

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Daniel J. O'Neill
(CRD No. 1358245),

Respondent.

DISCIPLINARY PROCEEDING
No. 2021070337301

Hearing Officer — RES

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: December 6, 2021

INTRODUCTION

Disciplinary Proceeding No. 2021070337301 was filed on July 29, 2021, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA or Complainant). Respondent Daniel J. O'Neill submitted an Offer of Settlement (Offer) to Complainant dated December 1, 2021. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, 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, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of

Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

O'Neill entered the securities industry in 1985. Since April 2013, O'Neill has been registered with FINRA as a General Securities Representative through an association with Aegis.

O'Neill is subject to FINRA's jurisdiction by virtue of his current association with a FINRA member firm.¹

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

Summary

Respondent Daniel J. O'Neill, while associated with FINRA member Aegis Capital Corp. ("Aegis" or the "Firm"), excessively and unsuitably traded the account of one of his customers, Customer A, from July 2014 through June 2015 (the "Relevant Period"). O'Neill controlled the trading in Customer A's account and, during the Relevant Period, executed 456 trades (many of which were unauthorized) with a total principal value of approximately \$22.9 million. O'Neill's excessive and unsuitable trading in Customer A's account resulted in an annualized turnover rate of 51.4 and an annualized cost-to-equity ratio (or break-even point) of 63.7%, and caused customer losses of \$147,411. At the same time, O'Neill's trading generated gross sales credits and commissions of \$110,446, of which O'Neill received at least \$66,000. By engaging in excessive and unsuitable trading in Customer A's account, O'Neill violated FINRA Rules 2111 and 2010.

¹ Subsequent to the filing and service of the Complaint, Aegis terminated O'Neill. Since that termination, O'Neill has not been registered with FINRA or associated with a FINRA member firm.

O'Neill also executed 183 trades with a total principal value of approximately \$8.1 million in Customer A's account without Customer A's prior authorization. By engaging in unauthorized trading in Customer A's account, O'Neill violated FINRA Rule 2010.

Facts

Customer A is a 59 year-old college basketball coach. Customer A first became a customer of O'Neill's while O'Neill was employed with another broker-dealer.

In May 2013, Customer A followed O'Neill to Aegis and opened a brokerage account. Customer A's investment objective was recorded as "speculation" even though Customer A was not a speculative investor and wanted to preserve capital while allowing for moderate risk. Customer A's estimated annual income was recorded as \$200,000 - \$299,999, his liquid net worth as \$500,000 - \$999,999, and his total net worth as \$1,000,000 - \$2,999,999.

In May 2013, the value of Customer A's account was approximately \$425,000, with approximately 35% of the account's holdings invested in equities and 65% in mutual funds. As of June 30, 2014, the total value of Customer A's Aegis account was \$380,424.25, with approximately 54% of the account's holdings in equities and 46% in mutual funds. However, by October 2014, nearly 90% of the account's holdings were in equities.

From July 2014 through June 2015, O'Neill recommended active short-term trading in Customer A's Aegis account supported by the use of margin. O'Neill executed 456 purchases and sales of securities totaling approximately \$22.9 million in Customer A's account, resulting in an annualized turnover rate of 51.4 and an annualized cost-to-equity ratio of 63.7%.

Although Customer A's account was not listed on Aegis's books and records as a discretionary account, during the Relevant Period, O'Neill decided which stocks to buy and sell and determined the volume and frequency of trading in Customer A's account. O'Neill also

executed 183 of the 456 trades without Customer A's prior knowledge or authorization. When O'Neill did contact Customer A before making securities trades, Customer A relied on and followed his trading recommendations.

O'Neill did not calculate cost-to-equity or turnover rates, or consider the cumulative trading costs Customer A incurred when determining which stocks to buy and sell. O'Neill also did not consider the interest costs associated with his use of margin, which allowed O'Neill access to additional funds so he could trade more frequently and thus increased the costs Customer A incurred.

