

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2019062640301**

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

RE: Stefan Andrew Spath (Respondent)  
Former General Securities Representative, General Securities Principal, and  
Securities Trader  
CRD No. 2876322

Pursuant to FINRA Rule 9216, Respondent Stefan Andrew Spath 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**

Spath first became registered with FINRA as a General Securities Representative in 1997. In May 2014, Spath became registered with FINRA as a General Securities Representative and General Securities Principal, among other registration categories, through his association with MCAP LLC. In January 2016, he also became registered with FINRA as a Securities Trader through his association with MCAP. On January 31, 2023, MCAP filed a Uniform Termination Notice for Securities Industry Registration (Form U5) stating that Spath voluntarily terminated his association with the firm.

Although Spath is not currently associated with a FINRA member, FINRA retains jurisdiction over him pursuant to Article V, Section 4 of FINRA's By-Laws.<sup>1</sup>

**OVERVIEW**

Spath was responsible for preparing Form 211 applications to be reviewed by MCAP and, if approved, filed with FINRA on behalf of MCAP's foreign issuer clients. From November 2017 through July 2019, Spath intentionally made material misrepresentations and omitted material information in communications with issuers about the status of the Form 211 applications, in violation of FINRA Rule 2010. In addition, from June 2018

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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).

through April 2019, Spath provided false and misleading responses to FINRA requests for information, in violation of FINRA Rule 2010. Lastly, from November 2017 through January 2019, Spath engaged in an outside business activity without providing prior written notice to MCAP, in violation of FINRA Rules 3270 and 2010.

### **FACTS AND VIOLATIVE CONDUCT**

This matter originated from FINRA's investigation of Forms 211 signed by Spath and an investor complaint to FINRA.

#### ***Spath intentionally made material misrepresentations and omitted material information in emails with issuers about Forms 211.***

FINRA Rule 2010 requires associated persons in the conduct of their business to "observe high standards of commercial honor and just and equitable principles of trade." Making an intentional misrepresentation of material fact or omitting material information in connection with business-related activities is a violation of FINRA Rule 2010, which encompasses any unethical, business-related misconduct, regardless of whether it involves a security.

A Form 211 is required to be filed to initiate or resume quotations in a quotation medium. In processing a Form 211, FINRA requests additional information from the member as necessary to support the filing. If the Form 211 and accompanying information demonstrate compliance with Rule 15c2-11 of the Securities Exchange Act of 1934 and FINRA Rule 6432, FINRA notifies the member that it is permitted to initiate or resume quotations in the subject security.

At MCAP, Spath advised foreign issuer clients seeking to have their securities quoted and traded on the OTC markets. Admission to the OTC markets required a priced quotation by a market maker, and the relevant issuers relied on MCAP to file a Form 211 with FINRA to initiate such a quotation. Spath's responsibilities included drafting and signing Forms 211, responding to FINRA requests for information about Forms 211, and communicating with issuers about Forms 211.

From November 2017 through July 2019, Spath intentionally made material misrepresentations or omitted material information in at least 27 emails with 10 foreign issuers regarding the status of MCAP's processing of Forms 211. In these emails, Spath typically misrepresented, or gave the misleading impression, that he had filed a Form 211 with FINRA or responded to a FINRA request for information to support a Form 211, when he had not done so. This information was material to the issuers because the outcome of the Form 211 process determined whether MCAP could initiate quotations for their securities and therefore whether the issuers would satisfy one of the requirements for applying for admission to the OTC markets.

Examples of these misrepresentations and misleading omissions include:

