, or due diligence, prior to recommending the offerings to its customers. Regulatory Notice 10-22 explains that such due diligence should include, at a minimum, a reasonable investigation concerning the issuer and its management, the assets held by or to be acquired by the issuer, the claims being made, and the intended use of proceeds of the offering.

SW Financial did not conduct reasonable due diligence before recommending the Offerings to its customers (among them, 163 retail customers who purchased the Offerings), and therefore lacked a reasonable basis for those recommendations. SW Financial failed to take reasonable steps to verify whether the Issuer had access to, or possession of, the pre-IPO shares in the companies that were the subject of the Offerings, even though such shares were the Offerings' only purported assets. Indeed, because investors in the Offerings receive shares in the companies at issue only after the companies have held IPOs, and many of the companies at issue have not yet done so, it remains unknown whether the Issuer, in fact, possesses the pre-IPO shares it purported to sell. Moreover, despite knowing that the Issuer applied markups to the pre-IPO shares — in other words, the Issuer charged a higher price when selling the shares to the pre-IPO fund than the Issuer had paid to acquire the shares—SW Financial did not determine the amount of these markups, nor did the firm seek to have the markups disclosed to customers. As a result, at the time SW Financial recommended the Offerings to its customers, the firm had no reasonable basis to believe that the Issuer had access to or

[8] Exchange Act Release No. 86031, 84 FR at 33376.

possession of the pre-IPO shares identified in the offering documents, or that the Issuer's markups were reasonable and properly disclosed. In fact, the markups for at least some of the Offerings were as high as 25 to 39 percent.[9]

Therefore, SW Financial violated FINRA Rules 2111 and 2010, and willfully violated Exchange Act Rule 15*l*-1.

C. SW Financial failed to make required filings pursuant to FINRA Rule 5123.

FINRA Rule 5123 requires that each member that sells a security in a non-public offering in reliance on an available exemption from registration under the Securities Act: (i) submit to FINRA, or have submitted on its behalf, a copy of any private placement memorandum, term sheet or other offering document, used in connection with such sale within 15 calendar days of the date of first sale; or (ii) notify FINRA that no such offering documents were used. Rule 5123 was implemented to, as described in FINRA Regulatory Notice 12-40, "enhance oversight and investor protection" and provide "more timely and complete information about the private placement activities of firms on behalf of other issuers." A violation of FINRA Rule 5123 is also a violation of FINRA Rule 2010.

During the period from July 2019 to December 2021, SW Financial sold at least 15 new Offerings, but failed to file the private placement memorandum and other offering documents with FINRA.

Therefore, SW Financial violated FINRA Rules 5123 and 2010.

D. SW Financial churned customer accounts.

Section 10(b) of the Exchange Act makes it unlawful for any person to employ "any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the [SEC] may prescribe." Rule 10b-5 makes it unlawful for any person, directly or indirectly, in connection with the sale or purchase of any security, to: (a) "employ any device, scheme, or artifice to defraud" or (c) "engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person."

FINRA Rule 2020 provides that a member may not "effect any transaction in, or induce the purchase or sale of, any security by any manipulative, deceptive or other fraudulent device or contrivance."

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[9] On May 13, 2022, the SEC filed a lawsuit in the Southern District of New York (Case No. 1:22-cv-03897-LAK) against the Issuer and its principals. Among other things, the SEC alleged that the Issuer committed fraud by charging undisclosed, excessive markups and not having enough pre-IPO shares to satisfy its sales to investors. On June 14, 2022, the court entered a stipulation and consent order granting a preliminary injunction and other relief, including appointment of a receiver for the Issuer. On January 17, 2023, the court granted the U.S. Department of Justice's motion to stay the proceedings in light of an ongoing criminal investigation. *See SEC v. Straightpath Venture Partners, LLC, et. al.*, 2023 U.S. Dist. LEXIS 8074 (Jan. 17, 2023).

FINRA Rule 2111 imposes a “quantitative suitability” obligation that requires a member or associated person who has actual or de facto control over a customer account to have a reasonable basis for believing that a series of recommended securities transactions are not excessive and unsuitable for the customer when taken together in light of the customer’s investment profile.[10]

FINRA Rule 2111.05 states that “[n]o single test defines excessive activity, 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 may provide a basis for a finding that a member or associated person has violated the quantitative suitability obligation.” 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 must 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 above six and a cost-to-equity ratio above 20% generally indicates that an account has been excessively traded.

Excessive trading becomes churning, which violates Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, and FINRA Rule 2020, when a FINRA member or registered representative acts with an intent to defraud or with a reckless disregard of the customer’s interests.

SW Financial is liable for its registered representatives’ misconduct because, among other reasons, under the common law doctrine of *respondeat superior* the representatives engaged in the misconduct set forth below in the course of their employment at SW Financial.

Violations of FINRA Rules 2111 and 2020, as well as Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5, also constitute a violation of FINRA Rule 2010.

