

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2021072581301**

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

RE: TradeZero America, Inc. (Respondent)
Member Firm
CRD No. 282940

Pursuant to FINRA Rule 9216, Respondent TradeZero America, 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

TradeZero America, Inc., which became a FINRA member in 2016, provides self-directed trading to retail investors through its online portal. Headquartered in Brooklyn, New York, the firm has 28 registered representatives at one branch office.¹

OVERVIEW

Between July 2020 and October 2022, TradeZero America paid individuals with followings on social media sites (commonly known as “influencers”) to promote the firm in social media communications. Such influencers posted social media communications on the firm’s behalf that were not fair and balanced or that made exaggerated or promissory claims. Therefore, TradeZero America violated FINRA Rules 2210(d)(1) and 2010.

During that same period, TradeZero America did not review its influencers’ videos prior to their posting on social media platforms, nor did the firm retain those videos. The firm also did not review or retain influencers’ posts made in online interactive electronic forums. TradeZero America also failed to establish, maintain, and enforce a system, including written supervisory procedures (WSPs), reasonably designed to supervise retail communications disseminated on the firm’s behalf by its influencers. Therefore, the firm

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

violated the Securities Exchange Act of 1934 Section 17(a), Exchange Act Rule 17a-4(b)(4), and FINRA Rules 2210(b), 4511, 3110, and 2010.

In addition, between January 2020 and January 2022, TradeZero America provided customers with privacy notices that inaccurately stated the extent to which the firm would use their nonpublic personal information in violation of Regulation S-P of the Securities Exchange Act of 1934 Rule 4 (17 CFR § 248.4) and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a FINRA examination of firms' practices related to the acquisition of customers through social media channels and the sharing of customer information.

1. TradeZero America's influencer communications were not fair and balanced and included exaggerated and promissory statements.

FINRA Rule 2210 addresses FINRA member communications with the public and includes content standards that apply to all member communications, including retail communications. FINRA Rule 2210(a)(5) defines retail communication as any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period.

FINRA Rule 2210(d)(1)(A) requires that all member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts regarding any particular security, industry, or service. No member may omit any material fact or qualification if the omission, considering the context of the material presented, would cause the communication to be misleading. FINRA Rule 2210(d)(1)(B) states that no member may make any false, exaggerated, unwarranted, promissory, or misleading statement or claim in any communication or publish, circulate, or distribute any communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

A violation of FINRA Rule 2210 also is 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.

In Regulatory Notices 10-06 and 17-18, FINRA stated that third parties' social media posts would constitute retail communications subject to FINRA Rule 2210 if a member firm either (1) paid for or was involved in the preparation of the content prior to posting (which FINRA referred to as "entanglement") or (2) explicitly or implicitly endorsed or approved the content (which FINRA referred to as "adoption"). Regulatory Notice 17-18 also stated firms should clearly identify as advertisements any communications that take the form of comments or posts by influencers as well as any other information required for compliance with FINRA Rule 2210.

During the relevant period, TradeZero America paid several influencers to promote the firm on social media platforms, including one influencer whose social media platforms had millions of viewers. During the relevant period, customers opened approximately 575 accounts using a unique referral link that TradeZero provided to its influencers.

TradeZero America's influencers' social media posts were retail communications of the firm and therefore subject to FINRA Rule 2210. TradeZero America provided each influencer with their own unique link which directed people to a page on the firm's website where they could open and fund a TradeZero America brokerage account. The firm also provided influencers with graphics to use in their social media posts and "talking points" that influencers could use to make their social media posts more effective. These talking points highlighted specific services and features offered by the firm. For example, the talking points noted that TradeZero America offered various features related to day-trading, but they omitted any discussion of the risks of day-trading. TradeZero America also promoted its partnership with one of its influencers on the firm's website and on social media platforms.

During the relevant period, TradeZero America's influencers created social media posts promoting TradeZero America that were not fair and balanced, as they did not discuss the risks of investing. The posts also contained exaggerated and promissory statements. For example, in a video posted in July 2020, one TradeZero America influencer told viewers that he was a "TradeZero guy" because the firm was for "people who want to trade and make billies" and not for "grandmas and grandpas who trade, like, one stock." In another video, the same influencer discussed his use of TradeZero America, stating he was up several thousand dollars without "even trying." These statements also misleadingly suggested that other individuals could achieve similar success by day-trading on TradeZero America. TradeZero America's influencers also posted communications which claimed that TradeZero America was a "free web trading platform," without disclosing that certain fees may apply or providing a prominent link to TradeZero America's fee schedule, or failed to disclose that the posts were advertisements.²

Therefore, TradeZero America violated FINRA Rules 2210(d)(1) and 2010.

² In Regulatory Notice 13-23, FINRA reminded firms that claiming or implying that accounts are "free" or "no fee" would generally be inconsistent with FINRA Rule 2210.

2. TradeZero America failed to review its influencers' posts about the firm and failed to preserve records of its influencers' posts.

