

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2018057956001**

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

RE: SageTrader, LLC (Respondent)  
Member Firm  
CRD No. 137862

Pursuant to FINRA Rule 9216, Respondent SageTrader, 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**

SageTrader has been a FINRA member since May 2006. The firm is headquartered in Englewood, New Jersey, maintains one branch office, and employs six registered representatives. SageTrader provides order routing and execution services in equities to institutional and U.S. registered broker-dealer clients.<sup>1</sup>

**OVERVIEW**

From July 2017 through November 2017, SageTrader mismarked approximately 9.7 million principal short sell orders, that resulted in approximately 390,000 executions, as long in violation of Rule 200(g) of Regulation SHO of the Securities and Exchange Act of 1934 and FINRA Rule 2010.

In addition, from July 2017 through February 2018, SageTrader failed to locate shares available for borrowing for approximately 490,000 principal short sales in violation of Rule 203(b)(1) of Regulation SHO and FINRA Rule 2010.

Further, from July 2017 through August 2022, SageTrader failed to establish, maintain, and enforce a supervisory system, including written supervisory procedures, reasonably

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<sup>1</sup> For more information about the firm, including prior regulatory events, visit BrokerCheck® at [www.finra.org/brokercheck](http://www.finra.org/brokercheck).

designed to achieve compliance with Regulation SHO's order marking and locate requirements in violation of FINRA Rules 3110 and 2010.

### **FACTS AND VIOLATIVE CONDUCT**

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

#### **SageTrader mismarked short-sale orders as long.**

Rule 200(g) of Regulation SHO requires that a broker-dealer mark all sell orders of any equity security as "long," "short" or "short exempt." A sell order may only be marked "long" if the seller 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.

A violation of Rule 200(g) also constitutes a violation of FINRA Rule 2010, which states that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."

In July 2017, SageTrader began effecting customer short sale orders on a net basis. Net trading generally refers to contemporaneous principal transactions where the initial and offsetting transactions are at different prices. For example, a firm trades on a "net" basis when it accumulates a position at one price and executes the offsetting trade with its customer or broker-dealer client at another price. SageTrader mismarked its principal short sales as long in connection with its handling of net trades because it incorrectly believed that the receipt of its customer sell order created an unconditional contract for the firm to purchase the securities from the customer and the firm was, therefore, deemed to own the securities.<sup>2</sup> SageTrader, however, had not entered into an unconditional contract with its customer because SageTrader would only purchase the subject securities from that customer if it was able to sell those securities to another broker-dealer. On December 1, 2017, the firm began marking its principal sales as short.

From July 2017 through November 2017, SageTrader improperly marked approximately 9.7 million principal short sale orders as long. Those orders resulted in approximately 390,000 executions.

Therefore, SageTrader violated Rule 200(g) of Regulation SHO and FINRA Rule 2010.

#### **SageTrader failed to obtain locates for its short sales.**

Rule 203(b)(1) of Regulation SHO provides that broker-dealers may not accept a short sale order 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

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<sup>2</sup> Rule 200(b)(2) provides that a person shall be deemed to own a security if "[t]he person has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase it, but has not yet received it."

vide arrangement to borrow the security, or (ii) has reasonable grounds to believe the security can be borrowed so that it can be delivered on the date delivery is due, and (iii) has documented compliance with subsection (b)(1). A broker-dealer must, therefore, locate securities available for delivery before effecting short sales for its own account. A violation of Rule 203(b)(1) also constitutes a violation of FINRA Rule 2010.

As a result of mismarking its principal sell orders as long from July 2017 through November 2017, SageTrader effected approximately 390,000 short sales without obtaining a locate. When the firm started marking its principal sales as short in December 2017, it also began uploading easy to borrow lists (ETBLs)<sup>3</sup> to its smart order router (SOR) to comply with Regulation SHO's locate requirement. SageTrader, however, failed to program the SOR to prevent the routing of short sale orders for securities that were not on the ETBLs. From December 2017 through February 2018 the firm failed to obtain locates for approximately 100,000 principal short sales. In late February 2018, SageTrader discovered this programming error and imposed a block on its SOR for non-ETBL securities.

By failing to obtain required locates for approximately 490,000 short sales, SageTrader violated Rule 203(b)(1) of Regulation SHO and FINRA Rule 2010.

**SageTrader failed to establish, maintain, and enforce a supervisory system reasonably designed to comply with Rules 200(g) and 203(b)(1) of Regulation SHO relating to order marking and locate requirements.**

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 is a violation of FINRA Rule 2010.

From July 2017 through August 2022, the firm failed to establish, maintain, and enforce a supervisory system, including WSPs, reasonably designed to achieve compliance with Regulation SHO's order marking and locate requirements.

From July 2017 to December 2018, SageTrader did not conduct any supervisory reviews and had no WSPs addressing order marking or locates for principal short sales.

In December 2018, the firm amended its WSPs to require periodic "spot checks" of principal orders and executions to ensure that the firm's SOR was properly marking

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<sup>3</sup> ETBLs are lists of securities that are readily available for borrowing and that generally may be used to satisfy Rule 203(b)(1)'s locate requirement. See SEC Division of Market Regulation: Responses to Frequently Asked Questions Concerning Regulation SHO, FAQ 4.2.

principal sales as short and that securities sold short were on the ETBL. The amended WSPs, however, failed to provide reasonable guidance as to when and how to conduct the referenced spot checks and were not reasonably designed to achieve compliance with Regulation SHO's order marking and locate requirements.

Therefore, SageTrader violated FINRA Rules 3110 and 2010.

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

- a censure; and
- a \$175,000 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.

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- 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.

March 1, 2023

Date

Michael Forsythe

SageTrader, LLC  
Respondent

Print Name: Michael Forsythe

Title: Chief Executive Officer

Reviewed by:

Susan Light

Susan Light  
Counsel for Respondent  
Katten Muchin Rosenman LLP  
50 Rockefeller Plaza  
New York, NY 10020-1605

Accepted by FINRA:

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

March 9, 2023

Date

Laurel S. Fensterstock

Laurel S. Fensterstock  
Principal Counsel  
FINRA  
Department of Enforcement  
200 Liberty Street  
New York, NY 10281