

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2021071191801**

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

RE: RBC Capital Markets, LLC (Respondent)  
Member Firm  
CRD No. 31194

Pursuant to FINRA Rule 9216, Respondent RBC Capital Markets, 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**

RBC Capital Markets, LLC (RBC) has been a FINRA member since March 1993. RBC conducts a general securities business, self-clearing securities transactions for its own customers and clearing securities transactions for customers of its introducing broker-dealers. The firm employs approximately 2,400 registered representatives across 300 branches and is headquartered in New York, New York.<sup>1</sup>

**OVERVIEW**

Between December 2018 and April 2021, RBC violated FINRA Rules 4560 and 2010 when it filed short interest reports that overreported the number of shares associated with 3,513 short interest positions by approximately 697 million shares. RBC also failed to establish and maintain a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with short interest reporting requirements in violation of FINRA Rules 3110 and 2010.

**FACTS AND VIOLATIVE CONDUCT**

This matter originated from FINRA's review of the firm's short interest reporting.

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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).

***RBC overreported its short interest positions.***

Short interest is a reflection of the total open short positions on a firm's books and records on a per-security basis.

FINRA Rule 4560 requires member firms 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 as prescribed by FINRA. Short interest data is reported to FINRA by all member firms twice a month, within two business days of the designated settlement date. The report includes all short interest positions resulting from (1) a "short sale," as that term is defined in Rule 200(a) of SEC Regulation SHO, or (2) a transaction that was marked "long" consistent with SEC Regulation SHO due to the firm's or the customer's net long position at the time of the transaction, as of the close of business on the settlement date.<sup>2</sup> Rule 4560(c)(2) further provides that short interest reporting should not include "any sale by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities."

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.

A violation of FINRA Rule 4560 is also a violation of FINRA Rule 2010, which requires members, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.

Between December 2018 and April 2021, RBC submitted short interest reports to FINRA that erroneously included short positions in 13 accounts resulting from repurchase and pledge transactions and securities lending conducted by the firm or its affiliates, and syndicate activity of correspondent firms for which RBC clears securities transactions. Because these short positions did not result from "short sales" as defined in Rule 200(a) of Regulation SHO and were not transactions that were marked long due to the firm's or the customer's net long position at the time of the transaction, they were not reportable under FINRA Rule 4560. As a result, the firm reported 3,513 short interest positions totaling approximately 771 million shares when it should have reported approximately 74 million shares, *i.e.*, it overreported the number of shares associated with the short interest positions by approximately 697 million.

Therefore, RBC violated FINRA Rules 4560 and 2010.

***RBC failed to maintain a supervisory system reasonably designed to ensure the filing of accurate short interest reports.***

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

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<sup>2</sup> Rule 200(a) of Regulation SHO provides "[t]he term short sale shall mean any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller."

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 is also a violation of FINRA Rule 2010.

Between December 2018 and April 2021, RBC's supervisory system, including its WSPs, was not reasonably designed to achieve compliance with its short interest reporting obligations under FINRA Rule 4560. Although the firm coded accounts as reportable or non-reportable for short interest reporting purposes, its supervisory system did not provide for testing of the coding of accounts on an ongoing basis. Also, the firm relied on email notifications from the firm's correspondent business clearing line for reconciling the coding and inclusion or exclusion of syndicate accounts for short interest reporting purposes. However, the firm did not implement processes or procedures to monitor whether the notifications were timely received and reviewed.<sup>3</sup>

Therefore, RBC violated FINRA Rules 3110 and 2010.

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

- a censure and
- a \$250,000 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;

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<sup>3</sup> In June 2021, RBC amended its supervisory systems and procedures to include, among other things, additional reviews at the time of account creation and short interest reporting and a lookback review identifying changes in the last six report cycles.

- 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 Respondents' 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.

June 30, 2023  
Date

  
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RBC Capital Markets, LLC  
Respondent


Print Name: Paul Carlesimo

Title: Chief Compliance Officer

Accepted by FINRA:

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

July 11, 2023  
Date

  
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Joseph E. Strauss  
Senior Counsel, Enforcement  
FINRA  
Department of Enforcement  
200 Liberty Street  
New York, New York 10281-1003