

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2022074134801**

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

RE: American Portfolios Financial Services, Inc. (Respondent)
Member Firm
CRD No. 18487

Pursuant to FINRA Rule 9216, Respondent American Portfolios Financial 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

American Portfolios has been a FINRA member firm since 1987. It is an introducing broker-dealer that sells an array of securities products to its customers. It is headquartered in Holbrook, New York. The firm has approximately 800 registered representatives operating from more than 360 branches.

In December 2021, pursuant to an AWC, FINRA found that the firm failed to reasonably supervise transmittals of customer funds to third parties in violation of NASD Rules 3010 and 3012 and FINRA Rules 3110 and 2010. The firm consented to a censure, a fine of \$225,000, and an undertaking to certify that it remediated its supervisory policies, procedures, and controls.¹

OVERVIEW

Between January 2019 and August 2022, American Portfolios violated FINRA Rules 3310(a), 3310(f), and 2010 by failing to develop and implement an anti-money laundering (AML) compliance program, including written procedures, reasonably designed to detect and cause the reporting of suspicious activity in low-priced securities. In addition, during the same period, American Portfolios violated FINRA Rules 3110 and

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

2010 by failing to establish, maintain, and enforce a supervisory system, including written procedures, reasonably designed to achieve compliance with Section 5 of the Securities Act of 1933.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a cycle examination conducted by FINRA's Department of Member Supervision.

1. American Portfolios failed to develop and implement a reasonable AML program.

FINRA Rule 3310 provides that "[e]ach member shall develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the member's compliance with the requirements of the Bank Secrecy Act (31 U.S.C. § 5311, *et seq.*) [BSA] and the implementing regulations promulgated thereunder by the Department of the Treasury."

FINRA Rule 3310(a) provides that a firm must "[e]stablish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions under 31 U.S.C. § 5318(g) and the implementing regulations thereunder." The implementing regulation issued by the U.S. Department of the Treasury, 31 C.F.R. § 1023.320, requires broker-dealers, under specified circumstances, to file with the Financial Crimes Enforcement Network "a report of any suspicious transaction relevant to a possible violation of law or regulation."

FINRA Rule 3310(f) requires that a member firm's AML program include appropriate risk-based procedures for conducting ongoing customer due diligence, including "(i) [u]nderstanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (ii) [c]onducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information."

In April 2002, NASD issued guidance to broker-dealers regarding their AML compliance program and suspicious activity report (SAR) filing obligations. Notice to Members 02-21 highlighted the duty to develop and implement an AML compliance program reasonably designed to detect and report suspicious activity. The Notice advised that a reasonable AML compliance program should be tailored to the member's business, including the types of accounts it maintains and the types of transactions in which its customers engage. The Notice explained that each broker-dealer has a duty to perform additional due diligence when opening an account and before proceeding with a transaction raising "red flags" suggestive of money laundering or other violative activity. The Notice also provided a non-exhaustive list of red flags, including customers that have questionable backgrounds and customers who in conjunction with other red flags engage in transactions involving certain types of securities such as penny stocks.

In May 2019, FINRA issued Regulatory Notice 19-18, which incorporated the red flags listed in Notice to Members 02-21 and provided an updated non-exhaustive list of red flags, including when a customer has a pattern of depositing shares, immediately selling the shares, and then wiring or otherwise transferring out the proceeds of the sales. Regulatory Notice 19-18 reminded firms that where red flags of suspicious activity are detected, the firm should consider whether additional investigation, customer due diligence measures, or a SAR filing may be warranted.

A violation of FINRA Rule 3310 also is a violation of FINRA Rule 2010, which requires member firms to “observe high standards of commercial honor and just and equitable principles of trade” in the conduct of their business.

Between January 2019 and August 2022, American Portfolios opened new accounts for multiple customers that transacted in low-priced securities. Ten customer accounts deposited over 48 million shares of low-priced securities, liquidated over 42 million shares, and generated nearly \$17 million in proceeds during this period. Notwithstanding the heightened level of risk presented by this activity, the firm failed to establish and implement policies and procedures that could be reasonably expected to detect and cause the reporting of suspicious transactions involving low-priced securities.

The firm’s AML procedures were not reasonably designed to detect and respond to red flags concerning low-priced securities. Although the procedures identified red flags of suspicious activity in low-priced securities, such as issuer promotional activity, atypical trading patterns including price and volume spikes, coordinated trading among accounts, and suspiciously timed deposits, liquidation, and wires, they failed to provide guidance regarding how to detect suspicious activity and how to monitor for those red flags. The procedures also failed to provide guidance on how to conduct or document a review of an identified red flag, including whether additional investigation, customer due diligence measures, or a SAR filing might be warranted. Additionally, the firm’s AML compliance program failed to include appropriate risk-based procedures for conducting ongoing customer due diligence, including how and when to identify and report suspicious transactions in low-priced securities.