From January 2016 through May 2019, SW Financial, acting through two registered representatives (RR 1 and RR 2), churned nine customer accounts.[11] RR 1 and RR 2 recommended short-term, in-and-out trading in the nine customer accounts, and the customers routinely followed those recommendations. As a result, SW Financial, acting through RR 1 and RR 2, exercised *de facto* control over the nine customer accounts.

The trading in the nine customers’ accounts resulted in annualized cost-to-equity ratios ranging from 79.88% to 228.25%, annualized turnover rates ranging from 18.63 to 66.88,

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[10] Effective June 30, 2020, the element of control was removed from the quantitative suitability obligation under FINRA Rule 2111. *See* Regulatory Notice 20-18 (June 19, 2020).

[11] FINRA previously took disciplinary action against the two SW Financial registered representatives. In May 2021, FINRA’s Office of Hearing Officers issued an Extended Hearing Panel Decision barring one of the registered representatives (RR 1) from associating with any FINRA member in any capacity and ordering restitution. In August 2019, the other representative (RR 2) entered into an AWC and agreed to a two-year suspension from associating with any FINRA member firm in any capacity, a fine, and an order to pay restitution to customers.

total trading costs of $350,280, including $304,873 in commissions, and total realized losses of $465,964. For example:

1. In December 2016, Customer A opened an account at SW Financial. At that time, Customer A was a 75-year-old retired aircraft maintenance worker with limited investment experience. Customer A viewed his assets at SW Financial as his retirement savings. SW Financial, acting through RR 1, recommended short-term, in-and-out trading to Customer A, and Customer A relied completely on those recommendations. From December 2016 through July 2018, RR 1 effected 174 trades in Customer A's account, resulting in an annualized cost-to-equity ratio of 103.49% and an annualized turnover rate of 31.5. Although Customer A's account had an average monthly funded equity of approximately $70,000, RR 1 purchased over $3.6 million in securities in Customer A's account. The trading in Customer A's account generated total trading costs of $120,388, including $101,806 in commissions, and caused $131,979 in realized losses. As a result, Customer A lost the majority of his retirement savings and was forced to sell his home and downsize to a smaller home to raise funds to pay expenses.

2. In April 2016, Customer B opened an account at SW Financial. At that time, Customer B was a 72-year-old owner of an air conditioning company with no recent investment experience. SW Financial, acting through RR 1, recommended short-term, in-and-out trading to Customer B, and Customer B relied completely on those recommendations. From April 2016 through May 2019, RR 1 effected 145 trades in Customer B's account, resulting in an annualized cost-to-equity ratio of 79.88% and an annualized turnover rate of 20.92. Although Customer B's account had an average monthly funded equity of approximately $26,000, RR 1 purchased over $1.7 million in securities in Customer B's account. The trading in Customer B's account generated total trading costs of $59,032, including $50,936 in commissions, and caused $76,866 in realized losses.

Therefore, SW Financial willfully violated Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5 and violated FINRA Rules 2111, 2020, and 2010.

E. SW Financial failed to establish, maintain, and enforce a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with the Exchange Act and FINRA Rules relating to (1) the sale of private placements and (2) excessive trading and churning.

FINRA Rule 3110(a) requires that FINRA members "establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules." FINRA Rule 3110(b) requires that each FINRA member "establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with the applicable securities laws and regulations, and with applicable FINRA Rules." The duty to supervise under FINRA Rule 3110 also includes the responsibility to reasonably investigate red flags that suggest that misconduct may be occurring and to act upon the results of such investigation.

A violation of FINRA Rule 3110 also constitutes a violation of FINRA Rule 2010.

SW Financial failed to reasonably supervise the Offerings.

As noted above, under Regulatory Notice 10-22, firms must conduct reasonable due diligence before selling private offerings to customers. From January 2018 through December 2021, SW Financial had reasonable written supervisory procedures (WSPs) for private offerings. Under the firm's WSPs, a designated supervisor was responsible for ensuring that the firm performed reasonable due diligence for every private offering it sold. As part of due diligence, the firm was required to conduct certain mandatory inquiries, including into the quality of the assets held by the issuer. The WSPs further mandated that the designated supervisor take reasonable steps to ensure the accuracy of all information sent to investors, and that the offering documents include all material information. The WSPs required the designated principal to complete, sign, and date a due diligence checklist for each offering to evidence the firm's review.

From January 2018 through December 2021, SW Financial did not take any of these steps or otherwise conduct reasonable due diligence with respect to the Offerings. SW Financial did not conduct any due diligence or complete any due diligence checklists for any of the 21 specific Offerings. As a result, although SW Financial was supposed to review the quality of the assets held by the Issuer, SW Financial failed to determine whether the Issuer possessed the pre-IPO shares that were the Offerings' sole asset. As noted above, for many of the Offerings, it remains unknown whether the Issuer actually possesses these shares. Moreover, SW Financial failed to determine the amount of the Issuer's markups and failed to take reasonable steps to ensure that it conveyed accurate information to potential investors in the offering documents. As noted above, the markups for at least some of the Offerings were as high as 25 to 39 percent—facts that were not disclosed to potential customers in the offering documents. The offering documents also contained material misrepresentations and omissions regarding the amount of compensation SW Financial had agreed to receive in connection with the Offerings.

