

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2021070904301**

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

RE: Osaic Services, Inc., formerly known as SagePoint Financial, Inc. (Respondent)
Member Firm
CRD No. 133763

Pursuant to FINRA Rule 9216, Respondent Osaic Services, 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

Osaic Services, Inc. has been a FINRA member since 2005. The firm is headquartered in Scottsdale, Arizona, employs over 20 registered representatives, and conducts a general securities business. From January 2009 to November 2023, Osaic Services was known as SagePoint Financial, Inc. and employed between approximately 1,500 and 1,900 registered representatives.

On September 9, 2022, Osaic Services entered into an AWC with FINRA through which it consented to findings that, from April 2014 to July 2017, the firm failed to establish, maintain, and enforce a supervisory system reasonably designed to achieve compliance with the suitability requirements of FINRA Rule 2111 as they pertain to margin use. The AWC further found that, as a result, Osaic Services failed to identify or reasonably respond to red flags of unsuitable margin use in two customer accounts. Osaic Services consented to a censure, a \$35,000 fine, and restitution of \$51,830.24 plus interest based on these violations of NASD Rule 3010 and FINRA Rules 3110 and 2010.¹

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

OVERVIEW

From at least June 2018 to at least August 2019, Osaic Services failed to establish and maintain a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with the suitability requirements of FINRA Rules 2111 and 2360(b)(19) as they pertain to excessive and unsuitable trading and options trading. Osaic Services permitted registered representatives who lacked sufficient knowledge, training, and experience with respect to options trading to override automated supervisory alerts and trading restrictions. Moreover, the firm permitted one of its registered representatives (Broker A) to open in the account of one customer (Customer 1) options positions that required the use of margin, even though the customer did not have a margin account. Some of those options transactions exposed Customer 1 to a risk of loss exceeding \$4.5 million—over 22 times her liquid net worth of \$200,000. Finally, Osaic Services failed to respond reasonably to indications that Broker A was excessively or unsuitably trading customer accounts, including those of Customers 1 and 2 (Customer 1's mother). As a result, the two customers paid over \$60,000 in commissions and costs, and incurred over \$1.2 million in losses. Osaic Services therefore violated FINRA Rules 3110, 2360(b)(20), and 2010.

Additionally, from at least February to June 2019, Osaic Services failed to reasonably supervise for unauthorized trading in the account of Customer 2 after she died. As a result, the firm violated FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's review of a Uniform Termination Notice for Securities Industry Registration (Form U5) filed by Osaic Services, which disclosed that the firm had discharged Broker A for "us[ing] . . . unapproved marketing material regarding [o]ptions trading with one client."²

A. The applicable rules.

FINRA Rule 2360(b)(19) imposes suitability requirements that are specific to recommendations to trade options. Subsection (A) requires that a member or associated person who recommends an options transaction have reasonable grounds to believe that the transaction is not unsuitable based on information provided by the customer after reasonable inquiry into the customer's investment objectives, financial situation and needs, and any other information known by the member or associated person. Subsection (B) requires a member or associated person who recommends an opening transaction in any option contract to have a reasonable basis for believing, at the time of the recommendation, that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction, and that he is financially able to bear the risks of the recommended position in the option contract.

² FINRA barred Broker A in November 2021 for refusing to provide documents and information requested by FINRA staff pursuant to FINRA Rule 8210, in violation of FINRA Rules 8210 and 2010.

FINRA Rule 2111 requires member firms and their associated persons to “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.” A customer’s investment profile includes such factors as the customer’s age, financial situation and needs, investment objectives, investment experience, investment time horizon, liquidity needs, and risk tolerance.

FINRA Rule 2111 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. FINRA Rule 2111, Supplementary Material .05, 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 measures the amount an account must appreciate just to cover commissions and other expenses. In other words, it is the break-even point where a customer may begin to see a return. A turnover rate above six or a cost-to-equity ratio above 20 percent generally indicates that an account has been excessively traded.

