

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2018060897301**

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

RE: Steven M. Netzel (Respondent)
Former General Securities Representative
CRD No. 2863170

Pursuant to FINRA Rule 9216, Respondent Steven M. Netzel 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

Netzel first registered as a General Securities Representative (GS) in February 2009. From November 2013 through June 2019, Netzel was registered as a GS with FINRA through Kalos Capital, Inc. (CRD No. 44337). From June 28, 2019 through August 1, 2019, Netzel was registered as a GS through another member firm.

In March 2012, Netzel entered into a Consent Order with the Arizona Corporation Commission Securities Division for offering or selling unregistered securities when Netzel was neither registered as a dealer or salesman nor exempt from registration, in violation of A.R.S. 44-1841 and A.R.S. 44-1842. Netzel agreed to cease and desist and was fined \$10,000.

Although Netzel is not currently associated with a FINRA member firm, he remains subject to FINRA's jurisdiction. On April 22, 2021 Kalos filed an amended Uniform Termination Notice for Securities Industry Registration (Form U5) for Netzel disclosing a new customer arbitration that was filed alleging, among other things, suitability claims. Pursuant to Article V, Section 4(a) of FINRA's By-Laws, the Form U5 amendment filed April 22, 2021 operates to recommence the running of the two-year jurisdiction period.¹

¹¹ For more information about the respondent, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

OVERVIEW

From October 2015 through February 2018, Netzel submitted customer documents to Kalos related to purchases of alternative investments for six customers that were altered, causing the books and records of Kalos to be inaccurate, in violation of FINRA Rules 4511 and 2010. In addition, Netzel's recommendations to three customers were unsuitable based on the customers' investment profiles, resulting in the overconcentration of the customers in alternative investments, in violation of FINRA Rules 2111 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's investigation into sales of offerings related to GPB Capital Holdings, LLC (GPB Capital).

While registered with Kalos, Netzel recommended alternative investments, including GPB Capital, to his customers. As part of the suitability review for alternative investments, the firm required its registered representatives to complete a questionnaire titled "Alternative Investment – Investor Profile" (Investor Profile), which the customer and registered representative signed. Kalos's guidelines restricted registered representatives from recommending customers invest more than a specified percentage of their total net worth in alternative investments, which may be less liquid and entail greater risk than traditional investments. The Investor Profile required, among other things, that representatives calculate the percentage that the purchase of a specific alternative investment, combined with the customer's prior investments in alternative investments, constituted of the customer's net worth in any one product, and in alternative investments overall, to ensure that the proposed transaction complied with the firm's concentration limits for alternative investments.

Inaccurate Books and Records

FINRA Rule 4511 requires member firms to "make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules." Section 17(a) of the Exchange Act and Rule 17a-3, promulgated thereunder, requires firms to maintain certain books and records relating to its business, including customer account records. Inherent in the obligation to make and preserve books and records is the requirement that they be accurate. An associated person who enters inaccurate information in a firm's books and records violates FINRA Rule 4511. A violation of FINRA Rule 4511 is also a violation of FINRA Rule 2010, which requires associated persons to act with high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

In connection with at least six customers' alternative investment purchases, Netzel submitted Investor Profiles that he knew reflected inaccurate information. There were indications on the face of the documents that information had been whited-out and written over. For example, Netzel re-submitted Investor Profiles for a married couple (Customers A and B), that Kalos initially rejected for exceeding the firm's concentration limit, with inaccurate financial information. Among other things, Customer A's and B's

net worth was inflated from \$1,300,000 to \$1,800,000 and their liquid net worth was inflated from \$905,850 to \$1,405,850. By increasing Customer A's and B's net worth, their percentage holdings in alternative investments was reduced, and Netzel was able to obtain the necessary approval for the alternative investment purchases.

Similar alterations and white-outs appear on Investor Profiles for Customer C, Customers D and E, Customer F, Customer G, and Customer H.

By reason of the foregoing, Netzel violated FINRA Rules 4511 and 2010.

Unsuitable Recommendations

FINRA Rule 2111 requires a registered representative to have a reasonable basis to believe that a recommended transaction or investment strategy is suitable for the customer to whom it is recommended, based on information obtained through reasonable diligence to ascertain the customer's investment profile. A recommendation is unsuitable if it results in an undue concentration of a customer's assets in a particular security or type of security, in light of the customer's financial condition, risk tolerance or investment objectives. A violation of FINRA Rule 2111 is also a violation of FINRA Rule 2010.

