

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT**

NO. 20050007960-01

RECEIVED

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REGISTRATION & DISCLOSURE**

**TO: Department of Market Regulation
Financial Industry Regulatory Authority ("FINRA")**

**RE: First New York Securities L.L.C., Respondent
Broker-Dealer
CRD No. 16362**

**Joseph E. Edelman, Respondent
CRD No. 2115413**

**Larry Chachkes, Respondent
CRD No. 4132788**

Pursuant to NASD Rule 9216 of the FINRA Code of Procedure, First New York Securities L.L.C. ("FNYS" or the "firm"), Joseph E. Edelman ("Edelman"), Larry Chachkes ("Chachkes"), [REDACTED] (collectively, the "respondents") 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 the firm and the individuals alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The 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:**

20050007960 (GPF)

000711357 2008

BACKGROUND

The firm became a member of FINRA on June 5, 1985, and its registration remains in effect.

Edelman was a registered representative at FNYS from February 22, 1999, through January 4, 2007, the date the firm filed a Form U-5 on his behalf. He currently is the Manager and member of both Perceptive Advisors LLC, an investment manager ("Perceptive Advisors") and Perceptive Capital LLC, which entities serve as the investment manager and general partner, respectively, of the Perceptive Life Sciences Master Fund group of private hedge funds.

Chachkes was a registered representative at FNYS from February 28, 2003, through July 23, 2008. He no longer works in the securities industry.

██████ was a registered representative at FNYS from September 17, 2003, through January 4, 2007, the date the firm filed a Form U-5 on his behalf. He currently works for Perceptive Advisors.

██████████ was a registered representative at FNYS from January 28, 2004, through January 4, 2007, the date the firm filed a Form U-5 on his behalf. He currently works for ██████████

RELEVANT PRIOR DISCIPLINARY HISTORY

The respondents have no relevant disciplinary history.

SUMMARY

In connection with 20050007960, the staff of the Market Regulation Department (the "staff") investigated potential violations of SEC Rule 105 of Regulation M ("Rule 105") by the respondents during the period January 1 through December 31, 2005 (the "review period"). The staff has determined that the respondents violated Rule 105 and NASD Rule 2110. The staff also has determined that the firm failed to establish, maintain and enforce a system of supervision and written supervisory procedures that were reasonably designed to achieve compliance with Rule 105 in violation of NASD Rules 2110 and 3010. The staff also has determined that the firm failed to make and keep certain required books and records in violation of NASD Rules 2110 and 3110, and SEC Rules 17a-3 and 17a-4.

FACTS AND VIOLATIVE CONDUCT

RULE 105 VIOLATIONS

Summary

1. During the review period, Rule 105 made it unlawful "for any person to cover a short sale with offered securities purchased from an underwriter or broker or dealer participating in the offering, if such short sale occurred during the shorter of . . . [t]he period beginning five business days before the pricing of the offered securities and ending with such pricing" 17 C.F.R. § 242.105 (2005).
2. During the review period, as set forth below, the respondents sold certain securities short during the five business days before the pricing of five public offerings (the "restricted period"), and then engaged in covering transactions with shares from the public offerings in violation of Rule 105. The securities were Telik Inc. ("TELK"), Geron Corp. ("GERN"), Cotherix Inc. ("CTRX"), Hythiam Inc. ("HYTM"), and Dendreon Corp. ("DNDN").
3. The respondents' total illegal profit from these transactions was \$171,504.44.

Transactions That Violated Rule 105

The TELK Secondary Offering (January 2005)

4. The firm, Edelman and [REDACTED] violated Rule 105 in connection with the TELK secondary offering. The restricted period for the TELK secondary offering was January 21 through January 27, 2005. After the market closed on January 27, 2005, the TELK secondary offering priced at \$18.75 per share.

Edelman

5. During the time period relevant to the TELK secondary offering, Edelman directed the trading in FNYS proprietary account no. [REDACTED]. Before the start of the five day restricted period, the account held an 11,500-share short position in TELK (the "pre-existing short position"). During the restricted period, at Edelman's direction, the firm bought 500 shares (which reduced the account's pre-existing short position to 11,000 shares) and sold short another 12,000 shares of TELK at between \$18.83 and \$19.24 per share. At the end of the restricted period, the account held an overall short position of 23,000 shares, 12,000 of which the firm and Edelman established during the restricted period.