FINRA Rule 3110(a) requires a member firm to 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.

FINRA Rule 3110(b) requires a member firm to 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.

The duty to supervise under FINRA Rule 3110 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 2360(b)(20)(A) requires a member that “conducts a public customer options business . . . [to] ensure that its written supervisory system policies and procedures . . . adequately address the member’s public customer options business.”

FINRA Rule 2010 requires members and associated persons, in the conduct of their business, to “observe high standards of commercial honor and just and equitable

principles of trade.” Violations of FINRA Rules 3110 and 2360 also constitute violations of FINRA Rule 2010.

B. Osaic Services failed to reasonably supervise for excessive and unsuitable trading, including unsuitable options trading.

From at least June 2018 to at least August 2019, Osaic Services failed to establish and maintain a system reasonably designed to supervise for excessive and unsuitable trading, including unsuitable options trading.

First, the firm’s system, including written supervisory procedures, was not reasonably designed to supervise options trades. The firm’s procedures required registered options principals to review, by the business day following the trade date, options transactions that had been flagged by an automated transaction surveillance system. The system flagged options transactions for a variety of reasons, such as if a trade requiring the use of margin was being placed in a non-margin account or if the types of options trades that were being placed in an account were outside the parameters for which the account was approved. But Osaic Services permitted other registered representatives—who were not registered options principals and who worked on the firm’s Trade Desk, despite lacking sufficient knowledge, training, and experience with options transactions—to override those alerts. And while the firm automatically restricted customers without margin accounts from opening options positions that required the use of margin, the firm permitted registered representatives—even those who lacked sufficient knowledge, training, and experience with options transactions—to override those options trading restrictions.

The shortcomings in the firm’s system became clear when, on a single day in August 2019, Broker A effected in Customer 1’s account numerous options spread transactions involving 4,500 index option contracts that were set to expire that day.³ The trades required the use of margin, even though Customer 1 did not have a margin account. And the trades triggered alerts in the automated transaction surveillance system at Osaic Services, including alerts for creating uncovered options positions in Customer 1’s cash account—which, in turn, created a potential risk of loss exceeding the amount of cash in Customer 1’s account. Nonetheless, without assessing the underlying facts that triggered the alerts (*e.g.*, that Customer 1 did not have a margin account), Osaic Services’ Trade Desk overrode the alerts and allowed the trades to be executed. None of the individuals who worked on the Trade Desk that day had the knowledge, training, and experience to understand the options transactions at issue. The Trade Desk was expected to be able to identify uncovered spread trading, as the firm’s procedures prohibited such trading. However, the Trade Desk failed to do so, and instead mistakenly treated certain of the

³ A spread involves the purchase and sale of call or put options for the same underlying asset; it derives its value from the difference, or spread, between the prices of the two options. Index options are derivative contracts that represent an index, which is a collection of individual stocks.

option spread transactions in Customer 1's account as "covered spreads."⁴ In fact, the vertical spreads were not "covered," because they involved short call options with lower strike prices than the long call options. These positions posed a maximum potential risk exceeding \$4.5 million, and eventually resulted in a loss of approximately \$1.17 million for Customer 1. At the time of the transactions, Customer 1's account only contained approximately \$137,000 in cash, and she had a liquid net worth of \$200,000.

Second, Osaic Services' written supervisory procedures were not reasonably designed to achieve compliance with the firm's obligations to supervise for excessive and unsuitable trades. The procedures advised contacting a client "when necessary" to confirm his or her understanding of, and agreement with, transactions in the client's account, and the procedures suggested modifying or restricting future transactions "as appropriate." However, the procedures did not provide guidance on when these steps should be taken.

