

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2017054317401**

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

**RE:** Douglas Edward Szempruch (Respondent)  
Former General Securities Representative  
CRD No. 4159318

Pursuant to FINRA Rule 9216, Respondent Douglas Edward Szempruch 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 hereby accepts and consents, 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**

Szempruch first became registered with FINRA as a General Securities Representative (GS) when he became associated with a member firm in May 2000. After working at other member firms, Szempruch became associated with Aegis Capital Corp. as a GS in June 2011. On June 11, 2021, Aegis filed a Form U5 stating that Szempruch voluntarily terminated his association with the firm. Szempruch is not currently registered with FINRA, but remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of the FINRA By-Laws.

Respondent does not have any relevant disciplinary history.

**OVERVIEW**

Between August 2014 and June 2017, while associated with Aegis, Szempruch: (1) recommended and effected excessive and unsuitable trades in six customer accounts; (2) exercised discretionary authority without prior written authorization to effect trades in seven customer accounts, and (3) sent email communications containing misleading statements about an investment opportunity from his firm-approved email account. Based on the foregoing, Szempruch violated FINRA Rules 2111, 2210(d)(1)(B) and 2010 and NASD Rule 2510(b).

## **FACTS AND VIOLATIVE CONDUCT**

This matter originated from a tip made to FINRA's Office of the Whistleblower.

### **Excessive Trading**

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 information obtained through reasonable diligence of the member or associated person to ascertain the customer's investment profile." As explained in the Supplementary Material found at 2111.05(c):

Quantitative suitability requires a member or associated person who has actual or de facto control over a customer account to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile, as delineated in Rule 2111(a). No single test defines excessive activity, but factors such as the turnover rate, the 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 appreciate 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 excessive trading has occurred.

A violation of FINRA Rule 2111 also constitutes a violation of FINRA Rule 2010, which requires registered representatives to "observe high standards of commercial honor and just and equitable principles of trade."

Between August 2014 and September 2016, Szempruch engaged in quantitatively unsuitable trading in six customer accounts. Each customer had an investment objective of growth (five customers) or balanced growth (one customer) and a risk tolerance of moderate. Szempruch recommended the trading in the six customers' accounts and the customers routinely followed his recommendations. Additionally, as will be discussed below, at various times, Szempruch exercised discretion when executing trades in these six customers' accounts. As a result, Szempruch exercised *de facto* control over the customers' accounts.

- Customer 1 had no previous investment experience before working with Szempruch. Szempruch's trading in Customer 1's account resulted in an annualized turnover rate of 25.51 and an annualized cost-to-equity ratio of 109.14%. As a result of Szempruch's trading, Customer 1 paid \$9,517 in commissions and suffered \$9,966 in losses over two years.
- Szempruch's trading in Customer 2's account resulted in an annualized turnover rate of 16.66 and an annualized cost-to-equity ratio of 101.03%. As a result of Szempruch's trading, Customer 2 paid \$6,546 in commissions while suffering \$3,415 in losses over two years.
- Szempruch's trading in Customer 3's account resulted in an annualized turnover rate of 9.73 and an annualized cost-to-equity ratio of 41.4%. As a result of Szempruch's trading, Customer 3 paid \$22,572 in commissions while suffering \$32,103 in losses over two years.
- Customer 4 is a senior. Szempruch's trading in Customer 4's account resulted in an annualized turnover rate of 48.08 and an annualized cost-to-equity ratio of 36.55%. As a result of Szempruch's trading, Customer 4 paid \$23,480 in commissions while suffering \$20,046 in losses over two years.
- Szempruch's trading in Customer 5's account resulted in an annualized turnover rate of 7.69 and an annualized cost-to-equity ratio of 35.17%. As a result of Szempruch's trading, Customer 5 paid \$27,481 in commissions while suffering \$16,832 in losses over two years.<sup>1</sup>
- Szempruch's trading in Customer 6's account resulted in an annualized turnover rate of 9.07 and an annualized cost-to-equity ratio of 34.3%. As a result of Szempruch's trading, Customer 6 paid \$37,602 in commissions while suffering \$75,243 in losses over two years.

