

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2020065599102**

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

RE: Thomas Diamante (Respondent)
Former General Securities Principal and Investment Banking Representative
CRD No. 1645257

Pursuant to FINRA Rule 9216, Respondent Thomas Diamante 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

Diamante first became registered with FINRA in August 1987. Between 1987 and 2006, Diamante was associated with nine FINRA member firms. In 2007, Diamante established SW Financial (SW Financial) (CRD No. 145012), and he subsequently served as SW Financial's CEO and majority owner. Through his association with SW Financial, Diamante was registered with FINRA in multiple capacities, including as a General Securities Principal, an Investment Banking Representative, and an Investment Banking Principal. On April 17, 2023, SW Financial filed a Uniform Termination Notice for Securities Industry Registration (Form U5) disclosing Diamante's voluntary termination from the firm.

Although Diamante is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction pursuant to Article V, Section 4(a)(i) of FINRA's By-Laws.¹

OVERVIEW

Between January 2018 and December 2021, Diamante engaged in a practice and course of business that deceived investors in connection with the sale of private placement offerings of pre-initial public offering (pre-IPO) funds (the Offerings). In the offering

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

documents, SW Financial stated it would receive a ten percent sales commission from its sale of the Offerings. Diamante, however, had entered into an agreement with the issuer whereby SW Financial would receive an additional five percent in selling compensation, as well as half of any carried interest. Diamante then failed to disclose to others at SW Financial that the firm would earn additional compensation. As a result, SW Financial negligently misrepresented and omitted material facts to investors about the amount of compensation the firm would receive in connection with the Offerings. Through this conduct, including negligent omissions, Diamante violated FINRA Rule 2010, both independently and by acting in contravention of Sections 17(a)(2) and (3) of the Securities Act of 1933.

Additionally, between January 2018, and December 2021, Diamante failed to reasonably supervise the Offerings. Diamante failed to perform reasonable due diligence for the Offerings, failed to complete due diligence checklists, and failed to ensure that the offering documents contained accurate information. As a result, Diamante violated FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter arose from a review of SW Financial's pre-IPO offerings.

A. Diamante obtained money by means of material omissions and engaged in a deceptive practice and course of business in connection with the sale of the Offerings.

Section 17(a) of the Securities Act provides that:

It shall be unlawful for any person in the offer or sale of any securities . . . by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly-

(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

(3) To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

FINRA Rule 2010 requires that FINRA members observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. It is a violation of FINRA Rule 2010 to act in contravention of Section 17(a) of the Securities Act. In addition, making a material misrepresentation or omitting a material fact to customers independently violates FINRA Rule 2010. Broker-dealers have an obligation

to disclose accurate information to prospective investors about their own financial incentives to make recommendations, including any potential selling compensation, because such incentives represent a potential conflict of interest that could influence the broker-dealer's recommendation.

In January 2018, Diamante and the Issuer agreed that SW Financial would act as a placement agent for the Issuer's Offerings. The Offerings purportedly provided investors with the opportunity to own interests in privately held companies that were potentially close to announcing an initial public offering (IPO). Shares in these private companies were the Offerings' sole purported asset. Although the written agreement between the Issuer and SW Financial stated that SW Financial would receive a ten percent sales commission, Diamante and the Issuer agreed that SW Financial would receive an additional five percent in selling compensation, for a total of 15 percent, as well as half of any carried interest.²

Diamante failed to inform others at SW Financial, including selling representatives and the firm's CCO, that the firm would earn additional compensation. Diamante approved offering documents—including a private placement memorandum, series investment letters, and subscription agreements—for dissemination to potential investors, which falsely stated that SW Financial would receive only a ten percent sales commission. Customers who invested in the Offerings then received "welcome letters" from the Issuer, which repeated the false statement that SW Financial only received a ten percent sales commission. SW Financial's selling representatives were unable to identify and correct these material misrepresentations and omissions because Diamante never told them that SW Financial was entitled to additional compensation. Moreover, on four occasions, the firm's CCO made filings with FINRA on SW Financial's behalf that falsely stated that the firm would receive only a ten percent sales commission.

From March 2018 to December 2021, SW Financial sold the Offerings to 171 investors. The total principal amount of the investments was approximately \$21.3 million. SW Financial received approximately \$3.06 million in total selling compensation, of which \$936,000 was attributable to the undisclosed five percent in selling compensation.³ Although Diamante used some of the disclosed sales commission to compensate selling representatives, he directed the undisclosed compensation to the firm's general fund, from which he drew his own compensation. In addition, the Issuer transferred shares valued at over \$1.07 million to SW Financial and its owners, including Diamante, to cover SW Financial's share of the carried interest. Therefore, as a result of Diamante's conduct, including his negligent omissions, the firm received approximately \$2 million in additional compensation, some of which Diamante personally retained.

