

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019062873301**

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

RE: SagePoint Financial, Inc.
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. Headquartered in Phoenix, Arizona, the firm conducts a general securities business with more than 1,800 registered representatives and approximately 800 branch offices.

In June 2020, SagePoint entered into AWC No. 2018056858101, in which FINRA found that over a five-year period the firm failed to establish and maintain a supervisory system, including written supervisory procedures, reasonably designed to supervise the suitability of representatives' recommendations to customers relating to early rollovers of unit investment trusts. The firm was censured, fined \$300,000, and ordered to pay \$1,315,373, plus interest, in restitution to customers.

In July 2018, SagePoint entered into AWC No. 2016047636601, in which FINRA found that over a two-year period the firm failed to establish and maintain a supervisory system, including written supervisory procedures, reasonably designed to supervise representatives' sales of multi-share class variable annuities. The firm was censured, fined \$200,000, and required to certify to FINRA that it had reviewed and revised its systems, policies and procedures, and training.

In December 2017, SagePoint entered into AWC No. 2017054229301, in which FINRA found that over a nearly six-year period the firm failed to establish and maintain a

supervisory system and procedures reasonably designed to ensure that eligible customers who purchased mutual fund shares received the benefit of applicable sales charge waivers. The firm was censured, fined \$75,000, and ordered to pay an estimated \$196,372 in restitution to customers.¹

OVERVIEW

From 2013 to the present, SagePoint failed to establish and maintain a supervisory system, including written supervisory procedures, reasonably designed to supervise associated persons with histories of industry and regulatory-related misconduct. SagePoint failed to assign clear responsibility for imposing heightened supervision and discipline to specific personnel, splitting that task between two different departments with no guidance as to how the departments should coordinate or fulfill their overlapping obligations. Additionally, SagePoint's disciplinary recordkeeping was haphazard and fragmented, thus impeding firm personnel from accessing complete information about associated persons' disciplinary histories when assessing whether to impose heightened supervision or discipline. As a result, the firm failed to escalate discipline and impose heightened supervision when associated persons' misconduct presented heightened risks and failed to reasonably follow up on red flags of misconduct. SagePoint also lacked a supervisory system reasonably designed to comply with its obligations to report to FINRA multiple instances of violative misconduct by associated persons, as required by FINRA Rule 4530(b). The firm thus violated NASD Rule 3010 and FINRA Rules 3110 and 2010.²

FACTS AND VIOLATIVE CONDUCT

This matter arose out of an investigation of a former SagePoint registered representative.

SagePoint failed to establish and maintain a supervisory system reasonably designed to supervise associated persons' histories of misconduct.

FINRA Rule 3110(a), like its predecessor NASD Rule 3010(a), states that each member shall 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. The duty to supervise also includes the responsibility to reasonably investigate red flags that suggest that misconduct may be occurring and to act upon the results of such investigation. FINRA Rule 3110(b), like NASD Rule 3010(b), states that each 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. Violations of FINRA Rule 3110 and NASD Conduct Rule 3010 also are violations of

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 effective December 1, 2014.

FINRA Rule 2010, which requires members, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.

Member firms play a key role in protecting investors from bad actors. FINRA Regulatory Notice 18-15 (April 30, 2018) reminded member firms of their supervisory obligations with respect to associated persons with histories of misconduct, stating that “it is essential that firms monitor the histories of their associated persons and establish heightened measures to supervise the activities of those associated persons with greater potential of creating customer harm.” The Notice also reiterated that a member firm must regularly review and update its supervisory system and procedures for monitoring brokers with histories of misconduct, including its system and procedures for imposing heightened supervision, where necessary.

SagePoint did not have a supervisory system reasonably designed to impose heightened supervision and discipline for associated persons who had histories of industry or regulatory-related incidents. There were two principal deficiencies in the firm’s supervisory system: (a) a divided structure with an uncertain delegation of authority between associated persons’ direct supervisors and compliance personnel to consider heightened supervision and impose discipline and (b) a haphazard and fragmented recordkeeping system for documenting the firm-imposed disciplinary history of the firm’s associated persons.

SagePoint did not clearly delineate who was responsible for imposing disciplinary action.