As a result of O'Neill's active short-term trading, by the end of June 2015, the value of Customer A's account was \$150,071.52, consisting of \$169,559.28 in securities and a -\$19,487.16 cash balance.

The costs associated with O'Neill's frequent short-term trading in Customer A's account often reduced or eliminated his profits or compounded the losses Customer A incurred. For example:

From July 30, 2014 through April 27, 2015, O'Neill executed 37 separate purchases and sales of 38,250 shares of Twitter (TWTR) stock worth approximately \$1.9 million, resulting in a net loss of \$10,764 and \$7,900 in commissions, markups and markdowns.

From August 20, 2014 through September 8, 2014, O'Neill executed 18 separate purchases and sales of 10,000 shares of Hertz Global Holdings Inc. (HTZ) even though the share price remained largely the same. Customer A incurred a net loss of \$3,197.56, while O'Neill charged \$2,599.90 in markups and markdowns on the trades.

From July 30, 2014 through August 21, 2014, O'Neill executed 5 separate purchases and sales of 5,000 shares of Yahoo (YHOO), generating a \$1,570.55 profit. O'Neill charged \$1,700

in markups and markdowns, or 108% of the profits generated by the trades. On August 28, 2014 and September 2, 2014, O'Neill again bought and sold 2,500 shares of YHOO, generating a \$1,203.33 profit and charging \$750 in markups and markdowns, or 62% of the profits generated by these trades. From September 15, 2014 through October 24, 2014, O'Neill executed 13 separate purchases and sales of 11,000 shares of YHOO, resulting in a net loss of \$615.67 and \$2,800 in commissions and markups and markdowns.

From September 17, 2014 through September 24, 2014, O'Neill executed 7 separate purchases and sales of 4,500 shares of Sunoco LP (SUNE), resulting in a net loss of \$1,494.09. O'Neill charged \$1,275 in markups and markdowns on the trades.

From May 15, 2015 through May 28, 2015, O'Neill executed 8 separate purchases and sales of 5,000 shares of SUNE, generating a \$447.82 profit. O'Neill charged \$2,625 in markups and markdowns, or 586% of the profits generated by the trades.

O'Neill experienced personal financial issues during the Relevant Period. In 2012 and 2013, two liens totaling approximately \$86,000 were filed against O'Neill, each of which remained outstanding throughout the Relevant Period.

O'Neill's excessive and unsuitable trading in Customer A's account during the Relevant Period generated total trading costs of \$140,109 (of which O'Neill earned at least \$66,000), margin interest charges of \$14,508, and caused losses of \$147,411.

O'Neill's Excessive and Quantitatively Unsuitable Trading

FINRA Rule 2111, the suitability rule, is "fundamental to fair dealing and is intended to promote ethical sales practices and high standards of professional conduct." The operable version of FINRA Rule 2111, Supplementary Material .05(c), that was in effect from July 9, 2012 through June 29, 2020 required, among other things, an 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 transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile."

As explained in Supplementary Material .05(c) of FINRA Rule 2111, "factors such as the turnover rate, the cost-equity ratio, and the use of in-and-out trading in a customer's account may provide a basis" for finding that an associated person engaged in quantitatively unsuitable trading.

A violation of FINRA Rule 2111 also constitutes a violation of FINRA Rule 2010, which requires associated persons to "observe high standards of commercial honor and just and equitable principles of trade."

During the Relevant Period, O'Neill exercised *de facto* control over the trading in Customer A's account, controlling the volume and frequency of trading, deciding what securities to buy and sell, the quantities, the price, and when each trade would occur. O'Neill also exercised control when he executed unauthorized trades in Customer A's account.

O'Neill's trading in Customer A's account was excessive and quantitatively unsuitable for Customer A given his investment profile.

The trading in Customer A's account was also excessive when measured against the annualized turnover rate and cost-to-equity ratio. A turnover rate of six or a cost-to-equity ratio in excess of 20% generally indicates that excessive trading occurred. During the Relevant Period, O'Neill executed 456 trades with a total principal value of approximately \$22.9 million in Customer A's account, resulting in an annualized turnover rate of 51.4 and an annualized cost-to-equity percentage (or break-even point) of 63.7%.

