

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20080131278**

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

RE: Robert W. Baird & Co. Inc. ("Baird" or the "Firm"), Respondent
CRD No. 8158

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Baird 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 Baird alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Baird 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

Since 1971, Baird, headquartered in Milwaukee, Wisconsin, has been a FINRA- regulated broker-dealer and a registered broker-dealer with the United States Securities and Exchange Commission.

RELEVANT DISCIPLINARY HISTORY

In 2008, Baird entered into a Letter of Acceptance, Waiver and Consent ("AWC") with FINRA in which it consented to findings that it, among other things, failed to reasonably supervise its fee-based brokerage business and failed to have a supervisory system in place to automatically credit customers' with breakpoint discounts, in violation of NASD Conduct Rules 3010 and 2110.

OVERVIEW

Effective September 7, 2004, the SEC adopted 17 CFR Part 242 ("Regulation SHO") under the Securities Exchange Act of 1934 ("Exchange

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Act”) and designated January 3, 2005 as the commencement date for compliance. Regulation SHO was, among other things, designed to control the harmful effects on market prices and the volatility caused by naked short selling. With this primary goal in mind, Regulation SHO was designed to: (i) create uniform order marking requirements for sales of equity securities; (ii) reduce the number of potential failures to deliver by means of a “locate” requirement; and (iii) limit the time in which a broker-dealer can permit a fail to deliver to persist for securities on the various SRO threshold security lists. Rule 203(b)(1) of Regulation SHO requires a broker-dealer to have reasonable grounds to believe a security can be borrowed, so that it can be delivered in time for settlement, before effecting a short sale in that security. Identifying a source from which to borrow such security is generally referred to as obtaining a “locate.” Regulation SHO requires that such locate be obtained and documented prior to effecting the short sale.

As set forth below, the Firm failed to comply with the locate requirements of Regulation SHO, and further violated FINRA Rules, NASD Rules and other SEC Rules during the period covering, in whole or in part, January 3, 2005 through approximately March 2010 (the “Relevant Period”). Specifically, the Firm released significant numbers of facilitative and other proprietary (“proprietary”), retail, employee, and institutional short sale orders for execution throughout the Relevant Period without first obtaining and/or documenting required locates and further failed to implement a reasonable post-trade review in order to determine whether locates were being obtained. In addition, the Firm misused the bona-fide market maker exception to the locate requirement. Moreover, the Firm failed to disclose its market maker status in a small percentage of equity research reports published in one format.

These violations occurred primarily as a result of the Firm’s systemic failure to implement a comprehensive and effective framework for Firm-wide Regulation SHO compliance which included the failure to establish and maintain reasonable written policies and procedures, including written supervisory policies and procedures. Moreover, even after NYSE examiners reported Regulation SHO deficiencies following their 2007 examination, the Firm’s internal review was inadequate and failed to identify the root causes of those violations. The Firm also failed to implement reasonable supervisory procedures with respect to its becoming a market maker and in connection with its process and review for the inclusion of required disclosures on published research reports.

FACTS AND VIOLATIVE CONDUCT

The Firm Failed to Prevent the Release of Short Sale Orders for Execution Without Locates

Rule 203(b)(1) of Regulation SHO states that, subject to certain exceptions, a “broker or dealer may not accept a short sale order in an equity security from another person, or effect a short sale in an equity security for its own account, unless the broker or dealer has: (i) Borrowed the security, or entered

into a bona-fide arrangement to borrow the security; or (ii) Reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due; and (iii) Documented compliance with this paragraph (b)(1)."

During the Relevant Period, the Firm used multiple order entry systems ("OESs") for entry of its proprietary, institutional, retail, and employee orders. The OESs in use at the Firm during the Relevant Period did not prevent the release of short sale orders for execution without valid locates. In fact, at least one OES in use at the Firm during the Relevant Period did not require the entry of any locate information in any form prior to the short sale order being released for execution.

