

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2008011759201**

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

RE: Michael A. Poutre, II
Registered Principal
(CRD No. 2482252)

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Michael A. Poutre, II, 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 me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. I 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:

BACKGROUND

Michael A. Poutre, II ("Poutre") entered the securities industry as an Investment Company and Variable Contracts Products Representative of a former registered FINRA firm on July 1, 1994. On January 31, 1996, he became registered with a FINRA firm as a General Securities Representative. On March 29, 2002, Poutre became registered as a General Securities Principal with a former registered FINRA firm. On September 27, 2006, he became registered in such capacities with MaxxTrade, Inc., ("MaxxTrade"), a FINRA registered firm. He was registered with MaxxTrade in such capacities until March 17, 2009. Poutre is currently not registered in any capacities with any FINRA firm.

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RELEVANT DISCIPLINARY HISTORY

Poutre was the subject of two disciplinary actions by FINRA, and a State Securities Department investigation within the last five years which were not similar to the violations in this matter.

OVERVIEW

From August 2007 to November 2008, Poutre effected a total of 20 sales of corporate bonds with markups, which he knew, or should have known, were at prices that were not fair and reasonable, in violation of NASD Rule 2110 and 2440.

FACTS AND VIOLATIVE CONDUCT

Charging Excessive Markups and Markdowns

1. NASD Conduct Rule 2440 provides that, in "over-the-counter" transactions,

if a member buys for his own account from his customer, or sells for his own account to his customer, he shall buy or sell at a price which is fair, taking into consideration all relevant circumstances... If he acts as agent for his customer, the member shall not charge his customer more than a fair commission or service charge, taking into consideration all relevant circumstances....

2. Since 1943, FINRA has had a policy which sets five percent as the guideline in determining whether markups or markdowns on equity trades are excessive. The Board of Governors has made clear, however, that the "5% Policy" is a guide, not a rule. IM-2440(a)(1). The policy set forth in IM-2440 applies equally to commissions on agency trades and to markups or markdowns on principal transactions. (See Notice to Members 93-81.)
3. The percentage of the charge is only one of the factors considered in determining fairness. IM-2440(b) identifies seven other factors that members should take into consideration in determining the fairness of a charge. The first factor is the type of security involved. As is noted in the Interpretive Memo, a higher percentage is generally appropriate for common stock transactions than for bond transactions. Traditionally for bond transactions, a charge of over 3% is considered excessive. The second factor is the availability of the security in the market. How

actively the security is traded, the effort and cost needed to buy or sell the security, or any other unusual circumstances involving acquiring or selling the security may have a bearing on the charge. Here, all of the bonds were actively traded and available on markets. The third factor is the price of the security, and the fourth factor is the size of the transaction. Lower priced securities and transactions that involve a small amount of money may justify higher percentage charges because of handling costs. Conversely, higher priced securities and larger transactions which were involved in this matter should generally have lower percentage charges.¹ The fifth factor is whether disclosure to the customer is made before the transaction is effected, although "[d]isclosure itself ... does not justify a commission or markup which is unfair or excessive in light of all other relevant circumstances." The sixth factor is the pattern of the member's charges. "While each transaction must meet the test of fairness... particular attention should be given to the pattern of a member's markups." (See IM-2440(b)(6).) The seventh factor is the nature of the member's business. The cost of providing services to customers may be considered in determining the fairness of charges.

Poutre Charged Excessive Markups For Bond Transactions

4. Between November 2006 and November 2008, Poutre placed orders for the sale of corporate bonds and placed charges on the orders for markups, which were not fair and reasonable, in consideration of the factors set forth in IM-2440(b). Poutre solicited 20 securities transactions in actively traded, liquid corporate bond transactions for customers, and charged the customers markups, or markdowns that exceeded 3% and \$400, as shown on Schedule A, attached hereto and incorporated by reference. Most of these transactions were large, in that many of them exceeded 100 bonds. Since these trades all involved purchase or sales of corporate bonds, a markup or markdown over 3% would be considered excessive. The corporate bonds involved in this matter were readily available in that the clearing firm trader was easily able to secure the supply requested. This matter involved large transactions of higher priced securities, which justified lower percentage charges. The markup and markdowns were not disclosed to the customers and the number of violative transactions establishes a pattern of excessive markups and markdowns. In addition, nothing in the nature of MaxxTrade's and Poutre's business activities justified the markups, or markdowns of over 3%.

¹ Trades with markups or markdowns which exceeded 3%, but had dollar amounts which were less than \$400, were excluded from Schedule A.

5. As set forth above, Poutre violated NASD Conduct Rules 2110 and 2440 by charging his customers more than a fair markup for the securities transactions listed on Schedule A.

- B. I also consent to the imposition of the sanction of a thirty (30) calendar day suspension in all capacities.¹

I understand that if I am barred or suspended from associating with any FINRA member, I become subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rules 8310 and 8311).

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

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against me;
- 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, I 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

¹ On September 23, 2009, Poutre filed a Chapter 7 bankruptcy petition pursuant to Title 11, United States Code. Accordingly, no monetary sanction is being assessed in this matter.

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.

I further specifically and voluntarily waive 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

I 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 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 me; and
- C. If accepted:
 - 1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. I 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. I 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 my right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I 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.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its 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 me to submit it.

