

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2016048921103**

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

RE: PHX Financial, Inc. (Respondent)
Member Firm
CRD No. 144403

Robert Delaplain (Respondent)
General Securities Principal
CRD No. 1017107

Pursuant to FINRA Rule 9216, Respondents PHX Financial, Inc. (PHX) and Robert Delaplain submit 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 Respondents alleging violations based on the same factual findings described in this AWC.

I.

ACCEPTANCE AND CONSENT

- A. Respondents hereby accept and consent, without admitting or denying the findings and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

PHX has been a FINRA member since 2007 and is headquartered in New York, NY. It has approximately 60 registered representatives (RRs) in four branches. It conducts a full-service brokerage business including, among other things, retail trading and investment banking.

Delaplain entered the securities industry in 1981 and has been registered with FINRA through an association with PHX since September 2012. Delaplain is registered with FINRA as a General Securities Representative, a General Securities Principal, an Options Principal, a Financial and Operations Principal, a Municipal Securities Principal, and a Compliance Official. Delaplain remains registered in those capacities through his association with PHX and is currently the firm's President and Registered Options & Securities Futures Principal (ROSFP) as well as a branch supervisor for the New York branch. From 2012 through the end of 2015, Delaplain was the firm's Chief Compliance Officer (CCO). In addition, he was responsible for directly supervising certain RRs.

RELEVANT DISCIPLINARY HISTORY

In April 2015, PHX, without admitting or denying the allegations giving rise thereto, entered into a Consent Agreement and Final Order (the “Order”) with the Office of the Montana State Auditor, Commissioner of Securities and Insurance (“CSI”) to resolve an October 2014 complaint brought by the CSI. The complaint had alleged that, from 2013 through May 2014, a PHX RR engaged in excessive and unauthorized trading and charged excessive commissions.¹ According to the Order, in May 2013, the CSI required PHX to place the RR on heightened supervision in order for him to qualify as a Montana salesperson. Delaplain was required to submit monthly updates to the CSI and maintain correspondence with the RR’s Montana clients. According to the Order, PHX and Delaplain failed to communicate with the CSI and with an investor, as required by the heightened supervision agreement. Pursuant to the Order, PHX consented to a \$30,000 fine and a restitution order totaling \$132,000. In addition, PHX was required to withdraw its registration in Montana and agreed not to reapply for a period of two years. Pursuant to the same Order, Delaplain was fined \$5,000.

OVERVIEW

From January 2013 until April 2019, PHX failed to establish and maintain a system, including written supervisory policies and procedures, reasonably designed to achieve compliance with the securities laws and regulations related to unsuitable excessive trading in customer accounts. In addition, from May 2013 through April 2016, PHX failed to reasonably enforce its WSPs related to options. As a result, PHX violated NASD Rule 3010 and FINRA Rules 2360, 3110,² and 2010.

From June 2013 to April 2015, PHX, through Robert Delaplain, failed to reasonably supervise two registered representatives, Halil Kozi³ and RR A⁴, who engaged in unsuitable excessive trading and unsuitable options trading in the accounts of two customers, resulting in approximately \$550,000 in customer losses and gross commissions of over \$350,000. As a result, PHX and Delaplain violated NASD Rule 3010(a) and FINRA Rules 3110(a) and 2010.⁵

For five private-placement offerings that PHX recommended and sold to customers between July 2017 and July 2018, the firm failed to conduct and document reasonable

¹ The RR entered into a separate Consent Agreement and Final Order with CSI in April 2015 in which CSI found he had engaged in excessive and unauthorized trading and had charged and received excessive commissions in certain Montana PHX accounts.

² FINRA Rule 3110 replaced NASD Rule 3010 on December 1, 2014.

³ On March 17, 2020, an Offer of Settlement (No. 2016048921102) was issued containing FINRA’s finding that Kozi excessively traded a customer’s account and made unsuitable recommendations. Kozi was suspended in all capacities for two years. Based on Kozi’s demonstrated inability to pay, no monetary sanctions were imposed.

