

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2016051704306**

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

RE: Joseph Michael Giordano (Respondent)  
General Securities Principal  
CRD No. 2278341

Roberto Birardi (Respondent)  
General Securities Principal  
CRD No. 4737649

Pursuant to FINRA Rule 9216, Respondents Joseph Michael Giordano (Giordano) and Roberto Birardi (Birardi) submit 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 Respondents alleging violations based on the same factual findings described in this AWC.

**I.  
ACCEPTANCE AND CONSENT**

A. Respondents hereby accept and consent, without admitting or denying the findings and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

**BACKGROUND**

Giordano first became associated with a FINRA member firm in September 1992. In February 2010, Giordano became registered with FINRA through his association with Aegis Capital Corp. (Aegis) (CRD No. 15007), a FINRA member firm, as a co-owner of, and the designated branch manager for, Aegis's Melville, Long Island branch. Giordano remains associated with Aegis and is currently registered with FINRA as a General Securities Representative (GSR), General Securities Principal (GP), Corporate Securities Representative (CS), Registered Options Principal (OP), Investment Banking Representative (IB), Operations Professional (OS), and Investment Banking Principal (BP). Since November 2016, Giordano has also been registered with FINRA through an association with another FINRA member firm.

In October 2007, Giordano entered into a Letter of Acceptance, Waiver and Consent with FINRA for violating NASD Rules 3010 and 2110.<sup>1</sup> From January 2005 to March 2005, Giordano failed to properly supervise a registered representative who engaged in penny

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<sup>1</sup> *Joseph Giordano*, AWC No. 2005002464702 (Oct. 11, 2007).

stock transactions in at least three customer accounts. Giordano consented to a 10 business-day suspension in a principal capacity and a \$7,500 fine.<sup>2</sup>

Birardi first became associated with a FINRA member firm in December 2003. In March 2010, Birardi became registered with FINRA through his association with Aegis, where he is a designated supervisor for Aegis's Melville branch. Birardi remains associated with Aegis and is currently registered with FINRA as a GSR, GP, and OS.<sup>3</sup>

### **OVERVIEW**

From July 2014 through December 2018, Giordano and Birardi failed to reasonably supervise six Aegis registered representatives who worked in the firm's Melville branch (the Aegis Representatives). As the designated supervisory principals, Giordano and Birardi were presented with but did not respond to multiple red flags identifying potentially excessive and unsuitable trading in customer accounts managed by the Aegis Representatives, including, among others, more than 700 exception reports generated by Aegis's clearing firm.

As a result, the Aegis Representatives engaged in excessive and unsuitable trading in at least 23 customer accounts, generating annualized turnover rates ranging from 4.2 to 96.3, annualized cost-to-equity ratios ranging from 21.3% to 164.6%, combined customer costs (including commissions, markups or markdowns, margin interest and fees) of more than \$2.6 million, and cumulative losses of \$4 million.

By virtue of the foregoing, Giordano and Birardi violated NASD Rule 3010 and FINRA Rules 3110 and 2010.<sup>4</sup>

### **FACTS AND VIOLATIVE CONDUCT**

This matter originated from a firm examination conducted by FINRA Member Supervision and FINRA's review of a customer arbitration filing.

FINRA Rule 3110 and its predecessor, NASD Rule 3010, require FINRA member firms to establish, maintain, and enforce a supervisory system, including WSPs, that is reasonably designed to supervise the activities of each registered representative, registered principal, and other associated person of the firm and achieve compliance with applicable securities laws and regulations, and FINRA and NASD rules.

The duty of supervision imposed by FINRA Rule 3110 and NASD Rule 3010 includes the obligation and responsibility to reasonably investigate red flags of potential misconduct and to act upon the results of such investigation.

A violation of FINRA Rule 3110 or NASD Rule 3010 also constitutes a violation of FINRA Rule 2010, which requires member firms and associated persons to observe high standards

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<sup>2</sup> For more information about the respondent, including prior regulatory events, visit BrokerCheck® at [www.finra.org/brokercheck](http://www.finra.org/brokercheck).

<sup>3</sup> For more information about the respondent, visit BrokerCheck® at [www.finra.org/brokercheck](http://www.finra.org/brokercheck).

<sup>4</sup> FINRA Rule 3110 superseded NASD Rule 3010 on December 1, 2014. Respondents' misconduct occurred under both NASD Rule 3010 and FINRA Rule 3110.

of commercial honor and just and equitable principles of trade in the conduct of their business.

***Suitability, Generally.***

FINRA Rule 2111, FINRA's suitability rule, requires member firms and their associated persons to have a reasonable basis to believe that a recommended transaction or investment strategy is suitable for the customer based on the customer's investment profile. A customer's investment profile includes the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, and risk tolerance.

FINRA Rule 2111 also imposes a "quantitative suitability" obligation that focuses on whether the number of transactions within a given timeframe is suitable in light of the customer's financial circumstances and investment objectives. Excessive trading occurs, and is unsuitable, when a registered representative, while exercising control over a customer's account, recommends a level of trading activity that is inconsistent with the customer's investment needs and objectives. The Supplementary Material to FINRA Rule 2111 at Rule 2111.05(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."