Proprietary Short Sale Orders

The Firm's procedures and both of the OESs used by the proprietary traders during the Relevant Period required the manual entry of locate information in a free-form text locate field prior to the entry and routing of short sale proprietary orders for execution. In order to facilitate the entry of locate information by the proprietary traders, the Firm programmed a single key stroke entry that automatically noted in that locate field that a locate had been obtained from the Firm's Stock Loan department (the "Borrow Button"). The Borrow Button was solely intended to create the notation of a locate the trader had already obtained; it did not function to obtain a locate or record the specifics (e.g., the time or number of shares) of the locate obtained. During the Relevant Period, the OESs used by the proprietary traders would not release a short sale for execution unless either the Borrow Button was used or locate information was otherwise documented in the locate field. While the proprietary traders used the Borrow Button in connection with every short sale order they placed during the Relevant Period, they did not in fact obtain locates in connection with many of their proprietary short sale orders.

Institutional Short Sale Orders

During the Relevant Period, the Firm did not provide locates to its institutional customers; however, the Firm was required to document locate information provided by its institutional customers. The OES used by sales traders to enter short sale orders for the Firm's institutional customers required the manual entry of information obtained from the customer regarding a locate from a third-party lending source (an "away" locate) into a free-form text locate field. The Firm's policies and procedures required sales traders to note the source of the away locate, as reported by the institutional customers, in this field. However, there was no system check to determine whether the recorded away locate reflected a recognized lending source.

Retail Short Sale Orders

The Firm allowed the entry of retail customer short sale orders through an OES which did not require the entry of any locate information in connection with a short sale order. Instead, Financial Advisors entering retail short sale orders (or orders for their own and/or other employee accounts) were required to note the locate information on a hard copy printout of the order ticket. However, because the OES did not require the entry of locate information it was possible for a retail short sale order to be released for execution without a valid locate having first been obtained. The Firm failed to conduct a meaningful post-trade date review to ascertain whether retail short sale orders entered through this OES and released for execution had an associated locate.

The Firm Lacked an Effective Post-Trade Locate Review System

In addition, the Firm's non-compliance with locate requirements in connection with short sale orders was not corrected in a timely manner because the Firm's post-trade review for locates in connection with any short sale orders entered through its OESs was not reasonable for the purpose of determining, retroactively, whether locates had been properly obtained and granted.

The Stock Loan Department Failed to Provide Locates and/or Properly Document Locates

The Firm failed to allocate adequate resources, including Stock Loan personnel, to the process of granting and documenting locates. In addition, the Firm failed to adequately train Stock Loan personnel regarding the requirements of Regulation SHO, including the locate requirement for proprietary short sales and the importance of documenting all locate requests and approvals.

Problems with Granting Locates

During the Relevant Period, the Stock Loan department consisted of only two employees whose duties included many activities in addition to providing and documenting locates. Moreover, both Stock Loan employees took breaks away from their desks during the day, sometimes at the same time. The telephone system in use in Stock Loan was inadequate and forwarded calls missed by Stock Loan personnel to an unoccupied desk and phone. As a result, if a trader seeking a locate called the Stock Loan department and the call was routed to the unoccupied desk, the call would often go unanswered. Since there was also no voicemail function on these phones, the trader could not leave a message requesting the locate. Despite complaints from traders as early as 2005, that Stock Loan personnel were not responding or timely responding to the traders' requests for locates, it was not until the Fall of 2007 that the Firm assigned additional phone lines in Stock Loan for traders to call when requesting locates, and it was not until the Fall of 2009 that additional Stock Loan personnel were added to field locate calls.

Until mid-2007, Stock Loan employees were of the mistaken belief that they were not required to provide locates to proprietary traders. Despite having been informed in mid-2007 that this belief was mistaken, Stock Loan personnel subsequently instructed proprietary traders that they did not need to contact Stock Loan for a locate on certain Exchange Traded Funds.

In addition, in 2008, a member of the Stock Loan department obtained and used a list of easy to borrow securities ("ETB list") that had not been authorized by the Firm's Legal and/or Compliance departments to provide Firm locates for certain short sale transactions.

