

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2018059045003**

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

RE: Traderfield Securities, Inc. (Respondent)
Member Firm
CRD No. 20130

Mario Divita (Respondent)
General Securities Principal
CRD No. 1504199

Pursuant to FINRA Rule 9216, Respondents Traderfield Securities, Inc. (Traderfield) and Mario Divita (Divita) submit 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 Respondents alleging violations based on the same factual findings described in this AWC.

I.

ACCEPTANCE AND CONSENT

- A. Respondents hereby accept and consent, without admitting or denying the findings and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

Traderfield has been a FINRA member firm since 1987. The firm is headquartered in Flushing, New York. The firm currently employs approximately six registered representatives and has one branch office.

Mario Divita first registered with FINRA as a General Securities Representative (GS) through a member firm in 1988. In October 2016, Divita registered as a GS and a Financial and Operations Principal through an association with Traderfield. He subsequently registered through Traderfield as a General Securities Principal, Compliance Officer, Registered Options Principal, Operations Professional, Private Securities Offerings Principal, Private Securities Offerings Representative, and Securities Trader.¹

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

OVERVIEW

Between December 2016 and June 2018, Traderfield failed to establish, maintain, and enforce a supervisory system, including written supervisory procedures (WSPs), reasonably designed to identify and prevent excessive trading in customer accounts. Traderfield and Divita also failed to reasonably supervise former registered representative Broker A,² who recommended excessive trading in 16 customer accounts. Between June 2017 and April 2018, Traderfield failed to report to FINRA statistical and summary information related to five customer complaints about Broker A. By this conduct, Traderfield violated FINRA Rules 3110, 4530, and 2010, and Divita violated FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

A. Traderfield failed to establish, maintain, and enforce a supervisory system, including written supervisory procedures, reasonably designed to identify and prevent excessive trading.

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(a)(5) mandates that a supervisory system include “the assignment of each registered person to an appropriately registered representative[] or principal[] who shall be responsible for supervising that person’s activities.” FINRA Rule 3110(b) requires that each FINRA member “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 the applicable securities laws and regulations, and with applicable FINRA Rules.” A violation of FINRA Rule 3110 also constitutes a violation of FINRA Rule 2010, which requires a member firm, in the conduct of its business, to “observe high standards of commercial honor and just and equitable principles of trade.”

FINRA Rule 2111, FINRA’s suitability rule, requires that member firms and their associated persons have a reasonable basis to believe that a recommended transaction or investment strategy is suitable for the customer based on the customer’s investment profile. Rule 2111 also imposes a “quantitative suitability” obligation that focuses on whether the number of transactions within a given timeframe is suitable in light of the customer’s investment profile. Excessive trading occurs, and is unsuitable, when a registered representative, while exercising actual or de facto control over a customer’s account, recommends a level of trading activity that is inconsistent with the customer’s investment needs and objectives.

Between December 2016 and June 2018, Traderfield failed to establish and maintain a supervisory system, including WSPs, reasonably designed to identify and prevent excessive trading. For example, the WSPs listed designated supervisors for certain

² FINRA previously barred Broker A from associating with any FINRA member in any capacity.

representatives at the firm, but did not list a designated supervisor for all representatives, including Broker A. The WSPs tasked supervisors with reviewing trade blotters, account statements, exception reports, and commission reports to monitor for excessive trading, but did not explain how to identify such trading or how supervisors should respond to such trading. Additionally, Traderfield's supervisors did not review exception reports, as required by the WSPs, in the exercise of their supervisory obligations.

Therefore, Traderfield violated FINRA Rules 3110 and 2010.

B. Traderfield and Divita Failed to Reasonably Supervise Broker A.

The duty to supervise under Rule 3110 also includes the responsibility to reasonably investigate red flags that suggest that misconduct may be occurring and to act upon the results of such investigation.

Regarding red flags indicative of excessive trading, the Supplementary Material to FINRA Rule 2111 at Rule 2111.05(c) states that "[n]o single test defines excessive activity, but factors such as the turnover rate, cost-equity ratio, and the use of in-and-out trading in a customer's account may provide a basis for a finding that a member or associated person has violated the quantitative suitability obligation." A turnover rate of six and cost-to-equity ratio above 20% are indicators that excessive trading may have occurred.