Third, Osaic Services failed to reasonably respond to red flags that Broker A was engaging in a pattern of unsuitable and excessive trading in customer accounts. In February 2019, the firm flagged a pattern of significant losses resulting from options trades in several of Broker A's customer accounts. Yet, after flagging this pattern, the firm imposed no restrictions or heightened scrutiny on Broker A's ability to trade options—thus permitting him to buy and sell over 6,000 option contracts in ten different options series in Customer 1's account, including the August 2019 transactions that resulted in a loss of approximately \$1.17 million. In just the two months during which Broker A traded in Customer 1's account—July and August 2019—the customer, who was 60 years old and had an annual income of \$100,000, lost the entirety of her account value and paid nearly \$42,000 in commissions and costs.

Moreover, in December 2018, March 2019, and July 2019, Osaic Services identified a pattern of high cost-to-equity ratios, high commissions, and high turnover rates in the accounts of Broker A's customers. Yet it failed to reasonably respond to these red flags of excessive trading. The firm did not confirm with Broker A's customers that the transactions in their accounts were suitable for them, or that they understood the activity in their accounts. Without imposing any trading restrictions or heightened supervision on Broker A, Osaic Services permitted him to continue to excessively trade his customers' accounts, including that of Customer 2. And it was not until August 2019 that the firm effectively restricted Broker A from effecting transactions in his customers' accounts, by terminating his employment with the firm. Between June 2018 and June 2019, Broker A effected 84 transactions in Customer 2's account, which resulted in an annualized turnover rate of 7.18, commissions and costs of over \$18,000, and losses of nearly

⁴ The term "covered spread" is not customarily used in the securities industry. However, a vertical call (put) spread—involving the purchase and sale of calls (puts) on the same underlying asset with different strike prices, but with the same expiration date—could be considered "covered" if the long (*i.e.*, purchased) option has a lower (higher) strike price than the short (*i.e.*, sold) option. In such a circumstance, the risk of loss is limited to the initial cost of the trade. Similarly, a horizontal/calendar spread—involving the purchase and sale of options on the same underlying asset with the same strike price, but with different expiration dates—could be considered "covered" if the expiration date of the long option is later than that of the short option.

\$46,000. At no point during this period did any supervisor attempt to contact Customer 2, who was 91 years old, widowed, had a net worth of \$500,000, and was in ill health.⁵

Therefore, Osaic Services violated FINRA Rules 3110, 2360(b)(20), and 2010.

C. Osaic Services failed to reasonably supervise for unauthorized trades in Customer 2's account after her death.

Unauthorized trading occurs when a registered representative places a trade in a customer's account without the customer's authorization or consent. Unauthorized trading is a violation of FINRA Rule 2010.

From at least February to June 2019, Osaic Services failed to reasonably investigate and act upon red flags that Broker A was trading in Customer 2's account after she died in December 2018. Osaic Services' Advisor Support team learned of Customer 2's death from one of her children in February 2019. The team was aware by April 2019 that Broker A had not yet frozen Customer 2's account. And at least one member of the team learned that month that Broker A had traded in Customer 2's account after her death. Despite these red flags, the firm took no action to: (1) record Customer 2's death in Osaic Services' system; (2) freeze Customer 2's account; (3) follow up with Broker A to ensure that he recorded Customer 2's death and froze her account; or (4) alert any supervisory principal, including Broker A's supervisor, that Broker A had failed to freeze Customer 2's account and, instead, had continued to trade in the account after her death.

Between February 2019 (when Osaic Services' Advisor Support team learned of Customer 2's death) and June 2019 (when Broker A submitted Customer 2's death certificate to Osaic Services), Broker A effected 21 trades in Customer 2's account, including an option trade. Over the course of the same period, Customer 2's account paid almost \$10,000 in commissions and costs.

Therefore, Osaic Services violated FINRA Rules 3110 and 2010.

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

- a censure and
- a \$250,000 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.

⁵ In March 2022, Osaic Services entered into a settlement with Customer 1 and the estate of Customer 2 relating to the conduct described in this AWC.

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;

- [REDACTED]
- 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 31, 2024

Date

Gregory Cornick

Osaic Services, Inc.
Respondent

Print Name: Gregory Cornick

Title: CEO and President, Osaic Services

Accepted by FINRA:

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

November 7, 2024

Date

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