O'Neill's intentional, active trading caused Customer A to incur \$140,109 in costs and \$147,411 in losses, while generating substantial commissions for O'Neill.

O'Neill did not have a reasonable basis to believe that the level of trading he recommended was suitable for Customer A.

As a result of the foregoing conduct, O'Neill violated FINRA Rules 2111 and 2010.

O'Neill's Unauthorized Trading

Unauthorized trading occurs when a registered representative effects trades in a customer's account without first obtaining the customer's authorization or consent.

Unauthorized trading is a breach of the duty to observe high standards of commercial honor and just and equitable principles of trade and, thus, a violation of FINRA Rule 2010.

From January 2015 through July 2015, O'Neill effected 183 trades in Customer A's account without first obtaining authorization or consent for the trades from Customer A. O'Neill's unauthorized trades are detailed in Exhibit A, a copy of which is annexed hereto and incorporated herein by reference.

As a result of the foregoing conduct, O'Neill violated FINRA Rule 2010.

Based on the foregoing, by excessively trading the account of Customer A, Respondent violated FINRA Rules 2111 and 2010. By engaging in unauthorized trading in the account of Customer A, Respondent violated FINRA Rule 2010.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by FINRA of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent Daniel J. O'Neill be suspended from associating with any FINRA member in all capacities for six months.

Respondent has submitted a sworn financial statement and demonstrated an inability to pay. In light of the financial status of Respondent, the sanctions do not include a monetary fine.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

SO ORDERED.

FINRA

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

A handwritten signature in blue ink, reading "Joseph E. Strauss".

Joseph E. Strauss, Senior Counsel
FINRA Department of Enforcement
One Brookfield Place
200 Liberty Street, 11th Floor
New York, New York 10281

Exhibit A

Unauthorized Trades in Customer A's Account

Date	Total Net Bought	Total Net Sold	Total Comm/SC	B/S	Symbol	Net Dollar Bought	Net Dollar Sold	Total Comm/SC
1/2/2015	\$108,959	\$0	\$550					
				B	BBBY	\$58,009	\$0	\$225
				B	ISIS	\$45,747	\$0	\$225
				B	VGGL	\$5,203	\$0	\$100
1/5/2015	\$0	\$47,208	\$300					
				S	ISIS	\$0	\$47,208	\$300
1/6/2015	\$57,236	\$0	\$225					
				B	BBBY	\$57,236	\$0	\$225
1/7/2015	\$50,197	\$0	\$225					
				B	ALKS	\$50,197	\$0	\$225
1/8/2015	\$65,413	\$132,048	\$960					
				B	BBY	\$49,322	\$0	\$375
				B&S	STML	\$16,091	\$14,140	\$135
				S	BBBY	\$0	\$117,908	\$450
1/9/2015	\$28,631	\$0	\$225					
				B	BBY	\$28,631	\$0	\$225
1/13/2015	\$165,511	\$5,765	\$875					
				B	ALKS	\$86,058	\$0	\$375
				B	BBY	\$79,452	\$0	\$400
				S	SRPT	\$0	\$5,765	\$100
1/14/2015	\$0	\$202,834	\$300					
				S	ALKS	\$0	\$102,113	\$200
				S	BBY	\$0	\$100,721	\$100
1/15/2015	\$0	\$34,872	\$100					
				S	BBY	\$0	\$34,872	\$100
1/22/2015	\$113,470	\$49,847	\$1,000					
				B	HW	\$28,049	\$0	\$400
				B	TCBI	\$85,421	\$0	\$400
				S	ALKS	\$0	\$34,290	\$100
				S	BBY	\$0	\$15,556	\$100
1/23/2015	\$122,368	\$86,112	\$1,500					
				B	CSCO	\$56,834	\$0	\$400
				B	FCAU	\$65,534	\$0	\$1,000
				S	TCBI	\$0	\$86,112	\$100
1/26/2015	\$70,588	\$102,949	\$1,100					
				B&S	MSFT	\$70,588	\$69,983	\$600
				S	FCAU	\$0	\$32,966	\$500
1/27/2015	\$55,876	\$54,582	\$1,250					
				B	HABT	\$33,351	\$0	\$250
				B	HIMX	\$22,525	\$0	\$500
				S	CSCO	\$0	\$27,055	\$100
				S	HW	\$0	\$27,527	\$400
1/28/2015	\$0	\$56,006	\$0					
				S	FCAU	\$0	\$33,041	\$0
				S	HIMX	\$0	\$22,966	\$0
1/30/2015	\$0	\$33,412	\$100					
				S	HABT	\$0	\$33,412	\$100
2/5/2015	\$94,825	\$64,174	\$950					
				B	BOX	\$12,650	\$0	\$225