6. On January 28, 2005, at Edelman's direction, the firm bought 42,000 shares from the TELK secondary offering at \$18.75 per share. The firm and Edelman violated Rule 105 when they used 12,000 shares of the 42,000 shares from the TELK secondary offering to cover the entire 12,000-share restricted period short position. As a result, the firm and Edelman earned a profit of \$1,307.17.



7. During the time period relevant to the TELK secondary offering, [REDACTED] directed the trading in FNYS proprietary account no. [REDACTED]. The account held a 2,000-share pre-existing short position in TELK. During the restricted period, at [REDACTED] direction, the firm sold short 1,000 shares of TELK on January 27, 2005 at \$19.40 per share and bought 1,000 shares in the open market on January 28, 2005 at \$19.18 per share. The 1,000 shares purchased in the open market covered 1,000 shares of the 2,000-share pre-existing short position. At the end of the restricted period, the account held an overall short sale position of 2,000 shares.
8. On January 28, 2005, at [REDACTED] direction, the firm bought 3,000 shares from the TELK secondary offering at \$18.75 per share. The firm and [REDACTED] violated Rule 105 when they used 1,000 shares of the 3,000 shares from the TELK secondary offering to cover the entire 1,000-share restricted period short position. As a result, the firm and [REDACTED] earned a profit of \$649.36.

The GERN Secondary Offering (September 2005)

9. All respondents violated Rule 105 in connection with the GERN secondary offering. The restricted period for the GERN secondary offering was September 9 through September 15, 2005. After the market closed on September 15, 2005, the GERN secondary offering priced at \$9.00 per share.

Edelman

10. During the time period relevant to the GERN secondary offering, Edelman directed the trading in FNYS proprietary account no. [REDACTED]. The account did not hold a pre-existing short position in GERN. During the restricted period, the firm and Edelman accumulated a 59,000 share short position in GERN at between \$9.89 and \$10.84 per share.
11. On September 16, 2005, at Edelman's direction, the firm bought 104,500 shares from the GERN secondary offering at \$9.00 per share. The firm and Edelman violated Rule 105 when they used 59,000 shares from the GERN secondary offering to cover the entire 59,000-share restricted period short position. As a result, the firm and Edelman earned a profit of \$78,818.35.

- [REDACTED]
12. During the time period relevant to the GERN secondary offering, [REDACTED] directed the trading in FNYS proprietary account no. [REDACTED]. The account held a 6,000-share pre-existing short position in GERN. During the restricted period, at [REDACTED] direction, the firm bought 5,500 shares of GERN (which reduced the pre-existing short position to 500 shares) and sold short an additional 8,000 shares of GERN at \$9.89 and \$11.75 per share. At the end of the restricted period, the account held a total short position of 8,500 shares of GERN, 8,000 of which were sold during the restricted period.
 13. On September 16, 2005, at [REDACTED] direction, the firm bought 8,500 shares from the GERN secondary offering at \$9.00 per share. The firm and [REDACTED] violated Rule 105 when they used 8,000 shares of the 8,500 shares from the GERN secondary offering to cover the entire 8,000-share restricted period short position. The firm and [REDACTED] earned a profit of \$16,468.50.

Chachkes

14. During the time period relevant to the GERN secondary offering, Chachkes directed the trading in FNYS proprietary account no. [REDACTED]. The account held a 1,000-share pre-existing short position in GERN. During the restricted period, at Chachkes' direction, the firm bought 21,000 shares of GERN at between \$10.76 and \$11.60 per share and sold short 49,500 shares in GERN at between \$9.89 per share and \$10.93 per share. At the end of the restricted period, the account held a total short position of 29,500 shares.
15. On September 16, 2005, at Chachkes' direction, the firm bought 29,500 shares from the secondary offering at \$9.00 per share. The firm and Chachkes violated Rule 105 when they used the 29,500 shares from the GERN secondary offering to cover the entire 29,500-share restricted period short position. As a result, the firm and Chachkes earned a profit of \$44,666.49.

- [REDACTED]
16. During the time period relevant to the GERN secondary offering, [REDACTED] directed the trading in FNYS proprietary account no. [REDACTED]. The account did not hold a pre-existing short position in GERN. During the restricted period, the account established an 11,900-share short position in GERN at \$10.42 per share.
 17. On September 16, 2006, at [REDACTED] direction, the firm bought 11,900 shares from the GERN secondary offering at \$9.00 per share. The firm and [REDACTED]

violated Rule 105 when they used the 11,900 shares from the GERN secondary offering to cover the entire 11,900-share restricted period short position. As a result, the firm and [REDACTED] earned a profit of \$16,813.08.

