

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019061612601**

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

RE: SagePoint Financial, Inc. (Respondent)
Member Firm
CRD No. 133763

Pursuant to FINRA Rule 9216, Respondent SagePoint Financial, 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 accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

SagePoint has been a FINRA member since May 2005. The firm is headquartered in Phoenix, Arizona, and conducts a general securities business. SagePoint has more than 1,800 registered representatives and approximately 800 branch offices.¹

OVERVIEW

During the period April 2014 through July 2017, SagePoint failed to establish, maintain, and enforce a supervisory system, including WSPs, reasonably designed to achieve compliance with the suitability requirements of FINRA Rule 2111 as they pertain to margin use. As a result, SagePoint failed to identify or reasonably respond to red flags of unsuitable use of margin in two customer accounts that caused the customers to pay more than \$51,800 in commissions, fees, and margin interest. By this conduct, SagePoint violated NASD Rule 3010, FINRA Rules 3110 and FINRA Rule 2010.²

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

² FINRA Rule 3110 superseded NASD Rule 3010 on December 1, 2014.

FACTS AND VIOLATIVE CONDUCT

FINRA Rule 3110(a) and its predecessor, NASD Rule 3010(a), require each member firm to 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 and NASD rules, respectively. FINRA Rule 3110(b) and its predecessor, NASD Rule 3010(b), require each FINRA member 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 the applicable securities laws and regulations, and with applicable FINRA and NASD rules. A violation of FINRA Rule 3110 also constitutes a violation of FINRA Rule 2010, which requires that member firms “observe high standards of commercial honor and just and equitable principles of trade” in the conduct of their business.

FINRA Rule 2111 requires that a member or an associated person have a reasonable basis to believe that a recommended transaction is suitable for the customer based on 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 a recommendation. FINRA Regulatory Notice 12-55 reminded members that their supervisory systems must be reasonably designed to achieve compliance with Rule 2111, and that they must “focus on the detection, investigation and follow-up of ‘red flags’ indicating that a registered representative may have recommended an unsuitable investment strategy” involving securities.

A margin account is a type of brokerage account in which a broker-dealer lends an investor cash, using the account as collateral, to purchase securities. Margin increases an investor’s purchasing power, but also exposes the investor to certain risks involved in trading securities on margin, including the potential to lose more money than they invested. Buying on margin carries a cost, which is the interest charged on the amount borrowed until it is repaid. When investors buy on margin, they must repay the amount borrowed plus interest, even if they lose money on the investments they purchased on margin. The margin balance is the amount of money a customer trading on margin owes to the broker-dealer.

FINRA has repeatedly cautioned that Rule 2111 imposes suitability requirements on “recommendations to customers to use margin strategy involving securities, irrespective of whether the recommendations mention *particular* securities.”³ This is especially applicable to elderly customers. As FINRA Regulatory Notice 07-43 notes, “depending on their particular circumstances, seniors and retirees may have less tolerance for certain types of risk than other investors.”

³ Regulatory Notice 12-55 (emphasis in original); see also Regulatory Notices 12-25 and 11-25.

SagePoint failed to establish and maintain a reasonable supervisory system and failed to establish, maintain, and enforce WSPs reasonably designed to supervise unsuitable trading on margin.

During the relevant period, SagePoint's WSPs regarding margin suitability provided that the registered representative was "responsible for reviewing the client's suitability for margin investing." The firm's WSPs identified factors to be considered in assessing margin suitability for a customer. Among other things, the WSPs stated that margin applications should be rejected for customers 70 and older whose income is less than their annual expenses, and the WSPs stated that customers over 70 needed to have more than five-years' experience trading on margin. The WSPs also stated that margin applications should be rejected for customers who are unemployed or retired and have no income. The WSPs also provided that the customer's income, sophistication, risk tolerance, net worth, and intended use of the margin account should be considered.

However, the firm did not reasonably enforce these WSPs and did not have any other supervisory system reasonably designed to supervise suitability in connection with the use of margin. During the relevant period, first line supervisors of registered representatives were responsible for conducting suitability reviews in the representatives' customer accounts. However, the first line supervisors were not responsible for reviewing new account documents or approving margin or options accounts, and the firm's transaction review system did not provide first line supervisors any indication of whether transactions were done on margin. Further, although the firm ran a quarterly surveillance report, which alerted the surveillance department to margin accounts with high debit balances, significant margin interest, and high commissions, among other potential red flags, the surveillance department failed to reasonably review and resolve these alerts in connection with at least two customer accounts during the relevant period.