				B	HW	\$23,147	\$0	\$300
				B	NXPI	\$59,028	\$0	\$225
				S	HTZ	\$0	\$43,770	\$100
				S	TWTR	\$0	\$20,405	\$100
2/6/2015	\$30,000	\$103,147	\$525					
				B&S	BHACU	\$30,000	\$29,785	\$150
				S	BOX	\$0	\$13,277	\$150
				S	NXPI	\$0	\$60,085	\$225
2/10/2015	\$127,674	\$50,530	\$650					
				B	BIOC	\$5,635	\$0	\$100
				B	FSLR	\$72,510	\$0	\$300
				B&S	CVS	\$49,529	\$50,530	\$250
2/11/2015	\$96,106	\$0	\$600					
				B	AKAM	\$96,106	\$0	\$600
2/12/2015	\$5,885	\$221,683	\$1,300					
				B	TWER	\$5,885	\$0	\$200
				S	AKAM	\$0	\$96,413	\$300
				S	CSCO	\$0	\$28,564	\$200
				S	FSLR	\$0	\$49,263	\$100
				S	HW	\$0	\$47,443	\$500
2/13/2015	\$111,260	\$3,028	\$800					
				B	BOX	\$40,730	\$0	\$400
				B	IMAX	\$70,531	\$0	\$400
				S	TWER	\$0	\$3,028	\$0
2/17/2015	\$0	\$52,909	\$300					
				S	BOX	\$0	\$19,078	\$100
				S	IMAX	\$0	\$33,830	\$200
2/18/2015	\$98,871	\$0	\$800					
				B	ADXS	\$17,536	\$0	\$400
				B	WWAV	\$81,334	\$0	\$400
2/19/2015	\$0	\$34,634	\$300					
				S	IMAX	\$0	\$34,634	\$300
2/20/2015	\$224,612	\$130,571	\$2,300					
				B	AMKR	\$37,588	\$0	\$800
				B	SGNL	\$16,170	\$0	\$200
				B	WFM	\$170,854	\$0	\$900
				S	FSLR	\$0	\$48,520	\$200
				S	WWAV	\$0	\$82,050	\$200
2/23/2015	\$60,664	\$71,713	\$800					
				B	LC	\$60,664	\$0	\$500
				S	ADXS	\$0	\$17,570	\$100
				S	BIOC	\$0	\$11,502	\$200
				S	WFM	\$0	\$42,641	\$0
2/24/2015	\$214,279	\$145,819	\$1,050					
				B	GM	\$56,959	\$0	\$300
				B	TEP	\$99,388	\$0	\$350
				B&S	TOL	\$57,932	\$57,835	\$300
				S	LC	\$0	\$47,388	\$0
				S	WWAV	\$0	\$40,595	\$100
2/25/2015	\$14,882	\$46,993	\$300					
				B	SGNL	\$14,882	\$0	\$100
				S	LC	\$0	\$10,317	\$100
				S	TEP	\$0	\$36,676	\$100