Szempruch's trading in the six customers' accounts was excessive and unsuitable given the customers' investment profiles.

Therefore, Respondent violated FINRA Rules 2111 and 2010.

#### Exercise of Discretion without Prior Written Authorization

NASD Rule 2510(b) prohibits registered representatives from exercising discretion in a customer's account unless the customer gives prior written authorization to the registered representative and the registered representative's member firm provides written

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<sup>1</sup> Customer 5 complained to Aegis regarding the performance and suitability of the investments in his account and reached a monetary settlement to resolve his complaint.

acceptance of the account as discretionary.<sup>2</sup> A violation of NASD Rule 2510(b) is also a violation of FINRA Rule 2010.

Between August 2014 and October 2016, Szempruch exercised discretion to effect 578 trades in seven customers' accounts without prior written authorization. Six of the seven customer accounts were also excessively traded by Szempruch, as described above. None of the seven customers provided written authorization for Szempruch to exercise discretion in their accounts and Aegis did not accept any of the seven accounts as discretionary accounts.

Therefore, Respondent violated NASD Rule 2510(b) and FINRA Rule 2010.

#### Misleading Statements in Email Communications

FINRA Rule 2210 governs communications by registered representatives with the public. FINRA Rule 2210(d)(1)(B) states:

No member may make any false, exaggerated, unwarranted, promissory or misleading statement or claim in any communication. No member may publish, circulate or distribute any communication that the member knows or has reason to know contains any untrue statement of material fact or is otherwise false or misleading.

A violation of FINRA Rule 2210(d)(1)(B) is also a violation of FINRA Rule 2010.

Between May 2017 and June 2017, Szempruch sent the same or similar email to 34 prospective customers, making misleading statements concerning investments in Company A. Specifically, Szempruch inaccurately represented that he: (1) had visited Company A's production facility; (2) had met with and was in direct communication with Company A's management; (3) was participating in weekly calls with Company A's management, and (4) had first-hand information about Company A.

In fact, although Szempruch was invited to visit Company A's facilities, he did not attend and was instead briefed later by colleagues who did make the trip. He also did not directly communicate with Company A's management but instead closely followed the company. Although Szempruch understood that his Aegis colleagues (as opposed to Szempruch himself) had begun conducting periodic status conferences with Company A's management, Company A's management ceased participating in the conferences shortly after executing a March 2017 agreement with Aegis. Szempruch thus did not have direct or firsthand information about the company, and misleadingly described his relationship and interactions with the company and its management.

Therefore, Respondent violated FINRA Rules 2210(d)(1)(B) and 2010.

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<sup>2</sup> After the last date of misconduct herein, NASD Rule 2510 was superseded by FINRA Rule 3260 (effective May 8, 2019).

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

- a 12 month suspension from associating with any FINRA member in all capacities; and
- restitution of \$99,720.87, plus interest.

Respondent has submitted a statement of financial condition and demonstrated a limited ability to pay. In light of Respondent's financial status, the sanctions do not include a monetary fine.

Restitution is ordered to be paid to the customers listed on Attachment A to this AWC in the total amount of \$99,720.87, 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 September 27, 2016, until the date of payment. Restitution amounts ordered, pursuant to this disciplinary action, are due and payable 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. The imposition of a restitution order or any other monetary sanction 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. If for any reason Respondent cannot locate any customer identified in Attachment A after reasonable and documented efforts, within such period, or such additional period, as agreed to by FINRA, Respondent shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property, or abandoned property fund for the state in which the customer is last known to have resided.

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 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:

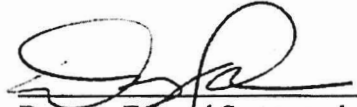
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not 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 testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- 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.

6/18/21  
Date

  
Douglas Edward Szempruch  
Respondent

Reviewed by:

  
/s/ Irwin Weltz

Irwin Weltz  
Counsel for Respondent  
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Accepted by FINRA:

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

7/9/21

Date



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FINRA  
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**Attachment A**

<b>Customer</b>	<b>Restitution Amount</b>
Customer 1	\$9,517.93
Customer 2	\$6,546.75
Customer 3	\$22,572.89
Customer 4	\$23,480.46
Customer 6	\$37,602.84