

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2021070337201**

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

RE: Joseph LaScala, Jr. (Respondent)  
General Securities Representative  
CRD No. 3070261

Pursuant to FINRA Rule 9216, Respondent Joseph LaScala, Jr. 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**

Since June 1998, LaScala has been registered with FINRA through an association with five different FINRA member firms. In February 2012, LaScala became registered with FINRA as a General Securities Representative, General Securities Principal, and Options Principal through his association with Aegis Capital Corp. (BD No. 15007), a FINRA member firm. LaScala is still registered with FINRA through his association with Aegis, and therefore remains subject to FINRA's jurisdiction.<sup>1</sup>

**OVERVIEW**

Between July 2014 and April 2016, LaScala violated FINRA Rules 2111 and 2010 when he engaged in excessive and quantitatively unsuitable trading in his customer's Aegis account.

Between January 2015 and April 2016, LaScala also violated NASD Rule 2510(b) and FINRA Rule 2010 when he exercised discretionary authority to effect 139 trades in the same customer's firm account without having obtained prior written authorization from the customer or approval from Aegis to treat the account as discretionary.

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<sup>1</sup> For more information about the respondent, visit BrokerCheck® at [www.finra.org/brokercheck](http://www.finra.org/brokercheck).

## FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's 2016 cycle examination of Aegis.

### ***LaScala's Excessive and Quantitatively Unsuitable Trading***

FINRA Rule 2111 required, among other things, a registered representative "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 that investment profile.<sup>2</sup> Excessive trading occurs, and is unsuitable, when a registered representative has actual or *de facto* control over trading in a customer's account and the level of activity in that account is inconsistent with the customer's investment needs and objectives.

No single test defines excessive activity, but factors such as the turnover rate and the cost-to-equity ratio may provide a basis for finding a violation of FINRA's suitability rule. The 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, or break-even, to cover commissions and other expenses so that a customer may begin to see a return. A turnover rate of six or a cost-to-equity ratio above 20% generally indicates that excessive trading has occurred.

A violation of FINRA Rule 2111 is also a violation of FINRA Rule 2010, which requires associated persons "to observe high standards of commercial honor and just and equitable principles of trade" in the conduct of their business.

Between July 2014 and April 2016, LaScala engaged in short-term trading in Customer A's individual 401(k) account at Aegis. LaScala placed 235 trades over this period, generating an annualized cost-to-equity ratio of 29.16% and an annualized turnover rate of 5.8. Because LaScala decided which stocks to trade and when to trade them, and exercised discretionary authority in connection with 139 of the trades, LaScala controlled the volume and frequency of trading in, and therefore exercised *de facto* control over, Customer A's account.

LaScala's short-term trading in Customer A's account was excessive and unsuitable given the customer's investment profile, and resulted in \$90,720 in trading costs and \$116,194 in losses.

Therefore, LaScala violated FINRA Rules 2111 and 2010.

### ***LaScala's Exercise of Discretion Without Authorization***

NASD Rule 2510(b) prohibits registered representatives from exercising discretionary authority in a customer's account unless the customer has given the representative prior written authorization and the account has been accepted in writing as a discretionary

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<sup>2</sup> The operable version of FINRA Rule 2111 was in effect from July 9, 2012, through June 29, 2020.

account by the representative's member firm employer.<sup>3</sup> A violation of NASD Rule 2510(b) is also a violation of FINRA Rule 2010.

Between January 2015 and April 2016, Aegis's written supervisory procedures prohibited registered representatives from exercising discretion in a customer's account unless the registered representative received prior written approval from the customer and the firm.

LaScala did not obtain prior written authorization from Customer A and Aegis to exercise discretion in Customer A's retirement account. However, LaScala exercised discretionary authority in the account when he placed 139 trades over this 16-month period with a total principal value of approximately \$2 million. Although LaScala discussed his short-term trading with Customer A generally, he did not speak with Customer A about the specific trades on the dates of the transactions.

Therefore, LaScala violated NASD Rule 2510(b) and FINRA Rule 2010.

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

- a four-month suspension from associating with any FINRA member in all capacities and
- a \$7,500 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 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, 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, he may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. *See* FINRA Rules 8310 and 8311.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

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<sup>3</sup> FINRA Rule 3260 superseded NASD Rule 2510 on May 8, 2019.

**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.

12-23-21

Date



Joseph LaScala, Jr.  
Respondent

Reviewed by:



David A. Gehn, Esq.  
Counsel for Respondent  
Ellenoff, Grossman & Schole, LLP  
1345 Avenue of the Americas  
New York, NY 10105

Accepted by FINRA:

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

1/24/2022

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Date



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Shane Cralle  
Principal Counsel  
FINRA Department of Enforcement  
15200 Omega Drive  
Rockville, MD 20850