

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013035136401**

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

RE: Barry M. Ferrari (CRD No. 848024)
Respondent

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Barry M. Ferrari ("Ferrari" or "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

In January 1978, Ferrari first became registered with FINRA as a General Securities Representative. Thereafter, from May 1984 through November 2009, he was registered through various FINRA member firms. From May 2010 through June 28, 2013, Ferrari was registered through Stock USA Execution Services ("Stock USA" or the "Firm") in several capacities including as a General Securities Representative, Registered Options Principal, General Securities Sales Supervisor, and General Securities Principal. Also, from May 2010 through June 28, 2013, Ferrari served as the Firm's Chief Compliance Officer ("CCO"). On July 25, 2013, Stock USA filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") stating that Ferrari's employment with the Firm was terminated due to a "reorganization at the company." Ferrari's last date of employment with the Firm was June 28, 2013.

Ferrari is not currently registered or associated with any member firm. However, Ferrari remains subject to FINRA's 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 Ferrari 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.

On March 13, 2015, FINRA accepted a Letter of Acceptance, Waiver and Consent in which Ferrari consented to the imposition of a \$20,000 fine and a three-month principal capacity suspension based on alleged findings that he: (i) failed 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) failed to enforce Stock USA's AML procedures requiring periodic risk assessments of correspondent accounts of foreign financial institutions, in violation of FINRA Rules 3310(b) and 2010; and (iii) failed 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. AWC No. 2008013749201.

OVERVIEW

From June 2011 through June 2013 (the "Relevant Period"), while serving as the CCO of Stock USA, Ferrari: (i) failed to demonstrate appropriate principal approval of certain advertising materials, including communications on the Firm's websites and social media accounts, in violation of NASD Rule 2210(b) and FINRA Rules 2210(b), 2220(b) and 2010; (ii) failed to enforce the Firm's written supervisory procedures ("WSP") with respect to the supervision of registered representatives' outside securities accounts, in violation of NASD Conduct Rule 3010(b) and FINRA Rule 2010; and (iii) failed to enforce the Firm's WSPs prohibiting representatives from using outside email accounts to communicate with customers, in violation of NASD Conduct Rule 3010(b) and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

1. Failure to Approve Certain Advertising Materials

NASD Conduct Rule 2210(b)(1) required a registered principal of a firm to "approve by signature or initial and date each advertisement, item of sales literature and independently prepared reprint before the earlier of its use or filing with [FINRA's] Advertising Regulation Department."

FINRA Rule 2210(b)(1), which replaced NASD Conduct Rule 2210 as of February 4, 2013, provides that “An appropriately qualified registered principal of the member must approve each retail communication before the earlier of its use or filing with FINRA’s Advertising Regulation Department.”

In addition, FINRA Rule 2220(b)(1) requires “all retail communications . . . issued by a member concerning options shall be approved in advance by a Registered Options Principal designated by the member’s written supervisory procedures.”¹

During the Relevant Period, Stock USA’s WSPs stated that Ferrari was responsible for preapproving advertising materials including sales literature, websites, and social media. Similarly, the Firm’s procedures required Ferrari to preapprove online webinars. However, Ferrari failed to preapprove certain of the Firm’s websites, social media accounts, and webinars, as required.

Specifically, Ferrari failed to review and preapprove Stock USA’s websites mastertrader.com and pristine.com. Similarly, Ferrari did not review and preapprove postings on the Firm’s Facebook, Twitter, and YouTube pages. Further, Ferrari could not demonstrate that certain posts on Stock USA’s social media accounts relating to options trading were approved in advance by him or any other Registered Options Principal at the Firm.

Additionally, during the Relevant Period, a number of registered representatives at the Firm’s branch located in White Plains, New York (the “White Plains Branch”) conducted webinars touting various online trading strategies. Ferrari did not review and preapprove any of these webinars, as required.

By failing to review and approve in advance certain advertising materials, Ferrari violated NASD Rule 2210(b) and FINRA Rules 2210(b), 2220(b) and 2010.

2. Failure to Enforce the Firm’s Procedures Regarding Registered Representatives’ Outside Securities Accounts

NASD Rule 3010 (b) requires member firms to establish, maintain and enforce written supervisory procedures reasonably designed to supervise their associated persons to ensure compliance with applicable securities laws and regulations and NASD rules.

Stock USA’s procedures stated the following regarding the review of representatives’ outside securities accounts:

SECURITIES ACCOUNTS - a registered representative who should open a securities account with another FINRA member will provide information

¹ FINRA Rule 2220 was in effect from December 14, 2009.

regarding this account and confirmations will come to the firm's home office. The CCO will review all trades. All transactions will be initialed and filed in an "Outside Accounts" binder.

During the Relevant Period, Ferrari failed to conduct an adequate review of transactions in outside securities accounts held by registered representatives at the Firm's White Plains Branch. Specifically, the White Plains Branch maintained hard copies of representatives' outside brokerage account statements but failed to forward the statements to Ferrari for review and approval. Also, Ferrari failed to send instructions to the outside brokerage firms advising that duplicate statements should be sent to the Firm's Compliance Department. Finally, Ferrari permitted JE, the branch manager of the White Plains Branch, to review and approve his own outside brokerage account statements.

By failing to enforce the Firm's procedures regarding the supervision of registered representatives' outside securities accounts, Ferrari violated NASD Conduct Rule 3010(b) and FINRA Rule 2010.

3. Failure to Enforce the Firm's Procedures Regarding Registered Representatives' Use of Outside Email Accounts

Stock USA's procedures stated that as CCO, Ferrari was responsible for reviewing incoming and outgoing correspondence, including email. The procedures further stated that "the Firm does not allow the use of any outside e-mail accounts for correspondence to its customers."

During the Review Period, three representatives from the Firm's White Plains Branch used personal email accounts to communicate with Firm customers. None of these email accounts had been registered with the Firm's email review system. Moreover, each of these representatives sent emails from their personal accounts to Ferrari and other Firm principals. Accordingly, the Firm and Ferrari should have taken steps to investigate whether these representatives were using the outside email accounts to communicate with customers in violation of the Firm's WSPs. Nevertheless, Ferrari failed to investigate the representatives' use of outside email accounts and failed to prevent the representatives from using these outside email accounts or to have the accounts registered with the Firm.

By failing to enforce the Firm's procedures regarding the supervision of registered representatives' use of outside email accounts, Ferrari violated NASD Conduct Rule 3010(b) and FINRA Rule 2010.

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

- a three-month suspension from association with any FINRA member in a principal capacity; and
- a \$10,000 fine.

The fine shall be due and payable either immediately upon reassociation with a member firm following the 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 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 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;
- 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; and

- 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.

05/07/2015
Date (mm/dd/yyyy)

Barry M. Ferrari
Barry M. Ferrari

Accepted by FINRA:

5/26/2015
Date

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

Noel C. Downey
Noel C. Downey
Senior Regional Counsel
FINRA Department of Enforcement
581 Main Street – Room 710
Woodbridge, NJ 07095
732-596-2042 (telephone)
202-721-6548 (facsimile)