SagePoint divided responsibility for imposing discipline between its supervisory personnel and compliance personnel. The firm’s supervision regional vice presidents (SRVPs), who supervised associated persons in specific geographic regions, were assigned responsibility in the firm’s written supervisory procedures to determine discipline and heightened supervision for the associated persons they supervised. The firm, however, also maintained other written procedures allowing the compliance department to make similar decisions without involving SRVPs. In practice, the firm’s supervision and compliance departments routinely decided how to respond to disciplinary matters without consulting each other. That resulted in a fragmented supervisory system leading, in some instances, to confusion about who would act, such that both field supervision and compliance deferred to the other without either responding reasonably to impose heightened supervision or increased discipline on associated persons who had a history of misconduct.

SagePoint’s disciplinary recordkeeping was haphazard and fragmented.

SagePoint had no written procedures concerning what information to record about internal discipline or where to store such information. In practice, SagePoint’s field supervision and compliance departments tracked internal disciplinary matters in separate databases. Neither department recorded the other’s disciplinary actions, and neither could access the other’s databases. Furthermore, many firm disciplinary matters were not

recorded in those or any other database. Because of the firm's segregated and disorganized recordkeeping, personnel who made disciplinary decisions did not have a full picture of associated persons' conduct. Indeed, during the relevant period, there were more than 700 associated persons who had a disciplinary event recorded in one database but not the other. Consequently, SagePoint personnel issued discipline without complete information about those associated persons' patterns of disciplinary violations, failures to respond to prior firm discipline, or disregard of firm directives or regulatory requirements.

On occasion, the issue of whether to discipline or impose heightened supervision on a particular associated person would be referred to the firm's Executive Review Committee. The ERC had the authority to impose discipline up to and including termination. Because of the firm's fragmented recordkeeping practices, however, the ERC often lacked access to the complete disciplinary history of a particular associated person and accordingly imposed discipline that was not appropriately tailored to the person's full record.

SagePoint failed to establish and maintain a system reasonably designed to comply with the firm's reporting obligations under FINRA Rule 4530(b).

FINRA Rule 4530(b) requires member firms to report promptly to FINRA when they have concluded or reasonably should have concluded that an associated person has violated any securities-, insurance-, commodities-, financial-, or investment-related laws, rules, regulations, or standards of conduct of any domestic or foreign regulatory body or self-regulatory organization. Pursuant to Rule 4530(b) and Supplementary Material .01, only certain types of violative conduct are reportable including, among other things, associated persons with "multiple instances" of the violative conduct described by Rule 4530(b).

SagePoint's written supervisory procedures regarding Rule 4530 did not provide any guidance about how to evaluate whether associated persons had engaged in multiple instances of such violative conduct, and the firm's fragmented recordkeeping practices precluded accurate assessments of whether multiple instances of such conduct had occurred. In practice, the firm did not assess whether associated persons' conduct amounted to multiple instances of violative conduct that required reporting under FINRA Rule 4530(b), and the firm has made no reports under Rule 4530(b) since 2013.

For numerous associated persons with repeat disciplinary histories, SagePoint failed to impose heightened supervision or appropriate discipline or consider reporting under FINRA Rule 4530(b).

Since the beginning of 2013, the firm issued more than 1,500 disciplinary letters to more than 700 associated persons, with 132 of those persons receiving three or more disciplinary letters. The firm disciplined 11 associated persons at least 110 times in total and cited them, without discipline, for numerous other violations. The firm's systemic supervisory failures resulted in the firm failing to impose heightened supervision on any

of those 11 associated persons during that time despite their disciplinary histories. On the limited occasions when the firm fined those 11 associated persons, the fines were not tailored to the associated persons' histories of misconduct. SagePoint also did not consider reporting the conduct of those associated persons under FINRA Rule 4530(b).

The following examples are illustrative.

Registered Representative 1. By mid-2013, SagePoint repeatedly had disciplined RR1 for failing to submit variable annuity applications for preapproval. By early 2014, the firm also had discovered that RR1 repeatedly had falsified information on variable annuity applications to circumvent the firm's preapproval standards, and falsified information to the firm and on regulatory filings to conceal the extent of personal financial challenges. When considering disciplining RR1 for those infractions, numerous SagePoint personnel, including RR1's SRVP, concluded that they could not trust him. Firm personnel considered terminating RR1 but determined instead to issue another disciplinary letter and put RR1 on a heightened supervision plan. Absent clearly assigned responsibilities, neither RR1's SRVP nor compliance issued discipline, implemented the heightened supervisory plan, or took any other action. Compliance staff deferred to the SRVP, believing the discipline and heightened supervisory plan "should be issued from Supervision," but the SRVP likewise deferred to compliance staff.