6/21/10
Date


Michael A. Poutre, II
Registered Principal

Reviewed by:

Counsel for Respondent

Accepted by FINRA:

Date 7/18/10

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


Richard S. Schultz
Senior Regional Counsel
FINRA Department of Enforcement
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Chicago, Illinois 60603-5052
(312)899-4334

Trades Placed by Michael A. Poutre With Markups That Were Greater than 3% and \$400

Disciplinary Proceeding No. 2008011759201
Schedule A

																			Dollar										
																			Excess	Markup	Dollar	Markup	Cost to	Email	Points MU	3% Parameter	Excess	Amount of	MU %
#	Rep	Bond Issue	Cusip	B/S	Date	Bonds	Cost Price	Firm Cost	3% parameter	Excess Markup	Dollar Amount	Markup Points	Amount of Markup	Percentage	Firm per Email	Cost vs. Firm Cost	based on email	Based on Email	based on email	based on Email	based on Email Cost								
1	MP	Tembec 8.625	87971KAA5	B	8/29/2007	18	52.5	49.5	50.985	1.515	\$ 273	3	\$ 540.00	6.08%	49.5	0	3	50.985	\$ 273	\$ 540.00	6.08%								
2	MP	Tembec 8.625	87971KAA5	B	8/29/2007	15	52.5	49.5	50.986	1.515	\$ 227	3	\$ 450.00	6.08%	49.5	0	3	50.985	\$ 227	\$ 450.00	6.08%								
3	MP	Tembec 8.625	87971KAA5	B	8/29/2007	20	52.5	49.5	50.985	1.515	\$ 303	3	\$ 600.00	6.08%	49.5	0	3	50.985	\$ 303	\$ 600.00	6.08%								
4	MP	Tembec 8.625	87971KAA5	B	8/28/2007	20	52.5	49.5	50.985	1.515	\$ 303	3	\$ 600.00	6.08%	49.5	0	3	50.985	\$ 303	\$ 600.00	6.08%								
5	MP	Tembec 8.625	87971KAA5	B	8/29/2007	15	52.5	49.5	50.985	1.515	\$ 227	3	\$ 450.00	6.08%	49.5	0	3	50.985	\$ 227	\$ 450.00	6.08%								
6	MP	Tembec 8.625	87971KAA5	B	8/29/2007	25	52.5	49.5	50.985	1.515	\$ 379	3	\$ 750.00	6.08%	49.5	0	3	50.985	\$ 379	\$ 750.00	6.08%								
7	MP	Tembec 8.625	87971KAA5	B	8/29/2007	30	52.5	49.5	50.985	1.515	\$ 455	3	\$ 900.00	6.08%	49.5	0	3	50.985	\$ 455	\$ 900.00	6.08%								
8	MP	GMAC 7	3704A0TN2	B	3/4/2008	27	70	56	67.98	2.02	\$ 545	4	\$ 1,080.00	6.06%	67	1	3	69.01	\$ 287	\$ 810.00	4.48%								
9	MP	GMAC 6.75	3704A0BJ0	B	3/18/2008	38	59	55	56.65	2.35	\$ 893	4	\$ 1,520.00	7.27%	56	1	3	57.88	\$ 502	\$ 1,140.00	5.36%								
10	MP	GMAC 7	3704A0UC4	B	5/13/2008	50	70	65.5	68.495	1.505	\$ 752	3.5	\$ 1,750.00	5.28%	67	0.5	3	69.01	\$ 435	\$ 1,500.00	4.48%								
11	MP	GMAC 7	3704A0UC4	B	5/22/2008	25	71	67	69.01	1.99	\$ 497	4	\$ 1,000.00	5.97%	68	1	3	70.04	\$ 240	\$ 750.00	4.41%								
12	MP	GMAC 8.25	370442BW4	B	10/27/2008	45	29.5	26.5	27.295	2.205	\$ 992	3	\$ 1,350.00	11.32%	26.5	0	3	27.295	\$ 992	\$ 1,350.00	11.32%								
13	MP	GMAC 8.25	370442BW4	B	10/27/2008	20	29.5	26.5	27.295	2.205	\$ 441	3	\$ 600.00	11.32%	26.5	0	3	27.295	\$ 441	\$ 600.00	11.32%								
14	MP	GMAC 8.25	370442BW4	B	10/27/2008	23	29.5	26.5	27.295	2.205	\$ 507	3	\$ 690.00	11.32%	26.5	0	3	27.295	\$ 507	\$ 690.00	11.32%								
15	MP	GMAC 8.25	370442BW4	B	10/27/2008	25	29.5	26.5	27.295	2.205	\$ 551	3	\$ 750.00	11.32%	26.5	0	3	27.295	\$ 551	\$ 750.00	11.32%								
16	MP	GMAC 8.25	370442BW4	B	10/27/2008	27	29.5	26.5	27.295	2.205	\$ 595	3	\$ 810.00	11.32%	26.5	0	3	27.295	\$ 595	\$ 810.00	11.32%								
17	MP	GMAC 8.25	370442BW4	B	10/27/2008	67	29.5	26.5	27.295	2.205	\$ 1,477	3	\$ 2,010.00	11.32%	26.5	0	3	27.295	\$ 1,477	\$ 2,010.00	11.32%								
18	MP	GMAC 8.25	370442BW4	B	10/27/2008	38	29.5	26.5	27.295	2.205	\$ 838	3	\$ 1,140.00	11.32%	26.5	0	3	27.295	\$ 838	\$ 1,140.00	11.32%								
19	MP & ES	GMAC 8.25	370442BW4	B	11/13/2008	19	28.69	23.89	24.4007	2.2693	\$ 412	3	\$ 540.00	12.66%	23.887	0	3	24.39781	\$ 413	\$ 540.54	12.68%								
20	MP & ES	GMAC 8.25	370442BW4	B	11/13/2008	72	26.69	23.69	24.4007	2.2693	\$ 1,648	3	\$ 2,160.00	12.66%	23.887	0	3	24.39781	\$ 1,651	\$ 2,162.16	12.68%								
Excess Markups based on Emails																			\$ 11,136										