

**FINRA**

2013 OCT -4 AM 11:49

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 20110303570-01**

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

RE: Elevation, LLC, Respondent  
Broker-Dealer  
CRD No. 140341

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Elevation, LLC (the "firm") 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 the firm alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. The firm 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**

The firm became a FINRA member on August 25, 2006, and its registration remains in effect.

**RELEVANT DISCIPLINARY HISTORY**

The firm has no prior relevant disciplinary history.

**SUMMARY**

In connection with Matter Nos. 20110303570 and 20120348726, the Market Analysis Team of the Department of Market Regulation conducted its quarterly sweep of the firm's compliance with SEC Rule 611 of Regulation NMS for the periods July 1, 2010 through September 30, 2010, and July 1, 2012 through September 30, 2012, respectively.

In connection with Matter No. 20120330596, the Trade Reporting and Compliance Engine ("TRACE") Corporate Bonds Team of the Department of Market Regulation conducted a review of the firm's compliance with the TRACE rules during the period June 21, 2010 through May 26, 2011.

### **FACTS AND VIOLATIVE CONDUCT**

In connection with Matter Nos. 20110303570 and 20120348726:

1. During the period reviewed, the firm failed to establish, maintain, and enforce written policies and procedures that were reasonably designed to prevent trade-throughs of protected quotations in NMS stocks that do not fall within any applicable exception, and if relying on an exception, are reasonably designed to assure compliance with the terms of the exception. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 611 of Regulation NMS, FINRA Rule 2010 and NASD Rule 3010.
2. During the period July 1, 2010 through September 30, 2010, the firm, in sixteen (16) instances, inaccurately appended modifiers to transaction reports submitted to the FINRA/NASDAQ Trade Reporting Facility identifying such transactions as qualifying for an exception or exemption from SEC Rule 611 of Regulation NMS. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6380A(a)(5)(I).
3. During the period July 1, 2012 through September 30, 2012, the firm, in twenty-five (25) instances, inaccurately appended modifiers to transaction reports submitted to the FINRA/NASDAQ Trade Reporting Facility identifying such transactions as qualifying for an exception or exemption from SEC Rule 611 of Regulation NMS. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6380A(a)(5)(I).

In connection with Matter No. 20120330596:

4. During the period reviewed, the firm failed to report the correct perspective (buy/sell indicator) to TRACE in 795 reports of transactions in TRACE-eligible corporate securities. These transactions constituted 97 percent of the total number of reports by the firm to TRACE during the review period. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6730(c)(4).
5. The firm failed to provide documentary evidence that it performed the supervisory reviews set forth in its written supervisory procedures, during the period reviewed, concerning trade reporting compliance of TRACE-eligible corporate securities. The conduct described in this paragraph constitutes violations of FINRA Rule 2010 and NASD Rule 3010.

- B. The firm also consents to the imposition of the following sanctions:

A censure, a fine of \$22,500 (consisting of a fine of \$5,000 for the TRACE reporting violations, a fine of \$5,000 for the TRACE-related supervision violations, a fine of \$5,000 for the equity trade reporting violations, and a fine of \$7,500 for the SEC Rule 611 and related supervision violations), and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph A.1. above. Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the Respondent shall submit to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850, a signed, dated letter, or an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in paragraph A.1. above; and, (3) the date the revised procedures were implemented.

The firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. It has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

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

## **II.**

### **WAIVER OF PROCEDURAL RIGHTS**

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

- A. To have a Complaint issued specifying the allegations against the firm;
- 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, the firm 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.

The firm 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**

The firm 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 the firm; and
- C. If accepted:
  - 1. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
  - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm'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. The firm 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. The firm 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 the firm's: (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. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm 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.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its 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 it 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 herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

October 3, 2013  
Date

Respondent  
Elevation, LLC  
By:   
Name: Patrick T. Sheehan  
Title: CEO

Reviewed by:

  
Attorney Name Charles C. Lucas  
Counsel for Respondent  
Firm Name General Counsel, Elevation LLC  
Address 214 N. Tryon St., Suite 3410  
City/State/Zip Charlotte, NC 28202  
Phone Number 704-976-9541

Accepted by FINRA:

11/1/13  
Date

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

  
Tina Salehi Gubb  
Chief Counsel  
Department of Market Regulation

### Statement of Corrective Action

*This Corrective Action Statement is submitted by Elevation LLC ("Elevation" or the "Respondent"). It does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA, or its staff.*

Pursuant to the Acceptance, Waiver and Consent executed by the Respondent on October 3, 2013 in connection with Matter Nos. 20110303570, 20120348726 and 20120330596, Elevation hereby submits this Statement of Corrective Action as evidence of (i) the firm's affirmative actions to correct any deficiencies identified by FINRA in connection with the above-referenced Matter Nos. and (ii) the firm's commitment to continuously improve its compliance policies and procedures to ensure compliance with rules and regulations promulgated by FINRA and the SEC.

1. Specifically relating to Matter Nos. 20110303570 and 20120348726 and the firm's compliance with SEC Rule 611 or Regulation NMS, Elevation has revised Section 12.2 of its WSP to specifically address compliance with Rule 611 and the proper application of the exemptions set for in Rule 611(b). The firm has inserted provisions for monthly monitoring and documentation of such reviews. Such WSP revisions were made in consultation with FINRA staff and were implemented September 1, 2013.

In addition, Elevation has revised its trading procedures and has provided additional training to its execution personnel to insure compliance with all provisions of Rule 611 including the proper application of available exemptions under the Rule and the implementation of new documentation requirements when such exemptions are applied. The firm has consulted with FINRA staff to clarify its processes and procedures and has heightened monitoring by senior trading personnel to assist other traders and to insure compliance with sweep requirements and/or the application of exemptions and the documentation requirements for such trades.

2. Specifically regarding Matter No. 20120330596, Elevation revised Section 15.6 of its WSP to improve procedures relating to the monitoring of TRACE reporting by any third party vendors that provide TRACE reporting services on behalf of the firm. The revised procedures include monthly monitoring of the third party vendor's activities, monthly interaction between the firm and the third party vendor to insure TRACE reporting is occurring properly, and documentation of all such reviews. Such WSP revisions were made in consultation with FINRA staff and were implemented September 1, 2013.

Elevation is committed to robust compliance and will continue to work with FINRA staff to continuously improve its compliance practices and procedures.

Respectfully Submitted,



Charles C. Lucas III  
General Counsel and Chief Compliance Officer