

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2018060897303**

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

RE: Arni J. Diamond (Respondent)
Former General Securities Representative
CRD No. 2667392

Pursuant to FINRA Rule 9216, Respondent Arni J. Diamond 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

Diamond first registered with FINRA as an Investment Company and Variable Contracts Products Representative (IR) in November 1995. From July 2013 through September 2018, Diamond was registered as a General Securities Representative (GS) and IR with FINRA through Kalos Capital, Inc. (Kalos) (CRD No. 44337). From September 2018 through January 2022, Diamond was then registered as a GS and IR through two different FINRA member firms.

Although Diamond 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.¹

Between October 2019 and July 2021, seven of Diamond's customers filed arbitrations against Kalos generally alleging sales practice violations, including Diamond's unsuitable investment recommendations. Kalos settled with all seven customers.

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

OVERVIEW

From November 2014 to March 2018, Diamond made unsuitable recommendations in speculative alternative investments to two customers that were inconsistent with the customers' investment profiles in violation of FINRA Rules 2111 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's investigation into sales of offerings related to GPB Capital Holdings, LLC (GPB Capital).

FINRA Rule 2111 requires a registered representative to have a reasonable basis to believe that a recommended transaction or investment strategy is suitable for the customer to whom it is recommended, based on information obtained through reasonable diligence to ascertain the customer's investment profile. A customer's investment profile includes, among other things, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, and risk tolerance. A recommendation may be unsuitable if it results in a concentration in a particular security or category of securities that creates a risk of loss inconsistent with the customer's investment profile. A violation of FINRA Rule 2111 also constitutes a violation of FINRA Rule 2010, which provides that registered representatives, in the conduct of their business, observe high standards of commercial honor and just and equitable principles of trade.

GPB Capital is a New York-based alternative asset management firm founded in 2013. GPB Capital serves as the general partner for limited partnerships formed to acquire income-producing companies. From 2013 through 2018, GPB Capital launched several limited partnerships, each focused on acquiring controlling interests in certain private sector companies. As relevant here, three of those limited partnerships were GPB Holdings, LP (Holdings), GPB Automotive Portfolio, LP (Automotive Portfolio), and GPB Waste Management, LP (Waste Management).

The securities GPB Capital sold, including those issued by Holdings, Automotive Portfolio, and Waste Management, were not registered. Instead, the limited partnership interests were sold pursuant to Regulation D of the Securities Act of 1933. As a condition of the offerings, only accredited investors were permitted to purchase the GPB Capital limited partnership interests.² Moreover, the GPB Capital offering documents stated that the limited partnership interests were all illiquid securities that were intended to be held by only "sophisticated investor[s]" who were "able to bear the economic and other risks of investment in the [limited partnership interests] for an indefinite period of time." The offering documents further stated that the GPB Capital limited partnership interests were "highly speculative investments which involve a high degree of risk of loss of the entire investment." Such risks involved, among other things, GPB Capital's lack of an operating history and significant expenses, including commissions GPB Capital typically paid to brokerage firms equal to 8% of the gross proceeds of each sale.

² See 17 CFR §230.501(a) (defining accredited investor).

From November 2014 to March 2018, Diamond recommended and sold GPB Capital limited partnership interests to two Kalos customers that were unsuitable in light of the customers' investment profiles. The customers include:

- Customer A who made a \$50,000 investment in Automotive Portfolio in June 2015. At the time of the investment, Customer A was 67 years old with an annual income and net worth that did not qualify him as an accredited investor, as required to invest in Automotive Portfolio. Moreover, Customer A had a moderate risk tolerance and no prior experience investing in limited partnerships.³
- Customer B who made six investments totaling \$200,000 in GPB Capital limited partnership interests between November 2014 and March 2018, including one investment in Holdings totaling \$50,000, three investments in Automotive Portfolio totaling \$90,000, and two investments in Waste Management totaling \$60,000. At the time of the investments, Customer B was in his early sixties and had a moderate risk tolerance. Customer B's investments in GPB Capital limited partnership interests resulted in Customer B's combined holdings of alternative investments to constitute between 28.7% and 32.5% of his total net worth.⁴

Diamond's seven recommendations to purchase GPB Capital limited partnership interests to Customers A and B were unsuitable for the customers based on their age, income, net worth, risk tolerance, and because Customer A was not an accredited investor as was required to invest in Automotive Portfolio, and because Diamond's recommendations to Customer B resulted in the over-concentration of Customer B's net worth in alternative investments.

Therefore, Diamond violated FINRA Rules 2111 and 2010.

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

- a four-month suspension from associating with any FINRA member in all capacities and
- a \$5,000 fine.

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.

³ Customer A settled an arbitration filed against Kalos, alleging, among other things, that the Automotive Portfolio investment Diamond recommended and sold was unsuitable.

⁴ Customer B settled an arbitration filed against Kalos, alleging, among other things, that the Holdings, Automotive Portfolio, and Waste Management investments Diamond recommended and sold were unsuitable.

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 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.

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.

Date 9/26/2023


Arni J. Diamond
Respondent

October 9, 2023

Date

Vinshale S Shetty

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