The CTRX Secondary Offering (September – October 2005)

18. The firm and Chachkes violated Rule 105 in connection with the CTRX secondary offering. The restricted period for the CTRX secondary offering was September 30 through October 6, 2005. After the market closed on October 6, 2005, the CTRX secondary offering priced at \$13.00 per share.
19. During the time period relevant to the CTRX secondary offering, Chachkes directed the trading in FNYS proprietary account no. [REDACTED]. The account held a 4,600-share pre-existing short position in CTRX. During the restricted period, at Chachkes' direction, the firm sold short another 1,000 shares of CTRX at \$14.19 per share. At the end of the restricted period, the account held a total short position of 5,600 shares.
20. On October 6, 2005, at Chachkes' direction, the firm bought 5,000 shares from the CTRX secondary offering at \$13.00 per share. The firm and Chachkes violated Rule 105 when they used 400 shares from the CTRX secondary offering to cover 400 shares of the restricted period short position. As a result, the firm and Chachkes earned a profit of \$473.24.

The HYTM Secondary Offering (October – November 2005)

21. The firm, Edelman and Chachkes violated Rule 105 in connection with the HYTM secondary offering. The restricted period for the HYTM secondary offering was October 27 through November 2, 2005. After the market closed on November 2, 2005, the HYTM secondary offering priced at \$4.75 per share.

Edelman

22. During the time period relevant to the HYTM secondary offering, Edelman directed the trading in FNYS proprietary account no. [REDACTED]. The account held an 8,900-share pre-existing short position in HYTM. During the restricted period, at Edelman's direction, the firm sold short 3,000 shares of HYTM at \$5.39 per share. At the end of the restricted period, the account held a total short position of 11,900 shares, 3,000 of which were sold during the restricted period.
23. On November 3, 2005, at Edelman's direction, the firm bought 4,400 shares of HYTM in the open market which reduced the account's pre-existing short position to 4,500 shares. Then the firm, at Edelman's direction, bought 7,500

shares from the HYTM secondary offering at \$4.75 per share. The firm and Edelman violated Rule 105 when they used 3,000 shares of the 7,500 shares from the HYTM secondary offering to cover the entire 3,000-share restricted period short position. As result, the firm and Edelman earned a profit of \$1,897.12.

Chachkes

24. During the time period relevant to the HYTM secondary offering, Chachkes directed the trading in FNYs proprietary account no. [REDACTED]. The account held a 2,000-share pre-existing short position in HYTM. During the restricted period, at Chachkes' direction, the firm sold short 2,000 shares of HYTM at \$5.14 per share. At the end of the restricted period, the account held a total short position of 4,000 shares, 2,000 of which were sold short during the restricted period.
25. On November 3, 2005, at Chachkes' direction, the firm bought 1,500 shares of HYTM in the open market which reduced the account's pre-existing short position to 500 shares. Then the firm, at Chachkes' direction, bought 2,500 shares from the HYTM secondary offering at \$4.75 per share. The firm and Chachkes violated Rule 105 when they used 2,000 shares from the HYTM offering to cover the entire 2,000-share restricted period short position. As a result, the firm and Chachkes earned a profit of \$778.76.

The DNDN Secondary Offering (November – December 2005)

26. The firm and Chachkes violated Rule 105 in connection with the DNDN secondary offering. The restricted period for the DNDN secondary offering was November 30 through December 6, 2005. After the market closed on December 6, 2005, DNDN secondary offering priced at \$4.50 per share.
27. During the time period relevant to the DNDN secondary offering, Chachkes directed the trading in FNYs proprietary account no. [REDACTED]. The account held a 10,000 share pre-existing short position in DNDN. During the restricted period, at Chachkes' direction, the firm bought 2,000 shares of DNDN at \$5.65 per share and sold short another 22,500 shares of DNDN at between \$5.13 per share and \$5.90 per share. At the end of the restricted period, the account held a total short position of 30,500 shares, 22,500 of which were sold during the restricted period.
28. On December 7, 2005, at Chachkes' direction, the firm bought 15,000 shares from the DNDN secondary offering at \$4.50. The firm and Chachkes violated Rule 105 when they used 7,000 shares from the DNDN offering to cover 7,000 shares of the 22,500-share restricted period short position. As a result, the firm and

Chachkes earned a profit of \$9,632.37.

