

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019063382401**

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

RE: Eric Edward Nicolassy (Respondent)
General Securities Representative
CRD No. 6244539

Pursuant to FINRA Rule 9216, Respondent Eric Edward Nicolassy 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

Nicolassy first became registered with FINRA in September 2014 as a General Securities Representative (GS). Since then, Nicolassy has been associated with multiple different member firms. On September 21, 2016, Nicolassy registered with FINRA as a GS through Woodstock Financial Group, Inc. (CRD No. 38095). On December 5, 2019, Woodstock Financial Group filed a Form U5 stating that Nicolassy voluntarily terminated his association with the firm. Since January 15, 2020, Nicolassy has been registered with FINRA as a GS through another member firm.¹

OVERVIEW

Between August 2018 and July 2019, Nicolassy excessively and unsuitably traded a senior customer's account, in violation of FINRA Rules 2111 and 2010. Additionally, between May 29, 2019 and July 16, 2019, Nicolassy exercised discretionary authority to effect at least 18 trades in four customer accounts without having obtained prior written authorization from the customers in violation of FINRA Rules 3260(b) and 2010.

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

FACTS AND VIOLATIVE CONDUCT

Nicolassy's Excessive and Unsuitable Trading

FINRA Rule 2111 requires, in pertinent part, that member firms or their associated persons “have a reasonable basis to believe that a recommended securities transaction or investment strategy involving a security or securities is suitable for the customer, based on information obtained through the reasonable diligence of the firm or associated person to ascertain the customer’s investment profile.” The rule imposes a “quantitative suitability” obligation that requires a member or associated person who has actual or de facto control over trading in a customer account to have a reasonable basis for believing that a series of recommended securities transactions are not excessive and unsuitable for the customer when taken together in light of the customer’s investment profile.

The Supplementary Material to FINRA Rule 2111 at Rule 2111.05(c) also states that “[n]o single test defines excessive activity, but factors such as the turnover rate, the cost-to-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.” Turnover rate represents the number of times that a portfolio of securities is exchanged for another portfolio of securities. The cost-to-equity ratio is the percentage of return on the customer’s average net equity needed to pay commissions and other expenses. A turnover rate above six or a cost-to-equity ratio above 20 percent may be indicative of excessive trading depending upon the customer’s investment objectives and profile.

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

Between August 2018 and July 2019, while associated with Woodstock Financial Group, Nicolassy engaged in excessive and unsuitable trading in the account of Customer A, an 83 year old retired real estate broker. During the relevant period, Nicolassy recommended that Customer A place 137 trades in his account and Customer A accepted Nicolassy’s recommendations. Although Customer A’s account had an average month-end equity of \$106,293, Nicolassy executed purchases with a total principal value of \$5,138,740 which resulted in an annualized turnover ratio of more than 23. Collectively, the trades Nicolassy executed caused Customer A to pay \$71,409.09 in commissions and \$10,410 in trade costs and margin interest, which resulted in an annualized cost-to-equity ratio in excess of 76 percent—meaning Customer A’s account would have had to grow by more than 76 percent annually just to break even. As a result of Nicolassy’s unsuitable recommendations, Customer A suffered more than \$125,000 in losses.

Nicolassy’s recommended securities transactions in the account of Customer A were excessive and unsuitable. Therefore, Nicolassy violated FINRA Rules 2111 and 2020.

Nicolassy's Exercise of Discretion Without Written Authorization

FINRA Rule 3260(b) provides that "[n]o member or registered representative shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the member, as evidenced in writing by the member or the partner, officer or manager, duly designated by the member." A registered representative who exercises discretion in a customer account without prior written authorization or without written approval from his or her member firm violates Rule 3260(b). A violation of Rule 3260(b) also violates FINRA Rule 2010.

From May 29, 2019 to July 16, 2019, Nicolassy exercised discretion on at least 18 occasions in four customer accounts, including in the account of Customer A. None of the customers provided prior written authorization for Nicolassy to exercise discretion in their accounts.

Therefore, Nicolassy violated FINRA Rules 3260(b) 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;
- partial restitution of \$32,134.09 as described below.

Partial Restitution is ordered to be paid to the customer listed on Attachment A to this AWC in the total amount of \$32,134.09.

Respondent shall submit satisfactory proof of payment of restitution (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, with a copy to meghan.rohan@finra.org. 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, with a copy to meghan.rohan@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 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 to the appropriate state authority.

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 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.

Respondent has submitted a statement of financial condition and demonstrated a limited ability to pay. In light of Respondent's financial status, the sanctions do not include a monetary fine.

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.

3/17/22
Date

E. Nicolassy
Eric Edward Nicolassy
Respondent

Reviewed by:

SS
Scott Sherman
Counsel for Respondent
Nelson Mullins
Atlantic Station, Suite 1700
201 17th Street NW, Atlanta, GA 30363

Accepted by FINRA:

3/24/2022
Date

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

Meghan Rohan/sb
Meghan Rohan
Principal Counsel
FINRA
Department of Enforcement
200 Liberty Street
New York, NY 10281

Attachment A
To Letter of Acceptance, Waiver and Consent
Matter No. 2019063382401

Customer A:.....\$32,134.09