

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2018057023701**

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

RE: TradeStation Securities, Inc. (Respondent)
Member Firm
CRD No. 39473

Pursuant to FINRA Rule 9216, Respondent TradeStation Securities, 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

TradeStation has been a FINRA member since 1996. The firm is headquartered in Plantation, Florida, has four branch offices, and currently has approximately 150 registered representatives. TradeStation provides on-line trading platforms to self-directed retail and institutional customers, and the firm self-clears its customers' equities and options transactions.

On December 1, 2011, pursuant to AWC No. 2010023934201, FINRA found that the firm failed to implement a reasonably designed system for the review of suspicious activity in customer accounts, independent testing of the firm's Anti-Money Laundering (AML) program, and reasonable AML training to employees tasked with implementing the firm's AML program. It was censured and fined \$200,000.¹

OVERVIEW

From January 2016 to March 2022, TradeStation failed to establish and implement an AML program reasonably designed to cause the reporting of suspicious trading by its customers. Specifically, the firm's AML program did not establish reasonable procedures for escalating potentially suspicious trading for AML review and the firm failed to

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

escalate certain trading in order to assess whether a suspicious activity report (SAR) should be filed. The firm thereby violated FINRA Rules 3310(a) and 2010. In addition, the firm did not establish reasonable written supervisory procedures (WSPs) in connection with the acceptance and resale of low-priced securities to achieve compliance with Section 5 of the Securities Act of 1933, thereby violating FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's examination program.

FINRA Rule 3310 requires each member to develop and implement a written AML program reasonably designed to achieve and monitor the firm's compliance with the requirements of the Bank Secrecy Act (BSA) and implementing regulations. FINRA Rule 3310(a) requires each firm to "[e]stablish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under [the BSA] and the implementing regulations." The implementing regulation, 31 CFR § 1023.320, requires broker-dealers to file with the Financial Crimes Enforcement Network "a report of any suspicious transaction relevant to a possible violation of law or regulation."

NASD's Notice to Members 02-21 warned firms that they have a duty to tailor their AML program to the particular risks of their business model, as well as their customer base; monitor red flags of suspicious activity; and where suspicious activity is detected, perform additional due diligence to determine whether or not to file a SAR. In Regulatory Notices 19-18 and 20-32, FINRA identified AML red flags in connection with securities trading to include but not be limited to instances where the firm's customers engage in (i) trading that results in regulatory inquiries or subpoenas; (ii) pre-arranged trading; (iii) spoofing;² (iv) layering;³ (v) marking the close; (vi) trading ahead of a significant price movement; (vii) trading that represents a significant proportion of the daily volume in a low-priced or thinly traded security; or (viii) the rapid purchase and sale of out-of-the money listed calls and puts at non-competitive prices.

A violation of FINRA Rule 3310 also constitutes 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."

² "Spoofing" is a manipulative trading tactic designed to induce other market participants into executing trades whereby a "customer engages in a frequent pattern of placing orders on one side of the market, usually inside the existing National Best Bid or Offer (NBBO), followed by the customer entering orders on the other side of the market that execute against other market participants that joined the market at the improved NBBO." FINRA Regulatory Notice 19-18 (May 2019).

³ "Layering" is a manipulative trading tactic whereby "a customer engages in a frequent pattern of placing multiple limit orders on one side of the market at various price levels, followed by the customer entering orders on the opposite side of the market that are executed and the customer cancelling the original limit orders." FINRA Regulatory Notice 19-18 (May 2019).

1. TradeStation did not develop and implement reasonable escalation and tracking procedures for its AML program.

The firm's AML program did not include reasonable procedures concerning the escalation of potentially suspicious customer trading to determine whether the activity should be reported to FinCEN, including the factors to consider or the process that should be followed.

To monitor for potentially suspicious trading, the firm primarily relied on alerts generated by automated surveillance systems supplied by a vendor. From 2016 to 2019, the legacy surveillance system generated over 100,000 trading alerts, or about 100 alerts each trading day. During this time period, two to three analysts in the Compliance department, who also had other responsibilities, were primarily tasked with reviewing the trading alerts, some of which were false positives. In September 2019, the firm switched to a different vendor, which had a more robust automated trade surveillance system that reduced the number of false positive alerts, and that generated approximately 50 alerts each trading day in the first six months after its implementation. In 2020, in connection with the growth of its business, the firm also added three additional analysts to assist with review of the alerts.

To resolve an alert, an analyst could close the alert with no further action, send the customer a warning notice, restrict the customer from trading in a security, or close the customer account. In conjunction with resolving an alert, the analysts could also escalate the activity to the AML department to determine whether a SAR should be filed. From 2016 to 2022, the analysts addressed the alerts by taking different actions. For example, they frequently closed alerts with no further action, but they did not always document their investigation or conclusion that the activity was not suspicious. They also appropriately restricted or closed customer accounts, including for suspicious trading activity, but again did not always document the reason for their actions. In addition, the analysts did not always escalate the activity to the AML department to consider whether a SAR should be filed. The firm did not have a reasonably designed system to supervise how the analysts reviewed and resolved the alerts or whether they were consistently escalating potentially suspicious trading to the AML department for consideration of reporting to FinCEN.

