

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 100618 / July 30, 2024**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 6642 / July 30, 2024**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21986**

**In the Matter of**

**WESTERN  
INTERNATIONAL  
SECURITIES, INC.**

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST  
PROCEEDINGS, PURSUANT TO  
SECTIONS 15(b) AND 21C OF THE  
SECURITIES EXCHANGE ACT OF 1934,  
AND SECTION 203(e) OF THE  
INVESTMENT ADVISERS ACT OF 1940,  
MAKING FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS AND A CEASE-  
AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(e) of the Investment Advisers Act of 1940 (“Advisers Act”) against Western International Securities, Inc. (“Western” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Section 203(e) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”) as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### Summary

1. From July 2020 through July 2021 Christopher Kennedy, a then-registered representative at registered broker-dealer Western, employed a risky day trading strategy in the accounts of several of his customers. The trading strategy, which involved the purchase and sale of options contracts, was not in the best interest of these customers, several of whom had moderate to conservative risk profiles. This trading strategy also resulted in these customers paying excessively large commissions to Kennedy and Western and high turnover and cost-to-equity ratios in their accounts.

2. Further, in this instance, Western failed to enforce its policies and procedures designed to achieve compliance with Regulation Best Interest ("Reg BI").

3. As a result, Western violated Rule 15c-1(a)(1) promulgated under the Exchange Act.

#### Respondent

4. **Western International Securities, Inc.**, a Colorado corporation headquartered in Pasadena, California, is registered with the Commission as an investment adviser and a broker-dealer. In April of 2020, Atria Wealth Solutions, Inc., a wealth management solution holding company acquired Western. Western provides brokerage services and investment advice to retail customers.

#### Other Relevant Person

5. **Christopher Booth Kennedy** ("Kennedy"), age 55, is a resident of Simi Valley, California and was associated with Western as an independent contractor registered representative from August 2017 until July 2019 and from November 2019 until August 2021.

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

## Facts

### A. Care Obligation

6. Reg BI requires that a broker-dealer, when recommending securities transactions to a retail customer “act in the best interest of the retail customer at the time the recommendation is made, without placing the financial or other interest of the broker . . . ahead of the interest of the retail customer.” Reg BI sets forth a “care obligation,” which in relevant part requires that such a broker exercise “reasonable diligence, care, and skill to . . . [h]ave a reasonable basis to believe that a series of recommended transactions, even if in the retail customer’s best interest when viewed in isolation, is not excessive and is in the retail customer’s best interest when taken together in light of the retail customer’s investment profile and does not place the financial or other interest of the broker . . . ahead of the interest of the retail customer.” 17 CFR § 240.151-1(a)(2)(ii)(A)-(C).

7. For certain of his customers with a total of 19 brokerage accounts, between July 2020 and July 2021, Kennedy utilized a day-trading strategy involving the purchase and sale of options contracts, which was inappropriate and not in those customers’ best interests. Several of Kennedy’s customers had little, if any, prior trading experience in stocks, had no experience in trading option contracts, and did not understand his trading strategy. Most of these customers’ original account opening documents reflected a moderate or conservative risk profile, which was not in alignment with Kennedy’s trading strategy. In several instances, Kennedy permitted certain customers’ option contracts to expire worthless, hoping that it would ultimately rise in value before expiration.

8. From July 2020 through July 2021, although the average monthly equity in the 19 brokerage accounts was approximately \$700,000, Kennedy made a weighted average of more than \$2 million in monthly purchases per account, totaling more than \$363.5 million over the entire time period. Virtually all of the trades executed under Kennedy’s day trading strategy were marked as “solicited” on the order tickets. Each position was held for an average of five days in equities and one day or less in options before being sold. Kennedy’s customers paid approximately \$1.27 million in commissions, and more than \$62,000 in other transaction charges.

