

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2018057929601**

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, Respondent ACS Execution Services, LLC 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 in this AWC.

**I.
ACCEPTANCE AND CONSENT**

- A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

ACS Execution Services, LLC (ACS), a FINRA member since 1986, provides execution services to other broker-dealers. The firm is headquartered in Red Bank, New Jersey, and employs approximately 10 registered representatives.¹

OVERVIEW

From June 2017 to the present, ACS violated Regulation SHO Rule 203(b)(1) and FINRA Rule 2010 by effecting at least 10 million short sales to facilitate net trading by its broker-dealer clients without locating shares available for borrowing.

During the same period, ACS also violated FINRA Rules 3110 and 2010 by failing to establish and maintain a supervisory system, including written supervisory procedures (WSPs), reasonably designed to achieve compliance with the locate requirements of Rule 203.

FACTS AND VIOLATIVE CONDUCT

This matter originated from an examination conducted by FINRA's Department of Market Regulation.

¹ For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

ACS failed to obtain locates for short sale orders as required by Rule 203(b)(1) of Regulation SHO.

Rule 203(b)(1) of Regulation SHO, known as the “Locate Requirement”, provides that a broker-dealer may not accept a short sale in an equity security from another person, or effect a short sale in an equity security for its own account, unless it has (i) borrowed the security or entered into a bona-fide arrangement to borrow the security, or (ii) reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due, and (iii) documented compliance with subsection (b)(1).

A violation of Rule 203(b) also constitutes a violation of FINRA Rule 2010, which requires member firms to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

ACS provides execution services to broker-dealers and executes orders on an agency, net trade, or riskless principal basis based on the instructions it receives. When the firm receives a short sale order from a client that trades on a net basis,² the firm effects a principal short sale order (or orders) in the same security on an exchange or other execution venue and then satisfies the order by buying the security as principal at a different price. When trading in this manner, two short sales are effected: ACS accepts a short sale order from its broker-dealer client, and ACS effects a short sale order for its own account.

From June 2017 to the present, ACS incorrectly believed that it could rely on a broker-dealer client’s locate when effecting a short sale for its own account to facilitate net trading. As a result, ACS effected at least 10 million short sales for its own account to facilitate short sale orders on a net basis without borrowing the securities, entering into a bona fide arrangement to borrow the securities, or having reasonable grounds to believe the securities could be borrowed so that they could be delivered on the date delivery was due.

Therefore, Respondent violated Regulation SHO Rule 203(b)(1) and FINRA Rule 2010.

ACS failed to establish and maintain a supervisory system, including WSPs, reasonably designed to achieve compliance with Rule 203(b)(1) of Regulation SHO.

FINRA Rule 3110(a) requires member firms 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. FINRA Rule 3110(b) requires member firms to establish, maintain, and enforce WSPs 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.

² As defined in FINRA Trade Reporting FAQ 304.1, a net trade is a principal trade in which a broker-dealer, after having received an order to buy (sell) an equity security, purchases (sells) the security at one price and satisfies the original order by selling (buying) the security at a different price. The difference between the price of the initial transaction and the price of the offsetting transaction is generally considered the broker-dealer’s compensation.

A violation of FINRA Rule 3110 is also a violation of FINRA Rule 2010.

From June 2017 to the present, ACS's supervisory system and WSPs were not reasonably designed to achieve compliance with Regulation SHO Rule 203(b)(1). The firm's WSPs incorrectly indicated that ACS could rely on a broker-dealer client's locate when facilitating a client order through a separate principal order for the firm's account. Although ACS required its broker-dealer clients to represent they obtained a locate, ACS did not implement any other supervisory system, surveillance, or review to monitor its compliance with or application of the locate requirement of Rule 203(b)(1).

Therefore, Respondent violated FINRA Rules 3110 and 2010.

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

- a censure;
- a \$250,000 fine; and
- an undertaking that, within 60 days of the date of the notice of acceptance of this AWC, a member of Respondent's senior management who is a registered principal of the firm shall certify in writing that, as of the date of the certification, the firm has remediated the issues identified in this AWC and implemented a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with Rule 203 of Regulation SHO regarding the issues identified in this AWC. The certification shall include a narrative description and supporting exhibits sufficient to demonstrate Respondent's remediation and implementation. FINRA staff may request further evidence of Respondent's remediation and implementation, and Respondent agrees to provide such evidence. Respondent shall submit the certification to Jason Mogel, Senior Counsel, FINRA, 99 High Street, Suite 900, Boston, MA 02110, jason.mogel@finra.org, with a copy to EnforcementNotice@finra.org. Upon written request showing good cause, FINRA staff may extend this deadline.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is 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 after the execution of this AWC, the monetary sanction imposed in this matter.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

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 its acceptance or rejection.

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 its subject matter 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. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.

- 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.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's 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 Respondent 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 in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

June 5, 2024

Date

Mark DeRolf

ACS Execution Services, LLC
Respondent

Print Name: Mark DeRolf

Title: Chief Compliance Officer

Reviewed by:

Susan Light

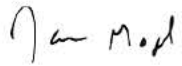
Susan Light
Michael J. Lohnes
Counsel for Respondent
Katten Muchin Rosenman LLP
50 Rockefeller Plaza
New York, NY 10020

Accepted by FINRA:

June 10, 2024

Date

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



Jason Mogel

Senior Counsel

FINRA

Department of Enforcement

99 High Street, Suite 900

Boston, MA 02110