SUPERVISION VIOLATIONS

29. During the review period, the firm's supervisory system failed to provide for adequate and reasonable supervision of the activities of the four individual respondents. The firm's supervisory system and written procedures did not provide for supervision reasonably designed to achieve compliance and prevent violations with respect to Rule 105. The firm's supervisory system did not include written supervisory procedures providing for a statement of the supervisory steps to be taken by the responsible person in connection with Rule 105 supervision. The conduct described in this paragraph constitutes a violation of NASD Rules 2110 and 3010.
30. During the investigation, the firm provided inaccurate information in response to an inquiry from the staff. The communication of the inaccurate information to the staff was caused by the firm's failure to have in place adequate supervisory procedures reasonably designed to ensure the firm provided responsive information to regulatory inquiries. The conduct described in this paragraph constitutes a violation of NASD Rules 2110 and 3010.

BOOKS AND RECORDS VIOLATIONS

31. During the review period, the firm failed to make and preserve certain books and records in conformity with FINRA Rules and as prescribed by SEC Rules 17a-3 and 17a-4.
32. Two of the order tickets that represented the subject transactions identified above did not reflect the correct price, and 53 of the order tickets lacked one or more required time stamps or contained inaccurate time stamps. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 17a-3 and NASD Rule 3110.
33. The firm also failed to preserve for a period of not less than three years, the first two in an accessible place, the memorandum of five brokerage orders. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 17a-4 and NASD Rule 3110.

B. The respondents also consent to the imposition of the following sanctions:

- As to all respondents, a censure.
- As to the firm, disgorgement of unlawful profits of \$171,504.44, and a fine of \$170,000 consisting of \$85,000 for the Rule 105 violations, \$75,000 for supervision violations, and \$10,000 for books and records violations.
- As to Edelman, a fine of \$50,000.
- As to Chachkes, a fine of \$30,000.
- [REDACTED] a fine of \$7,500.
- [REDACTED] a fine of \$7,500.
- As to the firm, an undertaking to revise the firm's written supervisory procedures with respect to the areas described above in paragraph 29. Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the firm shall submit to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850, or in an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, a signed, dated letter, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in paragraph 29; and (3) the date the revised procedures were implemented.

The respondents agree to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. Enclosed are Election of Payment forms showing the method by which each respondent proposes to pay the fine imposed.

The respondents specifically and voluntarily waive any right to claim that they are unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Formal Complaint issued specifying the allegations against the respondents;
- B. To be notified of the Formal 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, the respondents specifically and voluntarily waive any right to claim bias or prejudgment of the General Counsel, 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 acceptance or rejection of this AWC.

The respondents further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of NASD Rule 9143 or the separation of functions prohibitions of NASD 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

The 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 NASD Rule 9216;

- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the respondents; and
- C. If accepted:
1. this AWC will become part of each of the respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against any respondent;
 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about each of the respondent's disciplinary record;
 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and
 4. The 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. The 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 the respondents' right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. The respondents may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The 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 or its staff.

The respondents certify that they have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that they have agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the respondents to submit it.

12/8/08
Date 12/8/08

Respondent,
First New York Securities L.L.C.

By: [Signature]

Name: Harris Sitten

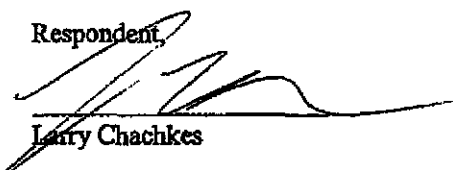
Title: Managing Member

Reviewed by:

[Signature]
Attorney Name
Counsel for Respondent FNYS

12/18/08
Date

Respondent,


Larry Chachkes

Reviewed by:

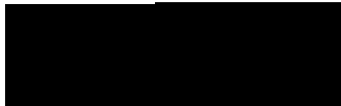
Bob E. Lehman
Attorney Name
Counsel for Respondent Chachkes

Date

Respondent,



Reviewed by:



12/10/08
Date

Respondent,

Joseph Edelman

Reviewed by:

B. B. E. Edelman
Attorney Name
Counsel for Respondent Edelman

Date _____

Respondent,

Reviewed by:

Accepted by FINRA:

12/18/08
Date

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

Thomas R. Gira
Thomas R. Gira
Executive Vice President
Department of Market Regulation