Later that year, a different compliance officer at the firm learned that RR1 had forged nine customers' signatures or initials on variable annuity applications. The compliance officer scheduled an unannounced branch exam for seven months later—which confirmed that RR1 had altered documents, among other infractions. The compliance officer consulted other members of the compliance department but not the SRVP or the compliance personnel previously involved in disciplining RR1. The firm did not place RR1 under heightened supervision at any time and did not consider whether his conduct required reporting under Rule 4530(b).

Thereafter, RR1 converted over \$400,000 in customer funds by forging variable annuity withdrawal forms.³

Registered Representative 2. From January 2009 to March 2021, SagePoint issued 37 separate disciplinary letters to RR2 and identified other infractions for which it did not issue discipline. RR2's misconduct included multiple instances in which he, among other things, exceeded limits on the sale of mutual fund C shares, used pre-signed documents, used unapproved advertising, and sent unapproved consolidated reports to customers. RR2 also routinely ignored the firm's discipline and directives. Firm personnel did not have access to a complete record of his disciplinary history when deciding whether to impose discipline or heighten supervision. Only one of RR2's 37 disciplinary events was recorded in both the compliance and field supervision databases. Fifteen were recorded in neither the field supervision nor compliance databases, six were recorded in a field supervision database only, and 15 were recorded only in the compliance database. Since the beginning of 2013, the firm has disciplined RR2 at least 27 times, without imposing

³ In 2016, FINRA barred RR1. The firm has since made the customers whole.

any fines, heightened supervision, or other escalated discipline. The firm did not consider whether RR2's conduct required reporting under FINRA Rule 4530(b).

Registered Representative 3. SagePoint disciplined RR3, a representative with a history of customer complaints, 12 times from August 2014 to May 2021. The firm issued RR3 his first five disciplinary letters during just six months. One of those letters concerned violations of the firm's policies regarding rollovers and breakpoints for unit investment trusts. In the following two years, RR3 violated the same policies nearly 70 more times, resulting in two more disciplinary letters. By the end of 2017, RR3 had received seven disciplinary letters. Only three were recorded in field supervision's disciplinary database, and only one was recorded in a database accessible to compliance personnel.

In 2018, SagePoint's compliance personnel referred RR3 to the ERC for selling more than 40 equity-indexed annuities away from the firm. Because of the firm's fragmented recordkeeping practices, however, the compliance personnel making the referral lacked access to nearly all the firm's information about RR3's seven prior disciplinary events. Compliance personnel incorrectly informed the ERC that RR3 had neither previous disciplinary issues nor repeat deficiencies. The ERC thus did not consider RR3's prior seven disciplinary events when it issued a letter of warning and \$1,500 fine. Since then, RR3 has engaged in other repeat infractions, but RR3 remains associated with SagePoint. The firm never has subjected him to any heightened supervision, and the firm has not considered whether his conduct was reportable under FINRA Rule 4530(b).

Registered Representative 4. Since 2006, SagePoint has issued RR4 at least 14 disciplinary letters, many concerning RR4 altering documents or using pre-signed forms. In 2006, SagePoint placed RR4 on heightened supervision for one year because of "repeat deficiencies" involving altered documents or pre-signed forms. Despite continued violations of the same type, the firm merely issued RR4 a letter of caution in 2010, another letter of caution in 2012, then de-escalated its discipline by issuing a letter of education in 2016. In 2017, the ERC considered another document-alteration violation, in which RR4 altered a document to obtain approval of a variable annuity that the firm previously had rejected. The ERC was not informed of the extent of RR4's prior related violations because of the firm's inadequate recordkeeping. The ERC issued a letter of caution and fined RR4 \$500. RR4 also has been disciplined five times for failing to obtain preapproval for variable annuities. One of those disciplinary events was not recorded in any database. One was recorded only in the compliance database, and three were recorded only in the field supervision database. RR4 remains associated with SagePoint. He has received no other fines, the firm has not placed him on heightened supervision since 2006, and the firm has not considered whether his violations were reportable under Rule 4530(b).