In practice, to detect potentially suspicious activity concerning low-priced securities, the firm relied exclusively on an exception report prepared by its clearing firm that showed basic information concerning deposits of low-priced securities, such as the account, security, date of deposit, number of shares, price, and total dollar amount. The report did not show historical or aggregated information and, therefore, was not a reasonable tool to identify patterns of suspicious activity in low-priced securities. Nor did the firm conduct ongoing due diligence of customers transacting in low-priced securities.

The firm also failed to take reasonable steps to monitor and investigate hundreds of transactions in low-priced securities that raised red flags in at least ten accounts held by four customers. Each of these customers engaged in a suspicious pattern of depositing shares of low-priced securities, liquidating some or all of those shares, and withdrawing the funds shortly thereafter. Many of the liquidations occurred during spikes in share

price and volume or during promotional campaigns. In addition, American Portfolios failed to reasonably investigate at least one of these customers who had disciplinary history presenting increased risk and was engaged in marketing work for issuers of low-priced securities.

For example, one of the firm's customers deposited 330,000 shares of a low-priced security in January 2021, liquidated the entire position the same day, and wired out the proceeds five days later. The deposit and liquidation occurred in the midst of a promotional campaign for the security, which resulted in price spikes and surging volume. Notwithstanding that these facts implicated multiple red flags set forth in the firm's AML compliance program, the firm failed to detect and investigate this activity.

Because the firm's AML program was not reasonably designed to detect and report suspicious activity involving low-priced securities, American Portfolios violated FINRA Rules 3310(a), 3310(f), and 2010.

2. American Portfolios failed to establish, maintain, and enforce a supervisory system, including written procedures, reasonably designed to achieve compliance with Section 5 of the Securities Act.

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. A violation of FINRA Rule 3110 also constitutes a violation of FINRA Rule 2010.

Section 5 of the Securities Act prohibits the offer or sale of securities to the public unless a registration statement is in effect or an exemption from registration applies. Unregistered securities that are not freely transferable are considered restricted securities and may contain a restricted legend. Firms that accept delivery of low-priced, over-the-counter securities, in either certificate form or by electronic transfer, and effect sales in these securities, are required to have written procedures and controls in place to prevent participation in an illegal, unregistered distribution of securities. In Regulatory Notice 09-05, FINRA noted that firms' written procedures should include a "mandatory, standardized process" that communicates each step in the review, approval, and post-approval process, clearly assigns ownership of each step in the process, and is easily accessible to the people involved in the process. The Notice also stated that "firms may not rely solely on others, such as clearing firms, transfer agents, or issuers' counsel, to fulfill these obligations." The Notice further observed that a "searching inquiry" may be required where the surrounding circumstances raise a question as to whether a transaction complies with Section 5.

Between January 2019 and August 2022, the firm's supervisory system, including written procedures, titled "Unregistered Resales of Restricted Securities," was not reasonably designed to achieve compliance with Section 5. The firm's written procedures did not provide reasonable guidance as to how to determine whether a transaction complied with the registration requirements of Section 5.

In practice, American Portfolios relied primarily on a low-priced security questionnaire completed by the registered representative on the account to determine if low-priced securities deposited at the firm were freely tradeable. The questionnaire directed representatives to attach documents and information evidencing the transaction through which the customer acquired the shares. The questionnaire, however, did not specify what documentation should be collected and reviewed prior to the deposit or sale of low-priced securities or explain how to verify information provided by customers. American Portfolios did not have a reasonable process for documenting its review of the questionnaire or ensuring that registered representatives completed the required questionnaire. As a result, the firm failed to consistently collect and maintain all the necessary documentation to determine whether deposited securities were freely tradeable.

In addition, on multiple occasions, the firm failed to conduct independent due diligence before allowing customers to deposit and liquidate potentially restricted securities. For example, when the firm was advised that a transfer agent had removed the restricted legend from a low-priced security, it did not take any further steps to obtain a questionnaire, documents, or information to conduct an independent analysis regarding resale eligibility.

By failing to establish, maintain, and enforce a supervisory system reasonably designed to achieve compliance with Section 5, American Portfolios violated FINRA Rules 3110 and 2010.

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

- a censure and
- a \$225,000 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:

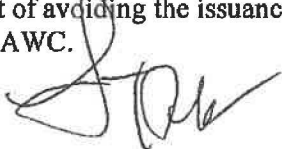
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not 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.

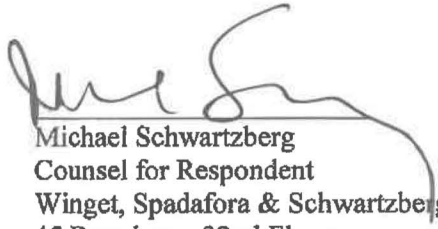
7/27/2024
Date


American Portfolios Financial Services, Inc.
Respondent

Print Name: Lin T. Dolber

Title: President

Reviewed by:



Michael Schwartzberg
Counsel for Respondent
Winget, Spadafora & Schwartzberg, LLP
45 Broadway, 32nd Floor
New York, New York 10006

Accepted by FINRA:

August 15, 2024

Date

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



Grace McAllister
Counsel
FINRA
Department of Enforcement
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