

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2017054659401**

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

RE: Frederic O'Hara, Respondent
General Securities Representative
CRD No. 351490

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Frederic O'Hara ("O'Hara") 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 herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent hereby accepts and consents, 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

O'Hara first became registered in the securities industry in February 1974 and has been associated as a General Securities Representative ("GSR") with several FINRA-regulated broker-dealers. In January 2008, O'Hara became registered as a GSR with Berthel, Fisher & Company ("Berthel Fisher"), a FINRA-regulated broker-dealer. In September 2010, O'Hara became registered as a GSR with Sagepoint Financial, Inc. ("Sagepoint" or "Firm"), a FINRA-regulated broker-dealer.

On July 12, 2018, Sagepoint filed an amended Uniform Termination Notice for Securities Industry Registration ("Form U5") stating that O'Hara was permitted to resign on June 29, 2018 during the firm's review of whether O'Hara had fully disclosed an outside business activity.

Although O'Hara is no longer registered or associated with a FINRA member firm, he remains subject to FINRA's jurisdiction, pursuant to Article V, Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

Respondent does not have any disciplinary history with the Securities and Exchange Commission, any state securities regulators, FINRA, or any other self-regulatory organization.

OVERVIEW

Between October 2009 and May 2012, O'Hara engaged in an outside business activity by serving as an outside director of a private company ("Company 1") without providing prior written notice to his broker-dealer employers in violation of NASD Rule 3030, for conduct before December 15, 2010, FINRA Rule 3270, for conduct on or after December 15, 2010, and FINRA Rule 2010.

Additionally, between February 2010 and August 2015, O'Hara participated in five undisclosed private securities transactions in Company 1 shares totaling \$63,000, including his own \$10,000 purchase. As a result, O'Hara violated NASD Rule 3040 and FINRA Rule 2010.

In September 2017, O'Hara misrepresented to Firm compliance personnel that he had never discussed Company 1 with any of his securities clients. As a result, O'Hara violated FINRA Rule 2010.

Between August 2012 and June 2018, O'Hara provided a Firm customer with sales materials, including promotional DVDs and year-end account summaries which contained valuations of Company 1's shares. The DVDs did not contain risk disclosures and the summaries lacked a reasonable basis to evaluate the valuations. As a result, O'Hara violated NASD Rule 2210(d)(1)(A), for conduct before February 4, 2013, FINRA Rule 2210(d)(1)(A), for conduct after February 4, 2013, and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

1. Outside Business Activities (NASD Rule 3030 and FINRA Rules 3270 and 2010)

NASD Rule 3030 and FINRA Rule 3270¹ prohibit a registered representative from engaging in any business activity outside the scope of his or her employment without providing written notice to his or her FINRA-regulated broker-dealer employer.

FINRA Rule 2010 states that a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade. A violation of NASD Rule 3030 and FINRA Rule 3270 also constitutes a violation of FINRA Rule 2010.

¹ NASD Rule 3030 was superseded by FINRA Rule 3270 effective December 15, 2010.

At all relevant times, the written supervisory procedures (“WSPs”) of Berthel Fisher and Sagepoint required registered representatives to disclose to the firm, in writing, any outside business activities prior to engaging in such activity.

In October 2009, while he was associated as a GSR with Berthel Fisher, O’Hara was appointed by Company 1 as an outside director. As an outside director at Company 1, O’Hara attended board meetings and provided Company 1’s founder, officers, and directors with business and financial advice. In connection with his services as director, in April 2010 and January 2011, Company 1 issued a total of 250,000 Company 1 shares to O’Hara.

On September 16, 2010, O’Hara became associated with Sagepoint as a GSR. O’Hara continued his directorship of Company 1 during his association with Sagepoint.

O’Hara did not provide prior written notice to Berthel Fisher or Sagepoint about his directorship with Company 1. On May 29, 2012, O’Hara finally disclosed to Sagepoint his appointment by Company 1 as an outside director.

By engaging in outside business activities without providing prior written notice to Berthel Fisher and Sagepoint, as required, O’Hara violated NASD Rule 3030, for conduct before December 15, 2010, FINRA Rule 3270, for conduct on or after December 15, 2010, and FINRA Rule 2010.

2. Private Securities Transactions (NASD Rule 3040 and FINRA Rule 2010)

NASD Rule 3040 provides that prior to participating in any private securities transaction, an associated person shall provide written notice to the member with which he is associated describing in detail the proposed transaction and the person’s proposed role therein and stating whether he has received or may receive selling compensation in connection with the transaction.

A violation of NASD Rule 3040 is a violation of FINRA Rule 2010.

At all relevant times, the WSPs of Berthel Fisher and Sagepoint required their registered representatives to obtain prior approval of the firm before participating in private securities transactions.

On February 12, 2010, O’Hara entered into a subscription agreement to purchase Company 1 securities for \$10,000. O’Hara did not provide Berthel Fisher with prior written notice of this purchase.

