

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2008013749201**

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

**RE: Barry M. Ferrari, Respondent
Former General Securities Principal
[CRD No. 848024]**

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Barry M. Ferrari, (hereinafter, "Respondent") submit 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 me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

A. I hereby accept and consent, 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

Respondent entered the securities industry in 1978 as an associated person with a FINRA member. From May 6, 2010 through June 28, 2013 (hereinafter, "Review Period"), Respondent was associated with FINRA member Stock USA Execution Services, Inc. ("SUSA") in a registered capacity. Respondent has not been associated with a FINRA member since June 28, 2013. However, Respondent remains subject to FINRA jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

On September 7, 2001, FINRA accepted a Letter of Acceptance, Waiver and Consent in which Respondent consented to the imposition of a censure and a \$5,000 fine, based on alleged findings that he had failed to report customer complaints received by his member firm, failed to report disciplinary action that led to the termination of registered representatives, and failed to report a settlement by the firm with a customer, all in violation of NASD Conduct Rules 3070 and 2110. AWC No. C10010116.

OVERVIEW

During the Review Period, while serving as AML Compliance Officer ("AMLCO") and Chief Compliance Officer ("CCO") of FINRA member SUSA, Respondent failed: (i) to establish written procedures reasonably designed to cause the detection, investigation, and reporting, as applicable, of potential suspicious activity, in violation of FINRA Rules 3310(a) and 2010; (ii) to enforce SUSA's AML Compliance Program procedures requiring periodic risk assessments of correspondent accounts of foreign financial institutions, in violation of FINRA Rules 3310(b) and 2010; and (iii) to establish written procedures reasonably designed to ensure compliance with SEC Rule 15c3-5, in violation of NASD Conduct Rule 3010 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

1. AML Compliance Program Procedures Relating to Potential Suspicious Activity

FINRA Rule 3310 (formerly NASD Conduct Rule 3011) requires FINRA member firms to develop and implement an AML Compliance Program reasonably designed to achieve and monitor the member's compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, et seq.), and the implementing regulations promulgated thereunder by the Department of the Treasury. FINRA Rule 3310(a) requires that members "[e]stablish and implement policies and procedures that can reasonably be expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder." In Notice to Members 02-47, FINRA reminded members of their obligation to look for red flags and report suspicious activity by filing a Form SAR.

While serving as Anti-Money Laundering Compliance Officer ("AMLCO") and Chief Compliance Officer ("CCO") of SUSA during the Review Period, Respondent failed to establish and implement a supervisory system, including written procedures, tailored to SUSA's primary business line of extending direct market access ("DMA") to domestic and foreign active-traders, including foreign financial institutions.

Specifically, during the Review Period, SUSA's monitoring of trade activity in customer accounts consisted solely of the following: (i) a weekly review of trades of \$50,000 or greater; penny-stock trades of 500,000 shares or greater; and non-penny stock trades of 100,000 shares or greater; and (ii) manual real-time reviews by a principal of the firm of all order and trade activity in customer accounts. Neither of these measures was reasonably designed to identify suspicious or potentially manipulative trading activity. In particular, the reliance on a manual real-time review by a principal to detect suspicious activity was entirely

unreasonable given the number and frequency of DMA-customer orders processed daily.¹

By virtue of the foregoing, Respondent Ferrari violated FINRA Rules 3310(a) and 2010.

2. Correspondent Accounts of Foreign Financial Institutions

Treasury Regulation 31 CFR 1010.610² requires each broker-dealer to establish a risk-based due-diligence program for correspondent accounts maintained by foreign financial institutions. As part of that due-diligence program, the broker-dealer must have procedures in place to identify foreign correspondent accounts and to conduct due diligence on those accounts. Specifically, broker-dealers are required to perform an assessment of the money laundering risk present in the case of each correspondent account, taking into account, as part of that assessment, all relevant factors, including, but not limited to, the following: (i) the nature of the foreign financial institution's business and the markets it serves; (ii) the type, purpose, and anticipated activity of such correspondent account; (iii) the nature and duration of the broker-dealer's relationship with the foreign financial institution; (iv) the anti-money laundering and supervisory regime of the jurisdiction in which the foreign financial institution is located; and (v) information known or reasonably available to the broker-dealer about the foreign financial institution's anti-money laundering record. The rule further requires that broker-dealers conduct periodic reviews of correspondent-account activity to determine: (i) whether the activity in the account is consistent with the information that was initially obtained about the type, purpose, and anticipated activity of the account, and (ii) whether, given the volume and/or type of activity in the account, the broker-dealer can adequately identify suspicious transactions.