9. The high cost-to-equity ratio and annual turnover ratios for certain of these day-trading customer accounts were suggestive of excessive trading. The cost-to-equity ratio is the rate of return required for an account to break even, taking into account the costs, such as commissions and other fees associated with the trading in the account. The annual turnover ratio represents the total value of annual purchases made in the account divided by the account’s average monthly balance. A cost-to-equity ratio of 20% or higher and an annual turnover ratio of six are thresholds that have been regarded as indicative of excessive trading. *See, e.g.*, Daniel R. Howard, Exch. Act Rel. No. 46269, 2002 WL 1729157, at \*3 (July 26, 2002) (Commission Opinion) (“While there is no definitive turnover rate or cost-to-equity ratio that establishes excessive trading, a turnover rate of 6 or a cost-to-equity ratio in excess of 20% generally

indicates that excessive trading has occurred.”), *aff'd*, *Howard v. SEC*, 77 F. App'x 2 (1st Cir. 2003); *Arceneux v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 767 F.2d 1498, 1502 (11th Cir. 1985) (acknowledging that “courts which have addressed this issue have indicated that an annual turnover rate in excess of six reflects excessive trading”).

10. The cost-to-equity ratio for more than half of Kennedy’s options-day trading customer accounts exceeded 20%, meaning that a customer’s account performance would need to return over 20% in the average monthly value of their account in order to pay the commissions and fees charged by Western and Kennedy, making it very unlikely for the customer’s account to make a profit. Further, the affected Kennedy accounts had annual turnover rates ranging between 6% and 108%, further demonstrating the high rate of trading recommended by Kennedy.

11. As a result of his trading strategy, Kennedy generated more than \$1 million in aggregate commissions. Specifically, Kennedy made \$322,013 in calendar year 2020, and \$888,970 in calendar year 2021, and over the two-year time period, the firm made approximately \$127,000 in commissions and several thousand more in associated fees generated as a result of Kennedy’s day-trading activity.

## **B. Compliance Obligation**

12. Reg BI’s Compliance Obligation requires broker-dealers to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Reg BI. Exchange Act Rule 15l-1(a)(2)(iv). These policies and procedures must address, among other things, compliance with the broker-dealer’s Care Obligation. Western failed to enforce its written policies and procedures designed to achieve compliance with Reg BI related to Kennedy’s trading.

13. On March 23, 2021, Western’s CCO told Kennedy’s direct supervisor that he was concerned that Kennedy was potentially “overtrading” his customers’ accounts and was concerned about the large customer losses and high commissions associated with Kennedy’s trading strategy. In an email the CCO sent that same day to Kennedy and his supervisor, the CCO provided a spreadsheet summarizing twenty of Kennedy’s customer accounts reflecting turnover rates of at least 4 and/or commission-to-equity rates of at least 10%, numbers that suggested that Kennedy was excessively trading the accounts.

14. Between April and May 2021, Western sent out a series of letters (the “Activity Letters”) to six of Kennedy’s customers to confirm that they were “aware of the costs and [trading] activities in the account.” None of the customers signed or returned the Activity Letters within 30 days. Based upon Western’s written supervisory procedures, all trading activity should have been restricted from any further trading when the customers failed to return the Activity Letters within 30 days of transmittal. However, the Kennedy accounts were not restricted, and no further action related to the customers’ failure to return the signed Activity Letters was taken within the prescribed time period.

15. The CCO also requested that certain of Kennedy's customers update their account opening and options eligibility forms to reflect a more aggressive investment objective and higher risk tolerance commensurate with Kennedy's trading strategy. Kennedy directed the inaccurate preparation of the updated account and options forms from certain of his customers to address Western's Compliance Department concerns. Specifically, Kennedy either updated his customers account opening and options eligibility forms with information that was false or directed the customers to complete the updated forms in response to Western's concerns with inaccurate information and then directed the customer to sign the forms. The customers complied with Kennedy's request because they trusted Kennedy and incorrectly believed he was acting in their best interest.

