

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20060052710-03**

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

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

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, First New York Securities L.L.C. ("FNYS" or the "firm") 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 the firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The firm hereby accepts and consents, 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

FNYS has been a member of FINRA since June 5, 1985, and its registration remains in effect.

RELEVANT DISCIPLINARY HISTORY

FNYS has the following relevant disciplinary history:

- On December 19, 2008, an AWC became final for matter 20050007960, pursuant to which FNYS was censured and fined \$170,000, including \$75,000 for various supervisory violations, among them a submission by the firm in December 2006 of inaccurate information in response to an inquiry from the staff of FINRA's Department of Market Regulation (the "staff"). The communication of the inaccurate information was caused by the firm's failure to have in place adequate supervisory procedures reasonably designed to ensure that the firm provided responsive information to regulatory inquiries.

SUMMARY

In connection with matter 20060052710, the staff conducted a review of certain trading patterns and other related activities engaged in by FNYS and certain employees of the firm during the period September 1, 2004 through March 31, 2005 (the "review period").

FACTS AND VIOLATIVE CONDUCT

1. During the review period, FNYS failed to preserve for a period of not less than three years, the first two in an accessible place, copies of: (a) Instant Messages sent and received between three of the firm's traders and an external party on certain days within a total period of approximately ten weeks; and (b) the new account form and clearing agreement for one of the firm's accounts at another broker-dealer. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 17a-4 and NASD Rule 3110.
2. FNYS's supervisory system during the review period did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Rules of NASD, concerning retention and review of electronic communications. Specifically, the firm's written supervisory procedures did not reflect the actual procedures that the firm had for: (a) the identification of the person(s) responsible at the firm to ensure compliance with the applicable rules; (b) the step(s) that such person(s) should take to ensure compliance therewith; (c) how often such person(s) should take such step(s); and (d) how enforcement of such written supervisory procedures should be documented at the firm. In addition, the firm did not maintain an internal record of the names of all persons designated as supervisory personnel – and the dates for which such designation was effective – who were responsible for conducting the weekly review of traders' electronic communications. The conduct described in this paragraph constitutes a violation of NASD Rules 2110 and 3010.
3. In an August 10, 2006 inquiry letter sent to FNYS, the staff, in explicit reliance on NASD Rule 8210, requested, among other things, copies of all documents demonstrating that, in accordance with NASD Rule 3010, the electronic communications of one of the firm's traders were subjected to supervisory reviews by a designated registered principal during the review period.
4. In response to the foregoing Rule 8210 request from the staff, one of FNYS's principals orally asked the associated person originally responsible for the firm's reviews of such electronic communications to gather and deliver the evidence of such reviews. Shortly thereafter, however, the associated person realized that he had misplaced the specific file in which he maintained hard copies of those electronic communications he believed at the time of his original reviews needed further investigation. When the associated person informed his supervisor of the misplaced file, he was directed by his supervisor to duplicate the past reviews. On his own accord, instead of duplicating such reviews using the same parameters as were in effect during the review period, the associated person re-

- conducted such reviews using changed and expanded parameters then in place for conducting such reviews. The associated person then signed and hand-wrote in dates of when he estimated such reviews would have taken place. The associated person then delivered these newly created reports to the secretary of the firm principal who was responding to the staff inquiry on behalf of the firm. Without conducting any review of these newly created reports, the firm's principal responding to the staff's inquiry submitted them to the staff as evidence of the past reviews.
5. The firm thus failed to take reasonable steps to confirm that the subject reports submitted to the staff in response to its Rule 8210 request, in fact, represented authentic and contemporaneous evidence of supervisory reviews that were actually conducted during the review period.
 6. The conduct described in paragraphs four and five constitutes a violation by the firm of NASD Rules 2110 and 8210.

OTHER FACTORS

On the eve of the scheduled On-the-Record testimony of the associated person identified in paragraph 4 who conducted the re-reviews, FNYS learned of the facts set forth in paragraph 4, as well as the existence of authentic documentation of the actual supervisory reviews that were conducted during the review period by such associated person. On that same evening, FNYS and the associated person, through their common counsel, then immediately self-reported the foregoing to the staff and delivered all of the authentic documentation the next day at the scheduled On-The-Record Testimony as agreed to the night before with the staff. The sanctions imposed below reflect these mitigating factors.

- B. The firm also consents to the imposition of the following sanctions:

A censure; fines totaling \$65,000 (\$15,000 for the firm's recordkeeping violations, \$20,000 for the firm's supervisory violations and \$30,000 for the firm's NASD Rule 8210 violation); **and an undertaking** to revise the firm's written supervisory procedures with respect to the areas described in paragraph I.A.2.

Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the Respondent shall submit to the **COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850**, a signed, dated letter, or an e-mail from a work-related account of the registered principal to **MarketRegulationComp@finra.org**, 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 I.A.2; and (3) the date the revised procedures were implemented.

The firm agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. The firm has submitted an

Election of Payment form showing the method by which it proposes to pay the fines imposed.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against the firm;
- 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, the firm specifically and voluntarily waives 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 firm 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

The firm 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 the firm; and
- C. If accepted:
 - 1. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary records;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. The firm 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 firm 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 firm's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm 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 or its staff.

The undersigned, on behalf of the firm, certifies that a person duly authorized to act on its 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 it 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 herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

11-18-10
Date

Respondent
First New York Securities L.L.C.

By: [Signature]

Name: Harris S. Stein

Title: Managing Director

Reviewed by:

[Signature: Bob E. Lehman]
Bob E. Lehman
Counsel for Respondent
Lehman & Eilen, LLP
50 Charles Lindbergh Blvd.
Uniondale, NY 11553-3612

Accepted by FINRA:

1/4/11
Date

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

[Signature: Thomas R. Gira]
Thomas R. Gira
Executive Vice President
Department of Market Regulation