⁴ FINRA has barred RR A from associating with any FINRA member in any capacity.

⁵ Although Delaplain was the Firm’s CCO from 2012 through 2015, his conduct as CCO does not form the basis for the finding that Delaplain violated NASD Rule 3010(a) and FINRA Rules 3110(a), and 2010. Rather, Delaplain’s violations of these rules relate to his conduct as the designated business-line supervisor for Kozi and RR A.

investigations of the offerings and their issuers before recommending those securities to its customers. During the same period, the firm also had no supervisory system or written procedures in place that were reasonably designed to ensure that it and its representatives did not engage in impermissible general solicitation of private-placement offerings. As a result of these supervisory failures related to private placements, PHX violated FINRA Rules 3110(a) and (b) and 2010.

Between July 2017 and July 2018, PHX recommended private-placement securities to eleven customers without first inquiring about the investment objectives, risk tolerance, time horizon, or tax status of those eleven customers. As a result, PHX violated FINRA Rules 2111(a), 3110(b), and 2010.

FACTS AND VIOLATIVE CONDUCT

PHX's Supervisory Violations

NASD Rule 3010(a) and FINRA Rule 3110(a) require firms to establish and maintain a system to supervise the activities of registered and associated personnel that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable FINRA rules. NASD Rule 3010(a) and FINRA Rule 3110(a) also require members to establish and maintain a system to supervise the activities of each RR that is reasonably designed to achieve compliance with the applicable securities laws and regulations and with applicable FINRA rules.

NASD Rule 3010(b) and FINRA Rule 3110(b) require firms to 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 applicable securities laws and regulations, and with applicable NASD and FINRA rules. Written supervisory procedures must not only set out what conduct is prohibited but should specify what steps need to be taken to achieve compliance.⁶

A violation of NASD Rule 3010 or of FINRA Rule 3110 is a violation of FINRA Rule 2010.

1. *The firm did not establish and maintain a supervisory system or written procedures reasonably designed to achieve compliance with FINRA Rule 2111's quantitative suitability requirements.*

FINRA Rule 2111 requires member firms or their associated persons to have a reasonable basis to believe that a recommended securities transaction is suitable in light of the customer's investment profile. Recommended securities transactions may be considered excessive if, when taken together, the level of trading is inconsistent with the customer's investment profile and an RR exercises control over the customer's accounts.

⁶ NASD Notice to Members 98-96 (December 1998).

From January 2013 through April 2019, the firm failed to establish and maintain a supervisory system, including written supervisory procedures, reasonably designed to identify and prevent unsuitable excessive trading.

The firm's written procedures did not identify any steps a supervisor should take to identify or prevent excessive trading or that a supervisor should take if the supervisor identified excessive trading, including what remedial steps should be taken and/or how those steps should be documented.

Further, from January 2013 through April 2016, to the extent the firm attempted to detect excessive trading, it did so by performing manual review of a daily trade blotter that did not capture patterns of trading or facilitate calculation of cost-to-equity ratios and turnover ratios.⁷ To the extent the firm performed these calculations, it did so manually and on an ad hoc basis, despite the fact that retail trading made up at least half of the firm's business at the time.

In April 2016, after a FINRA examination, the firm began using automated exception reports for excessive trading provided by its clearing firm. However, when the firm changed clearing firms in mid-2017, it no longer used those exception reports and did not obtain any other exception reports for excessive trading. Instead, the firm again performed manual reviews of a daily trade blotter that did not reflect patterns of trading, cost-to-equity ratios, or turnover ratios. In April 2019, after another FINRA examination, the firm resumed using automated exception reports for excessive trading.

As a result, PHX violated NASD Rules 3010(a) and (b) and FINRA Rules 3110(a) and (b) and 2010.

