

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2018056483904**

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

RE: Frank L. Martin (Respondent)
General Securities Principal
CRD No. 2859847

Pursuant to FINRA Rule 9216, Respondent Frank L. Martin 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

Martin first became registered with FINRA as a General Securities Representative (GSR) in 1997 through an association with a FINRA member firm. He was subsequently registered with FINRA through associations with multiple firms between May 1997 and October 2015. From October 2015 through August 2019, Martin was registered as a GSR and General Securities Principal through his association with Arive Capital Markets (CRD No. 8060). Martin has been registered through another FINRA member firm since July 2019.¹

OVERVIEW

From August 2016 to July 2019, Martin failed to reasonably supervise six Arive Capital Markets registered representatives, who each excessively traded one or more customers' accounts. As a result, Martin violated FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's 2018 cycle exam of Arive Capital Markets.

FINRA Rule 3110(a) requires that FINRA members "establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve

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

compliance with applicable securities laws and regulations, and with applicable FINRA rules.” The duty to supervise under 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. A violation of FINRA Rule 3110 also is 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.

FINRA Rule 2111 imposes a “quantitative suitability” obligation on registered representatives that focuses on whether the number of transactions the representative recommends to customers within a given timeframe is suitable in light of the customer’s financial circumstances and investment objectives.² A registered representative’s recommended securities transactions may be unsuitable if, when taken together, they are excessive, the level of trading is inconsistent with the customer’s investment profile, and the registered representative exercises actual or de facto control over the customer’s account. FINRA Rule 2111 Supplementary Material .05(c) states that “[n]o single test defines excessive activity, but factors such as the turnover rate, cost-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.”³

From August 2016 to July 2019, Martin was the designated branch manager for Arive’s home office in Brooklyn, New York. During that time, Martin also periodically served as the branch manager for the firm’s Coram, New York branch office, as well as the supervisor of a registered representative who was a producing manager based in Long Island, New York. Martin was responsible for conducting daily suitability reviews of customer accounts for compliance with FINRA Rule 2111 and for conducting daily trade blotter reviews with respect to activity at the branch offices he supervised. He was also responsible for conducting daily trade blotter reviews of activity by the Long Island manager he supervised. Martin was also the designated principal at the firm responsible for conducting weekly or monthly reviews of exception reports provided by Arive’s clearing firm, including exception reports for turnover, commission velocity, and in-and-out trading within a 30-day period. In connection with these reviews, Martin was responsible for reviewing exceptions, commenting on the exception reports, and closing out alerts.

Despite indicators of excessive trading at Arive, including high turnover and cost-to-equity in numerous customer accounts, Martin failed to investigate red flags of unsuitable or excessive trading. Martin signed off on daily trade blotters and periodic exception

² As of June 30, 2020, recommendations to retail customers became subject to Regulation BI under the Securities Exchange Act of 1934 and are excluded from Rule 2111. This AWC refers to the pre-June 30, 2020, version of Rule 2111, which was in effect during the relevant time period.

³ Turnover rate represents the number of times that a portfolio of securities is exchanged for another portfolio of securities. The cost-to-equity ratio is the percentage of return on the customer’s average net equity needed to pay commissions and other expenses. A turnover rate of six or a cost-to-equity rate above 20 percent generally indicates that an account has been excessively traded.

reports purportedly indicating he had reviewed them, however he did not reasonably investigate red flags of potentially unsuitable or excessive trading, such as frequent trading, in-and-out trading, and proceeds transactions. Martin frequently closed out exception reports without evidence of any reasonable review to verify that the trades were suitable. For example, Martin failed to reasonably investigate 21 alerts flagging in-and-out trading within a 30-day period for eight customers all dated January 31, 2018. Martin used the identical comment to close all the alerts, despite the fact that the alerts related to 11 different securities.

As a result of his unreasonable review practices, Martin failed to identify numerous accounts that were being excessively traded or take any steps to limit the trading in the accounts or escalate the activity to others at the firm. During the relevant period, six Arive registered representatives who Martin directly supervised, or for whose trading Martin was responsible for reviewing, excessively traded 12 accounts, causing customers to pay \$663,463 in commissions, fees, and margin interest.⁴ Cost-to-equity ratios in the 12 accounts ranged from 30 percent to 152 percent and turnover rates ranged from eight to 45.

Therefore, Martin violated FINRA Rules 3110 and 2010.

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

- a three-month suspension from associating with any FINRA member in all principal capacities.

Respondent has submitted a statement of financial condition and demonstrated an inability to pay. In light of Respondent's financial status, no monetary sanctions have been imposed.

Respondent understands that if he is barred or suspended from associating with any FINRA member in a principal capacity, 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, Respondent may not be associated with any FINRA member in a principal capacity during the period of the bar or suspension. *See* FINRA Rules 8310 and 8311. Furthermore, because Respondent is subject to a statutory disqualification during the suspension, if he remains associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

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

II.

⁴ To date, FINRA has ordered approximately \$500,000 in restitution for these customers in settlements with five registered representatives.

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 prejudice 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 understands and acknowledges that FINRA does not represent or advise him and Respondent cannot rely on FINRA for legal advice. 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.

Date

10/5/23

Frank L. Martin
Respondent

Accepted by FINRA:

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

10/11/2023

Date



Kerry Ladd

Senior Counsel

FINRA

Department of Enforcement

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