Problems with Documenting Locates

Baird failed to document and/or adequately document locates for retail and employee short sale orders and failed entirely to document locates for proprietary orders. According to the Firm's procedures, the Stock Loan department was primarily responsible for documenting locates granted by the Firm.

Documenting Locates for Retail/Employee Short Sale Orders

During the period January 2005 to approximately July 2007, Stock Loan personnel failed to document certain locates for retail and employee short sale orders. Stock Loan's locate log at times excluded locates on retail and/or employee short sale orders because either Stock Loan personnel failed to make any notation of the locate they granted in the first instance or because the Stock Loan personnel discarded the handwritten notes on which the locate information was often recorded.

During this period, Stock Loan personnel also failed to adequately document retail and employee locates. The locate log failed to document both the retail/employee account numbers and/or names for which locates were granted and also the time Stock Loan granted these locates. Moreover, even after the NYSE examination in 2007, when the Stock Loan department began to maintain a computerized Stock Loan locate log, the log still required the manual entry of locate data by the same Stock Loan personnel and there continued to be instances when the computerized log inaccurately reflected the time that retail/employee locates had been granted. Thus, even where Stock Loan granted retail and employee locates and documented them on the locate log, the Firm failed to adequately document these locates during the Relevant Period.

Because the Stock Loan locate logs failed to contain essential information, they were insufficient as a tool for a post-trade review of short sale orders to determine if valid locates had been obtained prior to the short sale order being released for execution.

Documenting Locates for Proprietary Short Sale Orders

As mentioned above, until July 2007, Stock Loan personnel were unaware that locates were required in connection with proprietary short sales or that Stock Loan was required to provide and document such locates. As a result, Stock Loan personnel failed to document any locates requested or granted on proprietary short sale orders until in or around July 2007.

The Firm Released Short Sale Orders for Execution Without Obtaining and/or Documenting Locates

As a result of the order entry system and Stock Loan deficiencies described above, the Firm released for execution proprietary, institutional, retail, and employee short sales without obtaining and/or documenting locates during the Relevant Period. The following is a quantification of the number of short sales released for execution without locates during a three-month sampling period from January – March 2007 (the “Sampling Period”).

Proprietary Short Sale Orders

There were 535 proprietary short sale orders (out of 656 orders, or about 82%) that the Firm entered and released for execution without obtaining and/or documenting locates during the Sampling Period in one of its OESs. There were another 57 proprietary short sale orders (out of 57 orders, or 100%) that the Firm entered and released for execution without obtaining and/or documenting locates during this period in its second OES. Thus, the Firm released for execution 592 (out of 713 orders, or 83%) proprietary short sale orders without obtaining and/or documenting locates during the three-month Sampling Period. In some instances, Stock Loan personnel failed to document locates which proprietary traders did in fact request and obtain. However, in the majority of instances, locates were not obtained at all. The Firm’s traders also entered an indeterminable number of short sale orders for which no locates were obtained or documented, which were not executed.

Moreover, both the Equity Trading Compliance Officer (“ETCO”) and the Director of Equity Trading were aware that the Firm’s proprietary traders were at times entering proprietary short sale orders without locates. At times, when proprietary traders reported that they had customer orders in hand and awaiting execution, but that they were unable to reach Stock Loan personnel for a locate, the Directory of Equity Trading instructed them to proceed in facilitating those customer orders by entering short sales without locates.

Institutional Short Sale Orders

As noted above, the OES used to enter institutional customer short sale orders required entry of the away locate source in a free-form text locate field. Nonetheless, the Firm released for execution 9 out of a total of 753 institutional short sale orders (approximately 1%) during the Sampling Period without properly documented locates.

Retail/Employee Short Sale Orders

The Firm released for execution 114 out of 1,403 retail and employee short sale orders during the Sampling Period (approximately 8%) without properly documented locates.