2/26/2015	\$95,739	\$120,771	\$800					
				B	LBIO	\$17,735	\$0	\$100
				B	WFM	\$42,628	\$0	\$100
				B&S	TEP	\$35,376	\$47,537	\$100
				S	GM	\$0	\$56,710	\$0
				S	SGNL	\$0	\$16,524	\$500
2/27/2015	\$25,180	\$85,551	\$300					
				B	MEIP	\$25,180	\$0	\$200
				S	WFM	\$0	\$85,551	\$100
3/3/2015	\$8,425	\$5,360	\$200					
				B	MEIP	\$8,425	\$0	\$100
				S	TSL	\$0	\$5,360	\$100
3/5/2015	\$0	\$38,549	\$560					
				S	AMKR	\$0	\$19,583	\$200
				S	LBIO	\$0	\$18,966	\$360
3/6/2015	\$49,992	\$24,036	\$500					
				B	HABT	\$49,992	\$0	\$400
				S	TEP	\$0	\$24,036	\$100
3/9/2015	\$15,024	\$25,746	\$300					
				B	BOX	\$15,024	\$0	\$150
				S	HABT	\$0	\$25,746	\$150
3/10/2015	\$0	\$26,561	\$225					
				S	HABT	\$0	\$26,561	\$225
3/11/2015	\$0	\$39,818	\$400					
				S	BOX	\$0	\$25,496	\$150
				S	MEIP	\$0	\$14,322	\$250
3/12/2015	\$99,571	\$0	\$575					
				B	CYBR	\$78,602	\$0	\$450
				B	SNR	\$20,969	\$0	\$125
3/13/2015	\$138,938	\$79,300	\$1,125					
				B	MBLY	\$62,041	\$0	\$450
				B&S	CYBR	\$76,897	\$79,300	\$675
3/16/2015	\$0	\$99,055	\$300					
				S	CYBR	\$0	\$37,532	\$100
				S	MBLY	\$0	\$61,523	\$200
3/17/2015	\$116,784	\$0	\$500					
				B	BURL	\$116,784	\$0	\$500
3/18/2015	\$159,099	\$212,630	\$1,850					
				B	BABA	\$63,642	\$0	\$225
				B	RIG	\$23,149	\$0	\$225
				B	SBUX	\$72,308	\$0	\$300
				S	BOX	\$0	\$8,487	\$100
				S	BURL	\$0	\$118,052	\$500
				S	CYBR	\$0	\$39,516	\$300
				S	SNR	\$0	\$20,368	\$100
				S	TEP	\$0	\$24,041	\$100
				S	TWER	\$0	\$2,166	\$0
3/19/2015	\$0	\$10,285	\$0					
				S	RIG	\$0	\$10,825	\$0
3/20/2015	\$205,749	\$183,583	\$3,688					
				B	TSO	\$70,421	\$0	\$713
				B	WLL	\$29,622	\$0	\$338
				B	WSM	\$60,090	\$0	\$713