During the Review Period, SUSA's AML Compliance Program procedures required that periodic reviews be conducted on all foreign financial institution correspondent accounts. Respondent, as AMLCO, was responsible for implementing and enforcing that procedure but failed to ensure that the periodic reviews were conducted.

By virtue of that failure, Respondent Ferrari violated FINRA Rules 3310(b) and 2010.

¹ Trade executions averaged approximately 2,000 per day during the Review Period. Average daily order volume reached as high as 4,000 in some months.

² Formerly codified at 31 CFR 103.176. On March 1, 2011, FinCEN transferred its regulations from 31 CFR Part 103 to 31 CFR Chapter X as part of an ongoing effort to increase the efficiency and effectiveness of its regulatory oversight.

3. Direct Market Access

On November 3, 2010, the Securities and Exchange Commission adopted Rule 15c3-5, to address concerns relating to the growing practice of broker-dealers affording direct market access to customers. Rule 15c3-5 provides, among other things, that a broker-dealer with market access, or that provides customers or any other persons with access to an exchange or alternative trading system ("ATS") through use of the broker-dealer's market participant identifier ("MPID"), must establish risk management controls and supervisory procedures that are reasonably designed to limit the financial exposure of the broker-dealer and ensure compliance with all regulatory requirements applicable to market access. Among other things, the controls and supervisory procedures must be reasonably designed to: (i) prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds; (ii) prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, or that indicate duplicative orders; (iii) prevent the entry of orders that are not in compliance with all regulatory requirements that must be satisfied on a pre-order entry basis; (iv) prevent the entry of orders that the broker-dealer or customer is restricted from trading; (v) restrict market access systems to authorized persons; and (vi) assure appropriate surveillance personnel receive immediate post-trade execution reports that enable them to investigate, report, or halt suspicious or manipulative trading activity. The controls and supervisory procedures mandated by Rule 15c3-5 must be under the direct and exclusive control of the broker-dealer. Rule 15c3-5 also requires broker-dealers to review annually the effectiveness of their risk management controls and supervisory procedures relating to market access and to certify annually that the controls and supervisory procedures satisfy the requirements of the rule.

As a broker-dealer providing market access to customers, SUSA was subject to the requirements of Rule 15c3-5. However, SUSA failed to implement adequate controls and supervisory procedures designed to restrict access to market-access systems to persons authorized by SUSA and failed to implement adequate post-trade execution reports to facilitate detection of manipulative trading activity.

As CCO of SUSA, Respondent was responsible for establishing policies and procedures to ensure compliance with applicable laws, rules, and regulations, including Rule 15c3-5. By failing to establish policies and procedures addressing the requirements of Rule 15c3-5, Respondent violated NASD Conduct Rule 3010 and FINRA Rule 2010.

B. I also consent to the imposition of the following sanctions:

- a fine the amount of \$20,000; and
- a three-month suspension from association with any FINRA member in a principal capacity.

The fine shall be due and payable either immediately upon reassociation with a member firm following the three-month suspension noted above, 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.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

I understand that if I am barred or suspended from associating with any FINRA member in a principal capacity, I become 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, I may not be associated with any FINRA member in a principal capacity, during the period of the bar or suspension (see FINRA Rules 8310 and 8311). Furthermore, because I am subject to a statutory disqualification during the three-month suspension, if I remain associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

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

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against me;**
- 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, I specifically and voluntarily waive 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 acceptance or rejection of this AWC.

I further specifically and voluntarily waive 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

I understand 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 me; and
- C.** If accepted:
 - 1.** this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
 - 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 the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4.** I 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. I 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 my: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D.** I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I 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.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have 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 me to submit it.

01/13/2015
Date (mm/dd/yyyy)

Barry M. Ferrari
Barry M. Ferrari, Respondent

Reviewed by:

Joseph R. Keenan
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Accepted by FINRA:

April 10, 2015
Date

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

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