

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2018060968102**

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

RE: American Portfolios Financial Services, Inc. (Respondent)
Member Firm
CRD No. 18487

Pursuant to FINRA Rule 9216, Respondent American Portfolios Financial Services, Inc. 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 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

American Portfolios has been a FINRA member firm since 1987. It is an introducing broker-dealer that sells an array of securities products to its customers using an independent contractor model. It is headquartered in Holbrook, New York. American Portfolios has 892 registered representatives in 419 branches.¹

OVERVIEW

Between September 2011 and June 2018, American Portfolios' supervisory system and written supervisory procedures (WSPs) were not reasonably designed to achieve compliance with the firm's obligation to monitor transmittals of customer funds to third parties and the firm failed to enforce its existing WSPs relating to such transmittals of customer funds. As a result, a sales assistant associated with American Portfolios converted approximately \$390,000 of customer funds. By virtue of the foregoing,

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

American Portfolios violated NASD Rules 3010 and 3012² and FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter arose from a Uniform Termination Notice for Securities Industry Registration (Form U5) for a registered representative who previously worked in the same branch as the sales assistant and a separate matter involving the sales assistant, who was barred by FINRA in December 2018 pursuant to FINRA Rule 9552.

FINRA Rule 3110(a), like its predecessor NASD Rule 3010(a), requires that “[e]ach member firm establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.” FINRA Rule 3110(b)(1), like NASD Rule 3010(b), requires that “[e]ach member shall 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 FINRA rules.” NASD Rule 3012(a)(2)(B)(i) specifically required firms to have supervisory policies and procedures reasonably designed to review and monitor, among other things, transmittals of funds or securities from customers to third parties.

A violation of FINRA Rule 3110 or NASD Rules 3010 and 3012 also is a violation of FINRA Rule 2010, which requires a firm to “observe high standards of commercial honor and just and equitable principles of trade” in the conduct of its business.

In Regulatory Notice 09-64 (November 2009), FINRA reminded member firms that “[a]s part of their duty to safeguard customer assets and to meet their supervisory obligations, FINRA firms must have and enforce policies and procedures governing the withdrawal or transmittal of funds or other assets from customer accounts.” These policies and procedures “should be reasonably designed to review and monitor all instructions to transmit or withdraw assets from customer accounts.”³

Between September 2011 and June 2018, a sales assistant converted approximately \$390,000 from 22 accounts held by 18 different customers through 46 check disbursements and 16 wire transfers. Most of the affected customers were senior citizens. The checks were issued to third parties at addresses associated with the sales assistant’s family members, and the wire transfers were to accounts controlled by the sales assistant’s family members. In September 2013, after the firm enhanced its procedures

² FINRA Rule 3110 superseded NASD Rule 3010 and relevant parts of NASD Rule 3012 effective December 1, 2014. *See* Regulatory Notice 14-10 (March 2014).

³ When FINRA issued Regulatory Notice 09-64 and related Regulatory Notice 12-05 (January 2012), NASD Rule 3012 and Incorporated NYSE Rule 401 were the relevant operative rules. Effective December 1, 2014, as part of FINRA’s new consolidated rules governing supervision, NASD Rule 3012’s requirements regarding the review and monitoring of transmittals of funds and securities, among other things, were relocated to FINRA Rule 3110(c)(2). *See* Regulatory Notice 14-10 (March 2014).

around wire transfers, the sales assistant ceased using wires and instead used checks to implement her scheme. Most notably, between April 2014 and June 2018, the sales assistant caused 41 checks totaling approximately \$340,000 to be issued from 15 customer accounts to the same entity she and her family controlled. In connection with each third-party check or wire, the sales assistant falsified the customer authorization form and forged the customer's signature. After learning about the theft from a customer's daughter, the firm fired the sales assistant and reimbursed all affected customers.

During this period, American Portfolios did not have a reasonable supervisory system and procedures to review and monitor transmittals of customer funds to third parties. Specifically, the firm failed to employ reasonable policies, systems, or procedures to review and monitor for patterns of fund transmittals from multiple customers' accounts to the same third party. For example, American Portfolios did not use exception reports or alerts. Instead, the firm relied on a supervisor's manual review of a daily transaction blotter, which included both cash distributions and securities transactions. However, the daily transaction blotter did not identify whether a cash distribution was to a third party and did not provide the supervisor with the means to identify transmittals to third parties or to recognize patterns over time, such as distributions to the same payee or account from multiple customer accounts. Consequently, the firm failed to detect the sales assistant's conversion of customer funds for nearly seven years. American Portfolios had considered in 2011, but declined to adopt, an exception report for transmittals from multiple customer accounts to the same third party after it discovered similar misconduct by a registered representative in Florida.

In addition, during the relevant period, American Portfolios failed to enforce the WSPs it had regarding transmittal of customer funds. Those WSPs required, among other things, a signed authorization document from the customer and verification of the signature on that document through a comparison to a signature on existing account records. The firm's WSPs further required that notation be made on the firm's records of who verified the signature and the date verified. American Portfolios, however, failed to enforce its procedures as it did not require or maintain any such records of signature verification, including as it related to the authorization documents falsified by the sales assistant.

By failing to have a supervisory system reasonably designed to achieve compliance with the firm's obligation to monitor transmittals of customer funds to third parties and by failing to enforce its existing WSPs relating to transmittals of customer funds, American Portfolios violated NASD Rules 3010 and 3012 and FINRA Rules 3110 and 2010.

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

- a censure;
- a \$225,000 fine; and

- an undertaking that, within 60 days of the date of the notice of acceptance of this AWC, Respondent shall certify to FINRA in a submission signed by an officer and registered principal of the firm that, as of the date of the certification, Respondent has established and implemented policies, procedures, and internal controls reasonably designed to address and remediate the issues identified in this AWC. The certification shall be addressed to Jeffrey E. Baldwin, Principal Counsel, FINRA Department of Enforcement, 1601 Market Street, Suite 2700, Philadelphia, PA 19103. Upon written request showing good cause, FINRA staff may extend the procedural date set forth above.

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.

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.

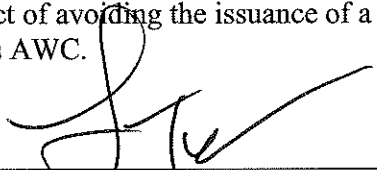
OTHER MATTERS

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.

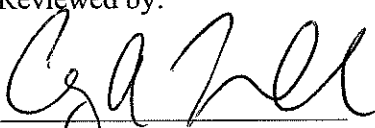
11/23/21
Date


American Portfolios Financial Services, Inc.
Respondent

Print Name: L. T. Diller

Title: President

Reviewed by:


Craig A. Vollono
Chief Legal Counsel
4250 Veterans Memorial Hwy, Suite 420E
Holbrook, NY 11741
Counsel for Respondent

Accepted by FINRA:

12/10/2021
Date

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


Jeffrey E. Baldwin
Principal Counsel
FINRA
Department of Enforcement
1601 Market Street
Suite 2700
Philadelphia, PA 19103