

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2020065274801**

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

RE: Jay S. Sheth (Respondent)
General Securities Representative
CRD No. 4656009

Pursuant to FINRA Rule 9216, Respondent Jay S. Sheth 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

Sheth first became registered with FINRA in April 2003 as a General Securities Representative (GS) through his association with a FINRA member firm. In January 2004, he registered with FINRA as a GS through an association with National Securities Corporation (CRD No. 7569). Sheth currently remains registered with FINRA through National in that capacity.¹

OVERVIEW

Between April 2019 and November 2019, while associated with National, Sheth made 21 payments to 11 firm customers totaling \$71,581 in order to compensate them for losses associated with investments that Sheth had recommended. By making these payments, which were not authorized by National, Sheth shared in his customers' losses in violation of FINRA Rules 2150(c) and 2010.

In May 2019, Sheth engaged in three private securities transactions (PSTs) totaling \$171,000 without providing prior written notice to, and receiving approval from, National, in violation of FINRA Rules 3280 and 2010.

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

Since at least 2013, Sheth communicated with National customers regarding securities-related business through unapproved channels including text messaging and the instant messenger application WhatsApp. These communications related to National's business but were not preserved as required by Section 17(a) of the Securities Exchange Act of 1934 (the Exchange Act) and Rule 17a-4(b)(4) thereunder. By causing National to maintain incomplete books and records, Sheth violated FINRA Rules 4511 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from the receipt of a FINRA Rule 4530 disclosure made by National on January 3, 2020, which stated that Sheth had "initiated multiple monetary payments totaling \$6833 to a client of the Firm, without prior notice and approval from the Firm."

A. Sheth Shared in His Customers' Losses

FINRA Rule 2150(c)(1)(A) states, in pertinent part, that no person associated with a member shall share directly or indirectly in the "losses in any account of a customer carried by the member or any other member[.]" unless that associated person: (a) obtains prior written authorization from the member employing the associated person, (b) obtains the customer's prior written authorization, and (c) shares in the losses of customers who are not immediate family members "only in direct proportion to the financial contributions" to such account by either the associated person or the member employing the associated person. A violation of FINRA Rule 2150 is also a violation of FINRA Rule 2010, which requires associated persons, in the conduct of their business, to "observe high standards of commercial honor and just and equitable principles of trade."

Between 2016 and 2018, Sheth recommended that many of his customers invest in two private placements (Private Placements A and B). Also in 2016, Sheth recommended that one customer invest in a different private placement (Private Placement C). In late 2018 and early 2019, the asset management company for Private Placements A and B announced, among other things, that it was no longer accepting new capital, it was temporarily suspending redemptions, and certain financial statements would need to be restated. On April 4, 2019, the asset management company further announced that it did not anticipate issuing first quarter 2019 distributions based on the performance of the underlying assets.

Sheth's payments to certain of his National customers began shortly after the asset management company's April 4, 2019 announcement and continued through November 2019. During this period, Sheth made 21 payments totaling \$71,581 to 11 National customers, all of whom invested in Private Placement A and/or B. The payments were made in various forms, including personal checks, cashier's checks, and cash.

Additionally, one of Sheth's customers sold an investment in Private Placement C at a loss in October 2019. The day after the customer received the check for the liquidated amount of the investment in Private Placement C, Sheth gave the customer a cashier's check in the exact amount of the customer's loss of principal.

At the time of each of the payments, National's written supervisory procedures (WSPs) prohibited representatives from sharing, directly or indirectly, in customers' investment losses. Sheth did not tell National about the payments or seek authorization before he made them. National only discovered the payments when one of Sheth's customers complained to the firm.

By sharing in losses incurred by the 11 customers, without National's prior knowledge or authorization, Sheth violated FINRA Rules 2150(c) and 2010.

B. Sheth Engaged in Undisclosed PSTs

FINRA Rule 3280 requires that prior to participating in a private securities transaction, an associated person provide written notice to his or her member firm "describing in detail the proposed transaction and the person's proposed role therein[.]" Rule 3280 further provides that if an associated person has received or may receive selling compensation, the member firm shall provide written approval or disapproval of the associated person's participation in the proposed private securities transaction. Additionally, Rule 3280 defines generally a private securities transaction as "any securities transaction outside the regular course or scope of an associated person's employment with a member" A violation of FINRA Rule 3280 also constitutes a violation of FINRA Rule 2010.

In November 2018, Sheth submitted an outside business activity (OBA) form to National stating his intention to be a silent investor in hotels. The OBA form, however, was never approved by National and National instead provided Sheth with a PST form to complete. Sheth never submitted a PST form to National for the hotel investments.

Nevertheless, in May 2019, Sheth and his spouse jointly invested a total of \$171,000 in three separate hotel projects without providing prior written notice to National of his intention to engage in PSTs. The operating agreements for each of the investments referred to the units being purchased by each investor as "securities" and noted that they were non-transferable and not registered with the Securities and Exchange Commission. Each project involved between 24 to 27 investors and raised between \$4.5 million and \$6.6 million. Sheth made the investments with the expectation of receiving profits and did not have any role in the operation or management of the projects. At the time of Sheth's investments National's WSPs prohibited its representatives from engaging in PSTs without providing written notice to, and receiving approval from, the firm.

By failing to provide written notice to National of his intention to engage in PSTs and failing to obtain approval from National for those investments, Sheth violated FINRA Rules 3280 and 2010.

C. Sheth Caused National to Maintain Incomplete Books and Records

FINRA Rule 4511 requires members to make and preserve accurate books and records as required under the FINRA Rules, the Exchange Act and the applicable Exchange Act rules. Exchange Act Rule 17a-4(b)(4) requires member firms to maintain, for a period of three years, all communications sent and received by the member relating to the member's business. A registered representative who causes his or her member firm to fail to comply with these recordkeeping obligations violates FINRA Rules 4511 and 2010.

National's WSPs prohibited registered representatives from communicating with customers about the firm's securities business via unapproved personal email, instant messaging applications, and text messages. Nevertheless, since at least 2013, Sheth communicated with National customers about securities-related business via personal email, text messages from his personal cellular device and WhatsApp. Sheth's communications with National customers via these unapproved channels were not captured and preserved by National.

By using his personal email, text messaging, and WhatsApp to communicate with National customers about firm business, Sheth caused National to fail to comply with its recordkeeping obligations under the Exchange Act, and thereby violated FINRA Rules 4511 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 \$20,000 fine.

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.

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 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.

3/28/22

Date



Jay S. Sheth
Respondent

Reviewed by:



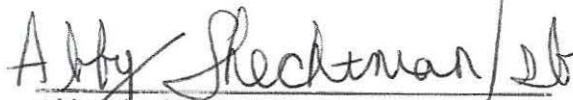
Timothy Feil, Esq.
Counsel for Respondent
Carmel, Milazzo & Feil LLP
425 Broadhollow Road, Suite 300
Melville, New York 11747

Accepted by FINRA:

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

4/7/2022

Date



Abby Shechtman
Principal Counsel
FINRA Department of Enforcement
Brookfield Place, 200 Liberty Street
New York, NY 10281-1003