2. The firm did not reasonably supervise options trading.

The firm's written procedures required it to meet certain requirements set forth in FINRA Rule 2360. Rule 2360 requires, among other things, the firm to "ensure that its written supervisory system, policies, and procedures pursuant to Rules 3110, 3120, and 3130 adequately address the member's public customer options business." Pursuant to that obligation, PHX's procedures required the firm to name a Registered Options & Securities Futures Principal (ROSFP) and identified the ROSFP's responsibilities. Those responsibilities included, among other things, a suitability review for risk tolerance when an options account was opened, ongoing suitability review of options trading including review of size and frequency of trades, commission-related issues, and concentration of a customer's account in a particular type of options trade (options class), all of which are required by Rule 2360 for a reasonable review.

However, from May 2013 through April 2016, the firm did not enforce its written supervisory procedures in a way reasonably designed to achieve compliance with its

⁷ 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.

supervisory obligations related to options trading, as set forth in FINRA Rule 2360.

The firm named Kozi ROSFP in May 2013 and delegated to Kozi responsibility for multiple tasks such as reviewing and approving new options accounts, confirming the options-related suitability risk levels for new accounts, and reviewing three options-related exception reports.

However, Kozi was a producing broker who engaged in extensive options trading for the customer from whom he earned most of his commissions, Customer A. The firm did not take any steps to ensure that a different options principal was reviewing options-related alerts related to that customer. Instead, Kozi was responsible for reviewing options-related alerts for Customer A, for whom, as described below, Kozi was recommending and engaging in unsuitable options trading.

In addition, the firm did not take any steps to ensure that Kozi performed the functions delegated to him. No one at the firm asked Kozi to document his reviews of options-related exception reports and the firm did not take other steps to monitor whether Kozi was conducting such reviews or addressing any issues raised in exception reports.

Additionally, the firm was not reviewing whether options trades were consistent with the customer's risk tolerance or reviewing options trades for concentration in a particular options class, even though this step was required by the firm's written supervisory procedures.

As a result, PHX violated NASD Rule 3010(b) and FINRA Rules 2360(b)(20)(A), 3110(b), and 2010.

3. Between June 2013 and April 2015, the firm, through Delaplain, failed to reasonably supervise Kozi and RR A.

During the time that Kozi and RR A were associated with PHX, Delaplain was the direct business-line supervisor responsible for supervising Kozi and RR A. During that time, Delaplain failed to identify or reasonably respond to red flags of violative trading in two customer accounts. As a result, the two RRs engaged in excessive and unsuitable trading.

Between June 2013 and April 2015, Kozi effected more than 100 solicited trades involving speculative options trading strategies that were inconsistent with Customer A's balanced growth investment objective and moderate risk tolerance. Delaplain, did not detect this trading, even though Customer A's account came to Delaplain's attention after it generated an alert relating to a distinct issue: potential solicitation of a low-priced security. After Kozi informed Delaplain that he believed Customer A's risk tolerance was higher than that reflected in the firm's records, Delaplain asked Kozi to update the risk tolerance for the account. Delaplain, failed to follow up and detect that Kozi did not make this change and continued to solicit Customer A to engage in unsuitably speculative trading.

Delaplain, did not make inquiries about the continued unsuitable speculative trading with Kozi or with Customer A. In addition, no one at the firm, including Delaplain, calculated

the cost-to-equity ratio in Customer A's account. Therefore, the firm and Delaplain did not identify that the cost-to-equity ratio increased almost every month the account was open, eventually reaching 93% in February 2015. In total, Kozi's trading in Customer A's account generated more than \$135,000 in gross commissions and over \$97,000 in commissions to Kozi, while the customer incurred a net loss of nearly \$72,000.