FINRA Rule 2210(b)(1)(A) requires that an appropriately qualified registered principal of a member firm approve each retail communication before the earlier of its use or filing with FINRA's Advertising Regulation Department.³

In addition, the Exchange Act, its accompanying rules, and FINRA rules require firms to preserve certain records related to retail communications. Exchange Act §17(a) requires every registered broker-dealer to "keep for prescribed periods such records . . . as the Commission, by rule, prescribes." Exchange Act Rule 17a-4(b)(4) requires every registered broker-dealer to preserve for at least three years "all communications which are subject to rules of a self-regulatory organization of which the member, broker or dealer is a member regarding communications with the public." FINRA Rule 2210(b)(4)(A) requires that member firms maintain all retail communications for the period prescribed under the Exchange Act and maintain a record of, among other things: (i) the dates of first and last use of such communication; and (ii) the name of any registered principal who approved the communication and the date that approval was given. FINRA Rule 4511 requires member firms to "preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules."

A violation of the Exchange Act, Exchange Act Rules, and FINRA Rule 4511 also is a violation of FINRA Rule 2010.

During the relevant period, TradeZero America did not have an appropriately qualified registered principal approve influencers' videos prior to their publication and did not review influencers' posts made in online interactive electronic forums. The firm also did not maintain records of influencers' posts or the dates they were used.

Therefore, TradeZero America violated Exchange Act Section 17(a), Exchange Act Rule 17a-4, and FINRA Rules 2210(b), 4511, and 2010.

3. TradeZero America failed to establish, maintain, and enforce a reasonably designed supervisory system, including WSPs, for its influencers' retail communications.

FINRA Rule 3110(a) requires each 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 each member firm to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the

³ Rule 2210(b)(1)(D)(ii) excepts from this requirement retail communications posted in an online interactive electronic forum provided that the member supervises and reviews such communications in the same manner as required for supervising and reviewing correspondence pursuant to FINRA Rule 3110(b) and FINRA Rule 3110 Supplemental Material .06 through .09 (Rule 3110.06-Rule 3110.09).

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.

During the relevant period, TradeZero America did not establish, maintain, or enforce a system, including WSPs, reasonably designed to supervise retail communications posted on the firm's behalf by influencers. With respect to videos created by influencers that promoted TradeZero America, the firm's WSPs did not require any principal to review and approve videos prior to posting, and the firm did not in fact have any system to review and approve videos prior to posting. The firm's WSPs also did not require review and supervision of its influencers' posts made in online interactive electronic forums in the same manner as the firm reviewed and supervised correspondence. The firm also did not reasonably supervise its retail communications posted by influencers for compliance with FINRA Rule 2210(d)(1). Further, TradeZero America did not establish or maintain a supervisory system or procedures to preserve records of influencers' videos or their dates of use, as required by Exchange Act Section 17(a), Exchange Act Rule 17a-4, and FINRA Rule 2210(b)(4) and 4511.

Since the relevant period, the firm has revised its supervisory system, including its WSPs, to, among other things, require a registered principal of the firm to review and approve all influencers' social media communications promoting TradeZero America prior to use and to preserve records of such communications and their dates of use.

By failing to establish, maintain, and enforce a reasonably designed supervisory system, including WSPs, for its retail communications disseminated by its influencers, TradeZero America violated FINRA Rules 3110 and 2010.

4. TradeZero America provided inaccurate privacy notices to firm customers.

Regulation S-P requires that firms provide at the beginning of a customer relationship a clear and conspicuous notice to the customer that accurately reflects the firm's privacy policies and practices (17 CFR § 248.4). The notice must include the categories of nonpublic personal customer information that the firm collects and discloses, as well as the categories of affiliates and non-affiliated third parties to whom the information is disclosed (17 CFR § 248.6). A violation of Regulation S-P is also a violation of FINRA Rule 2010.

Between January 2020 and January 2022, at least 22,000 customers opened accounts at TradeZero America. The firm provided to each of those customers, at the time of account opening, a privacy notice to customers that stated, in relevant part:

[TradeZero America] disclose[s] nonpublic personal information only when it is both permitted by law and required for the ordinary course of business.

That statement was inaccurate. During that period, TradeZero America shared the nonpublic personal information of its customers with non-affiliated third parties for marketing purposes. For example, the firm shared customer names, e-mail addresses, social security numbers, birthdates, and state IDs, among other information, with a non-affiliated third-party service provider to develop effective marketing campaigns. Moreover, TradeZero America's privacy notice failed to state that the firm might share customers' nonpublic personal information with third parties for marketing purposes. Therefore, TradeZero America failed to disclose to customers the categories of nonpublic personal customer information the firm would disclose, and the non-affiliated third parties to whom it would disclose that information.

In January 2022, the firm updated its privacy notice to correct the inaccuracy.

By providing inaccurate privacy notices to customers, TradeZero America violated Regulation S-P Rule 4 and FINRA Rule 2010.

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

- a censure and
- a \$250,000 fine.

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

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.

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.

May 24, 2024

Date

Michael Haupt

TradeZero America, Inc.
Respondent

Print Name: Michael Haupt

Title: CEO

Accepted by FINRA:

June 10, 2024

Date

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

Alexandra Boudreau

Alex Boudreau
Principal Counsel
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Department of Enforcement
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