Therefore, SW Financial violated FINRA Rules 3110 and 2010.

SW Financial failed to reasonably supervise for excessive trading and churning.

From January 2016 through November 2019, the firm's WSPs failed to include procedures for how its supervisors should monitor for churning and how to address potential indicia of churning. In addition, the WSPs did not include a definition of "turnover rate" or "cost-to-equity ratio" with respect to monitoring for excessive trading. Moreover, the WSPs incorrectly defined the quantitative suitability obligation as applicable only when the firm and its registered representatives had "actual control" over customer accounts, without identifying or explaining the concept of *de facto* control.

In practice, the firm had two ways to review for excessive trading and churning, which were individually and collectively unreasonable. First, the firm used a daily trade blotter to perform a suitability review. The daily trade blotter, however, only reflected the prior day's trading and did not provide any information related to patterns of, or overall, trading in customer accounts.

Second, SW Financial used the monthly active account report it received from its clearing firm, which flagged customer accounts meeting certain thresholds, such as high commission-to-equity ratios, high turnover rates, large numbers of trades, and losses. The monthly report routinely flagged dozens of customer accounts and some customers appeared on the monthly report multiple times, often for several consecutive months. Specifically, five SW Financial registered representatives traded 20 accounts that collectively appeared on the monthly report more than 100 times from March 2016 through September 2019. These 20 accounts, as well as other accounts that appeared on the monthly report, should have attracted supervisory scrutiny because the accounts had (1) annualized cost-to-equity ratios and turnover rates well above the guideposts of 20% and six, respectively, (2) significant numbers of trades and high commissions, and (3) substantial losses.

SW Financial's WSPs did not identify the parameters of the monthly report that caused alerts to trigger and did not provide any guidance with respect to how to resolve or escalate accounts that the monthly report flagged. The firm did not use the monthly reports' high cost-to-equity ratios and turnover rates to review potentially excessive trading in the flagged accounts. Instead, the firm relied on the monthly report to generate a list of customers to whom the firm sent "active account letters." The firm relied on the active account letters as its primary tool for supervising excessive trading and churning and did not otherwise contact customers or restrict or limit the trading by the five representatives. As a result, SW Financial's active account letters did not slow, much less stop, the excessive trading in these customers' accounts.

For example, from May 2017 through January 2018, the firm reviewed nine consecutive monthly reports that flagged RR 1's trading in Customer A's account. The May 2017 monthly report showed that Customer A's account had already triggered alerts on five consecutive monthly reports, had an annualized cost-to-equity ratio of 44.95%, an annualized turnover rate of 30.92, and lost 31% of its equity in the previous four months. The firm closed the May 2017 alert without further action because it sent Customer A an active account letter in March 2017. The January 2018 monthly report showed that the annualized cost-to-equity ratio in Customer A's account had increased to 98.11%, the annualized turnover rate had increased to 35.53, the account had lost 49% of its equity in the previous four months, and Customer A paid $95,062 in commissions over the last year. The firm closed the January 2018 alert without further action because Customer A had received and signed an active account letter in November 2017, two months earlier.

Additionally, the firm failed to reasonably supervise churning and excessive trading notwithstanding that several registered representatives responsible for the customers' accounts had regulatory histories and customer complaints that should have caused SW Financial to closely monitor their accounts. In particular, two registered representatives were placed on heightened supervision plans mandated by state securities regulators, which required the firm to complete monthly reviews of their trading. Nevertheless, SW Financial never restricted or limited the trading by the representatives, disciplined the representatives, or took any other reasonable steps to prevent their excessive trading and churning in customers' accounts.

As a result of these supervisory failures, SW Financial failed to identify or address red flags of churning and excessive trading in 20 customer accounts handled by five registered representatives, including RR 1 and RR 2. The trades recommended in these accounts resulted in annualized turnover rates ranging from 12.93 to 66.88 and annualized cost-to-equity ratios from 42.61% to 228.25%. Collectively, the trading caused the customers to pay more than $816,087 in total trading costs.

Therefore, SW Financial violated FINRA Rules 3110 and 2010.

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

- an expulsion from FINRA membership.

Respondent understands that if it is expelled from FINRA membership, it 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.

Respondent understands that this settlement includes a finding that it willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Exchange Act Rule 15*l*-1(a), 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. A bar or expulsion shall become effective upon approval or acceptance of this AWC.

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.

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.

4/17/23
Date

SW Financial
Respondent

Print Name: Bruce Boyle

Title: Chief Compliance Officer

Reviewed by:

Charles O'Rourke, Esq.
Counsel for Respondent
2 Swenson Drive
Woodbury, New York 11797

Accepted by FINRA:

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

5/11/2023
Date

Michael Dorfman-Gonzalez
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