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 increase in value just to cover commissions and other trading expenses, or the break-even point where a customer may begin to see a return. A turnover rate of six and a cost-to-equity ratio above 20% are indicators that excessive trading may have occurred.

***Giordano and Birardi failed to reasonably supervise six representatives who engaged in excessive and unsuitable trading.***

From July 2014 through December 2018, Giordano was the branch manager and designated supervisory principal for Aegis's Melville branch. Among other things, Aegis's WSPs required branch managers to monitor trading for suitability issues during their daily review of the trade blotter.

As Melville's branch manager, Giordano was responsible for conducting the daily trade blotter review. Giordano delegated his responsibility for the daily trade review to Birardi, a supervisor in the Melville branch. However, Giordano did not provide any training or perform any substantive review of Birardi's work, other than to confirm the daily review was completed.

When conducting the daily trade review, Birardi reviewed the daily trade blotter for repeat customers or stocks. If he identified an account that met these criteria, Birardi confirmed the customer's recorded investment objective or risk tolerance and looked to see whether an "active trading letter," intended to document a customer's general acknowledgement of the costs and risks associated with the trading in their accounts, had been signed recently by the customer. Birardi did not calculate turnover or cost-to-equity rates, review

customers' net worth or income, or speak with the customer's registered representative of record regarding their trading recommendations.

Giordano was the designated supervisor responsible for performing the duties required for registered representatives in the Melville branch who were under heightened supervision. During the relevant period, two of the Aegis Representatives were placed on heightened supervision due to customer complaints regarding, among other things, potentially unsuitable trading. Accordingly, Giordano reviewed all of their trades via order tickets and trade blotters, looking for commission violations, suitability, and active trading, among other things. Giordano also contacted certain clients he selected based on his reviews, and completed a monthly checklist documenting his activities.

From July 2014 through December 2018, the active and frequent trading conducted by the Aegis Representatives and recorded on the daily trade blotters generated annualized turnover rates ranging from 4.2 to 96.3 and annualized cost-to-equity ratios ranging from 21.3% to 164.6%.

- Representative A's trading in the accounts of seven firm customers resulted in annualized turnover rates ranging from 16.9 to 22.4, cost-to-equity ratios ranging from 21.7% to 55.6%, and more than \$1.5 million in trading costs.
- Representative B's trading in the accounts of two firm customers resulted in annualized turnover rates of 4.2 and 14.9, cost-to-equity ratios of 21.3% and 73.9%, and more than \$229,000 in trading costs.
- Representative C's trading in the accounts of three firm customers resulted in annualized turnover rates ranging from 12.5 to 96.3, cost-to-equity ratios ranging from 35.6% to 123.8%, and more than \$135,000 in trading costs.
- Representative D's trading in the account of one firm customer resulted in an annualized turnover rate of 51.4, a cost-to-equity ratio of 63.7%, and more than \$140,000 in trading costs.
- Representative E's trading in the accounts of four firm customers resulted in annualized turnover rates ranging from 19.9 and 54.7, cost-to-equity ratios ranging from 87.9% to 120.4%, and more than \$275,000 in trading costs.
- Representative F's trading in the accounts of six firm customers resulted in annualized turnover rates ranging from 8.4 to 54.8, cost-to-equity ratios ranging from 34.7% to 164.6%, and more than \$336,000 in trading costs.

The trading conducted by the Aegis Representatives also generated more than 700 exception reports specifically designed by Aegis's clearing firm to identify accounts with turnover rates and commission-to-equity ratios indicative of excessive and unsuitable trading.<sup>5</sup> Giordano and Birardi had access to, but never reviewed, the exception reports when conducting their heightened supervision and trade review responsibilities, including 120 exception reports related to the 23 customer accounts referenced above. Seven of the

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<sup>5</sup> The exception reports were triggered when the annualized cost-to-equity ratio in accounts with an aggressive or speculative investment objective exceeded 5% or 6%, respectively, for three or more consecutive days, or the turnover exceeded 500% for five or more consecutive days.

accounts Giordano reviewed as part of his heightened supervision of Representatives C and E reflected annualized turnover rates ranging from 12.5 to 96.3 and annualized cost-to-equity ratios ranging from 35.6% to 123.8%.

Giordano and Birardi failed to reasonably investigate these red flags, relying on the “active trading”, concentration and day trading disclosure letters sent to the customers to mitigate the risks associated with the active trading in their accounts. However, these letters did not include the actual costs of the trading in the customer’s account (including costs incurred due to the use of margin) or explain what trades (or series of trades) prompted Aegis to issue the letter. Their failure to reasonably respond also allowed the Aegis Representatives to make unsuitable recommendations and excessively trade the 23 customer accounts discussed above.

By virtue of the foregoing, Giordano and Birardi violated NASD Rule 3010 and FINRA Rules 3110 and 2010.

