

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019063821601**

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

RE: Adam Maggio (Respondent)
General Securities Principal
CRD No. 4177365

Pursuant to FINRA Rule 9216, Respondent Adam Maggio 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

Maggio first became registered with FINRA in 2002. Since February 2013, Maggio has been registered in multiple capacities, including as a General Securities Principal, through an association with Joseph Stone Capital L.L.C. (CRD No. 159744).¹ Since September 2021, Maggio has also been registered in multiple capacities, including as a General Securities Principal, through an association with another FINRA member firm.

OVERVIEW

From January 2015 to June 2020, Maggio failed to reasonably supervise trading in certain customer accounts at Joseph Stone for potentially excessive activity. Maggio failed to identify certain red flags of excessive trading, and when Maggio was provided notice of those red flags in certain customer accounts, he did not implement appropriate procedures to stop the misconduct. As a result, Maggio violated FINRA Rules 3110 and 2010.

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

FACTS AND VIOLATIVE CONDUCT

A. The Applicable Rules

FINRA Rule 3110 requires that member firms “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.” To comply with this obligation, a firm’s designated supervisors must reasonably investigate red flags of potential misconduct and take appropriate action when misconduct has occurred.

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 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 generally indicates that an account has been excessively traded.

A violation of FINRA Rule 3110 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.

B. Maggio did not reasonably supervise for potential excessive trading.

Joseph Stone’s written supervisory procedures (WSPs) designated Maggio as the supervisor responsible for reviewing actively traded accounts for compliance with FINRA’s suitability rule. The WSPs directed that designated supervisors, including Maggio, conduct such reviews by considering, among other things, “a calculation of Year to Date Cost Over Equity Ratio [in a customer’s account] . . . as well as the number of trades in a time period (quarterly & Year to Date) and the client’s [investment] objectives, risk tolerance, [and] experience as well as any other criteria deemed applicable by the reviewer.” When Maggio identified an account as an actively traded account, he had the authority to, among other things, limit the commissions charged to

the customer on future trades. As set forth below, Maggio did not reasonably discharge his responsibility to supervise the trading of customer accounts for potentially excessive activity.

Maggio failed to identify red flags of excessive trading.

From January 2015 through November 2017, Joseph Stone's clearing firm made exception reports available to Joseph Stone through an online portal, to which Maggio and other supervisors had access. Among these exception reports were "active account reports" that flagged accounts with high commission-to-equity ratios. Prior to November 2017, Maggio did not review these reports as a general practice, even though they were uploaded to the portal. Instead, Maggio tried to identify excessively traded accounts using his own manual calculations, which compared the commissions charged in an account to the account's current value, rather than its average net equity, and which often understated the cost-to-equity ratio.

On certain occasions, Maggio's manual review did not identify accounts that had red flags of excessive trading, including accounts with cost-to-equity ratios greater than 20 percent, with the result that certain accounts continued to be actively traded and were charged high commissions. For example:

- An active account report dated October 31, 2017, showed that Customer A had been charged more than \$12,000 in commissions in the ten months since the account was opened, resulting in a cost-to-equity ratio of more than 27 percent. Maggio did not review that report, and Maggio's manual calculation (which was based on the account's current value) understated the account's cost-to-equity ratio as 14 percent. As a result, Maggio did not take any steps to address the level of trading in the account until March 2018. Customer A was thereafter charged more than \$10,000 in additional commissions until April 2018, when Customer A closed his account. Over the life of the account, the recommended trades in Customer A's account resulted in an annualized cost-to-equity ratio of more than 44 percent and an annualized turnover rate of more than 13.
- An active account report dated June 30, 2017, showed that Customer B had been charged more than \$7,800 in commissions in the six months since the account was opened, resulting in a cost-to-equity ratio of more than 25 percent. Maggio did not review that report. Maggio understated the cost-to-equity ratio in Customer B's account because he calculated the account's cost-to-equity ratio as 10 percent. Maggio did not take any steps to limit the trading or commissions charged in Customer B's account until October 2017, and Customer B was charged over \$3,500 in additional commissions and other trade costs between August and October 2017. At that point, the recommended trades in Customer B's account had resulted in a cost-to-equity ratio of more than 43 percent and a turnover rate of more than 13 for the ten months the account had been open.
- An active account report dated April 30, 2016, showed that Customer C had been charged more than \$4,000 in commissions in the three months since the account was