The Firm Misapplied the Bona-Fide Market Maker Exception to the Locate Requirement

During the Relevant Period, the Firm's policies and procedures were not reasonably designed to prevent traders from entering speculative proprietary short sale orders and short sale hedge orders without locates. Specifically, Firm traders were of the mistaken belief that the Firm's status as a market maker in a security exempted all Firm short sales in the security from the locate requirement. As a result, the market maker exception was misapplied with respect to proprietary speculative, facilitative and hedge short sales.

The Firm Failed to Disclose its Market Maker Status on Certain Research Reports

Over the course of the Relevant Period, the Firm failed to disclose its market maker status on one of the three formats used for certain equity research reports it published in connection with issuers in whose securities it was a market maker. Specifically, a third party software vendor's modification resulted in the omission of market maker disclosures from all Breaking News reports in .pdf format from approximately August 14, 2009 to May 2010. As a result, the .pdf version of approximately 693 Breaking News reports omitted market maker disclosures regarding 360 different securities.

The Firm Failed to Establish a Reasonable Supervisory System

NASD Rule 3010 requires that Firms establish and maintain a supervisory system, including written supervisory procedures related to a Firm's business, that is reasonably designed to achieve compliance with the applicable securities laws and regulations, and with the applicable Rules of the NASD.

The Firm experienced systemic operational and supervisory deficiencies that persisted, in some instances, for approximately five years, as described below. As such, the Firm failed to reasonably supervise during the Relevant Period in that it failed to establish, maintain and enforce a supervisory system,

including written supervisory procedures, with respect to the requirements of Regulation SHO, NASD and FINRA Rules, and SEC Rules discussed herein.

The Compliance Department Failed to Establish a Reasonable Supervisory System for Regulation SHO

In late 2004, the Firm's (former) capital markets compliance unit leader ("CMCUL") was delegated the responsibility for coordinating the Firm's preparation for compliance with Regulation SHO. In that role, she headed a working group charged with establishing and implementing systems and written policies and procedures for Firm-wide Regulation SHO compliance (the "Regulation SHO Working Group"). Although the Regulation SHO Working Group included the Director of Equity Trading and the head of Cashiering, it did not include the head of Stock Loan. The policies and procedures written or reviewed by the CMCUL and implemented by the Firm were not reasonably designed to achieve compliance with certain requirements of Regulation SHO.

In addition, the CMCUL failed to review and/or coordinate the Regulation SHO related policies and procedures instituted in each department of the Firm. For example, while the written policies and procedures provided to the traders in May 2005 (over four months after Regulation SHO went into effect) stated that locates were required to be obtained from Stock Loan for proprietary short sales, those procedures were incorrect in that they stated the locate was only required prior to execution of the order, rather than at the time the order was entered. Moreover, the policies and procedures written for Stock Loan personnel indicated that the locate requirement was inapplicable to proprietary traders.

The Firm Failed to Properly Train and Supervise Its Stock Loan Personnel

The Firm's Stock Loan employees did not receive adequate training and guidance in connection with Regulation SHO, and as a result, the Stock Loan department's compliance with Regulation SHO requirements was insufficient. As discussed above, prior to the middle of 2007, Stock Loan personnel maintained a handwritten log for locates granted in connection with retail and employee short sale trades. However, there was no locate log maintained in connection with proprietary short sales, as Stock Loan employees believed that the locate procedures did not apply to proprietary trading.

Moreover, as discussed above, Stock Loan personnel routinely failed to properly document locates provided for retail and/or employee short sale orders. Rather, when the Stock Loan personnel did record a locate, they often did so by making a separate handwritten notation. Sometimes, that information was eventually transferred to their handwritten locate log. On other occasions, the notes were lost or discarded before the information was transferred. In addition, the locate log failed to contain the retail/employee account numbers and/or names for which locates were granted or the time Stock Loan granted these locates, so this information was never maintained at all. As a result, there was no way to

determine from the locate log the time at which a locate had been granted or to which short sale order the locate was connected.

