

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20070094679**

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REGISTRATION & DISCLOSURE

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

RE: StockCross Financial Services, Inc.
Member
CRD No. 6670

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, StockCross Financial Services, Inc. ("StockCross" or the "Respondent") 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 herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent hereby accepts and consents, without admitting or denying the findings, 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, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

StockCross was founded in 1971 and has been a member of the NASD (now FINRA) since 1972 and a member of the NYSE since 1982. Respondent's main office is in Beverly Hills, CA, with branches in Boston, MA and Houston, TX. Stockcross is a clearing/carrying organization and primarily clears its own securities. Respondent primarily operates as a discount broker with approximately 4,000 retail accounts and no hedge funds. Approximately half of its business is conducted via self-directed on-line trading. Stockcross has approximately 16 registered representatives who interact with clients.

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RELEVANT PRIOR DISCIPLINARY HISTORY

In Stockcross Financial Services, Inc., Decision 04-31 (NYSE Hearing Board March 8, 2004), Respondent consented to a censure and \$30,000 fine for violating: (1) NYSE Rule 342(a) and (b) by failing to maintain and implement appropriate procedures for supervision and control with respect to Floor brokerage activities, the hiring of new employees, and employee compliance with the continuing education requirements of NYSE Rule 345A; (2) NYSE Rule 4401 by failing to preserve a written record of its Floor brokerage negotiated commission rates for executions on the Floor; (3) NYSE Rule 440 and Exchange Act Rule 17a-4 by failing to preserve certain books and records in connection with Floor commission billings; and (4) NYSE Rule 345A by permitting registered persons with inactive registrations to perform the duties and functions requiring registration. Respondent also agreed to an undertaking to retain an outside consultant to review, report, and make recommendations on certain of Respondent's policies, procedures and supervisory systems.

OVERVIEW

In June 2004, NYSE's Division of Member Firm Regulation ("MFR") conducted an examination of Respondent's supervisory and sales practice procedures (the "2004 Exam"). In May 2005, MFR conducted another examination of Respondent's supervisory and sales practice procedures (the "2005 Exam"). As detailed below, at the time of the 2004 Exam and 2005 Exam, StockCross violated: (1) NASD Rule 3110(a) and Section 17(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 17a-4 thereunder by failing to preserve all employee electronic communications; (2) NASD Rule 3010(b) by failing to establish, maintain, and enforce written procedures to supervise and review employee electronic communications; (3) NASD Rule 3110(a) and Exchange Act Rule 17a-4 by failing to adequately preserve, and NASD Rule 3010(b) by failing to establish, maintain, and enforce written procedures to supervise and review, employee communications sent by facsimile; and (4) Exchange Act Rule 17a-3 and NASD Rule 3110(a) by failing to make, retain, and provide required records related to customer accounts. StockCross also violated NASD Rule 2110.

FACTS AND VIOLATIVE CONDUCT

Failure to Preserve Electronic Communications **NASD Rules 3110(a) and 2110 and Exchange Act Rule 17a-4**

At the time of the 2004 Exam, StockCross had a centralized email address that

was managed and monitored by the chief compliance officer. It was Respondent's only public email address. Respondent's written procedures required the chief compliance officer to print, review, and archive for three years, all incoming and outgoing electronic communications sent to the StockCross email address. However, Respondent could not demonstrate that all such communications were being preserved.

In addition, at the time of the 2004 Exam, Respondent allowed designated supervisory personnel to have access to personal email and instant messaging services, and although such employees were required to print and retain both internal and external and incoming and outgoing correspondence, Respondent was unable to demonstrate such correspondence was being preserved. Furthermore, although Respondent represented that it blocked access to third-party email addresses and instant messaging services for other employees, all employees had access to third-party email, which was not being preserved. The Beverly Hills branch office also had computers, including a Bloomberg terminal, with access to instant messaging services, which were not being preserved.

At the time of the 2005 Exam, Respondent's policies regarding preserving employee electronic communications were largely the same as at the time of the 2004 Exam. Although Respondent blocked most employee access to third-party email and turned off the Beverly Hills branch's outgoing instant messaging capability after the 2004 Exam, supervisory personnel and certain employees continued to have access to personal email and instant messaging services, which were not being preserved.

