

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019060753503**

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

RE: John M. LoPinto (Respondent)
Former General Securities Representative
CRD No. 4563735

Pursuant to FINRA Rule 9216, Respondent John M. LoPinto 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

LoPinto first registered with FINRA as a General Securities Representative (GS) through a member firm in September 2002. Between November 2016 and November 2019, LoPinto was registered with FINRA as a GS through Worden Capital Management LLC (CRD No. 148366) (WCM).

Although LoPinto is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction. On February 12, 2021, WCM filed an amended Uniform Termination Notice for Securities Industry Registration (Form U5) for LoPinto disclosing a new customer arbitration that was filed alleging, among other things, excessive trading. Pursuant to Article V, Section 4(a) of FINRA's By-Laws, the Form U5 amendment filed February 12, 2021 operates to recommence the running of the two-year jurisdiction period.¹

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

OVERVIEW

From November 2016 through September 2019, while registered through WCM, LoPinto excessively traded five customers' accounts in violation of FINRA Rules 2111 and 2010.

In addition, from April 2018 through June 2019, LoPinto effected 53 trades in one customer account using discretion without the customer's prior written authorization and without the firm accepting that account as discretionary in writing, in violation of NASD Rule 2510(b) and FINRA Rules 3260(b) and 2010.²

FACTS AND VIOLATIVE CONDUCT

Excessive Trading

FINRA Rule 2111(a) provides in pertinent part 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." As explained in the Supplementary Material found at 2111.05(c):

Quantitative suitability requires a member or associated person who has actual or de facto control over a customer account to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile, as delineated in Rule 2111(a). No single test defines excessive activity, but factors such as the turnover rate, the cost-equity ratio, and the use of in-and-out trading in a customer's account may provide a basis for a finding that a member or associated person has violated the quantitative suitability obligation.³

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. An annualized turnover rate of six or an annualized cost-to-equity ratio above 20 percent generally indicates that excessive trading has occurred.

² FINRA Rule 3260 superseded NASD Rule 2510 on May 8, 2019. Therefore, LoPinto violated NASD Rule 2510(b) for conduct occurring prior to May 8, 2019 and FINRA Rule 3260(b) for conduct occurring on or after May 8, 2019.

³ FINRA Rule 2111 was amended effective June 30, 2020. The quoted excerpt is from the pre-June 30, 2020 version which applies to the conduct at issue here.

A violation of FINRA Rule 2111 also constitutes a violation of FINRA Rule 2010, which requires associated persons to act with high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

From November 2016 through September 2019, LoPinto engaged in quantitatively unsuitable trading in five customer accounts. LoPinto recommended high frequency trading in the five customer accounts. LoPinto's customers routinely followed his recommendations and, as a result, LoPinto exercised *de facto* control over the five customers' accounts.

LoPinto's trading resulted in high turnover rates and cost-to-equity ratios as well as significant losses, as set forth below.

1. From April 2018 to August 2019, LoPinto effected 77 transactions in Customer A's account, resulting in an annualized turnover rate of 34.11 and an annualized cost-to-equity ratio of 138.3%. LoPinto's trading in Customer A's account generated total trading costs of \$40,932, including \$28,290 in commissions, and caused \$37,822 in realized losses.
2. From November 2016 to July 2018, LoPinto effected 68 transactions in Customer B's account, resulting in an annualized turnover rate of 24.88 and an annualized cost-to-equity ratio of 124.96%. LoPinto's trading in Customer B's account generated total trading costs of \$51,033, including \$44,855 in commissions, and caused \$44,927 in realized losses.
3. From October 2017 to October 2018, LoPinto effected 33 transactions in Customer C's account, resulting in an annualized turnover rate of 49.41 and an annualized cost-to-equity ratio of 250.18%. LoPinto's trading in Customer C's account generated total trading costs of \$55,523, including \$48,450 in commissions, and caused \$84,668 in realized losses.
4. From November 2017 to September 2018, LoPinto effected 53 transactions in Customer D's account, resulting in an annualized turnover rate of 37.24 and an annualized cost-to-equity ratio of 196.20%. LoPinto's trading in Customer D's account generated total trading costs of \$28,142, including \$19,715 in commissions, and caused \$29,005 in realized losses.
5. From January 2017 to July 2019, LoPinto effected 84 transactions in Customer E's account, resulting in an annualized turnover rate of 18.18 and an annualized cost-to-equity ratio of 95.84%. LoPinto's trading in Customer E's account generated total trading costs of \$29,893, including \$20,396 in commissions, and caused \$43,909 in realized losses.

LoPinto's trading in these five customers' accounts was excessive and unsuitable given the customers' investment profiles. As a result of LoPinto's excessive trading, the

customers suffered collective realized losses of \$240,331 while paying total trading costs of \$205,523, including commissions of \$161,706.

Therefore, LoPinto violated FINRA Rules 2111 and 2010.

Exercise of Discretion Without Prior Written Authorization

NASD Rule 2510(b) and FINRA Rule 3260(b) prohibit registered representatives from exercising discretion in a customer's account unless the customer gives prior written authorization to the registered representative and the registered representative's member firm provides written acceptance of the account as discretionary. Violations of NASD Rule 2510(b) and FINRA Rule 3260(b) also constitute a violation of FINRA Rule 2010.

From April 2018 through June 2019, LoPinto exercised discretion to effect 53 trades in Customer F's account without prior written authorization. LoPinto charged Customer F a total of \$21,632 in commissions to place the trades. Customer F did not provide written authorization for LoPinto to exercise discretion in the account and WCM did not accept the account as a discretionary account.

Therefore, LoPinto violated NASD Rule 2510(b) and FINRA Rules 3260(b) and 2010.

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

- a nine-month suspension from associating with any FINRA member in all capacities;
- a \$7,500 fine; and
- restitution of \$135,333 plus interest, as described below.⁴

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.

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 sanctions imposed in this matter.

Restitution is ordered to be paid to the four customers listed on Attachment A to this AWC in the total amount of \$135,333, 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 September 2019 until the date of payment. Restitution amounts ordered, pursuant to this disciplinary action, are due and payable immediately upon reassociation with a member firm, or prior

⁴ The restitution imposed in this AWC is equal to the commissions paid by Customers B, C, E and F. Customers A and D previously received restitution related to LoPinto's excessive trading in connection with the AWC issued in *Worden Capital Management LLC & Jamie J. Worden*, AWC No. 2017056432601 (Dec. 31, 2020).

to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier. 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. If for any reason Respondent cannot locate any customer identified in Attachment A after reasonable and documented efforts, within such period, or such additional period, as agreed to by FINRA, Respondent 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.

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.

Respondent 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.

January 5, 2022

Date

John M. LoPinto

John M. LoPinto
Respondent

Reviewed by:

Michael C. Farkas

Michael C. Farkas, Esq.
Counsel for Respondent
Michael C. Farkas, Esq. PLLC
32 Court Street, Suite 408
Brooklyn, NY 11201

Accepted by FINRA:

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

January 10, 2022

Date

Michael Dorfman-Gonzalez

Michael Dorfman-Gonzalez
Principal Counsel
FINRA
Department of Enforcement
Brookfield Place
200 Liberty Street
New York, NY 10281

Attachment A

Customer	Restitution Amount
B	\$44,855
C	\$48,450
E	\$20,396
F	\$21,632