² Carried interest is a share of profits payable to investment managers rather than investors. Here, the Issuer retained as carried interest 20 percent of any profits following the IPOs of the private companies.

³ For certain Offerings, despite the agreement, the Issuer in fact paid SW less than a total of 5% in additional compensation.

Through the conduct described above, Diamante obtained money by means of material omissions, and engaged in a course of business that operated as a fraud or deceit upon investors.

Therefore, Diamante violated FINRA Rule 2010, both independently and by virtue of violating Sections 17(a)(2) and (3) of the Securities Act.

B. Diamante failed to reasonably supervise the Offerings.

FINRA Rule 3110(a) requires that a member firm “establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA Rules.” FINRA Rule 3110(a)(2) requires that a member firm designate an appropriately registered principal with authority to carry out the supervisory responsibilities of the member for each type of business in which it engages for which registration as a broker-dealer is required. A violation of FINRA Rule 3110 also constitutes a violation of FINRA Rule 2010.

Prior to recommending a private placement offering to customers, a broker-dealer must conduct a reasonable investigation, or due diligence. Regulatory Notice 10-22 explains that such due diligence should include, at a minimum, a reasonable investigation concerning the issuer and its management, the assets held by or to be acquired by the issuer, the claims being made, and the intended use of proceeds of the offering.

From January 2018 through December 2021, SW Financial designated Diamante as the supervisor responsible for private placement offerings. The firm directed Diamante to ensure that the firm performed reasonable due diligence for every private offering it sold. As part of this due diligence, Diamante was required to conduct certain mandatory inquiries, including into the quality of assets held by the issuer. The firm further required that Diamante take reasonable steps to ensure the accuracy of all information sent to investors, and that the offering documents include all material information. To comply with these supervisory obligations, the firm required Diamante to complete, sign, and date a due diligence checklist for each offering to evidence the firm’s review.

Diamante did not reasonably perform this role, and did not perform reasonable due diligence on the Offerings. Diamante did not conduct reasonable due diligence or complete any due diligence checklists for any of the 21 specific Offerings. As a result, although Diamante was supposed to review the quality of the assets held by the Issuer, he failed to determine whether the Issuer possessed the pre-IPO shares that were the Offerings’ sole asset. For many of the Offerings, the companies at issue have not yet held IPOs, so it remains unknown whether the Issuer, in fact, possesses the pre-IPO shares it purported to sell. Moreover, although Diamante was aware that the Issuer applied markups to the pre-IPO shares it sold, he failed to determine the amount of these markups. The markups for at least some of the Offerings were as high as 25 to 39

percent—facts that were not disclosed to potential customers in the offering documents.⁴ As noted above, the offering documents Diamante was responsible for reviewing also misrepresented the amount of compensation SW Financial had agreed to receive in connection with the Offerings.

Therefore, Diamante violated FINRA Rules 3110 and 2010.

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

- a nine-month suspension from associating with any FINRA member in all capacities;
- a three-month suspension in all principal capacities, to run consecutively with the all-capacities suspension;
- a \$50,000 fine; and
- a requirement that he requalify as a general securities principal or investment banking representative by passing the requisite examination(s) prior to acting in that capacity with any FINRA member.

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.

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 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

⁴ On May 13, 2022, the SEC filed a lawsuit in the Southern District of New York (Case No. 1:22-cv-03897-LAK) against the Issuer and its principals. Among other things, the SEC alleged that the Issuer committed fraud by charging undisclosed, excessive markups and by selling pre-IPO shares to which it did not have access. On June 14, 2022, the court entered a stipulation and consent order granting a preliminary injunction and other relief, including appointment of a receiver for the Issuer. On January 17, 2023, the court granted the U.S. Department of Justice's motion to stay the proceedings in light of an ongoing criminal investigation. *See SEC v. Straightpath Venture Partners, LLC, et. al.*, 2023 U.S. Dist. LEXIS 8074 (Jan. 17, 2023).

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.

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;

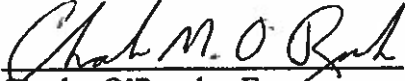
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other 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.

4/17/13
Date

Thomas Diamante
Thomas Diamante
Respondent


Reviewed by:



Charles O'Rourke, Esq.
Counsel for Respondent
2 Swenson Drive
Woodbury, New York 11797

Accepted by FINRA:

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



Roger Kiley
Senior Counsel
FINRA
Department of Enforcement
55 W. Monroe Street, Suite 2700
Chicago, Illinois 60603

May 11, 2023
Date