Registered Representative 5. RR5 is a supervisor of a SagePoint office of supervisory jurisdiction. From 2013 to 2019, SagePoint disciplined RR5 at least 12 times. Many of his violations involved failures to report tax liens on his Uniform Application for Securities Industry Registration (Form U4). In 2009 and 2013, the firm learned of failures to timely report tax liens but did not issue discipline to RR5 or record the violations in

any disciplinary tracking databases. In 2016, the firm issued RR5 a letter of education after he again failed to timely disclose additional tax liens. When RR5 took multiple months to comply with the letter's directive to disclose, the firm did not escalate its discipline. In 2017, the ERC considered yet more undisclosed tax liens, and it issued a letter of warning and \$2,250 fine; the ERC, however, was not informed about the extent of RR5's previous failures to timely disclose.

RR5 also repeatedly failed to supervise other representatives. The firm cited him for failing, among other things, to review correspondence, file and log customer complaints, and maintain gift logs. RR5 did not timely review transactions or complete annual practice reviews, as required by firm policy. Compliance personnel noted in February 2017 that RR5 was not following up to ensure that associated persons under his supervision corrected deficiencies. Despite knowing of RR5's repeated failures to supervise, SagePoint assigned him to perform heightened supervision of other representatives on multiple occasions without confirming that he did. He did not. RR5 remains associated with SagePoint, which has not limited the scope of his supervisory responsibilities or placed him on heightened supervision. The firm has not considered whether RR5's conduct was reportable under FINRA Rule 4530(b).

Registered Representative 6. In August 2014, SagePoint responded to a state regulator's inquiry asking whether RR6 had sold the securities of Company A away from the firm. Four months later, SagePoint compliance personnel located documentary evidence showing that RR6 repeatedly had sold Company A's securities away from SagePoint without providing notice to the firm. The compliance personnel neither took action nor referred the matter to the field supervision department. Compliance staff resumed its investigation in 2017. RR6 gave false responses to compliance staff's inquiries. Although the firm knew RR6 had supplied false information, it took no action. Only after the firm received a request from FINRA staff relating to RR6 did it conduct an unannounced on-site exam and permit RR6 to resign.⁴ At no time was RR6 placed on heightened supervision, and the firm has not considered whether his conduct was reportable under FINRA Rule 4530(b).

* * *

As a result of the foregoing, SagePoint violated NASD Rule 3010 and FINRA Rules 3110 and 2010.

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

- a censure;
- a \$700,000 fine; and
- the following undertaking:

⁴ In 2020, RR6 entered into an AWC in which he was suspended for nine months and fined \$10,000 for, among other things, the private securities transactions and his false statements to firm personnel.

No later than 120 days after the date this AWC is accepted, a senior officer and principal of SagePoint shall certify in writing to FINRA that the firm has implemented supervisory systems and written supervisory procedures reasonably designed to address the conduct discussed in this AWC, has reviewed the conduct of each associated person the firm disciplined from January 1, 2013, to the present, and has made all reports required by FINRA Rule 4530(b). The firm's certification shall include a writing detailing, for each associated person whose conduct the firm reviewed pursuant to this undertaking, all the conduct considered by the firm and whether the firm reported pursuant to Rule 4530(b). The certification shall be submitted by letter addressed to Jonathan E. Pahl, Principal Counsel, FINRA Department of Enforcement, at 15200 Omega Drive, Suite 300, Rockville, MD 20850 and jonathan.pahl@finra.org.

Upon written request showing good cause, FINRA staff may extend any of the procedural dates 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 testimonial obligations or right to

take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- 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 have 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.

11/30/2021
Date



SagePoint Financial, Inc.
Respondent

Print Name: Desiree Sii

Title: SPF President and CEO

Reviewed by:



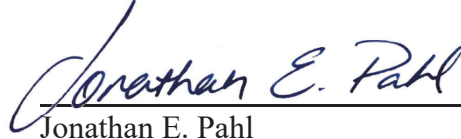
Nina McKenna
Chief Legal Counsel and General Counsel for Respondent
SagePoint Financial, Inc.
20 E. Thomas Road, Suite 2000
Phoenix, AZ 85012

Accepted by FINRA:

12/17/2021

Date

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

A handwritten signature in blue ink that reads "Jonathan E. Pahl". The signature is written in a cursive style with a large initial 'J' and 'P'. It is positioned above a horizontal line.

Jonathan E. Pahl
Principal Counsel
FINRA, Department of Enforcement
15200 Omega Drive, Suite 300
Rockville, MD 20850