Similarly, Delaplain failed to identify red flags of excessive and unsuitable trading in RR A's customer's account, even though the account came to his attention in March 2014, shortly after Customer B opened the account, when it generated two exception report alerts reflecting a large purchase of a low-priced security. In June 2014, Delaplain again received alerts about Customer B's account regarding a large purchase of a low-priced security. However, no one at the firm, including Delaplain, reviewed Customer B's account, calculated the cost-to-equity ratio in the account, made inquiries of RR A or contacted Customer B. At the time of the first alert, Customer B's account had a rolling cost-to-equity ratio of 26% and a rolling turnover ratio of 8.2%. At the time of the second alert, the cost-to-equity ratio in the account had risen to 56%, and the turnover ratio had risen to 17.8%. The firm and Delaplain thus failed to identify these red flags for excessive trading.

Between April and November 2014, Customer B's account lost \$490,252, almost the entire amount initially deposited, and Customer B was charged \$221,547 in gross commissions. The annualized cost-to-equity ratio was 90% and the annualized turnover ratio was above 30%.

PHX and Delaplain thereby violated NASD Rule 3010(a) and FINRA Rules 3110(a) and 2010.

4. *Between July 2017 and July 2018, the firm committed supervisory failures related to private placements.*
 - a. *The firm failed to conduct and document reasonable investigations of five private placements before recommending them to firm customers.*

A broker-dealer has a duty to conduct a reasonable investigation concerning any private-placement offering that it recommends and sells to its customers. The amount and nature of the investigation required depends on various factors, including the size and stability of the security's issuer. As FINRA stated in Regulatory Notice 10-22, "[t]he SEC and courts recognize that a more thorough investigation is required for 'securities issued by smaller companies of recent origin,' which could include many [private-placement] issuers."⁸

A firm's investigations of private-placement offerings and offerors should be designed to ensure that the offerings are not fraudulent, that statements made by the offerors about the securities are not false or misleading, and that the firm has a reasonable basis for determining whether the securities are suitable for customers to whom they might

⁸ Reg. Notice 10-22, *Regulation D Offerings*, at 2 (April 2010).

recommend the offerings. Regulatory Notice 10-22 further reminds firms that they must have supervisory procedures that are reasonably designed to ensure, among other things, that the firm's personnel investigate each private placement the firm recommends, that they do so in a manner that is sufficiently rigorous to comply with all legal and regulatory requirements, and that they document the process and results of each investigation.

Between July 2017 and July 2018, PHX's written supervisory procedures stated that the firm, before it offered shares of a private offering to any customer, would conduct an investigation that touched on certain aspects of the offering, including the risks, rewards, and conflicts presented by the offering; the plan for using proceeds and dividing revenues; and the issuer's management, governance, financial condition, and business prospects. The written procedures also required the firm to maintain a complete file of all documents related to its due-diligence process, including a copy of a reviewed, signed, and dated "Private Placement Due Diligence Checklist."

For five private-placement offerings that PHX recommended and sold to customers between July 2017 and July 2018, the firm could not demonstrate that it had conducted a reasonable investigation of the offerings and issuers before recommending those securities to their customers. The firm's records for each of those offerings contained only the private-offering memorandum, subscription agreements, and issuer-created information, and did not document investigative efforts the firm did make, such as meetings and communications with issuers and third parties, online research, and a facility visit. The firm's due-diligence records for the five private placements at issue did not reflect an independent investigation or analysis of the offerings by PHX, nor did those records include completed, signed copies of the Private Placement Due Diligence Checklist required by the firm's own WSPs.

- b. Between July 2017 and July 2018, the firm failed to establish a supervisory system designed to ensure that it did not engage in general solicitation of private-placement offerings.*

The supervisory system and procedures required by FINRA Rule 3110(a) and (b) must be reasonably designed to achieve compliance with the requirements of applicable securities laws and regulations, including Regulation D, issued by the Securities and Exchange Commission under the Securities Act of 1933.

