

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2022076103701**

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

RE: Axos Invest LLC (Respondent)
Member Firm
CRD No. 172393

Pursuant to FINRA Rule 9216, Respondent Axos Invest LLC 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

Axos Invest LLC became a FINRA member firm in 2015. The firm, which is headquartered in Las Vegas, Nevada, has two branch offices and 15 registered representatives. Axos Invest LLC's primary business consists of self-directed accounts for retail investors.¹

OVERVIEW

From June 30, 2020, to February 6, 2023, Axos Invest LLC falsely responded "No" to the question on the firm's customer relationship summary (Form CRS) concerning legal or disciplinary history. The firm was required to respond "Yes," because a control affiliate of the firm, and two of the firm's registered representatives, had prior legal or disciplinary history. By filing and delivering to customers two versions of its Form CRS (an initial version and an amended version) containing inaccurate information, Axos Invest LLC willfully violated Section 17(a)(1) of the Securities Exchange Act of 1934, Exchange Act Rule 17a-14, and FINRA Rule 2010.

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

FACTS AND VIOLATIVE CONDUCT

This matter originated from a FINRA cause examination.

On June 5, 2019, the Securities and Exchange Commission (SEC) adopted Form CRS and rules creating new requirements—which include requirements to prepare, file, and deliver the Form CRS—for SEC-registered broker-dealers offering services to a retail investor. The compliance date for Form CRS was June 30, 2020.

Form CRS provides customers with information about the types of services the firm offers; the fees, costs, conflicts of interest, and required standard of conduct associated with those services; whether the firm and its investment professionals have reportable legal or disciplinary history; and how to get more information about the firm.

Form CRS also includes required “conversation starters” to help begin a discussion with a broker-dealer about the relationship, including their services, fees, costs, conflicts, and disciplinary information.

Section 17(a)(1) of the Securities Exchange Act of 1934 requires registered broker-dealers to make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission deems “necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of” the Exchange Act. Exchange Act Rule 17a-14—titled “Form CRS, for preparation, filing and delivery of Form CRS”—requires broker-dealers offering services to a retail investor to prepare a Form CRS in accordance with the instructions in Form CRS, and to comply with requirements related to filing, amending, delivering, and posting the Form CRS to the firm’s public website.

A violation of Exchange Act § 17(a)(1) and Exchange Act Rule 17a-14 also is a violation of FINRA Rule 2010, which requires member firms to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

Form CRS contains the heading, “Do you or your financial professionals have legal or disciplinary history?” The instructions to Form CRS state that a firm must respond “Yes” if it or any of its financial professionals discloses, or is required to disclose, legal or disciplinary history on specified regulatory disclosure forms, such as Forms BD, U4, U5, and U6.² Legal or disciplinary history that is required to be disclosed on those forms

² These forms are submitted to the Central Registration Depository by member firms or regulators. Broker-dealers file Form BD (Uniform Application for Broker-Dealer Regulation) to become registered with the U.S. Securities and Exchange Commission, FINRA, other self-regulatory organizations, and jurisdictions (*e.g.*, U.S. states and territories); Form U4 (Uniform Application for Securities Industry Registration or Transfer) is used to elicit employment history, disciplinary, and other information about individuals, to register them with FINRA, other self-regulatory organizations, or jurisdictions; Form U5 (Uniform Termination Notice for Securities Industry Registration) is used to terminate individuals’ registrations with FINRA, other self-regulatory organizations, or jurisdictions, and to elicit details regarding the reasons for termination; and Form U6 is used by regulators to report disclosure events and disciplinary actions against individuals and organizations, and to report final FINRA arbitration awards against broker-dealers and associated persons.

includes criminal history, regulatory actions, civil judicial actions, and specified financial events (e.g., bankruptcies, judgments, and liens). Because a firm must disclose on Form BD not only its own legal or disciplinary history, but also that of its “control affiliates,”³ a firm must respond “Yes” to the Form CRS question concerning legal or disciplinary history if any of its control affiliates has legal or disciplinary history.⁴

Axos Invest LLC falsely responded “No” to the question concerning legal or disciplinary history on the initial Form CRS it filed on June 29, 2020, and on the amended Form CRS it filed on April 22, 2022. The firm was required to respond “Yes” on both Forms CRS. At the time the firm filed its initial Form CRS, a control affiliate and one of the firm’s registered representatives had prior legal or disciplinary history. At the time the firm filed its amended Form CRS, the affiliate and two of the firm’s registered representatives had prior legal or disciplinary history.

Before filing these Forms CRS, regulatory disclosures reflecting the affiliate’s and registered representatives’ legal or disciplinary history had already been made by, or were available to, the firm in FINRA’s Central Registration Depository (CRD) and in BrokerCheck®. Specifically, the firm had already disclosed on its Form BD that the affiliate had been the subject of disciplinary actions. This affiliate had been the subject of 13 disciplinary actions, which occurred between 2004 and 2019 (when the affiliate was under different ownership), and which included findings for failing to file suspicious activity reports relating to the deposit and sale of low-priced securities, failing to develop and implement a written anti-money laundering program reasonably designed to achieve compliance with the Bank Secrecy Act, failing to provide customers with margin interest rate disclosures, and failing to comply with Regulation SHO’s close-out requirements for short sales. In addition, a Form U4 filing for one of the firm’s registered representatives disclosed a bankruptcy filing, and Form U4 and U5 filings for the other registered representative disclosed a customer complaint. Despite having disclosed the affiliate’s legal or disciplinary history on its Form BD—and despite its knowledge of its registered representatives’ legal or disciplinary history—Axos Invest LLC incorrectly responded “No” to the Form CRS question concerning legal or disciplinary history.⁵

Therefore, Axos Invest LLC willfully violated Exchange Act § 17(a)(1), Exchange Act Rule 17a-14, and FINRA Rule 2010.

³ According to Form BD, a “control affiliate” includes any individual or organization that directly or indirectly controls, is under common control with, or is controlled by, a firm.

⁴ See U.S. Securities and Exchange Commission, Frequently Asked Questions on Form CRS, *available at* <https://www.sec.gov/investment/form-crs-faq>.

⁵ Following FINRA’s investigation, Axos Invest LLC updated its Form CRS, effective February 6, 2023, to respond “Yes” to the question concerning legal or disciplinary history.

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

- a censure and
- a \$75,000 fine.

Respondent agrees to pay the monetary sanction 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 it proposes to pay the fine imposed.

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 sanction imposed in this matter.

Respondent understands that this settlement includes a finding that it willfully violated Section 17(a)(1) of the Securities Exchange Act of 1934 and Rule 17a-14 thereunder, 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.

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.
- 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 it 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.

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.

May 9, 2023

Date

Derrick Walsh

Axos Invest LLC
Respondent

Print Name: Derrick Walsh

Title: CFO

Reviewed by:

Daniel Hawke

Daniel M. Hawke
Counsel for Respondent
Arnold & Porter
601 Massachusetts Ave, NW
Washington, DC 20001

Accepted by FINRA:

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

May 19, 2023

Date

Rebecca Segrest

Rebecca Segrest
Senior Counsel
FINRA
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