

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2021071134401**

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

RE: Jose M. Candelario Padilla (Respondent)
General Securities Representative
CRD No. 4847560

Pursuant to FINRA Rule 9216, Respondent Jose M. Candelario Padilla 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

Candelario Padilla first became registered with FINRA in 2004. Since September 2016, he has been registered as a General Securities Representative through an association with Nationwide Planning Associates Inc. (CRD No. 31029).¹

OVERVIEW

Between March 2020 and October 2020, Candelario Padilla recommended retail customers purchase leveraged and inverse exchange-traded funds (NT-ETFs) without having a sufficient understanding of the risks and features associated with the products, thereby failing to have a reasonable basis to make those recommendations. As a result, Candelario Padilla willfully violated the Care Obligation under Rule 15c-1 of the Securities Exchange Act of 1934 (Regulation BI or Reg BI) and violated FINRA Rules 2111 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from an examination of Nationwide Planning Associates.

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

As of June 30, 2020, broker-dealers and their associated persons are required to comply with Regulation BI under the Securities Exchange Act of 1934. Reg BI requires a broker, dealer, or a natural person associated with a broker or dealer, when making a recommendation of any securities transaction or investment strategy involving securities (including account recommendations) to a retail customer, to act in the best interest of that retail customer at the time the recommendation is made, without placing the financial or other interest of the broker, dealer, or associated person ahead of the interest of the retail customer. Reg BI's Care Obligation, set forth at Exchange Act Rule 15c-1(a)(2)(ii), requires broker-dealers and their associated persons to exercise reasonable diligence, care, and skill to, among other things, understand the potential risks, rewards, and costs associated with a recommendation, and have a reasonable basis to believe that the recommendation could be in the best interest of at least some retail customers. Reg BI's Adopting Release provides that what constitutes "reasonable diligence, care and skill" depends on, among other things, the complexity of, and risks associated with, the recommended security.²

Prior to June 30, 2020, FINRA Rule 2111 required members and associated persons to have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the retail customer. Rule 2111 Supplementary Material .05(a) defines the reasonable-basis obligation to require members and their associated persons perform reasonable diligence to have an understanding of the potential risks and rewards associated with the recommended security or strategy, and to have a reasonable basis to believe, based on that reasonable diligence, that the recommendation is suitable for at least some investors.

A violation of Reg BI or FINRA Rule 2111 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.

NT-ETFs are designed to return a multiple of an underlying index or benchmark, the inverse of that benchmark, or both, over only the course of one trading session—usually a single day. NT-ETFs typically rebalance their portfolios on a daily basis (also known as the daily reset). As a result, due to the effects of compounding of daily returns during the holding period, the performance of NT-ETFs over periods longer than a single trading session can differ significantly from the performance of their underlying index or benchmark during the same period of time. In Regulatory Notice 09-31, FINRA advised its members that before recommending the purchase of an NT-ETF, a firm and its associated persons must understand the terms and features of the funds, including, in part, the effect that a customer's intended holding period will have on the funds' performance. This Notice also advises that NT-ETFs "typically are not suitable for retail investors who plan to hold them for more than one trading session, particularly in volatile markets."

Between March 2020 and October 2020, Candelario Padilla recommended that retail customers at Nationwide Planning Associates purchase NT-ETFs. When he made those

² *Regulation Best Interest: The Broker-Dealer Standard of Conduct*, Exchange Act Release No. 86031, 84 FR 33318 at 33376 (July 12, 2019).

recommendations, Candelario Padilla did not have a sufficient understanding of the features and risks associated with NT-ETFs—including, for example, that losses in NT-ETFs can be compounded because of the daily reset function. As a result, Candelario Padilla did not have a reasonable basis to believe that NT-ETFs could be suitable for or in the best interest of any retail customers.

At Candelario Padilla's recommendation, nine retail customers held a total of 14 NT-ETF positions for periods ranging from 14 to 65 days. These customers suffered net losses from NT-ETF trading of approximately \$26,000.

Therefore, Candelario Padilla willfully violated Exchange Act Rule 15c-1 (for conduct on and after June 30, 2020), FINRA Rule 2111 (for conduct prior to June 30, 2020), and FINRA Rule 2010.

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 \$2,500 fine; and
- restitution of \$26,422 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 customers listed on Attachment A to this AWC (Eligible Customers) in the total amount of \$26,422, 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 October 13, 2020 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 all Eligible Customers 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.

Respondent understands that this settlement includes a finding that he willfully violated Rule 15l-1 of the Securities Exchange Act of 1934 and that under Article III, Section 4 of FINRA's By-Laws, this makes him subject to a statutory disqualification with respect to association with a member.

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.

March 7, 2023

Date

Jose M. Candelario Padilla

Jose M. Candelario Padilla
Respondent

Reviewed by:

Max Schatzow

Max Schatzow
Counsel for Respondent
RIA Lawyers

Accepted by FINRA:

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

March 10, 2023

Date

Matthew M. Ryan

Matthew M. Ryan
Principal Counsel
FINRA
Department of Enforcement
1601 Market St., Suite 2700
Philadelphia, PA 19103-2339

ATTACHMENT A
TO LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
MATTER NO. 2021071134401

Customer No.	Restitution Amount
1	\$7,078
2	\$4,001
3	\$1,050
4	\$4,468
5	\$3,572
6	\$3,226
7	\$1,382
8	\$1,206
9	\$439