The Firm Lacked Reasonable Written Policies and Procedures in Connection with Becoming a Market Maker

As discussed above, the Firm failed to establish and maintain reasonable written policies and procedures for becoming a registered market maker in securities, in violation of NASD Rule 3010, NASD Conduct Rule 2110, and FINRA Rule 2010. Specifically, the Firm did not have reasonable written policies and procedures (1) requiring traders to obtain approval prior to becoming a market maker in a security; and (2) requiring timely notice to other relevant departments of the Firm, including Compliance and Research, of the Firm's new market maker status.

In addition, the Firm failed to establish and maintain reasonable written supervisory policies and procedures in connection with becoming a registered market maker in securities. Specifically, the Firm did not have reasonable written supervisory policies and procedures (1) to determine whether prior approval had been obtained before the Firm became a registered market maker in a security; and (2) to determine whether timely notice of the Firm's new market maker status was given to relevant departments of the Firm, including Compliance and Research.

The Firm Lacked Reasonable Written Policies and Procedures in Connection with Use of the Market Maker Exception to the Locate Requirement

As discussed above, Firm traders misused the market maker exception to the locate requirement. The Firm failed to establish and maintain reasonable written policies and procedures for use of the market maker exception to the locate requirement, in violation of NASD Rule 3010, NASD Conduct Rule 2110, and FINRA Rule 2010. Specifically, the Firm did not have reasonable written policies and procedures, including written supervisory policies and procedures, (1) defining the limitations of the bona-fide market maker exception to the locate requirement; and (2) to detect and prevent misuse of the market maker exception to the locate requirement.

The Firm's Written Policies and Procedures Relating to Regulation SHO Were Unreasonable and in Some Cases Incorrect

The Firm's Regulation SHO violations were extensive due to the patchwork of systems, policies, and procedures implemented by the Firm in 2005 under the leadership and supervision of the CMCUL that contained multiple gaps and in certain instances contained incorrect instructions for compliance with Regulation SHO. For example, at various times during the Relevant Period, the Firm's written policies and procedures in connection with Regulation SHO did not require:

- a. proprietary traders to obtain locates for short sales;
- b. the Stock Loan department to grant and document all locates;
- c. adequate reviews of short sales to detect short sales entered without a locate and/or without an exception to the locate requirement; and
- d. market makers engaged in non-bona fide market making transactions to obtain locates for short sales (where no locate exception was applicable).

*The Firm's Limited Reviews of Regulation SHO
Compliance Were Ineffective*

Furthermore, the systems and procedures established in 2005 for supervision of Regulation SHO compliance were unreasonable in design such that the Firm was unable to detect the Regulation SHO violations that occurred. For example, the Firm implemented a procedure for the review of proprietary short sales in order to determine whether valid locates had been obtained. This process consisted of supervisory personnel reviewing proprietary short sale orders to ensure that a locate source had been entered. The OES used by proprietary traders would not release a short sale order for execution without some entry having been made in the free-form text locate field. The Firm instituted a review which only determined whether the Borrow Button had been used, not whether a locate had been obtained. Because this review only encompassed short sale orders for which the Borrow Button by definition would have been used, the review was ineffective. In addition, the procedure did not require supervisory personnel to compare the locate information entered into the OES against records of locates granted by Stock Loan. Therefore, supervisory personnel did not have sufficient information to determine if a locate had been obtained for a sufficient number of shares, or had actually been obtained at all.

Indeed, during the Relevant Period, the ETCO became aware of instances where proprietary traders had used the Borrow Button to route short sale orders for execution without first obtaining a locate. He nonetheless continued to perform a post-trade review that only determined whether the Borrow Button had been used, not whether a locate had been obtained. Had a reasonable review been performed, it would have revealed that locates had not been obtained and/or documented in connection with a significant majority of proprietary short sales, as well as the deficiencies in the Stock Loan documentation of locates.

The Firm's procedures also required the Stock Loan department to review whether Firm short sales had been executed without locates. However, until August 2007, the report reviewed by Stock Loan personnel omitted all short sales in proprietary accounts. As such, Stock Loan personnel were also unable to detect proprietary short sales entered without locates. Moreover, this process was limited to reviewing for locate compliance regarding executed short sale orders for employee and retail accounts and did not include unexecuted short sale orders that had been released for execution.

