

FINRA's Crackdown on Firms' Use of Social Media Influencers Continues

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The Financial Industry Regulation Authority's (FINRA) Enforcement Division recently announced a resolution to a nearly two-and-a-half-year investigation in which TradeZero America, Inc. (TradeZero) agreed to pay a fine of \$250,000. FINRA found that TradeZero, a self-directed trading platform for retail investors, failed to establish, maintain, and enforce a reasonably designed supervisory system for its influencers' social media posts, and failed to preapprove and preserve records of these retail communications. FINRA also found that social media posts made by influencers on the firm's behalf were not fair or balanced, and contained exaggerated, unwarranted, promissory, or misleading claims. Notably, TradeZero allegedly provided inaccurate privacy notices to firm customers.

FINRA has put firms on notice through Regulatory Notices [10-06](#) and [17-18](#) that social media posts will be considered "retail communications" for the purpose of Rule 2210 if the member firm either (1) paid for or was involved in the preparation of the content prior to posting; or (2) explicitly or implicitly endorsed or approved the content. Between July 2020 and October 2022, TradeZero was alleged to have paid several influencers to promote the firm on social media platforms, including one influencer whose social media platforms had millions of viewers.

TradeZero provided each influencer with graphics and "talking points" highlighting TradeZero's specific services and features to make their posts more effective. These talking points noted that TradeZero offered various features related to day-trading but allegedly omitted any discussion of the risks associated with day-trading. Each influencer was also assigned a unique hyperlink to include in their social media posts, which directed potential customers to a page on the firm's website where they could open and fund a TradeZero brokerage account. Customers opened approximately 575 accounts using one of the unique referral links.

A video posted in July 2020 by one TradeZero influencer told viewers 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, stating he was up several thousand dollars without "even trying." These statements misleadingly suggested that other individuals could achieve similar success by day-trading on TradeZero and failed to properly address the risks of investing.

The influencers also posted communications claiming TradeZero was a "free web trading platform," without disclosing that certain fees may apply or providing TradeZero's fee schedule. FINRA found that TradeZero's influencer communications about the firm were unfair and unbalanced, or made claims that were exaggerated, unwarranted, promissory, or misleading, in violation of FINRA Rules 2210(d)(1) and 2010. FINRA said because

the influencers' posts are "retail communications," an appropriately registered principal of the firm must review and approve each post before use, which TradeZero allegedly failed to do. The firm also failed to maintain records of the influencers' posts as required under Exchange Act Rule 17a-4(b)(4) and FINRA Rules 2210(b)(4)(A) and 4511, and failed to establish, maintain, and enforce written supervisory procedures or systems designed to supervise social media posts disseminated on the firm's behalf, in violation of FINRA Rules 3110 and 2010.

An additional wrinkle to TradeZero's settlement involved its privacy policies. Regulation S-P of the Exchange Act requires that firms provide a clear and conspicuous notice to the customer that accurately reflects the firm's privacy policies and practices at the beginning of a customer relationship. The notice must include the categories of nonpublic personal customer information the firm collects and discloses, as well as the categories of affiliated and nonaffiliated third parties to whom the information is disclosed. Between 2020 and January 2022, TradeZero provided at least 22,000 new customers with a privacy notice stating: "[TradeZero America] disclose[s] nonpublic personal information only when it is both permitted by law and required for the ordinary course of business." In fact, TradeZero shared the nonpublic personal information of its customers, such as customer names, e-mail addresses, social security numbers, birthdates, and state IDs, among other information, with nonaffiliated third-party service providers for marketing purposes, in violation of Regulation S-P and FINRA Rule 2010.

In addition to agreeing to a \$250,000 fine, TradeZero agreed to implement a supervisory system for its influencers. The firm revised its policies and procedures to require that a registered principal of the firm review and approve influencer posts prior to use. The firm also implemented a system to retain social media communications disseminated by influencers on the firm's behalf. Importantly, the firm also updated its privacy notice to correct the inaccuracies.

TradeZero's settlement is the latest in what appears to be an area of focus for FINRA's Enforcement Division. Recently, retail investor firms [M1 Finance LLC](#) and [Cobra Trading Inc.](#) also settled with FINRA to resolve allegations stemming from social media influencer activity. In 2023, FINRA [published](#) select practices observed by the FINRA staff during examinations that firms should consider when evaluating their own use of social media influencer and referral programs to avoid such sanctions. Firms and their counsel should closely watch for future enforcement in this space and ensure compliance with FINRA and Securities and Exchange Commission rules.

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