

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2018057548201**

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

RE: ACS Execution Services, LLC, Respondent
Member Firm
CRD No. 17972

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent ACS Execution Services, LLC ("Respondent" or 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 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

The Firm became a FINRA member in July 1986. The Firm is headquartered in Red Bank, New Jersey, maintains two branch offices, and employs approximately 14 registered representatives. The Firm provides execution services to other broker-dealers.

RELEVANT DISCIPLINARY HISTORY

On May 21, 2015, FINRA accepted an AWC from the Firm (f/k/a Soloway & Co.), which imposed a censure, a \$5,000 fine, and an undertaking to update its written supervisory procedures ("WSPs") in connection with violations of FINRA Rules 7450 and 2010 and NASD Rule 3010 that occurred during the period of March 1, 2012, through February 28, 2014.

OVERVIEW

Between March 9, 2016, and February 9, 2018 (the "Review Period"), the Firm violated FINRA Rules 7450(a) and 2010 by reporting 343,503,736 Reportable Order Events ("ROEs") to the Order Audit Trail System ("OATS"), nearly all of which contained

inaccurate, incomplete or improperly formatted data with respect to order event timestamps in milliseconds. The Firm also violated FINRA Rules 3110(a) and (b) and 2010 by failing to establish and maintain a system to supervise, as well as WSPs, reasonably designed to achieve compliance with applicable FINRA rules regarding the accuracy of order event timestamps reported to OATS.

FACTS AND VIOLATIVE CONDUCT

Relevant Rules

1. FINRA Rule 7450(a) requires, in relevant part, that “[a]ll applicable order information required to be recorded under Rule 7440 . . . be transmitted to [OATS] by each Reporting Member.”
2. FINRA Rule 7440 requires members to record order information related to an order’s receipt or origination, transmission, modification, cancellation, and execution. FINRA Rule 7440(a)(2) requires that “the time of an event shall be expressed in hours, minutes, seconds, and milliseconds if the member’s system captures time in milliseconds.”¹
3. FINRA Rule 3110(a) requires members to “establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.”
4. FINRA Rule 3110(b) requires members to “establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.”
5. FINRA Rule 2010 requires members, in the conduct of their business, to “observe high standards of commercial honor and just and equitable principles of trade.” Violations of FINRA Rules 7450 and 3110 also constitute violations of FINRA Rule 2010.

Violations of FINRA Rules 7450 and 2010 (Inaccurate OATS Reporting)

6. Each required record of the time of an event entered into OATS must be expressed in terms of hours, minutes, and seconds. The time of an event must be expressed in hours, minutes, seconds, and milliseconds if the member’s system captures time in milliseconds.
7. During the Review Period, the Firm’s system for capturing order event times captured milliseconds data.

¹ FINRA Rule 7440’s requirement to report milliseconds became effective on April 7, 2014.

8. During the Review Period, the Firm submitted approximately 343,503,736 New Order Reports (“NWs”) to OATS, which represents approximately 37 percent of the Firm’s total reporting obligation (919,499,626) during the Review Period. But the Firm reported all 343,503,736 NWs to OATS with “000” as the milliseconds data, rather than the actual milliseconds captured by the Firm’s system. As a result, nearly all of its NWs reports to OATS during the Review Period were inaccurate. The Firm remediated the issue on February 9, 2018. By virtue of the foregoing, the Firm violated FINRA Rules 7450(a) and 2010.

Violations of FINRA Rules 3110(a), 3110(b), and 2010 (Failure to Establish and Maintain a System to Supervise and Failure to Establish, Maintain and Enforce WSPs)

9. During the Review Period, the Firm failed to establish and maintain a system to supervise the activities of each associated person, as well as WSPs, reasonably designed to achieve compliance with applicable FINRA rules regarding the accuracy of order event timestamps reported to OATS. The Firm’s WSPs provided for reviews based on certain automated daily feedback on the OATS website including, but not limited to, Unmatched Exchange Route Reports and Unmatched Inter-Firm Route Reports. In addition, the Firm’s supervision of its OATS reporting accuracy included a review of its monthly OATS Report Cards.² OATS automated daily feedback and monthly Report Cards, however, do not provide feedback for milliseconds reporting (among other fields). The Firm took corrective action on March 27, 2018. By virtue of the foregoing, the Firm violated FINRA Rules 3110(a), 3110(b), and 2010.

B. Respondent also consents to the imposition of the following sanctions:

1. A censure; and
2. A fine of \$75,000 (comprising a \$55,000 fine for violating FINRA Rules 7450(a) and 2010 and a \$20,000 fine for the supervision violations).

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

Respondent specifically and voluntarily waives any right to claim an inability 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.

² FINRA provides member firms access to report cards that cover a variety of topics and rulesets that help firms track their compliance with key equity trading rules related to, among other things, the OATS rules.

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against it;
- 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, Respondent specifically and voluntarily waives 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.

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 action brought by FINRA or any other regulator against Respondent;
 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. 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: (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. 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.

The undersigned, on behalf of the Respondent 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 it to submit it.

ACS Execution Services, LLC
Respondent

2/18/2020
Date

By: Mark DeRolf

Print Name: Mark DeRolf

Title: CEO

Reviewed by:

Attorney Name
Counsel for Respondent
Firm Name
Address
City/State/Zip

Accepted by FINRA:

2-28-2020
Date

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



Manuel Yanez
Senior Counsel
FINRA
Department of Enforcement
15200 Omega Drive, Suite 300
Rockville, Maryland 20850