*The Firm Failed to Take Reasonable Action to Remedy
Its Regulation SHO Violations Even After Being Alerted
to Deficiencies by NYSE Examiners*

In June of 2007, the NYSE conducted an examination of the Firm that included a review of certain aspects of the Firm's Regulation SHO compliance. That review revealed, among other things, that locates were not performed and/or documented on proprietary short sales, that traders regularly used the Borrow Button without first having obtained a locate, and that the Firm did not have a reasonable supervisory system in place to ensure that its proprietary traders obtained locates when necessary.

Notwithstanding having been informed of these deficiencies, the Firm failed to take adequate action to identify their root causes. The CMCUL assumed that the primary cause of the NYSE's findings was that proprietary traders failed to request locates as required. As a result, the Firm's initial investigation failed to reveal, but upon subsequent investigation the Firm learned, that in addition to traders not always calling Stock Loan for a locate, Stock Loan personnel (1) did not understand their responsibility to grant locates for proprietary trades; (2) were not properly documenting locates granted for retail and employee accounts and were not documenting locates at all with respect to proprietary accounts; and (3) were not readily available to grant locates during the trading day. The Firm failed to recognize the deficiencies in its written policies and procedures governing these very practices. Consequently, the Firm failed to recognize that the review of proprietary short sales for locates was ineffective by design, and/or that the Stock Loan department was not performing a locate review with respect to proprietary short sale orders. The full extent of these review and policy-related deficiencies was only revealed during Enforcement's investigation.

As a result, the procedural changes that were effected in response to the NYSE examination were inadequate to redress all of the underlying issues that caused the Firm's violations. For example, the revised supervisory system implemented in the Fall of 2007 was still not reasonably designed to detect proprietary short sales entered without locates. Compliance personnel took over the locate review process and began to compare the newly-enhanced Stock Loan log with a report of proprietary short sales. However, this review failed to include any unexecuted proprietary short sale orders for locate compliance. In addition, even with respect to executed orders, Compliance personnel were unable to verify whether a locate had been obtained for all orders in a timely fashion and for a sufficient number of shares until late 2009.

The supervisory system the Firm revised in 2007 for the review of retail and employee short sales for the presence of locates was similarly inadequate. Nearly 150 retail short sale orders from August 2007 – August 2008 were not included on the short sale reports. Additionally, at least 20 retail short sale orders had no locate, had no valid locate, were not reviewed, or were not timely reviewed. In August 2008, the Firm again revised its retail locate review process, but it was again flawed. The revised procedure was for reviewers to use activity

session reports to identify all retail short sale orders and then compare those orders to the locate log to determine whether valid locates had been obtained; in practice, however, reviewers were starting the comparison with the locate log, thus potentially missing retail orders without locates that would not have been captured on the locate log. This problem was not discovered until September 2009.

Furthermore, the Firm failed to establish reasonable policies and procedures, or a system of follow-up and review to determine that Stock Loan personnel were complying with all of the requirements of Regulation SHO. For this reason, the Compliance department was unaware for months that Stock Loan had obtained and used an unauthorized ETB list to grant locates in 2008.

In 2009, after Enforcement's investigation revealed these deficiencies, the Firm replaced the CMCUL and hired independent consultants to revise further its Regulation SHO-related policies and procedures. New procedures went into effect in March 2010; however, these procedures still contained inaccuracies and inconsistencies with respect to the documentation and supervision of locates. The Firm has subsequently revised these procedures to comply with Regulation SHO.

