

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2020067160501**

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

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

Pursuant to FINRA Rule 9216, Respondent Electronic Transaction Clearing, Inc. (ETC) 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 member of FINRA since July 2009. The firm is headquartered in Los Angeles and employs approximately 80 registered representatives across four branches. ETC provides execution and clearing services to institutional customers.

In May 2016, FINRA entered into an AWC with the firm (No. 2013036531901) imposing a censure and fine of \$75,000 for multiple violations, including violations of FINRA Rule 4560 for inaccurately reporting short interest positions. Specifically, between August 2013, and October 2013, the firm reported to FINRA 946 short interest positions totaling 4,322,237 shares when it should have reported 68 short interest positions totaling 465,651 shares.¹

OVERVIEW

Between January 2020, and July 2020, ETC reported short interest positions for one customer that were also being reported by ETC's clearing firm, resulting in the firm overreporting its short interest positions. Specifically, the firm reported 10,473 securities totaling 16,401,162 shares when it should have reported 1,450 securities totaling 3,476,103 shares. Additionally, between September 2020, and July 2021, ETC reported

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

short interest positions before same-day trades for one customer were settled. This resulted in the firm (1) failing to report short interest positions in 453 securities totaling 222,709 shares; (2) under reporting 201 securities totaling 1,170,158 shares when it should have reported 201 securities totaling 1,281,623 shares; and (3) over reporting 352 securities totaling 1,814,659 shares when it should have reported 185 securities totaling 1,708,377. As a result, ETC violated FINRA Rules 4560 and 2010.

Between January 2020, and July 2021, ETC also failed to establish and maintain a supervisory system, including written supervisory procedures (WSPs), reasonably designed to achieve compliance with the short interest reporting rules, in violation of FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's periodic reviews of short interest positions in 2020 and 2021.

ETC failed to report to FINRA accurate short interest position data.

Short interest reflects the total open short positions on a firm's books and records on a per-security basis. All brokerage firms report short interest data to FINRA twice a month within two business days of the designated settlement date which includes all short positions as of the close of business on the settlement date. The accuracy of reported short interest is crucial for regulatory purposes as aggregate short interest data is disseminated to the public by FINRA and exchanges, as well as financial media, and may be relied upon by the public in making investment decisions.

FINRA Rule 4560 requires members to maintain a record of total short interest positions in all customer and proprietary firm accounts in all equity securities, and to regularly report such positions in a manner prescribed by FINRA.

FINRA Rule 2010 provides that a "member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." A violation of Rule 4560 constitutes a violation of Rule 2010.

In August 2012, FINRA published Regulatory Notice 12-38, Short-Interest Reporting which stated that complete and accurate short interest data should be reported to FINRA only once. Duplicate reporting results in inaccurate short-interest position information. A firm is responsible for determining whether its clearing firm is reporting short interest on its behalf and, if so, the firm should not submit a duplicate report.

ETC failed to exclude the short interest positions of one of its customers whose account was custodied at ETC's clearing firm, resulting in duplicative and inaccurate reporting of the customer's short interest positions to FINRA. Specifically, in 13 reports between January 2020, and July 2020, ETC inaccurately reported 10,473 short interest securities totaling 16,401,162 shares when it should have reported 1,450 short interest securities totaling 3,476,103 shares.

Between September 2020, and July 2021, in eight short interest reports submitted to FINRA, ETC pulled short interest data before same day trades for a customer were settled. This caused ETC to (1) fail to report short interest positions in 453 securities totaling 222,709 shares; (2) under report 201 securities totaling 1,170,158 shares when it should have reported 201 securities totaling 1,281,623 shares; and (3) over report 352 securities totaling 1,814,659 shares when it should have reported 185 securities totaling 1,708,377.

Therefore, ETC violated FINRA Rules 4560 and 2010.

ETC failed to establish and maintain a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with the short interest reporting rules.

FINRA Rule 3110(a) requires members to establish and maintain a system, including WSPs, 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 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 is also a violation of FINRA Rule 2010.

Between January 2020, and July 2021, ETC failed to establish and maintain a supervisory system, including its WSPs, reasonably designed to achieve compliance with its short interest reporting obligations. The firm failed to program its reporting system to exclude short positions in certain accounts custodied at its clearing firm from its own short interest reports, which led to duplicative and inaccurate reporting. The firm’s system also failed to include a periodic evaluation of its reporting logic to ensure that only the correct short positions were reported and that all reportable positions, including same day trades, were included. Additionally, ETC’s WSPs relating to short interest failed to describe a process to reasonably supervise the firm’s short interest reporting obligations. For example, the WSPs did not describe any steps to ensure that positions custodied and reported by its clearing firm were excluded from its own short interest reporting. Furthermore, the WSPs were silent as to when the automated short interest report should be generated instead of making clear that the data should be pulled after same day trades had settled. The comparison described in the WSPs between internal reports compared share totals but failed to match the values being reported to the firm’s stock record, a comparison which would have identified the inaccurate reporting of the short interest positions.

After notification from FINRA that the firm was providing inaccurate short interest reports, ETC revised its procedures in August 2020 to exclude from its reports the positions custodied with and reported by its clearing firm. The firm also updated its

operations guide in July 2021 to start the short interest report process after same day trades had been settled.

By failing to establish a maintain a supervisory system reasonably designed to achieve compliance with the short interest reporting rules, Respondent violated FINRA Rules 3110 and 2010.

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

- a censure and
- a \$150,000 fine

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.

January 11, 2023

Date

William Brennan

Electronic Transaction Clearing, Inc.
Respondent

Print Name: William Brennan

Title: CEO

Accepted by FINRA:

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

January 13, 2023

Date

Carolyn Isaac

Carolyn Isaac
Principal Counsel
FINRA
Department of Enforcement
15200 Omega Drive
Rockville, 20850