

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2018056490320**

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

RE: Bryan J. Moskowitz (Respondent)
General Securities Representative
CRD No. 6063246

Pursuant to FINRA Rule 9216, Respondent Bryan J. Moskowitz 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

Moskowitz first registered with FINRA in 2012. From August 2017 to December 2022, Moskowitz was registered with FINRA as a General Securities Representative through an association with Spartan Capital Securities, LLC (CRD No. 146251). Since June 2023, Moskowitz has been registered as a General Securities Representative through an association with another FINRA member firm.¹

OVERVIEW

Between November 2017 and March 2019, Moskowitz excessively traded one customer's account in violation of FINRA Rules 2111 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a FINRA cycle examination of Spartan.

Prior to June 30, 2020, FINRA Rule 2111 required a registered representative to have a reasonable basis to believe that a recommended transaction or investment strategy was suitable for the customer to whom it was recommended, based on information obtained

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

through reasonable diligence to ascertain the customer's investment profile.² A customer's investment profile includes, among other things, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, and risk tolerance. Under Rule 2111.05(c), members and associated persons with actual or *de facto* control over an account were required to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, were not excessive and unsuitable for the customer in light of the customer's investment profile. A violation of FINRA Rule 2111 also is a violation of FINRA Rule 2010, which requires persons associated with a FINRA member to "observe high standards of commercial honor and just and equitable principles of trade" in the conduct of their business.

No single test defines when trading is excessive, 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 are relevant to determining whether an associated person has excessively traded a customer's account in violation of FINRA Rule 2111. 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 has to 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 of six or more, or a cost-to equity ratio above 20 percent, generally indicates that a series of recommended transactions was excessive.

Between November 2017 and March 2019, Moskowitz excessively traded the account of one customer, a veterinarian in his mid-sixties. Moskowitz recommended high frequency in-and-out trading to the customer, even when the price of his recommended securities did not materially change. The customer relied on Moskowitz's advice and routinely followed his recommendations, and as a result, Moskowitz exercised *de facto* control over the account.

Between November 2017 and March 2019, Moskowitz recommended 50 transactions in the customer's account, resulting in an annualized turnover rate of 18 and an annualized cost-to-equity ratio of approximately 93 percent. Moskowitz's in-and-out trading in the customer's account generated total trading costs of \$16,902, including \$13,145 in commissions, and caused \$81,614 in total realized losses.

By excessively and unsuitably trading the account of one customer, Moskowitz violated FINRA Rules 2111 and 2010

² On June 30, 2020, recommendations to retail customers became subject to Rule 15l-1 of the Securities Exchange Act of 1934 (Regulation Best Interest). FINRA Rule 2111 is still in effect, but as of June 30, 2020, it no longer applies to recommendations that are subject to Regulation Best Interest.

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

- a three-month suspension from associating with any FINRA member in all capacities;
- a \$5,000 fine; and
- restitution of \$13,145 plus interest as described below.

Respondent agrees to pay the monetary sanctions 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.

Restitution is ordered to be paid to the customer listed on Attachment A to this AWC (Eligible Customer) in the total amount of \$13,145 plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), from March 31, 2019 until the date this AWC is accepted by the National Adjudicatory Council (NAC).

Respondent shall submit satisfactory proof of payment of restitution and interest (separately specifying the date and amount of each paid to each Eligible Customer) or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted by email to EnforcementNotice@FINRA.org. The email must identify Respondent and the case number and include a copy of the check, money order, or other method of payment. This proof shall be provided by email to EnforcementNotice@FINRA.org no later than 120 days after the date of the notice of acceptance of the AWC.

The restitution amount plus interest to be paid to each Eligible Customer shall be treated by the Respondent as the Eligible Customer's property for purposes of state escheatment, unclaimed property, abandoned property, and similar laws. If after reasonable and documented efforts undertaken to effect restitution Respondent is unable to pay the Eligible Customer within 120 days after the date of the notice of acceptance of the AWC, Respondent shall submit to FINRA in the manner described above a list of the unpaid Eligible Customers and a description of Respondent's plan, not unacceptable to FINRA, to comply with the applicable escheatment, unclaimed property, abandoned property, or similar laws for each such Eligible Customer.

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 sanctions imposed in this matter.

The imposition of a restitution order or any other monetary sanctions in this AWC, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

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.

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 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.

11/06/2024
Date

Bryan J. Moskowitz
Bryan J. Moskowitz
Respondent

Reviewed by:

Michael C. Farkas
Michael C. Farkas, Esq.
Counsel for Respondent
Law Office of Michael C. Farkas
32 Court Street, Suite 408
Brooklyn, New York 11201

Accepted by FINRA:

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

November 11, 2024
Date

Alyssa Braver
Alyssa Braver
Counsel
FINRA
Department of Enforcement
Brookfield Place
200 Liberty Street
New York, NY 10281

Attachment A

Customer	Restitution Amount (Exclusive of Interest)
Eligible Customer	\$13,145