The firm was made aware that it could enhance the foregoing components of its AML program in 2016 and 2017, as part of its annual AML independent testing. The independent testing reports recommended that the firm better document its process for escalating matters to the AML department and track subsequent AML investigations. However, the firm did not fully implement these recommendations until March 2022. In 2018, the firm began tracking AML investigations and SAR filings. In 2022, the firm further enhanced its procedures to require documentation of all matters escalated to the AML department.

Because of the foregoing deficiencies, which existed from January 2016 to March 2022, the analysts did not consistently escalate certain potentially suspicious trading to the AML department for an assessment of whether a SAR should be filed.

For example:

- From 2016 to 2018, the firm received five regulatory inquiries regarding a retail customer of the firm, whose account had generated hundreds of alerts for potential layering, spoofing, trading a significant proportion of the daily trading volume in a low-priced security, and marking the close activity. From April 2017 to October 2017, the customer's account generated multiple trading alerts in one security, along with other red flags to suggest that the customer may have been involved in a potential fraudulent pump-and-dump scheme in that security. In September 2018, the firm terminated the customer relationship. While the Compliance department escalated the customer and his activity to the AML department in September and October 2016, the analysts reviewing the activity after October 2016 did not escalate it to the AML department until 2018.
- From June 2017 to March 2022, an institutional customer of the firm – a foreign financial institution that maintained two omnibus accounts – generated over 10,000 alerts for potentially suspicious trading activity including layering, wash trades, trading ahead of a significant price movement, or trading a significant proportion of the daily trading volume in low-priced securities. On hundreds of occasions, the firm imposed restrictions prohibiting the institutional customer's further trading in certain securities but only escalated the customer to the AML department in three instances in 2018 to determine whether the activity warranted the filing of a SAR.
- From June 2017 to March 2022, a retail customer of the firm generated over 750 alerts for potentially suspicious trading activity. From August 2018 to August 2020, the firm sent the customer five warning notices relating to potentially suspicious trading in her account, including wash trading and marking the close, but only escalated the customer to the AML department in one instance, in October 2018, to determine whether the activity warranted the filing of a SAR.

Therefore, Respondent violated FINRA Rules 3310(a) and 2010.

2. TradeStation did not establish reasonable WSPs in connection with the acceptance and resale of low-priced securities.

FINRA Rule 3110(a) requires a member firm 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 a member firm 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 constitutes a violation of FINRA Rule 2010.

Section 5 of the Securities Act prohibits the sale of any security unless a registration statement is in effect or there is an applicable exemption from registration. Firms that accept delivery of low-priced, over-the-counter securities, in either certificate form or by electronic transfer, and effect sales in these securities, are required to have written procedures and controls in place to prevent participation in an illegal, unregistered distribution of securities. In Regulatory Notice 09-05, FINRA noted that firms' written procedures should include a "mandatory, standardized process" that communicates each step in the review, approval, and post-approval process, clearly assigns ownership of each step in the process, and is easily accessible to the people involved in the process.

From 2016 to 2022, TradeStation's WSPs pertaining to Section 5 of the Securities Act did not describe all of the steps in the firm's review, approval, and post-approval process, to address the firm's review of the deposit and resale of low-priced securities to prevent the firm's participation in an unregistered distribution of restricted securities. Additionally, the procedures did not designate individuals responsible for the various steps in the process. Instead, the procedures designated "Compliance" and "Settlements" with responsibility for compliance with Section 5 of the Securities Act. Further, from January 2018 to March 2022, the firm's procedures inaccurately stated that the Compliance department had responsibility to ensure compliance with Section 5 of the Securities Act, when the responsibility had been transferred to the Trading Operations department.

Therefore, the Firm violated FINRA Rules 3110 and 2010.

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

- a censure;
- a \$700,000 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 Rules 3310 and 3110 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 Jessica Zetwick-Skryzhynskyy, Director, at 9509 Key West Ave., Rockville, MD 20850 and Jessica.Zetwick-Skryzhynskyy@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.

January 18, 2024

Date

Peter Korotkiy

TradeStation Securities, Inc.
Respondent

Print Name: Peter Korotkiy

Title: President & COO

Reviewed by:

Michael A. Gross

Michael A. Gross
Counsel for Respondent
Ulmer & Berne LLP
2255 Glades Road, Suite 324A
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Accepted by FINRA:

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

February 9, 2024

Date

Julie Lenaghan

Julie A. Lenaghan
Principal Counsel
FINRA
Department of Enforcement
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