- On November 16, 2017, Issuer A asked if there was any “news” from FINRA about the Form 211, and Spath replied that “unfortunately finra is still reporting the [Issuer A and related Issuer B] files as ‘pending.’” However, Spath knew FINRA did not have pending Form 211 files for these issuers because MCAP did not file the relevant Forms 211 with FINRA until November 29, 2017, and April 19, 2018.
- On June 5, 2018, Issuer B asked if Spath responded to FINRA’s request for information about the Form 211, and Spath replied, “Yes, the responses were submitted to FINRA for [Issuer B].” However, Spath knew this was untrue. Indeed, Spath and MCAP never responded to FINRA’s request for information about the Form 211 filed for Issuer B.
- On November 30, 2018, Issuer C asked if there was “[a]nything from FINRA on the 211 yet?” On December 2, 2018, Spath responded, “This week must be the week. There has been a bottleneck at FINRA this past quarter. ... I am confident we will receive some communication from FINRA this upcoming week.” On December 21, 2018, Issuer C asked for an update, and Spath replied, “[Issuer C] is still pending, however we received clearance [from FINRA] on [another Form 211] today.... Let’s hope [Issuer C] is next.” Spath’s responses gave the misleading impression that MCAP had filed the Form 211 for Issuer C with FINRA. However, MCAP did not file the relevant Form 211 with FINRA until January 24, 2019.

Therefore, Spath violated FINRA Rule 2010.

***Spath provided false and misleading information to FINRA.***

Providing false and misleading information in response to a FINRA request is contrary to high standards of commercial honor and just and equitable principles of trade and therefore violates FINRA Rule 2010. It subverts FINRA’s ability to perform its regulatory function and protect the public interest.

From June 2018 through April 2019, FINRA staff requested information pursuant to FINRA Rule 6432 to support certain Forms 211 filed by MCAP, and Spath signed six false and misleading responses to those requests. Spath’s responses to FINRA were false and misleading with respect to (1) how and when MCAP first became aware of the issuer and/or (2) whether all emails concerning the issuer were attached to the response. For example, in a December 3, 2018 response to FINRA, Spath stated that the attached single page of emails “represent[ed] all emails between [Issuer D] and MCAP.” However, Spath had dozens of additional email communications with Issuer D. In another example, Spath stated in a January 22, 2019 FINRA response that he became aware of Issuer E when its

president contacted him by phone on or about November 20, 2018. However, Spath was first contacted about Issuer E by a different person through email three months earlier.

Therefore, Spath violated FINRA Rule 2010.

***Spath engaged in an undisclosed outside business activity.***

FINRA Rule 3270 provides, in relevant part, that:

No registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member.

A violation of FINRA Rule 3270 also constitutes a violation of FINRA Rule 2010.

In 2017, Spath agreed to assist a friend with securing short-term loans from investors to finance the friend's cattle and olive farm. Between April 2017 and October 2018, Spath introduced five investors, none of whom were MCAP customers, to the owner of the farm. The investors and the farm executed loan agreements memorializing loans to the farm totaling \$450,000. The loans had a maturity of less than five months and were secured by the farm's assets or the farm owner's personal guarantee. As compensation for the referrals, between November 2017 and January 2019, the farm paid Spath approximately \$74,000.<sup>2</sup>

MCAP's written supervisory procedures, consistent with the requirements of Rule 3270, required registered persons to provide prior written disclosure of any OBAs to the firm. The firm's WSPs also prohibited acting as a finder, receiving compensation for services rendered away from the firm, and participating in raising money for any business without prior firm approval. Spath did not provide prior written notice to MCAP about his activities involving the farm or disclose to MCAP that he received compensation for referring investors.

Additionally, in 2017 and 2019, Spath submitted two compliance questionnaires to MCAP in which he falsely attested that he had not participated in OBAs that had not been disclosed to the firm.

Therefore, Spath violated FINRA Rules 3270 and 2010.

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<sup>2</sup> The farm repaid the loans in a timely manner.

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

- a 20-month suspension from associating with any FINRA member in all capacities; and
- a \$15,000 fine.

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 fine shall be due and payable either immediately upon reassociation with a member firm or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

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 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.

April 27, 2023

Date

*Stefan Andrew Spath*

Stefan Andrew Spath  
Respondent

Reviewed by:

*David Schrader*

David Schrader  
Counsel for Respondent  
Paykin Krieg & Adams LLP  
2500 Westchester Avenue, Suite 107  
Purchase, New York 10577

Accepted by FINRA:

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

May 5, 2023

Date

*Shanyn Gillespie*

Shanyn Gillespie  
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FINRA  
Department of Enforcement  
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