

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2021070253901**

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

RE: Fidelity Brokerage Services LLC (Respondent)
Member Firm
CRD No. 7784

Pursuant to FINRA Rule 9216, Respondent Fidelity Brokerage Services LLC 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

Fidelity has been a FINRA member since 1979. The firm primarily provides self-directed online brokerage services. Fidelity is headquartered in Smithfield, Rhode Island and has approximately 850 branch offices and 31,000 registered representatives.

In December 2015, Fidelity entered into an AWC with FINRA (No. 2014041374401), through which it consented to findings that the firm violated NASD Rules 3010 and 3012(a)(2)(B)(i) and FINRA Rule 2010 by failing to prevent or detect the conversion of funds from nine of its customers. Fidelity did not establish and maintain adequate supervisory systems or written supervisory procedures to achieve compliance with applicable securities laws, regulations, and rules, or to adequately review and monitor the transmittal of funds from customer accounts to outside entities. The firm consented to a censure, a \$500,000 fine, and restitution in the total amount of \$529,270, plus interest.¹

OVERVIEW

Fidelity, through an affiliate, provides recordkeeping services to companies (plan sponsors) for their equity compensation plans through stock plan services (SPS) accounts for the companies' domestic and international employees (plan participants). From

¹ For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

December 2012 to October 2020, the firm's supervisory system, including its written supervisory procedures, was not reasonably designed to supervise associated persons' access to SPS account data or the transmittal of funds from international SPS accounts. As a result, the firm failed to detect that, for nearly eight years, an associated person responsible for supporting the maintenance of SPS account data converted approximately \$750,000 from 37 international plan participants. Therefore, Fidelity violated FINRA Rules 3110 and 2010 and NASD Rules 3010 and 3012.² Fidelity is censured and fined \$600,000.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's investigation into the associated person's conversion of funds from international SPS accounts, after the firm reported the misconduct to FINRA.

A. Fidelity Did Not Have a Reasonably Designed System, including WSPs, to Supervise Its Associated Persons' Access to SPS Account Data.

FINRA Rule 3110(a), and its predecessor NASD Rule 3010(a), requires a member firm to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. The duty to supervise under Rule 3110(a), and its predecessor NASD Rule 3010(a), also includes the responsibility to reasonably investigate red flags that suggest that misconduct may be occurring and to act upon the results of such investigation. FINRA Rule 3110(b), and its predecessor NASD Rule 3010(b), requires a member firm to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. NASD Rule 3012(a)(2)(B)(ii) also required the review and monitoring of "customer changes of address and the validation of such changes of address."

Violations of FINRA Rule 3110 and NASD Rules 3010 and 3012 are also violations of FINRA Rule 2010, which requires a firm to observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business.

From December 2012 to October 2020, a Fidelity associated person working in the firm's SPS business unit converted approximately \$750,000 from 37 international SPS accounts.³ The associated person was a member of a team responsible for supporting the day-to-day maintenance of SPS account data, resolving data inconsistencies, and handling data inquiries from companies and their employees. The inquiries were communicated to the associated person by other business personnel. To perform these functions, the firm provided the associated person and his coworkers with access to SPS

² FINRA Rules 3110 and 3120 superseded NASD Rules 3010 and 3012 effective December 1, 2014. *See* Regulatory Notice 14-10 (March 2014).

³ FINRA barred the associated person in May 2021. He was later criminally sentenced.

account data that allowed them to view and change various types of account information such as plan participants' names, addresses, and bank instructions.

Fidelity's WSPs prohibited its associated persons from accessing SPS account data unless necessary to perform their job responsibilities and only permitted changes to SPS account data at the direction of plan sponsors and plan participants. The firm used a workflow management tool to log, track, and oversee these changes, but it did not monitor for or prevent associated persons from accessing or changing data without tracking it through the workflow management tool. As a result, the associated person was able to evade detection by accessing and changing SPS account data without logging the changes in the workflow management tool for almost eight years.

In 37 international SPS accounts, the associated person was able to use his data access to change the plan participant's name to his own name or the name of a domestic SPS account he created and controlled and then link the international SPS account to (1) banking instructions for checks in his own name sent to a P.O. Box address located in his home state that he controlled or (2) wire instructions for the domestic SPS account he created and controlled.

When the associated person changed the international SPS account data and linked those accounts to the domestic SPS account, the plan participant listed as the owner appeared to be employed by multiple companies in various industries. The firm did not identify or investigate why the owner of the domestic SPS account appeared to be associated with multiple plan sponsors.

