

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2021069405501**

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

RE: Charles V. Malico (Respondent)  
Former General Securities Representative  
CRD No. 1507282

Pursuant to FINRA Rule 9216, Respondent Charles V. Malico 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**

Malico first registered with FINRA in 1987. From June 2016 through April 2022, Malico was registered with FINRA as a General Securities Representative through an association with Network 1 Financial Securities Inc. (CRD No. 13577).

Malico is not currently registered or associated with any FINRA member firm. However, he remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.<sup>1</sup>

**OVERVIEW**

From July 2020 through November 2021, Malico willfully violated the Best Interest Obligation under Rule 15l-1 of the Securities Exchange Act of 1934 (Regulation Best Interest or Reg BI) and violated FINRA Rule 2010 by recommending a series of transactions in the account of one retail customer that was excessive in light of the customer's investment profile and therefore was not in that customer's best interest.

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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).

## FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's review of a customer-initiated arbitration.

As of June 30, 2020, broker-dealers and their associated persons are required to comply with Regulation Best Interest under the Securities Exchange Act of 1934. Reg BI's Best Interest Obligation requires a broker, dealer, or a natural person associated with a broker or dealer, when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer, to act in the best interest of that retail customer at the time the recommendation is made, without placing the financial or other interest of the broker, dealer, or associated person ahead of the interest of the retail customer. Reg BI's Care Obligation, set forth at Exchange Act Rule 15c-1(a)(2)(ii), requires broker-dealers and their associated persons to exercise reasonable diligence, care, and skill to, among other things, have a reasonable basis to believe that a series of recommended transactions, even if in the retail customer's best interest when viewed in isolation, is not excessive and is in the retail customer's best interest in light of the retail customer's investment profile.

No single test defines when trading is excessive, but factors such as the turnover rate, the cost-to-equity ratio, and the use of in-and-out trading in a customer's account are relevant to determining whether a member firm or associated person has excessively traded a customer's account in violation of Reg BI. The 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 a series of recommended transactions was excessive and not in the retail customer's best interest. In-and-out trading includes purchasing and selling the same security in a customer's account multiple times over a brief period. A pattern of in-and-out trading likewise generally indicates that a series of recommended transactions was excessive and not in the retail customer's best interest.

A violation of Reg BI also is a violation of FINRA Rule 2010, which requires associated persons to "observe high standards of commercial honor and just and equitable principles of trade" in the conduct of their business.

From July 2020 through November 2021, Malico recommended to one of his retail customers (Customer A) at Network 1 a series of transactions that was excessive in light of that customer's investment profile. In so doing, Malico placed his and Network 1's interests ahead of the interests of the customer. Customer A was a 63-year-old tax preparer with an annual income of approximately \$100,000 and a liquid net worth of approximately \$50,000. Although Customer A's average account balance during the relevant period was less than \$30,000, Malico recommended that he make more than 350 trades in his account, which caused Customer A to pay more than \$54,000 in commissions and other trading costs.

Malico frequently recommended that Customer A buy and then sell a security, only to repurchase the same security weeks or even days later. For example, between January and July 2021, Malico recommended that Customer A buy and then sell shares of the same biotechnology company on six separate occasions. On four of those occasions, Malico recommended that Customer A buy shares of the company only to sell them on the same day or the next day. Such in-and-out trading caused Customer A to lose more than \$6,000, while generating more than \$3,200 in commissions and trading costs to Malico and Network 1.

Collectively, the trades that Malico recommended in Customer A's account resulted in an annualized cost-to-equity ratio exceeding 158 percent—meaning that Customer A's account would have had to grow by more than 158 percent annually just to break even. As a result, Malico's recommendations made it virtually impossible for Customer A to realize a profit and, in fact, Customer A lost more than \$17,500 during the relevant period.<sup>2</sup>

Therefore, Malico willfully violated Exchange Act Rule 15l-1 and violated FINRA Rule 2010.

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

- a six-month suspension from associating with any FINRA member in all capacities; and
- a \$5,000 fine.

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 this settlement includes a finding that he willfully violated Rule 15l-1 of the Securities Exchange Act of 1934 and that under Article III, Section 4 of

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<sup>2</sup> This AWC does not require that Malico pay restitution to Customer A because Network 1 has already compensated Customer A in connection with the settlement of an arbitration claim filed by the customer.

FINRA's By-Laws, this makes him subject to a statutory disqualification with respect to association with a member.

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.

9/28/22  
Date

  
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Charles V. Malico  
Respondent

Reviewed by:

G. A. Feil 9/28/22  
Timothy Feil, Esq.  
Craig Riha, Esq.  
Counsel for Respondent  
Carmel, Milazzo & Feil LLP  
425 Broadhollow Road, Suite 300  
Melville, NY 11747

Accepted by FINRA:

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

10/11/2022  
Date

Bernard J. Cooney  
Bernard J. Cooney  
Counsel  
FINRA  
Department of Enforcement  
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