Under Section 5 of the 1933 Act, it is unlawful to offer or sell any security that is not registered with the SEC. Regulation D, however, provides a number of exemptions to this registration requirement. One of those exemptions is found in Rule 506(b), which provides a "safe harbor" to an issuer that offers or sells its security to no more than 35 financially sophisticated, yet unaccredited investors. To claim the 506(b) exemption, an issuer, or anyone acting on the issuer's behalf, must also comply with the prohibition of "general solicitation" set forth in SEC Rule 502(c).

The SEC has stated that a broker-dealer, acting on behalf of an issuer, can demonstrate the absence of general solicitation under Rule 502(c) by showing that it had a pre-existing, substantive relationship with a prospective investor before it began participating

in the offering. A broker-dealer could demonstrate that this type of relationship existed by, for example, showing that the prospective private-placement investor had made a previous investment in securities offered through the broker-dealer or had submitted and received approval of an investor-qualification questionnaire. The SEC has also issued guidance stating that a “pre-existing relationship is one . . . that was established through . . . a registered broker-dealer . . . prior to the registered broker-dealer[’s] . . . participation in the offering.”⁹

Between July 2017 and July 2018, PHX had no supervisory system or written procedures that were reasonably designed to ensure that it and its representatives avoided engaging in general solicitations of private-placement offerings that relied on the exemption provided by SEC Rule 506(b). In particular, the firm failed to supervise the sales of seven different offerings to 32 customers to ensure that those sales did not constitute general solicitations.

As a result of these supervisory failures related to private placements, PHX violated FINRA Rules 3110(a) and (b) and 2010.

PHX’s Failure to Obtain Suitability Information

FINRA Rule 2111(a) states that:

A member or an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer’s investment profile. A customer’s investment profile includes, but is not limited to, the customer’s age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the member or associated person in connection with such recommendation.

The firm likewise had an obligation under FINRA Rule 3110 to establish, maintain, and enforce written procedures reasonably designed to ensure compliance with FINRA’s suitability rule.

Between July 2017 and July 2018, PHX recommended private-placement securities to 11 new customers without first inquiring about the investment objectives, risk tolerance, time horizon, or tax status of those 11 customers. Although the firm typically obtained complete suitability information from its customers when they completed account-opening paperwork, the 11 customers at issue did not open brokerage accounts. These customers only purchased private-placement offerings. The paperwork these customers filled out in connection with their private-placement purchases included certain suitability

⁹ See SEC Compliance and Disclosure Interpretations, Question 256.26, August 6, 2015.

information, but did not include information about investment objectives, risk tolerance, time horizon, or tax status. Neither the firm nor its representatives obtained that information through other means before recommending the transactions. The firm thus failed to enforce its own written procedures, which required it “to make reasonable efforts” to obtain, among other things, information concerning the customer’s financial status, tax status, and investment objectives.

Therefore, PHX violated FINRA Rules 2111(a), 3110(b), and 2010.

B. Respondents also consent to the imposition of the following sanctions:

For PHX:

- a censure and \$50,000 fine;¹⁰
- restitution to the customers listed on Attachment A, in the total amount of \$356,711, plus interest as described further below; and
- an undertaking, within 30 days of the issuance of the Notice of Acceptance of this AWC, to review and revise, as necessary, the firm’s supervisory system and WSPs, regarding supervision of excessive trading and churning. Within 90 days of the Notice of Acceptance of this AWC, a registered principal on behalf of the firm shall certify in writing to Margery Shanoff, Senior Counsel, that: (i) the firm has completed its review; and (ii) as of the date of the certification, the firm has established systems and WSPs reasonably designed to achieve compliance with the applicable securities laws, regulations, and NASD and FINRA rules addressed in this AWC.

For Delaplain:

- a suspension from association with any FINRA member firm in any principal capacity for six months;
- a \$5,000 fine; and
- a requirement to re-qualify as a principal by passing the requisite examination or examinations before acting in any principal capacity with any FINRA member.