In addition, because Fidelity did not monitor or prevent changes to SPS account data that were not logged in its workflow management tool, its system, including WSPs, was not reasonably designed to prevent unauthorized access and changes to SPS account data, including changes to plan participants' addresses.

Beginning in December 2020, the firm enhanced its supervision of associated persons' access to SPS account data by further restricting associated persons' ability to make changes and updates to the data, implementing a technology protocol that requires changes to plan participant data to be logged in the workflow management tool, and implementing additional quality control oversight for SPS account data.

From December 2012 to October 2020, by failing to have a reasonably designed system, including WSPs, to supervise its associated persons' access to SPS account data, Fidelity violated FINRA Rule 3110, NASD Rules 3010 and 3012, and FINRA Rule 2010.

B. Fidelity Did Not Have a Reasonably Designed System to Supervise Outgoing Money Movements from International SPS Accounts.

As noted above, FINRA Rule 3110(a), and its predecessor NASD Rule 3010(a), requires a member firm to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable

securities laws and regulations, and with applicable FINRA rules. In addition, NASD Rule 3012(a)(2)(B)(i) specifically required firms to have supervisory policies and procedures reasonably designed to review and monitor, among other things, transmittals of funds or securities from customers to third parties. A violation of NASD Rule 3012 is also a violation of FINRA Rule 2010.

In Regulatory Notice 09-64 (November 2009), FINRA reminded member firms that “[a]s part of their duty to safeguard customer assets and to meet their supervisory obligations, FINRA firms must have and enforce policies and procedures governing the withdrawal or transmittal of funds or other assets from customer accounts.” These policies and procedures “should be reasonably designed to review and monitor all instructions to transmit or withdraw assets from customer accounts.”⁴

After changing international SPS account data, as described above, the associated person impersonated the plan participants through Fidelity’s online SPS plan participant portal using the data he improperly accessed to liquidate some or all of their holdings. The associated person then withdrew the funds either by issuing checks from the international SPS accounts payable to himself, which were mailed to the domestic P.O. Box he controlled, or by wiring money from the international SPS accounts to the domestic SPS account he controlled and causing it to be withdrawn. Specifically, the associated person caused 83 unauthorized checks to be issued from international SPS accounts totaling approximately \$380,000 and made 183 unauthorized wire transfers from international SPS accounts to the domestic SPS account totaling approximately \$378,000.

The firm had a system to surveil the transmittal of funds from customer accounts. During the relevant period, however, outgoing money movements from international SPS accounts were not included in that system or in any other firm surveillance program. Thus, the unauthorized checks and wire transfers described above were not subject to review or monitoring by the firm.

The firm discovered the associated person’s conversion after an international SPS plan participant contacted the firm with questions regarding transfers out of his account. The firm terminated the associated person, voluntarily notified FINRA of the misconduct prior to filing a Form U5 for the individual, initiated an internal investigation, and shortly thereafter made full restitution to the affected plan participants. The firm subsequently implemented a process to surveil all outgoing money movements from international SPS accounts.

From December 2012 to October 2020, by failing to have a reasonably designed system to supervise outgoing money movements from international SPS accounts, Fidelity violated FINRA Rule 3110, NASD Rules 3010 and 3012, and FINRA Rule 2010.

⁴ When FINRA issued Regulatory Notice 09-64 and related Regulatory Notice 12-05 (January 2012), NASD Rule 3012 and Incorporated NYSE Rule 401 were the relevant operative rules. Effective December 1, 2014, as part of FINRA’s new consolidated rules governing supervision, NASD Rule 3012’s requirements regarding the review and monitoring of transmittals of funds and securities, among other things, were relocated to FINRA Rule 3110(c)(2). *See* Regulatory Notice 14-10 (March 2014).

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

- a censure and
- a \$600,000 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 it 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.

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 it;
- 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 it 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.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Respondent has agreed to the AWC's provisions voluntarily; and that 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 Respondent to submit this AWC.

January 3, 2025

Date

Gail Rachel Merken

Fidelity Brokerage Services LLC
Respondent

Print Name: Gail Rachel Merken

Title: Chief Compliance Officer

Reviewed by:

Ariel Gursky

Ariel Gursky
Ben A. Indek
Counsel for Respondent
Morgan, Lewis & Bockius LLP
101 Park Avenue
New York, NY 10178

Accepted by FINRA:

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

January 8, 2025

Date

Katherine Florio

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