FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2022076459305

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

RE: Nicholas Michael Caruso (Respondent)
Former General Securities Representative
CRD No. 7301382

Pursuant to FINRA Rule 9216, Respondent Nicholas Michael Caruso 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

Caruso first registered with FINRA on May 20, 2022, as a General Securities Representative (GS) through an association with Monmouth Capital Management LLC (CRD No. 290248). On June 5, 2023, Monmouth filed a Form U5 stating that Caruso voluntarily terminated his association with the firm.

On June 5, 2023, Caruso registered with FINRA as a GS through another member firm. On August 17, 2023, that member firm filed a Form U5 stating that Caruso voluntarily terminated his association with the firm as of that date.

Caruso is not currently registered or associated with any FINRA member firm. However, he remains subject to FINRA' s jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.[1]

OVERVIEW

Between September 2022 and May 2023, while associated with Monmouth[2], Caruso willfully violated the Best Interest Obligation under Rule 15*l*-1 of the Securities

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

[2] On July 6, 2023, FINRA expelled Monmouth for churning and excessively trading customer accounts and failing to reasonably supervise its representatives' trading, among other misconduct.

Exchange Act of 1934 and violated FINRA Rule 2010 by recommending a series of transactions in the accounts of two retail customers that was excessive in light of their investment profiles and therefore was not in either customer's best interest.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a customer complaint made to FINRA.

As of June 30, 2020, broker-dealers and their associated persons are required to comply with Regulation Best Interest under the Securities Exchange Act of 1934. Reg 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. 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, 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 Reg 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.

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 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 of six or a cost-to-equity ratio above 20 percent generally indicates that a series of recommended transactions was excessive.

Caruso recommended to two of his retail customers (Customers A and B) a series of transactions that was excessive in light of each customer's investment profile. In so doing, Caruso placed his and Monmouth's interests ahead of the interests of both customers. At the time of the trading, the customers were in their early sixties, and each had an investment profile reflecting an income of between $100,000 and $200,000 and a liquid net worth of between $200,000 and $500,000. Caruso's recommendations for both customers involved a pattern of in-and-out, short-term trading, and Caruso failed to consider the cumulative costs of his trading.

Customer A

Between November 2022 and May 2023, Caruso effected 20 trades in Customer A's account. Collectively, these trades resulted in a cost-to-equity ratio exceeding 49 percent—meaning that Customer A's account would have had to grow by more than 49 percent during the seven-month period just to break even—and a turnover rate of 9.59. Although Customer A's average account balance during this period was approximately $15,200, Caruso effected the purchase of approximately $146,000 in securities. Customer A lost approximately $4,500 during this period and paid more than $7,300 in commissions and trade costs.

Customer B

Between September 2022 and May 2023, Caruso effected 22 trades in Customer B's account. Collectively, these trades resulted in a cost-to-equity ratio exceeding 30 percent, and a turnover rate of 6.56. Although Customer B's average account balance during this period was approximately $22,200, Caruso effected the purchase of approximately $145,800 in securities. Customer B lost approximately $15,800 during this period and paid more than $6,800 in commissions and trade costs.

By engaging in excessive trading in two customer accounts, Caruso willfully violated Exchange Act Rule 15*l*-1 and violated FINRA Rule 2010.

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

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

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 15*l*-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.

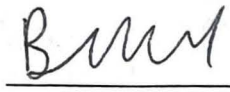
D. Respondent may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that he may not deny the charges or make any statement that is inconsistent with the AWC in this statement. This statement 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 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.

10/08/23
Date

Nicholas Caruso
Nicholas Michael Caruso
Respondent

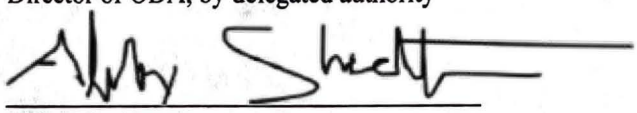
Reviewed by:



Bryan Ward
Counsel for Respondent
Holcomb + Ward LLP
3455 Peachtree Road NE
Suite 500
Atlanta, GA 30326

Accepted by FINRA:

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



10/12/2023
Date

Abby Shechtman
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FINRA
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