opened, resulting in a cost-to-equity ratio of more than 21 percent. Maggio did not review this report, nor did he conduct a manual review of the trading in Customer C's account until December 2016, at which point he imposed a commission restriction. By that time, however, Customer C had been charged over \$19,000 in commissions in the ten months the account had been open, resulting in a cost-to-equity ratio in excess of 77 percent. Over the life of the account, the recommended trades in Customer C's account resulted in an annualized cost-to-equity ratio of more than 74 percent and an annualized turnover rate of more than 17.

Maggio also failed to reasonably respond to red flags of excessive trading.

After Maggio began reviewing relevant exception reports in November 2017, in certain instances he failed to reasonably respond to red flags of excessive trading. On certain occasions, Maggio responded to red flags of excessive trading by restricting the commissions that representatives could charge on individual trades, but he did not limit the aggregate costs and commissions charged to the affected accounts. As a result, representatives could place more frequent trades in a customer's account and thereby continue to charge customers similar aggregate commissions. Maggio also did not restrict commissions on certain trades where the customer made a realized gain, irrespective of the overall amount of commissions that had been charged.

For example, in December 2016, Maggio restricted the commissions that could be charged on future trades in Customer D's account to a maximum of 1.5 percent on any purchase and no commission on any sale that resulted in a realized loss. At that time, the customer's cost-to-equity ratio was more than 20 percent for the seven months the account had been open. Although Maggio imposed progressively more stringent restrictions on the amount of commissions Customer D could be charged on purchases and sales that resulted in a realized loss, he never restricted the commissions that Customer D's representative could charge on sales that resulted in a realized gain. Between January 2017 and November 2019, Customer D was charged over \$70,000 in commissions, primarily on individual sales where the customer realized a gain. Notwithstanding the commission restrictions imposed by Maggio, the recommended trades in Customer D's account resulted in an annualized cost-to-equity ratio of more than 34 percent over the life of the account.

As a result of the foregoing, Maggio violated FINRA Rules 3110 and 2010.

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

- a five-month suspension from associating with any FINRA member in all principal capacities;
- a \$5,000 fine; and
- a requirement that within 90 days of the Notice of Acceptance of this AWC, Maggio will undertake to attend and satisfactorily complete 20 hours of continuing education concerning supervisory responsibilities by a provider not

unacceptable to FINRA. Maggio will notify Joshua Bone, Principal Counsel, of the name and contact information of the provider who is providing the continuing education at least 10 days prior to attending the training. Within 30 days following completion of such training, Maggio will submit written proof that the continuing education program has been satisfactorily completed to Joshua Bone at Joshua.Bone@finra.org. All correspondence must identify the respondent and matter number.

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 he 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.

Respondent understands that if he is barred or suspended from associating with any FINRA member in a principal capacity, 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, Respondent may not be associated with any FINRA member in any principal capacity during the period of the bar or suspension. *See* FINRA Rules 8310 and 8311. Furthermore, because Respondent is subject to a statutory disqualification during the suspension, if he remains associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

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.

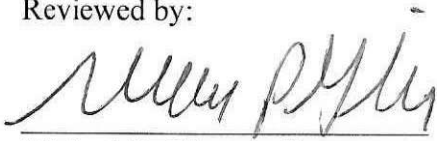
Respondent certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; Respondent has agreed to the AWC's provisions voluntarily; and no offer, threat, inducement, or promise of any kind, other than the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce him to submit this AWC.

11-17-2021

Date


Adam Maggio
Respondent

Reviewed by:



Michael P. Gilmore, Esq.
Counsel for Respondent
Moss & Gilmore LLP
129 Third St.
Mineola, NY 11501

Accepted by FINRA:

December 10, 2021

Date

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



Joshua J. Bone
Principal Counsel
FINRA
Department of Enforcement
99 High St #900
Boston, MA 02110

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