Netzel's recommendations to three customers resulted in unsuitable concentrations of their assets in alternative investments:

- In October 2017, Netzel recommended that Customers A and B purchase two alternative investments. Customers A and B were retired seniors with a moderate risk tolerance and an investment objective of capital appreciation. At the time of the recommendation, the couple already held \$412,150 in alternative investments. After the purchases, approximately 32% of Customer A's and B's actual net worth was invested in alternative investments.
- In October 2015, Customers D and E purchased \$138,000 in alternative investments, adding to their existing alternative investment holdings of \$392,700. Customers D and E, a married couple, were retired seniors with a moderate risk tolerance and an investment objective of capital appreciation. After the October 2015 purchases, alternative investments constituted approximately 35% of Customer D's and E's net worth. In February 2018, Customers D and E made an additional \$25,000 purchase in an alternative investment. By then, the couple held \$570,700 in alternative investments. After the February 2018 purchase, approximately 37% of Customer D's and E's net worth was invested in alternative investments.
- In April and May 2017, Customer I made five purchases of GPB Capital totaling \$250,000. Customer I was a 62-year-old retiree with a moderate risk tolerance and an investment objective of capital appreciation. When added to his existing

holdings, Customer I held a total of \$513,315 in alternative investments, constituting over 30% of his net worth.

Netzel's recommendations to Customers A and B, Customers D and E, and Customer I resulted in the customers being overconcentrated in alternative investments that were unsuitable for them based on their net worth, investment objectives and risk tolerance.

By reason of the foregoing, Netzel violated FINRA Rules 2111 and 2010.

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

- a four-month suspension from associating with any FINRA member in all capacities;
- a \$10,000 fine; and,
- partial restitution of \$9,788.80 plus interest as described below.²

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.

Partial restitution is ordered to be paid to the customers listed on Attachment A to this AWC (Eligible Customers) in the total amount of \$9,788.80, 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 February 16, 2017, until the date the restitution plus interest are due and payable.

Restitution plus interest ordered pursuant to this disciplinary action are due and payable immediately upon reassociation with a member firm or upon submission of any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

Respondent shall submit satisfactory proof of payment of restitution and interest (separately specifying the date and amount of each paid to each Eligible Customer) or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted by email to EnforcementNotice@FINRA.org. The email must identify Respondent and the case number and include a copy of the check, money order, or other method of payment. This proof shall be provided by email to EnforcementNotice@FINRA.org no later than 120 days after the date the restitution plus interest are due and payable.

The restitution amount plus interest to be paid to each Eligible Customer shall be treated by the Respondent as the Eligible Customer's property for purposes of state escheatment,

² The amount of partial restitution is equal to the portion of the commissions received by Netzel for the alternative investment purchases by Customers A and B between February 2017 and January 2018. Customers D and E, and Customer I will not receive partial restitution because they previously settled their claims with Kalos.

unclaimed property, abandoned property, and similar laws. If after reasonable and documented efforts undertaken to effect restitution Respondent is unable to pay all Eligible Customers within 120 days after the restitution and interest are due and payable, Respondent shall submit to FINRA in the manner described above a list of the unpaid Eligible Customers and a description of Respondent's plan, not unacceptable to FINRA, to comply with the applicable escheatment, unclaimed property, abandoned property, or similar laws for each such Eligible Customer.

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 sanctions imposed in this matter.

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.

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.

April 11, 2023

Date

Steven Netzel

Steven M. Netzel
Respondent

Reviewed by:

Paul J. Roshka, Esq.

Paul J. Roshka, Esq.
Counsel for Respondent
Jennings Haug Keleher McLeod
2800 North Central Avenue
Suite 1800
Phoenix, Arizona 85004

Accepted by FINRA:

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

April 14, 2023

Date

Vaishali Shetty

Vaishali Shetty
Senior Counsel
FINRA
Department of Enforcement
Two Jericho Plaza, Suite 307
Jericho, New York 11753



ATTACHMENT A

Customers A and B	\$9,788.80
-------------------	------------