

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2022076811601**

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

RE: American Portfolios Financial Services, Inc. (Respondent)
Former Member Firm
CRD No. 18487
Acquired by Osaic Wealth, Inc.
Member Firm
CRD No. 23131

Pursuant to FINRA Rule 9216, Respondent American Portfolios Financial Services, Inc., 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

American Portfolios Financial Services, Inc. (APFS) became a FINRA member firm in 1987 and offered retail brokerage services. In November 2022, APFS was acquired by Osaic Holdings, Inc., and was later merged into Osaic Wealth, Inc (Osaic). At the time of the acquisition, APFS had approximately 800 registered representatives operating from more than 360 branches. APFS submitted its Uniform Request for Broker-Dealer Withdrawal in October 2024, and the termination of its registration became effective in December 2024. Osaic, located in Scottsdale, AZ, has been a FINRA member since July 1989. Osaic has approximately 12,200 registered representatives in over 5,800 offices.¹

OVERVIEW

Between April 2018 and September 2022, APFS failed to calculate the per account fees for customers enrolled in its Bank Deposit Program (Sweep Program) according to the formula in disclosure documents that it distributed to Sweep Program customers. As a

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

result, APFS's communications with those customers inaccurately represented how the firm calculated its fees. The firm also did not disclose that it retained surplus interest earned from customers' funds. By making inaccurate and incomplete disclosures in communications with customers, the firm violated FINRA Rule 2010, and by contravening content standards for public communications, the firm violated FINRA Rules 2210(d)(1) and 2010.

From April 2018 to May 2023, APFS lacked a system, including written supervisory procedures (WSPs), reasonably designed to supervise the Sweep Program, in violation of FINRA Rules 3110 and 2010.

For these and other violations, the firm agrees to a censure, fine of \$550,000, and \$4,629,115.80 in restitution.

FACTS AND VIOLATIVE CONDUCT

This matter originated from APFS's self-disclosure to FINRA.

In April 2018, APFS began offering the Sweep Program and enrolled all new and existing firm customers, who did not opt out, into the Sweep Program. Through the Sweep Program, APFS automatically transferred customers' available cash balances from their brokerage accounts into interest-bearing, Federal Deposit Insurance Corporation (FDIC)-insured bank accounts at participating banks. During the relevant period, APFS enrolled approximately 85,000 customers in the Sweep Program.

APFS provided customers with inaccurate disclosures about the Sweep Program.

At the Sweep Program's inception, APFS sent its existing brokerage account holders a nine-page disclosure statement, which contained disclosures regarding customer yields and the fees retained by APFS. APFS mailed the disclosure statements to new customers at account opening and posted the statement on its website. During the relevant period, APFS published approximately 20 versions of the disclosure statement to its website, with updated information on participating banks, yields, and fees.

From April 2018 through September 2022, the disclosure statements APFS sent to its customers enrolled in the Sweep Program stated that APFS collected monthly per account fees from the banks participating in the Sweep Program that were calculated based on a formula tied to the Federal Funds Target (FFT) rate. In practice, however, after APFS first determined the interest rate, or yield, it paid to Sweep Program participants based on factors such as the rates paid by its competitors, APFS kept the remaining interest paid by the participating banks, less other administrative fees, as APFS's fee, rather than using the disclosed formula tied to the FFT. Although at times this resulted in APFS receiving lower fees than it would have received had it applied the disclosed formula, over the entire relevant period, APFS collected in the aggregate over \$3 million more in fees than it would have collected had it used the disclosed formula.

During the same period, APFS retained surplus interest when, due to interest rate changes that occurred after the firm had determined customer yields, the total interest paid by participating banks in the Sweep Program was greater than the combination of fees retained by the firm, other administration fees, and interest paid to customers. In disclosure statements regarding the Sweep Program, APFS did not disclose the existence of surplus interest or that APFS would retain surplus interest. During the relevant period, APFS retained in the aggregate surplus interest totaling approximately \$1.25 million.

Additionally, after it discovered the issue involving the Sweep Program formula in September 2022 and started basing its fee on the disclosed formula, in April and May 2023, APFS sent an outdated disclosure statement to Sweep Program participants. The outdated statement contained inaccurate customer yields that were higher than the yields paid to customers during those months. Had APFS paid the customer yields contained in the disclosure statement, customers would have earned over \$100,000 more in the aggregate than what APFS paid in interest to customers during that period.

