

**FINRA
OFFICE OF HEARING OFFICERS**

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ADMINISTRATIVE DISCLOSURE

Department of Enforcement,

Complainant,

v.

**A. B. Watley Direct, Inc.,
CRD No. 18663,**

Respondent.

**Disciplinary Proceeding
No. 2005003391301**

Hearing Officer - LBB

**ORDER ACCEPTING OFFER
OF SETTLEMENT**

JANUARY 7, 2010

INTRODUCTION

Disciplinary Proceeding No. 2005003391301 was filed on March 26, 2009 by the Department of Enforcement of the Financial Industry Regulatory Authority ("FINRA") ("Complainant"). Respondent A. B. Watley Direct, Inc. ("Watley") ("Respondent") submitted an Offer of Settlement ("Offer") to Complainant on December 18, 2009. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council ("NAC"), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA") have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of

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the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

A. B. Watley Direct, Inc., CRD No. 18663, has been a member of FINRA since February 3, 1987. It is and was between 2005 and 2007 headquartered in New York, New York. It is an online brokerage firm, with most of its business coming from active or "direct access" traders.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

During the period September 1, 2005 through July 31, 2007 (the "relevant period"), Watley's website and television advertisements contained statements and claims that were misleading, exaggerated or unwarranted, and failed to provide a basis for evaluating the facts in regard to the services offered.

During the relevant period, Watley frequently claimed in public communications that it offered commission rates of "\$6.95 to as low as \$1.95 a trade." In fact, the \$1.95 rate was available only to customers who placed 3000 or more trades in the previous month, a fact not clearly disclosed in any of the public communications. Furthermore, no customers of the firm qualified for the \$1.95 rate during the relevant period.

The firm frequently claimed it offered customers "low commissions" in general. Those claims were misleading in light of the actual commission rates and fees charged the majority of its customers.

The firm was advised by FINRA's Advertising Regulation Department in advance of use that three television advertisements that included the misleading commission rate information

did not comply with FINRA's advertising rules and needed to be changed prior to use.

Nonetheless, between September 2005 and March 2006, Watley ran these television advertisements in the Chicago and Detroit metropolitan areas and in South Florida, without altering the material to which Advertising Regulation objected. There was no disclosure in the television ads of any limitations or restrictions related to the stated commission rates.

Watley's website made various misleading claims regarding the speed of execution and level of market access the firm provided clients. The home page of the website included a ranking given by Barron's but failed to provide sufficient information to evaluate the rating or the criteria on which it was based.

Respondent has been a member of FINRA since February 3, 1987. At all times relevant herein, Watley was headquartered in New York, New York. It is an online brokerage firm.

During the relevant period, Watley advertised its services to the public through its website and television advertisements, among other methods.

In those public communications, the firm frequently claimed it offered "low commissions." Included in those communications was the claim that Watley offered commission rates "as low as \$1.95 a trade" and "\$6.95 to as low as \$1.95 a trade."

Those claims appeared prominently on the firm's website home page and in television advertisements which were run in the Chicago and Detroit metropolitan areas and in South Florida.

In fact, the \$1.95 rate was available only to customers who placed 3000 or more trades in the previous month, a fact not clearly disclosed in any of the public communications. In the television ads, this was not disclosed at all.

No customer of the firm qualified for the \$1.95 commission rate during the relevant period. Thus, the firm promoted a commission rate that nobody actually received.

The \$6.95 rate was a 90 day introductory rate. A lower rate was available during the relevant period only for customers doing more than 400 trades a month. In 2006, fewer than 5% of the firm's clients qualified for rates of \$6.95 or less. The remaining customers paid significantly higher rates, ranging from \$9.95 to \$13.95.

In addition to per trade expenses, close to 23% of the firm's customers were billed monthly maintenance charges in 2006. 13% of those billed monthly maintenance charges used the firm's "direct access" "Ultimate Trader," which had a \$50 monthly maintenance fee. 83% of those billed monthly maintenance charges used the Web access "Watley Trader," which had a \$25 monthly maintenance fee.

The firm submitted to FINRA's Advertising Regulation Department three television advertisements that stated that it offered commission rates "as low as \$1.95 a trade" and "\$6.95 to as low as \$1.95 a trade." FINRA's Advertising Regulation Department reviewed these three advertisements and on June 20, 2005, it informed the firm that the three television advertisements did not comply with NASD Rule 2210. The firm used them nonetheless. The ads were run on various stations in the Chicago and Detroit metropolitan areas and in South Florida in late 2005 and early 2006.

In communications with the public, the firm also claimed "[T]rade like the Pros trade. Whether you are an active trader or an active investor, Ultimate Trader is institutional quality trading software. You install it on your computer and you are wired right to Wall Street."

The phrases "Trade like the Pros trade" and "you are wired right to Wall Street" suggest literal direct access and that the customer can execute trades without reliance on a broker-dealer.

In fact, all customer trades through Ultimate Trader and Watley Trader had to be routed through Watley.

The firm's website also claimed Ultimate Trader and Watley Trader offered "Fast Execution." These claims were not balanced by any disclosures that market volatility and volume may delay system access and trade execution.

The home page of Watley's website as it appeared in early 2006 included the claim "Barron's Top Ranked 4.7 out of 5 in Trade Cost," accompanied by a graphic showing four and a half stars. The website failed to provide sufficient information to evaluate the rating or the criteria on which it was based.

The statements and claims on Watley's website and in its television advertisements regarding its commission rates, access to markets and speed of execution as presented were exaggerated, unwarranted or misleading.

Watley's promotion on its website of its Barron's ranking failed to provide a basis for evaluating the facts in regard to the part of the industry discussed or the services offered.

Based on the foregoing, Respondent willfully violated NASD Rules 2210(d)(1)(A), 2210(d)(1)(B) and 2110.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be censured and fined Twenty Thousand (\$20,000) Dollars. It is further ordered that Watley undertake to file with FINRA's Advertising Regulation Department all sales literature and advertisements at least ten days prior to their first use for one year from the date of this Order. Watley shall be required to pay all costs typically assessed by FINRA's Advertising Regulation Department for such filings.

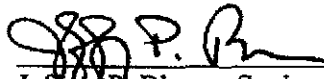
Pursuant to the General Principles Applicable to all Sanction Determinations contained in the Sanction Guidelines, FINRA imposed a lower fine in this case after it considered, among other things, the firm's revenues and financial resources. See Notice to Members 06-55.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

SO ORDERED.

FINRA

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



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