Between December 2016 and June 2018, Traderfield failed to reasonably supervise Broker A, who was excessively trading his customers' accounts. Between December 2016 and May 2017, the WSPs did not designate a supervisor for Broker A, and no supervisor was reviewing Broker A's trading activity for excessive trading. Although the firm's WSPs still did not designate a supervisor for Broker A, Divita began directly supervising Broker A in September 2017. However, between September 2017 and June 2018, Divita failed to reasonably supervise Broker A.

Divita did not take reasonable steps to monitor for excessive trading in Broker A's customer accounts. Although Divita knew that Broker A's customers were responsible for a large volume of trades at the firm, Divita did not review exception reports for potential excessive trading. Instead Divita reviewed daily trade reports and simply focused on trading volume. Divita failed to monitor the losses in Broker A's customer accounts, which were significant. Although Divita reviewed certain commission information, he failed to recognize Broker A's high commissions as a red flag. Further, Divita did not consider costs when reviewing Broker A's trading activity and did not consider, or even understand, turnover rates and cost-to-equity ratios.

Traderfield's and Divita's failure to supervise Broker A permitted his excessive trading in customer accounts to continue. Broker A's trading in 16 customer accounts resulted in annualized turnover ratios ranging from seven to 40, and annualized cost-to-equity ratios ranging from 27% to 173%. Traderfield and Divita did not investigate or otherwise respond reasonably to these red flags of excessive trading. Broker A's trading in the 16

accounts, which was inconsistent with these customers' investment needs and objectives, caused them to be charged a total of \$451,057 in commissions and incur a total of \$538,057 in losses.

Therefore, Traderfield and Divita violated FINRA Rules 3110 and 2010.

C. Traderfield failed to comply with its FINRA Rule 4530 reporting obligations.

FINRA Rule 4530(d) requires each member firm to “report to FINRA statistical and summary information regarding written customer complaints . . . by the 15th day of the month following the calendar quarter in which customer complaints are received by the member.” A violation of Rule 4530 is also a violation of FINRA Rule 2010.

Between June 2017 and April 2018, Traderfield failed to comply with its reporting obligations under FINRA Rule 4530. The firm failed to report to FINRA statistical and summary information regarding five customer complaints pertaining to Broker A's trading activity in accounts that were excessively traded. The complaints pertained to commissions charged, account losses, and alleged unauthorized trading.

Therefore, Traderfield violated FINRA Rules 4530(d) and 2010.

B. Respondents also consent to the imposition of the following sanctions:

For Traderfield:

- A censure;
- Partial restitution of \$300,000 as described below;³ and
- An undertaking within 30 days of the Notice of Acceptance of this AWC, to review and revise, as necessary, its supervisory system and written supervisory procedures regarding excessive trading and reporting of complaints. Within 90 days of Notice of Acceptance of this AWC, a registered principal on behalf of the firm shall certify in writing to Ralph Delouis, Principal Counsel at Ralph.Delouis@finra.org, that (i) the firm has completed its review; and (ii) as of the date of the certification, the firm has established systems and written supervisory procedures regarding its supervision of excessive trading and Rule 4530 reporting requirements that are reasonably designed to achieve compliance with FINRA Rule 3110. For good cause shown and upon receipt of a timely application, FINRA staff may extend the review and certification deadlines set forth above.

³ Pursuant to the General Principles Applicable to all Sanctions Determinations contained in the Sanction Guidelines, FINRA imposed no fine against Traderfield in this case, and agreed to partial restitution after it considered, among other things, the firm's revenues and financial resources. *See* Notice to Members 06-55.

For Divita:

- a three-month suspension from association with any FINRA member in all principal capacities;
- a fine of \$5,000; and
- an undertaking that within 90 days of the Notice of Acceptance of this AWC, Divita will attend and satisfactorily complete 24 hours of continuing education concerning supervisory responsibilities by a provider not unacceptable to FINRA. Divita will notify Ralph Delouis, Principal Counsel, of the name and contact information of the provider of the continuing education at least 10 days prior to attending the continuing education. Within 30 days following the completion of the continuing education, Divita will submit written proof that the continuing education program was satisfactorily completed to Ralph Delouis at Ralph.Delouis@finra.org. All correspondence must identify the respondent and matter number 2018059045003. Upon written request showing good cause, FINRA staff may extend any of the deadlines related to the continuing education component of the sanction.

Partial restitution is ordered to be paid by Traderfield to the customers listed on Attachment A to this AWC in the total amount of \$300,000.