16. Western also had a policy which generally required the branch manager and/or trading supervisor to pre-approve opening 100 or more option contracts and/or the purchase of 25 or more short-term option contracts. In several instances, Kennedy's direct supervisor and Western did not follow this policy as to Kennedy's trading activity.

17. By the spring of 2021, Kennedy's supervisor began to monitor Kennedy's day trading more closely. For example, on May 11, 2021, the supervisor sent the Compliance Department a spreadsheet indicating the performance for ten of Kennedy's customer accounts from January 1 through May 11, 2021, reflecting that these accounts had total unrealized losses of approximately \$5.2 million and generated commissions of approximately \$584,000 in 5½ months. The supervisor advised Western's Compliance Department that he had concerns about Kennedy's trading.

18. Kennedy's trading activity did not stop at that time. Instead, as noted above, Western sent out Activity Letters to six of Kennedy's customers requesting that each customer acknowledge that they authorized the trading in their account. As explained above, Kennedy's customers did not all return the Activity Letters, and Western did not take any steps to restrict the Kennedy accounts at that time.

19. Throughout the summer of 2021, the losses in certain of Kennedy's customer accounts continued to mount. On June 28, Kennedy's supervisor sent the Compliance Department an updated spreadsheet indicating customer losses and commissions through May, which showed that one Kennedy customer, a 78-year-old widow, had lost \$525,000 in the prior month.

20. During the last week of July 2021, rather than restrict Kennedy's activities in light of his above-described trading activity, concerns expressed by his supervisor, and the failure of certain of his customers to return the Activity Letters, the firm gave Kennedy more fulsome trading access, albeit on a one-week trial basis, allowing him to sidestep Western's trading desk to directly allocate his block trades to his customer accounts. During that week, Kennedy executed large, risky trades resulting in substantial losses for his customers. At that same time,

Kennedy repeatedly disobeyed instructions from Western's personnel.

21. The firm terminated Kennedy in August 2021 for his failure to cooperate in an internal investigation related to his above-described trading activity.

### **Violation**

22. As a result of the conduct described above, Western willfully violated Reg BI, Exchange Act Rule 15l-1(a)(1).<sup>2</sup>

### **Western's Cooperation and Remedial Efforts**

23. In determining to accept the Offer, the Commission considered the cooperation Western provided during the Commission's investigation, including disclosing information about conduct that the Commission's Staff had not yet uncovered through its own investigation, conducting an internal investigation regarding this conduct, regularly briefing the Staff regarding its investigation, identifying key documents found in its investigation and subsequently voluntarily providing tables summarizing information from these documents. The cooperation substantially advanced the quality and efficiency of the Staff's investigation and therefore conserved Commission resources. The Commission also considered remedial actions undertaken by Western, including changes to senior management, the \$9 million in financial remediation paid to affected customers, and substantive improvements in Western's policies and procedures.

## **IV.**

In view of the foregoing, the Commission deems it appropriate, and in the public interest to impose the sanctions agreed to in Respondent Western's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Section 203(e) of the Advisers Act, it is hereby ORDERED that:

A. Respondent Western cease and desist from committing or causing any violations and any future violations of Exchange Act Rule 15l-1(a)(1).

B. Respondent Western is censured.

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<sup>2</sup> "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act and Section 203(e) of the Advisers Act "means no more than that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C.Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

C. Respondent Western shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$140,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Western as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Katharine Zoladz, Regional Director, Los Angeles Regional Office, Securities and Exchange Commission, 444 South Flower Street, Los Angeles, California, 90071.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the

Commission in this proceeding.

E. Respondent acknowledges that the Commission is not imposing a civil penalty in excess of \$140,000 based upon its cooperation in a Commission investigation. If at any time following the entry of the Order, the Division of Enforcement (“Division”) obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay an additional civil penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Vanessa A. Countryman  
Secretary