The firm failed to reasonably supervise margin suitability in Customer A's account.

Customer A is a 79-year-old retired widow who had an account at SagePoint during the period April 2014 through July 2017. Customer A's primary investment objective was "growth," her risk tolerance was "moderate," and her annual income was \$35,000.

Customer A's new account documentation indicated that she had less than five years of margin trading experience. Despite the guidance in its WSPs regarding margin suitability, SagePoint approved Customer A's account for margin trading.

The registered representative for Customer A transferred securities from cash to margin in her account and purchased additional securities on margin. The month-end average equity of Customer A's account was approximately \$361,000. She used the funds in her account to pay for monthly living expenses, withdrawing an average of over \$60,000 annually. Customer A would write checks from her account, which withdrew cash on margin, effectively borrowing against the value of the margined securities, further increasing Customer A's margin balance and the margin interest charged. By December 2014, Customer A's margin balance was over \$77,000. By the end of 2015 the margin balance was over \$149,000.

In November 2015, SagePoint's surveillance department identified Customer A's high margin use as an exception and notified the firm's field supervision group. SagePoint's field supervision group emailed the registered representative and the first line supervisor assigned to the account, requesting an explanation of the margin use in Customer A's account. The registered representative provided an email response indicating the customer was a 73-year-old widow, who was a knowledgeable investor and had maintained a margin account for 25 years; according to the representative, Customer A was aware of the margin use, and had been warned by her representative to stop using the account for check writing. After receiving this response, the field supervision group conveyed a summary of the response to the firm's surveillance department, and SagePoint closed the exception. SagePoint made no effort to contact Customer A directly about the margin use in her account. Nor did SagePoint take reasonable steps to verify Customer A's alleged margin experience, to confirm whether she was aware of the margin balances and interest being charged, or to decrease Customer A's margin balance. After the margin exception was closed, Customer A's margin use increased month after month until the margin balance reached 111% of the account equity in May 2017.

SagePoint's failure to reasonably follow up on red flags of unsuitable margin use resulted in Customer A paying \$32,041.99 in margin interest and \$4,869.59 in commissions and fees charged on margin trades in the account.

The firm failed to reasonably supervise margin suitability in Customer B's account.

Customer B is a 56-year-old married homemaker who had an account at SagePoint during the period April 2014 through July 2017. Customer B's primary investment objective was "growth," her risk tolerance was "moderate," and she had an annual income of \$35,000. From late 2014 through June 2017, Customer B purchased equity securities on margin, and the margin balance in her account averaged approximately \$34,000 and ranged from approximately 20-46% of the equity in the account each month.

In November 2015, SagePoint's surveillance department identified Customer B's high margin use. As with Customer A's account, the firm closed the exception relying solely on the registered representative's explanations by email that the customer was aware of the margin interest charged, had been on margin for years, understood her margin balance, and had funds to cover her margin balance at any time. SagePoint took no other steps to verify Customer B's margin experience, to confirm whether she was aware of the margin balances and interest being charged, or to decrease Customer B's margin balance.

SagePoint's failure to reasonably follow up on red flags of unsuitable margin use resulted in Customer B paying \$8,863.69 in margin interest and \$6,054.97 in commissions and fees charged on margin trades.

Therefore, Respondent violated NASD Rule 3010 and FINRA Rules 3110 and 2010.

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

- a censure;
- a \$35,000 fine; and
- restitution of \$51,830.24 plus interest as described below.

Respondent agrees to pay the monetary sanctions 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.

Restitution is ordered to be paid to the customers listed on Attachment A to this AWC in the total amount of \$51,830.24, 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 July 31, 2017, until the date this AWC is accepted by the National Adjudicatory Council (NAC).

A registered principal on behalf of Respondent 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. 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 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, 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 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.

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.

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 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.

August 24, 2022
Date


SagePoint Financial, Inc.
Respondent

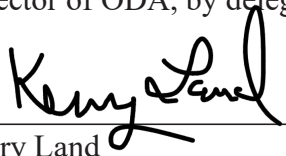
Print Name: Desiree Sii

Title: President and CEO

Accepted by FINRA:

September 9, 2022
Date

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


Kerry Land
Senior Counsel
FINRA
Department of Enforcement
Brookfield Place, 200 Liberty Street, 11th Floor
New York, NY 10281

ATTACHMENT A (public version)

Customer Name	Restitution Amount
Customer A	\$36,911.58, plus interest
Customer B	\$14,918.66, plus interest