Between August 2012 and August 2015, O’Hara also participated in four unapproved private securities transactions involving his Sagepoint customers, SO, WC & DC, PT, and RK. SO, WC & DC, PT, and RK each separately purchased Company 1 securities, investing a total of \$53,000. O’Hara’s participation in the

securities transactions included discussing Company 1 as an investment opportunity with customers SO, WC & DC, PT, and RK; providing customer SO with Company 1 promotional DVDs; introducing SO, WC & DC, PT, and RK to persons associated with Company 1, including the company's Chief Financial Officer; providing the customers with Company 1 subscription agreements; and facilitating disbursements from the Sagepoint accounts of customers SO and WC & DC to pay for their purchase of Company 1 securities. O'Hara did not provide Sagepoint with prior written notice of any of these private securities transactions.

As a result, O'Hara violated NASD Rule 3040 and FINRA Rule 2010.

3. False Statement to FINRA-Registered Broker-Dealer Employer (FINRA Rule 2010)

Making a false statement to a FINRA-regulated broker-dealer violates FINRA Rule 2010.

In a letter dated September 12, 2017, Sagepoint compliance specifically asked O'Hara to provide a detailed explanation of his role as director of Company 1 and whether he had ever discussed Company 1 with his Sagepoint clients. In a letter to Sagepoint compliance dated September 21, 2017, O'Hara responded, "I have never discussed [Company 1] with any of my securities clients."

As set forth above, O'Hara had discussed Company 1 with Sagepoint customers, SO, WC & DC, PT, and RK, and, therefore, his claim that he had never discussed Company 1 with any of his securities clients was false.

As a result of this conduct, O'Hara violated FINRA Rule 2010.

4. Violation of FINRA's Content Standards for Communications with the Public (NASD Rule 2210 and FINRA Rule 2010)

NASD Rule 2210(d)(1)(A) requires all member communications with the public to be fair and balanced, provide a sound basis for evaluating the facts in regard to the securities or products being discussed, and not omit material information which would cause the communications to be misleading.

FINRA Rule 2210(d)(1)(A) requires all member communications with the public to be fair and balanced, provide a sound basis for evaluating the facts in regard to the securities or products being discussed, and not omit material information which would cause the communications to be misleading.

A violation of NASD Rule 2210(d)(1)(A) or FINRA Rule 2210(d)(1)(A) also constitutes a violation of FINRA Rule 2010

In August 2012, O'Hara provided promotional DVDs to his Sagepoint customer SO in connection with his potential investment in Company 1. The DVD contained footage of a roadshow presentation explaining the company's operations, with specific discussions of its long-term business strategy. These communications did not comply with NASD Rule 2210(d)(1)(A) because they did not specifically identify or explain the risks of investing in Company 1.

Between April 2013 and April 2018, O'Hara's pension administration firm prepared and sent SO a one-page spreadsheet listing the value of certain of SO's assets, which included a line-item valuation of SO's Company 1 securities. These communications did not comply with NASD Rule 2210(d)(1)(A) and FINRA Rule 2210(d)(1)(A) because the valuations contained therein did not contain explanatory text or any other indication of the source of the valuations, thereby failing to give SO a reasonable basis to evaluate them.

As a result, O'Hara violated NASD Rule 2210(d)(1)(A), for conduct before February 4, 2013, FINRA Rule 2210(d)(1)(A), for conduct after February 4, 2013, and FINRA Rule 2010.

B. Respondent(s) also consent(s) to the imposition of the following sanctions:

- A suspension from association with any FINRA member in any capacity for nine months; and
- A fine of \$10,000

I understand that if I am barred or suspended from associating with any FINRA member, I become 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, I 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).

The fine shall be due and payable either immediately upon reassociation with a member firm, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent(s) specifically and voluntarily waive(s) 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(s) specifically and voluntarily waive(s) 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 acceptance or rejection of this AWC.

Respondent(s) further specifically and voluntarily waive(s) 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(s) understand(s) 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(s); 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(s);
 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 the subject matter thereof in accordance with FINRA Rule 8313; and
 4. Respondent(s) 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(s) 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: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Respondent(s) may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent(s) 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 or its staff.

Respondent(s) 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 herein and the prospect of avoiding the issuance of a Complaint, has been made to induce him to submit this AWC.

3/10/2020
Date

Frederic O'Hara
Frederic O'Hara
Respondent

Reviewed by:



Bracha Pollack
Counsel for Respondent
Greenberg Traurig, P.A.
5100 Town Center Circle, Suite 400
Boca Raton, FL 33486

Accepted by FINRA:

3-16-2020

Date

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



Eric Hansen
Director
FINRA Department of Enforcement
One Brookfield Place, 11th Floor
New York, NY 10281
Telephone: (646) 315-7398
Facsimile: (646) 315-7441