				B&S	X	\$45,615	\$46,190	\$500
				S	BABA	\$0	\$63,762	\$713
				S	SBUX	\$0	\$73,201	\$713
3/23/2015	\$100,565	\$44,855	\$600					
				B	SONC	\$54,136	\$0	\$300
				B	TSO	\$46,429	\$0	\$100
				S	MEIP	\$0	\$3,865	\$100
				S	RIG	\$0	\$11,516	\$0
				S	WLL	\$0	\$29,475	\$100
3/24/2015	\$49,813	\$114,748	\$400					
				B	GOGO	\$49,813	\$0	\$300
				S	SONC	\$0	\$54,455	\$0
				S	WSM	\$0	\$60,293	\$100
3/25/2015	\$85,995	\$150,043	\$825					
				B	SONC	\$85,955	\$0	\$675
				S	GOGO	\$0	\$34,076	\$0
				S	TSO	\$0	\$115,967	\$150
3/26/2015	\$119,748	\$49,034	\$1,250					
				B	SEDG	\$21,983	\$0	\$250
				B	SONC	\$48,680	\$0	\$600
				B&S	X	\$49,085	\$49,034	\$400
4/7/2015	\$0	\$22,848	\$250					
				S	SEDG	\$0	\$22,848	\$250
4/10/2015	\$114,346	\$0	\$700					
				B	FEYE	\$64,431	\$0	\$300
				B	X	\$49,915	\$0	\$400
4/13/2015	\$0	\$31,922	\$0					
				S	FEYE	\$0	\$31,922	\$0
4/14/2015	\$0	\$50,308	\$400					
				S	X	\$0	\$50,308	\$400
4/15/2015	\$84,452	\$61,456	\$2,100					
				B	EVEP	\$42,523	\$0	\$500
				B	X	\$41,929	\$0	\$750
				S	GOGO	\$0	\$15,458	\$100
				S	SONC	\$0	\$45,997	\$750
4/29/2015	\$0	\$34,884	\$400					
				S	RIG	\$0	\$34,884	\$400
4/30/2015	\$0	\$34,784	\$400					
				S	RIG	\$0	\$34,784	\$400
5/4/2015	\$33,772	\$82,063	\$550					
				B	ETSY	\$33,772	\$0	\$350
				S	IMAX	\$0	\$37,717	\$100
				S	SONC	\$0	\$44,346	\$100
5/5/2015	\$11,316	\$0	\$0					
				B	ETSY	\$11,316	\$0	\$0
5/6/2015	\$12,234	\$0	\$100					
				B	ETSY	\$12,234	\$0	\$100
5/7/2015	\$11,648	\$0	\$100					
				B	ETSY	\$11,648	\$0	\$100
5/11/2015	\$0	\$30,594	\$0					
				S	ETSY	\$0	\$30,594	\$0
5/21/2015	\$158,400	\$165,702	\$1,900					
				B	GOGO	\$32,865	\$0	\$0

				B&S	EA	\$125,534	\$62,295	\$400
				S	HTZ	\$0	\$30,341	\$750
				S	SUNE	\$0	\$73,067	\$750
5/22/2015	\$0	\$10,961	\$0					
				S	GOGO	\$0	\$10,961	\$0
5/26/2015	\$278,290	\$124,428	\$5,200					
				B	SUNE	\$153,070	\$0	\$2,500
				B	X	\$125,220	\$0	\$2,500
				S	EA	\$0	\$124,428	\$200
5/27/2015	\$0	\$36,841	\$0					
				S	SUNE	\$0	\$36,841	\$0
5/28/2015	\$0	\$41,352	\$0					
				S	STML	\$0	\$1,267	\$0
				S	SUNE	\$0	\$40,096	\$0
6/2/2015	\$82,870	\$0	\$800					
				B	FCX	\$82,870	\$0	\$800
6/3/2015	\$0	\$51,987	\$1,000					
				S	X	\$0	\$51,987	\$1,000
6/5/2015	\$9,031	\$0	\$0					
				B	IDRA	\$9,031	\$0	\$0
6/10/2015	\$62,007	\$0	\$225					
				B	FB	\$62,007	\$0	\$225
6/11/2015	\$50,533	\$21,671	\$400					
				B	ATVI	\$50,533	\$0	\$100
				S	GOGO	\$0	\$21,671	\$300
6/15/2015	\$0	\$49,264	\$0					
				S	ATVI	\$0	\$49,264	\$0
6/18/2015	\$0	\$82,788	\$600					
				S	FB	\$0	\$28,605	\$100
				S	FCX	\$0	\$19,745	\$200
				S	X	\$0	\$34,438	\$300
6/29/2015	\$0	\$40,750	\$400					
				S	FCX	\$0	\$19,555	\$200
				S	X	\$0	\$21,195	\$200
6/30/2015	\$0	\$17,689	\$650					
				S	IDRA	\$0	\$8,665	\$250
				S	SGNL	\$0	\$9,024	\$400
7/2/2015	\$0	\$17,321	\$0					
				S	FB	\$0	\$17,321	\$0