A registered principal on behalf of Traderfield shall submit satisfactory proof of payment of restitution (separately specifying the date and amount of each paid to each customer listed on Attachment A) or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted by email to EnforcementNotice@FINRA.org from a work-related account of the registered principal of Respondent, with a copy to Ralph.Delouis@finra.org. The email must identify Traderfield and the case number and include a copy of the check, money order, or other method of payment. This proof shall be provided by email to EnforcementNotice@FINRA.org, with a copy to Ralph.Delouis@finra.org no later than 120 days after the date of the notice of acceptance of the AWC.

If for any reason Traderfield cannot locate any customer identified on Attachment A after reasonable and documented efforts within 120 days after the date of the notice of acceptance of the AWC, or such additional period agreed to by FINRA in writing, Respondent shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property, or abandoned property fund for the state in which the customer is last known to have resided. Respondent shall provide satisfactory proof of such action to FINRA in the manner described above, within 14 calendar days of forwarding the undistributed restitution to the appropriate state authority.

The imposition of a restitution order or any other monetary sanction in this AWC, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

Restitution payments to customers shall be preceded or accompanied by a letter, not unacceptable to FINRA, describing the reason for the payment and the fact that the payment is being made pursuant to a settlement with FINRA and as a term of this AWC.

As noted above, pursuant to the General Principles Applicable to all Sanction Determinations contained in the Sanction Guidelines, FINRA imposed no fine against Traderfield in this case after it considered, among other things, the firm's revenues and financial resources. See Notice to Members 06-55.

Divita agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Divita has submitted an Election of Payment form showing the method by which he proposes to pay the fine imposed.

Divita and Traderfield specifically and voluntarily waive any right to claim an inability to pay, now or at any time after the execution of this AWC, the monetary sanctions imposed in this matter.

Divita understands that if he is barred or suspended from associating with any FINRA member in a principal capacity, he becomes subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, Respondent may not be associated with any FINRA member in any principal capacity, during the period of the bar or suspension. See FINRA Rules 8310 and 8311. Furthermore, because Respondent is subject to a statutory disqualification during the suspension, if he remains associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

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

II.

WAIVER OF PROCEDURAL RIGHTS

Respondents specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a complaint issued specifying the allegations against them;
- 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, Respondents specifically and voluntarily waive any right to claim bias or prejudice 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.

Respondents further specifically and voluntarily waive 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

Respondents understand that:

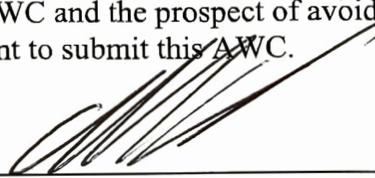
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondents; and
- C. If accepted:
1. this AWC will become part of Respondents' permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondents;
 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. Respondents 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. Respondents 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 Respondents' 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 Respondents' testimonial obligations in any litigation or other legal proceedings.

- D. Respondents may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they 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 Traderfield Securities, Inc., 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.

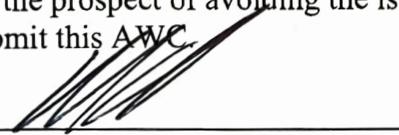
10/22/21
Date


Traderfield Securities, Inc.
Respondent

Print Name: Mario D. Divita
Title: CEO

Respondent Mario Divita certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; Respondent has agreed to the AWC's provisions voluntarily; and 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 him to submit this AWC.

10/22/21
Date


Mario Divita
Respondent

Reviewed by:

Andrew E. Hurni

Andrew E. Hurni, Esq.
Counsel for Respondents
Hurni & West, LLP
5 Crenshaw Court
Marlboro, NJ 07746

Accepted by FINRA:

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

November 24, 2021

Date

Ralph Delouis

Ralph Delouis
Principal Counsel
FINRA
Department of Enforcement
Two Jericho Plaza
Jericho, NY 11753

ATTACHMENT A

Customer	Restitution Amount
Customer A	\$7,486
Customer B	\$28,948
Customer C	\$58,679
Customer D	\$81,091
Customer E	\$15,361
Customer F	\$17,738
Customer G	\$6,705
Customer H	\$7,254
Customer I	\$13,016
Customer J	\$16,172
Customer K	\$5,556
Customer L	\$15,622
Customer M	\$9,735
Customer N	\$5,691
Customer O	\$5,039
Customer P	\$5,907
Total	\$300,000