

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND
CONSENT NO. 2019061067510**

TO: Department of Enforcement
Financial Industry Regulatory Authority

RE: Electronic Transaction Clearing, Inc.
Member Firm
CRD No. 146122

Pursuant to FINRA Rule 9216, Respondent Electronic Transaction Clearing, Inc. 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

ETC has been a FINRA member since July 2009. The firm is headquartered in Los Angeles, California, and currently employs approximately 75 registered representatives in its four branch offices. ETC is a self-clearing broker-dealer that provides execution and clearing services to broker-dealers and non-broker-dealers.

On July 24, 2017, FINRA accepted an Offer of Settlement in which the firm was censured and fined \$250,000 for, among other violative conduct, failing to properly net all positions for accounts that were related or under common control in order to determine whether sales were long or short. (Matter No. 20130377093).

On December 29, 2016, Cboe Exchange, Inc. accepted an Offer of Settlement in which the firm was censured and fined \$150,000 for, among other violative conduct, failing to reasonably supervise order marking by the Firm's non-broker-dealer customers and failing to monitor and enforce any policies and procedures designed to prevent incorrect identification of orders as "sell short exempt." (File No. 16-0013, Matter No. 20150460041).¹

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

OVERVIEW

From August 2017 through June 2020, the firm violated FINRA Rules 3110 and 2010 by failing to establish and maintain a supervisory system reasonably designed to achieve compliance with Rule 200(g) of Regulation SHO.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's 2019 cycle examination of the firm.

FINRA Rule 3110(a) requires that FINRA members "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 FINRA 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." A violation of FINRA Rule 3110 also is a violation of FINRA Rule 2010, which requires FINRA members, in the conduct of their business, to "observe high standards of commercial honor and just and equitable principles of trade."

Rule 200(g) of Regulation SHO requires broker-dealers to "mark all sell orders of any equity security as 'long,' 'short,' or 'short exempt.'" The broker-dealer selling an equity security may only mark an order as "long" in the event that it is deemed to own the security being sold and either (i) the security to be delivered is in the physical possession or control of the broker or dealer; or (ii) it is reasonably expected that the security will be in the physical possession or control of the broker or dealer no later than the settlement of the transaction.

From August 2017 to June 2019, the firm had no supervisory system reasonably designed to check that it was correctly marking sell orders in compliance with Rule 200(g) of Regulation SHO, and ETC's written supervisory procedures (WSPs) were unreasonable because they did not describe any procedures for reviewing or testing orders to achieve compliance with order marking requirements. In July 2019, the firm implemented a supervisory system whereby it sampled orders for the correct marking of sell orders, and in July 2020, updated its WSPs to contain a detailed description of the steps to conduct the review.

Furthermore, from August 2017 through June 2020, the firm failed to reasonably monitor the orders of customers that used more than one market participant identifier (MPID) to verify that the customers' positions were aggregated for purposes of marking those orders accurately as required by Rule 200(g). In July 2020, the firm updated its WSPs to address customers that use more than one MPID.

Therefore, Respondent violated FINRA Rules 3110 and 2010.

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

- A censure; and
- A total fine of \$70,000 (\$7,000 payable to FINRA).²

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 hereafter, 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

² The remainder of the fine shall be allocated to New York Stock Exchange LLC, NYSE Arca, Inc., NYSE National, Inc., The Nasdaq Stock Market LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., and Investors Exchange LLC for similar violations.

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.

May 11, 2022

Date

William Brennan

Electronic Transaction Clearing, Inc.
Respondent

Print Name: William Brennan

Title: Chief Executive Officer

Reviewed by:

Susan Light

Susan Light
Counsel for Respondent
Katten Muchin Rosenman LLP
575 Madison Avenue
New York, NY 10022-2585
212.940.8599

Accepted by FINRA:

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

May 20, 2022

Date

Steven M. Tanner

Steven M. Tanner
Senior Counsel
FINRA
Department of Enforcement
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