FINRA Rule 2210 sets forth content standards that apply to all member communications with the public, including “retail communications,” which are defined as “any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period.” FINRA Rule 2210(d)(1)(A) provides that “[n]o member may omit any material fact . . . if the omission, in light of the context of the material presented, would cause the communications to be misleading.” Under FINRA Rule 2210(d)(1)(B), members may not 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 a material fact or is otherwise false or misleading.” A violation of FINRA Rule 2210 is also a violation of FINRA Rule 2010, which requires FINRA members, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade. Negligently misrepresenting or omitting a material fact independently violates of FINRA Rule 2010. As a result of APFS’s inaccurate disclosures regarding its Sweep Program, APFS violated FINRA Rules 2210(d)(1)(A), 2210(d)(1)(B), and Rule 2010. By negligently misrepresenting and omitting material facts regarding the Sweep Program, APFS independently violated FINRA Rule 2010.

APFS failed to maintain accurate books and records and filed inaccurate FOCUS reports.

Section 17(a) of the Exchange Act and Exchange Act Rules 17a-3(a)(2) and (a)(11) require broker-dealers to make and keep current various books and records, including general ledgers and net capital calculations. Exchange Act Section 17(a) and Rule 17a-5(a) require broker-dealers to prepare and file monthly or quarterly Financial and Operational Combined Uniform Single (FOCUS) reports containing certain accounting and financial information, including APFS’s income and net capital. FINRA Rule 4511 requires FINRA members to make and preserve books and records as required under FINRA rules, the Exchange Act, and applicable Exchange Act rules. Inherent in the obligation to make and preserve books and records is the requirement that they be

accurate. Violations of Exchange Act Section 17(a), Rules 17a-3 or 17a-5, or FINRA Rule 4511 are also violations of FINRA Rule 2010.

From April 2018 through September 2022, as described above, APFS retained excess administration fees and surplus interest, which it should have paid to customers. On its general ledger, however, APFS credited these amounts as revenue when it should have debited the amounts as payable to customers. During this period, APFS also inaccurately recorded its net capital, which it calculated using the incorrect revenue amounts, and filed inaccurate monthly FOCUS reports with FINRA reporting the incorrect revenue amounts and net capital calculations.

Therefore, APFS violated Section 17(a) of the Exchange Act, Exchange Act Rules 17a-3 and 17a-5, and FINRA Rules 4511 and 2010.

APFS lacked a system, including WSPs, reasonably designed to supervise its Sweep Program.

FINRA Rule 3110(a) requires each FINRA member 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. FINRA Rule 3110(b) requires each FINRA member 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. Violations of FINRA Rule 3110 are also violations of FINRA Rule 2010.

From April 2018 through September 2022, APFS relied on a working group to administer the Sweep Program, including determining the customer yield and program fees and ensuring that the customer disclosure statements were accurate. However, during that same period, APFS had no system to review whether the working group adhered to the formula described in customer disclosures or to ensure the disclosures were updated to accurately reflect how the Sweep Program fees and customer yield were determined. In addition, from April 2018 through May 2023, APFS had no supervisory system, including written procedures, to ensure that the customer disclosures accurately communicated all material information.

Therefore, APFS violated FINRA Rules 3110 and 2010.

SANCTIONS CONSIDERATIONS

In determining the appropriate sanctions in this matter, FINRA considered, among other factors, that (1) in October 2022, APFS disclosed to FINRA the underpayments to Sweep Program customers resulting from the failure to use the disclosed fee formula, (2) in October 2022, APFS began applying the disclosed formula to calculate its fee for the Sweep Program, (3) Osaic provided substantial assistance and cooperation to FINRA's staff in calculating the appropriate restitution, including retaining an outside consultant,

and (4) during the course of settlement negotiations in this matter, Osaic began paying restitution to affected customers and completed restitution payments by the end of August 2025.

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

- a censure;
- a \$550,000 fine; and
- restitution of \$4,629,115.80 plus interest as described below.

Respondent agrees to pay the monetary sanctions 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.

Restitution is ordered to be paid to affected customers (Eligible Customers) in the total amount of \$4,629,115.80, 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 April 1, 2018 through April 30, 2025.

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 sanctions 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.

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.

December 11, 2025

Date

Gregory Cornick

Osaic Wealth, Inc., as the acquirer of American
Portfolios Financial Services, Inc.
Respondent

Print Name: Gregory Cornick

Title: CEO and President, Osaic Services

Reviewed by:



Ivan P. Harris, Esq.
Counsel for Respondent
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004-2541

Accepted by FINRA:

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

December 29, 2025

Date

Jeffery Ding

Jeffery Ding
Senior Counsel
FINRA
Department of Enforcement
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