B. Respondents also consent to the imposition of the following sanctions:

For Giordano:

- a six-month suspension from association with any FINRA member in any principal capacity;
- a \$10,000 fine; and
- an undertaking that, within 90 days of notice that this AWC has been accepted, Giordano will attend and satisfactorily complete 20 hours of continuing education concerning supervisory responsibilities by a provider not unacceptable to FINRA. Giordano will notify Tiffany A. Buxton, Director, of the name and contact information of the provider of the continuing education at least 10 days prior to attending the training. Within 30 days following completion of such training, Giordano will submit written proof that the continuing education program was satisfactorily completed to Tiffany A. Buxton at [tiffany.buxton@finra.org](mailto:tiffany.buxton@finra.org). All correspondence must identify the respondent and matter number 2016051704305. Upon written request showing good cause, FINRA staff may extend any of the deadlines related to the continuing education component of the sanction.

For Birardi:

- a three-month suspension from association with any FINRA member in any principal capacity;
- a \$5,000 fine; and
- an undertaking that, within 90 days of notice that this AWC has been accepted, Birardi will attend and satisfactorily complete 20 hours of continuing education concerning supervisory responsibilities by a provider not unacceptable to FINRA. Birardi will notify Tiffany A. Buxton, Director, of the name and contact information of the provider of the continuing education at least 10 days prior to attending the training. Within 30 days following completion of such training, Birardi will submit written proof that the continuing education program was



satisfactorily completed to Tiffany A. Buxton at tiffany.buxton@finra.org. All correspondence must identify the respondent and matter number 2016051704305. Upon written request showing good cause, FINRA staff may extend any of the deadlines related to the continuing education component of the sanction.

Respondents agree to pay the monetary sanctions upon notice that this AWC has been accepted and such payments are due and payable. Respondents have submitted Election of Payment forms showing the methods by which they propose to pay the fines imposed.

Respondents specifically and voluntarily waive any right to claim an inability to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

Giordano and Birardi understand that if they are barred or suspended from associating with any FINRA member in a principal capacity, they become 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, Giordano and Birardi may not be associated with any FINRA member in any principal capacity during the period of the bar or suspension. *See* FINRA Rules 8310 and 8311. Furthermore, because Giordano and Birardi are subject to a statutory disqualification during the suspension, if they remain 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**

Respondents specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a complaint issued specifying the allegations against them;
- 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, Respondents specifically and voluntarily waive 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.

Respondents further specifically and voluntarily waive 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**

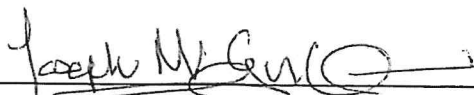
Respondents understand that:

- 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 Respondents; and
- C. If accepted:
  - 1. this AWC will become part of Respondents' permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondents;
  - 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. Respondents 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. Respondents 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 Respondents' 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 Respondents' testimonial obligations in any litigation or other legal proceeding.
- D. Respondents may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they 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.

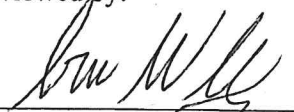
Giordano and Birardi each certify that they have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that they have agreed to the AWC's provisions voluntarily; and no offer, threat, inducement, or promise of any kind, other than

the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce them to submit this AWC.

10-26-2021  
Date

  
\_\_\_\_\_  
Joseph Michael Giordano  
Respondent

Reviewed by:

  
\_\_\_\_\_  
Irwin Wetz, Esq.  
Wetz Kakos Gerbi Wolinetz Volynsky LLP  
170 Old Country Road, Suite 310  
Mineola, New York 11501  
*Counsel for Joseph Michael Giordano*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Roberto Birardi  
Respondent

Reviewed by:

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Michael P. Gilmore, Esq.  
Moss & Gilmore LLP  
129 Third Street  
Mineola, New York 11501  
*Counsel for Roberto Birardi*

Accepted by FINRA:

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Tiffany A. Buxton, Director  
FINRA Department of Enforcement  
One Brookfield Place, 200 Liberty Street, 11th Floor  
New York, New York 10281



the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce them to submit this AWC.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Joseph Michael Giordano  
Respondent

Reviewed by:

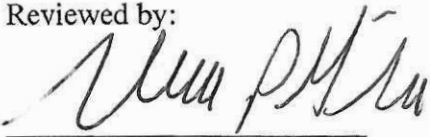
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Irwin Weltz, Esq.  
Weltz Kakos Gerbi Wolinetz Volynsky LLP  
170 Old Country Road, Suite 310  
Mineola, New York 11501  
*Counsel for Joseph Michael Giordano*

10/26/21

Date

  
\_\_\_\_\_  
Roberto Birardi  
Respondent

Reviewed by:



\_\_\_\_\_  
Michael P. Gilmore, Esq.  
Moss & Gilmore LLP  
129 Third Street  
Mineola, New York 11501  
*Counsel for Roberto Birardi*

Accepted by FINRA:

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

11/8/2021



\_\_\_\_\_  
Date

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Tiffany A. Buxton, Director  
FINRA Department of Enforcement  
One Brookfield Place, 200 Liberty Street, 11th Floor  
New York, New York 10281