

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2021072685301**

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

RE: Michael Scott Desando (Respondent)  
General Securities Representative  
CRD No. 1849321

Pursuant to FINRA Rule 9216, Respondent Michael Scott Desando 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**

Desando first became registered with FINRA in 1988. Since January 4, 2016, Desando has been registered as a General Securities Representative and General Securities Principal through an association with Network 1 Financial Securities Inc. (CRD No. 13577).<sup>1</sup>

**OVERVIEW**

Between January 2017 and November 2018, Desando excessively and unsuitably traded one customer's account, in violation of FINRA Rules 2111 and 2010.

**FACTS AND VIOLATIVE CONDUCT**

FINRA Rule 2111(a) provides in pertinent part that “[a] member or an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer’s investment profile.” 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

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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).

representative exercises control over the customer's account. No single test defines when trading is excessive, but factors such as the turnover rate and the cost-to-equity ratio are considered in determining whether a member firm or associated person has violated FINRA's suitability rule.

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 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 a cost-to-equity ratio above 20 percent generally indicates that an account has been excessively traded.

Between January 2017 and November 2018, while he was registered through Network 1, Desando recommended an excessive and unsuitable level of trading in the account of one customer, a sheriff's deputy with limited investment experience. During the relevant period, Desando recommended that the customer place 180 trades in his account, and the customer relied on Desando's advice and accepted his recommendations. Although the customer's account had an average equity of approximately \$30,700, Desando recommended trades with a total principal value of more than \$1,700,000. These trades resulted in an annualized turnover rate of more than 28 and collectively caused the customer to pay approximately \$37,000 in commissions and other trading costs. Desando's recommended trades resulted in an annualized cost-to-equity ratio of 69 percent, meaning that the customer's account would have had to grow by 69 percent annually just to break even.

As a result, Desando's recommended securities transactions made it virtually impossible for the customer to realize a positive return and were excessive and unsuitable given the customer's investment profile. Therefore, Desando violated FINRA Rules 2111 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 capacities; and
- a \$5,000 fine.<sup>2</sup>

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.

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<sup>2</sup> This AWC does not require that DeSando pay restitution because the customer has settled an arbitration claim pertaining to Desando's unsuitable recommendations.

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.

## **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 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.**

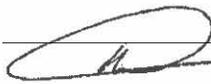
## OTHER MATTERS

Respondent understands that:

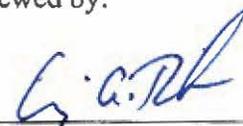
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not 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 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.

8/10/22  
Date

  
Michael Scott Desando  
Respondent

Reviewed by:

  
Craig Riha, Esq.  
Counsel for Respondent  
Carmel, Milazzo & Feil LLP  
425 Broadhollow Road, Suite 300  
Melville, New York 11747

Accepted by FINRA:

8/22/2022  
Date

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

  
Joshua J. Bone  
Principal Counsel  
FINRA  
Department of Enforcement  
99 High St., Suite 900  
Boston, MA 02110