FINRA has considered PHX’s limited ability to pay and its agreement to pay full restitution to the affected customers in connection with the monetary sanctions imposed in this matter. Respondents PHX and Delaplain both specifically and voluntarily waive 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. Respondents have each submitted an

¹⁰ Pursuant to the General Principles Applicable to all Sanction Determinations contained in the Sanction Guidelines, FINRA imposed a lower fine against PHX in this case after it considered, among other things, the Firm’s revenues and financial resources, as well as its agreement to pay restitution to the affected customers. See Notice to Members 06-55.

Election of Payment Form showing the method by which they propose to pay the fines imposed.

Respondent Delaplain understands that if he is barred or suspended from associating with any FINRA member in a principal capacity, 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, Delaplain may not be associated with any FINRA member in a principal capacity during the period of the bar or suspension. *See* FINRA Rules 8310 and 8311. Furthermore, because Delaplain is subject to a statutory disqualification during the suspension, if he remains associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

Restitution is ordered to be paid by PHX to the customers listed on Attachment A to this AWC in the total amount of \$356,711, 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 the dates identified in Attachment A until the date this AWC is accepted by the National Adjudicatory Council (NAC).

A registered principal on behalf of PHX shall submit satisfactory proof of payment of restitution and prejudgment interest (separately specifying the date and amount of each paid to each customer listed on Attachment A) or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted by email to EnforcementNotice@FINRA.org from a work-related account of the registered principal of Respondent PHX. The email must identify 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.

If for any reason Respondent PHX cannot locate any customer identified in Attachment A after reasonable and documented efforts within 120 days after the date of the notice of acceptance of the AWC, or such additional period agreed to by FINRA in writing, PHX shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property, or abandoned property fund for the state in which the customer is last known to have resided. PHX shall provide satisfactory proof of such action to FINRA in the manner described above, within 14 calendar days of forwarding the undistributed restitution and interest to the appropriate state authority.

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

Restitution payments to customers shall be preceded or accompanied by a letter, not unacceptable to FINRA, describing the reason for the payment and the fact that the payment is being made pursuant to a settlement with FINRA and as a term of this AWC.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondents specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a complaint issued specifying the allegations against them;
- 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, Respondents specifically and voluntarily waive 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.

Respondents further specifically and voluntarily waive 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

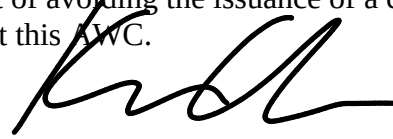
Respondents understand that:

- 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 Respondents; and
- C. If accepted:
 - 1. this AWC will become part of Respondents' permanent disciplinary records and may be considered in any future action brought by FINRA or any other regulator against Respondents;
 - 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. Respondents 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. Respondents 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 Respondents' testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Either Respondent may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they may not deny the charges or make any statement that is inconsistent with the AWC in the statement. The statement(s) do not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA.

The undersigned, on behalf of Respondent PHX, 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 PHX to submit this AWC.

12/7/2020

Date



PHX Financial, Inc.
Respondent

Print Name: Kevin Chen

Title: Ceo

Reviewed by:

Robert M. Bursky

Robert M. Bursky, Esq.
Counsel for Respondent PHX
68 South Service Road - Suite 100
Melville, New York 11747

Respondent Delaplain 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.

12/10/20
Date


Robert Delaplain
Respondent

Reviewed by:

Robert M. Bursky

Robert M. Bursky, Esq.
Counsel for Respondent Delaplain
68 South Service Road - Suite 100
Melville, New York 11747

Accepted by FINRA:

12/18/2020

Date

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



Margery M. Shanoff
Senior Counsel
FINRA
Department of Enforcement
15200 Omega Dr.
Rockville, MD 20850

ATTACHMENT A

Customer	Restitution Amount	Interest Start Date
Customer A	\$135,164	2/5/2015
Customer B	\$221,547	11/3/2014