

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2020065242201**

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

RE: Decker & Co, LLC (Respondent)
Member Firm
CRD No. 166446

Pursuant to FINRA Rule 9216, Respondent Decker & Co, LLC 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

Decker has been a FINRA member since June 2013. The firm employs three registered representatives and has one registered branch office. Its principal place of business is in Menlo Park, CA. During the relevant time period, the firm assisted U.S. and foreign-based institutional clients with trading in foreign markets, acting as a chaperone between its clients and foreign broker-dealers.¹

OVERVIEW

In December 2019, and again from April 2020 to June 2020, Decker conducted a securities business while it failed to maintain the required minimum net capital. As a result, Decker violated the Securities Exchange Act of 1934 (Exchange Act) § 15(c), Exchange Act Rule 15c3-1 promulgated thereunder, and FINRA Rules 4110(b) and 2010.

From December 2019 to June 2020, Decker failed to maintain books and records accurately reflecting the firm's liabilities and net capital levels and filed inaccurate Financial and Operational Combined Uniform Single (FOCUS) reports. As a result, Decker violated Exchange Act § 17(a), Exchange Act Rules 17a-3 and 17a-5, and FINRA Rules 4511 and 2010.

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

From April 2020 to at least March 2022, the firm failed to file an application for approval of a material change in business operations to reflect that it would be chaperoning trades without a clearing firm, in violation of FINRA Rules 1017 and 2010.

Finally, the firm failed to conduct required independent testing of its anti-money laundering program for the years 2017 through 2020, in violation of FINRA Rules 3310(c) and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's 2020 cycle examination of Decker.

1. Decker conducted a securities business while below its minimum net capital requirement.

Exchange Act § 15(c) and Exchange Act Rule 15c3-1 require broker-dealers to maintain certain minimum levels of net capital. FINRA Rule 4110(b)(1) requires a member firm to suspend all business operations during any period in which it is not in compliance with applicable net capital requirements as set forth in Exchange Act Rule 15c3-1. Violations of Exchange Act § 15(c), Exchange Act Rule 15c3-1, and FINRA Rule 4110(b) are also violations of 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.

In December 2019, the firm cleared trades through a clearing firm and was subject to a minimum net capital requirement of \$19,465. As of December 31, 2019, the firm had failed to accrue \$152,117 in liabilities, resulting in a net capital deficiency of \$57,519. The firm conducted a securities business on this date.

On April 10, 2020, the firm terminated its clearing arrangement, which caused the firm's minimum net capital requirement to increase to \$250,000. Between April 30, 2020, and June 30, 2020, the firm was net capital deficient by amounts ranging from \$359,575 to \$447,033. On October 28, 2020, the firm filed a notice with FINRA under Exchange Act Rule 17a-11 that it had engaged in securities business while below its required minimum net capital during this time period.

Therefore, Respondent violated Exchange Act § 15(c), Exchange Act Rule 15c3-1, and FINRA Rules 4110(b) and 2010.

2. Decker failed to maintain accurate books and records and filed inaccurate FOCUS reports.

Exchange Act § 17(a), Exchange Act Rules 17a-3 and 17a-5, and FINRA Rule 4511 require FINRA member firms to make and preserve certain books and records. Inherent in the obligation to make and preserve books and records is the requirement that they be accurate. Exchange Act Rule 17a-3(a)(2) requires that a broker-dealer maintain ledgers reflecting all assets and liabilities, including by accurately accruing all liabilities, Exchange Act Rule 17a-3(a)(11) requires that a broker-dealer make and keep accurate net

capital calculations, and Exchange Act Rule 17a-5(a) requires member firms to timely file accurate FOCUS reports containing certain accounting and financial information, including firms' net capital calculations. A violation of Exchange Act § 17(a), Exchange Act Rules 17a-3 and 17a-5, and FINRA Rule 4511 is also a violation of FINRA Rule 2010.

Between December 2019 and June 2020, the firm failed to timely accrue liabilities owed to vendors. This resulted in the firm maintaining an inaccurate general ledger and making inaccurate net capital calculations. Additionally, the firm filed seven monthly FOCUS reports that contained these inaccurate net capital calculations.

Therefore, Respondent violated Exchange Act § 17(a), Exchange Act Rules 17a-3 and 17a-5, and FINRA Rules 4511 and 2010.

3. Decker failed to file an application for approval of a material change in business operations.

FINRA Rule 1017(a)(5) requires that a member "file an application for approval of ... a material change in business operations as defined in Rule 1011(m)." FINRA Rule 1017(c) prohibits a firm from implementing a material change in business operations until such change is approved by FINRA. FINRA Rule 1011(m) defines a "material change in business operations" as including "removing or modifying a membership agreement restriction" and "adding business activities that require a higher minimum net capital under ... [Exchange Act] Rule 15c3-1." A violation of FINRA Rule 1017 is also a violation of FINRA Rule 2010.

Decker's membership agreement permitted it to clear transactions on a fully-disclosed basis through a clearing firm and required the firm to promptly notify FINRA if it changed its clearing entity or method of clearance. In April 2020, Decker terminated its clearing arrangement and did not have a clearing firm. Thereafter, from April 2020 to at least March 2022, the firm acted as a chaperoning broker-dealer in effecting foreign securities transactions without a clearing firm. Prior to making these changes, which increased its minimum net capital requirement, as described above, and constituted a material change in its business, the firm did not file an application for approval of a material change in business operations, nor did it receive approval from FINRA.

Therefore, Respondent violated FINRA Rules 1017 and 2010.

4. Decker failed to conduct required independent testing of its AML program.

FINRA Rule 3310 requires each member firm to develop and implement a written anti-money laundering (AML) program reasonably designed to achieve and monitor the firm's compliance with the Bank Secrecy Act (BSA) and implementing regulations promulgated by the Department of the Treasury. FINRA Rule 3310(c) generally requires each member firm to conduct annual (on a calendar-year basis) independent testing. Supplementary Material .01(c) to the rule explains that to be independent the testing may not be performed by a person who performs the functions being tested, the AML

compliance officer, or anyone reporting to any of those persons. A violation of FINRA Rule 3310(c) also constitutes a violation of FINRA Rule 2010.

Decker failed to conduct the required independent AML testing from 2017 through 2020. In 2017, the firm's test was not independent because the person conducting the test reported to an employee that performed the functions being tested. In 2018 and 2019, the firm conducted no testing. For 2020, the firm failed to conduct the testing on a calendar-year basis as required because it was performed in 2021.

Therefore, Respondent violated FINRA Rules 3310(c) and 2010.

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

- a censure and
- a \$35,000 fine.

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 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.

October 9, 2023

Date

Mark Decker

Decker & Co, LLC
Respondent

Print Name: Mark Decker

Title: CEO

Accepted by FINRA:

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

November 6, 2023

Date

Christopher Conroy

Christopher Conroy
Counsel
FINRA
Department of Enforcement
200 Liberty Street
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