Such acts, practices, and conduct constitute violations by StockCross, from approximately January 2004 until October 2005, of NASD Rule 3110(a), which requires, among other things, that members make and preserve books and records in conformity with all applicable laws, rules, and regulations; and Exchange Act Rule 17a-4, which requires, among other things, that members preserve originals of all communications received and copies of all communications sent by such member relating to its business, for a period of not less than three years. Such conduct is also a violation by StockCross of NASD Conduct Rule 2110.

Inadequate Supervisory Review of Electronic Communications
NASD Rules 3010(b) and 2110

At the time of the 2004 Exam and 2005 Exam, Respondent's written procedures required all correspondence, including electronic correspondence, to be reviewed and approved by a supervisor. The procedures also required employees to retain their own written and electronic correspondence files in chronological order, including a printed copy of all incoming email. However, Respondent's

procedures failed to provide for any reasonable follow-up and review to ensure that electronic communications were, in fact, being printed out and reviewed. Moreover, because StockCross failed to adequately preserve employee electronic communications, it could not show that it was reviewing and approving those communications.

Such acts, practices, and conduct constitute violations by StockCross, from approximately January 2004 until October 2005, of NASD Rule 3010(b), which requires members to establish, maintain, and enforce written procedures that supervise its business and the activities of its associated persons, in order to achieve compliance with applicable securities laws, regulations, and NASD rules. Such conduct is also a violation by StockCross of NASD Conduct Rule 2110.

Failure to Preserve and Review Facsimile Communications
NASD Rule 3110(a), Exchange Act Rule 17a-4, and
NASD Rules 3010(b) and 2110

At the time of the 2004 Exam and 2005 Exam, Respondent was unable to demonstrate that it was preserving or reviewing facsimile communications sent or received by employees from its Beverly Hills branch.

Such acts, practices, and conduct constitute violations by StockCross, from approximately June 2004 until November 2005, of NASD Rule 3110(a) and Exchange Act Rule 17a-4, in that it failed to adequately preserve, and NASD Rule 3010(b) in that it failed to establish, maintain, and enforce written procedures to supervise and review, its communications sent by facsimile. Such conduct is also a violation by StockCross of NASD Conduct Rule 2110.

Failure to Make and Preserve Books and Records Related to Customer
Accounts
Exchange Act Rule 17a-3 and NASD Rules 3110(a) and 2110

At the time of the 2004 Exam, a sample review of 10 customer accounts disclosed: (1) three accounts that did not contain the customers' employment status, net worth, and account objectives; (2) five accounts for which the customer was not provided an explanation of the terms regarding investment objectives at the time the account was opened; and (3) one account for which a customer was not furnished with a copy of his account record after changes were made. In addition, Respondent failed to maintain a record of the individual at its Beverly Hills branch who could explain the types of records maintained at that branch and the information contained in such records.

Such acts, practices, and conduct constitute violations by StockCross, from

approximately June 2004 to April 2005, of NASD Rule 3110(a), which requires, among other things, that members make and preserve books and records in conformity with all applicable laws, rules, and regulations, and as prescribed by Exchange Act Rule 17a-3. Such conduct is also a violation of Exchange Act Rule 17a-3, which requires, in relevant part, that a member make an account record for each customer containing certain required information; maintain a record indicating, among other things, an explanation of any terms regarding investment objectives; provide its customers with an account record setting forth certain changes made to account information; and create a record for each office listing each person who can explain the types of records maintained at that office and the information contained in those records. Such conduct is also a violation by StockCross of NASD Conduct Rule 2110.

- B. Respondent also consents to the imposition of the sanctions of a censure and a \$60,000 fine.

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

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against it;
- B. To be notified of the Formal 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 General Counsel, 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 acceptance or rejection of this AWC.

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 actions brought by FINRA or any other regulator against Respondent;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondent's disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof 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.

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 or its staff.

Respondent certifies that it has read and understood all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Respondent has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce Respondent to submit it.

StockCross Financial Services, Inc.
Respondent

January 30, 2009
Date

By: Elaine M. Beran
CCO

Accepted by FINRA:

2/10/09
Date

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

Linda Riefberg
Linda Riefberg
Vice President
FINRA Department of Enforcement
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