The Firm Failed to Implement Reasonable Procedures Relating to Market Making Activity and the Inclusion of Research Report Disclosures

During the Relevant Period, the Firm permitted its traders to register the Firm as a market maker in a security without any prior authorization or approval. Further, until August 2007, there were no procedures requiring immediate and direct notification to the Research, Compliance, or any other department of the Firm when a trader registered the Firm as a market maker in a security. Prior to August 2007, the Compliance and Research departments were not timely notified when the Firm became a market maker in a new security. Rather, the Compliance Department periodically referenced a list of the Firm's market making securities which was maintained and updated by the Trading Department. The Compliance Department was to detect changes to the list of securities in which the Firm was a market maker and then e-mail the Research Department a list of all additions and/or deletions to this list. As a result, until August 2007, the Firm's Research and Compliance departments were not timely notified that the Firm was acting as a market maker in securities that required disclosure of the Firm's market maker status in equity research reports.

As discussed above, the Firm failed to establish, maintain, and enforce adequate written policies and procedures, including written supervisory policies and procedures, to require:

- a. traders to obtain approval prior to establishing the Firm as a market maker in a security,
- b. communication of the Firm's market maker status to the Firm's Research department;

- c. communication of the Firm's market maker status to the Firm's Compliance department; and
- d. inclusion of required market maker status disclosures on certain Firm equity research reports.

Baird's conduct, as described above, constitutes the following violations:

1. The Firm failed to establish and maintain a supervisory system reasonably designed to achieve compliance with applicable securities laws and regulations in that Baird failed to designate effective compliance personnel as responsible for the Firm's overall compliance with Regulation SHO, in violation of NASD Rule 3010, NASD Conduct Rule 2110, and FINRA Rule 2010.¹
2. The Firm failed to establish and maintain a supervisory system reasonably designed to achieve compliance with applicable securities laws and regulations in that the Firm failed to allocate adequate resources and Stock Loan personnel to the process of granting and documenting locates, and the Firm failed to adequately train Stock Loan personnel regarding the requirements of Regulation SHO including the documentation of locate requests and approvals, in violation of NASD Rule 3010, NASD Conduct Rule 2110, and FINRA Rule 2010.
3. The Firm failed to establish and maintain a supervisory system, including written policies and procedures and written supervisory policies and procedures, reasonably designed to achieve overall compliance with Regulation SHO, in violation of NASD Rule 3010, NASD Conduct Rule 2110, and FINRA Rule 2010.
4. The Firm failed to establish and maintain a supervisory system, including written policies and procedures and written supervisory policies and procedures, reasonably designed to achieve compliance with the applicable securities laws in connection with becoming a registered market maker in securities, in violation of NASD Rule 3010, NASD Conduct Rule 2110, and FINRA Rule 2010.
5. The Firm failed to establish and maintain a supervisory system, including written policies and procedures and written supervisory policies and procedures, reasonably designed to achieve compliance with the applicable securities laws in connection with the use of the market maker exception to

¹ For the period January 3, 2005 to December 14, 2008, this violative conduct also constitutes a violation of NASD Conduct Rule 2110, and for the period after December 15, 2008, this violative conduct also constitutes a violation of FINRA Rule 2010, both of which require that a Firm, in the conduct of its business, observe high standards of commercial honor and just and equitable principles of trade. See FINRA Regulatory Notice 08-57, which describes certain changes to FINRA's rules including the change of NASD Rule 2110 to FINRA Rule 2010, effective December 15, 2008.

the locate requirement, in violation of NASD Rule 3010, NASD Conduct Rule 2110, and FINRA Rule 2010.

6. The Firm released for execution proprietary, institutional, retail and employee short sale orders without locates, in violation of Regulation SHO Section 203(b)(1), NASD Conduct Rule 2110, and FINRA Rule 2010.
7. The Firm both failed to document and adequately document locates for short sale orders as required by Regulation SHO Section 203(b)(1)(iii), NASD Conduct Rule 2110, and FINRA Rule 2010.
8. The Firm misused the bona-fide market maker exception to the locate requirement as set forth in Regulation SHO Section 203(b)(2)(iii) in that the Firm misapplied the exception in connection with customer facilitation, non-bona fide market making short sales and proprietary hedge short sales. This conduct also violates NASD Conduct Rule 2110 and FINRA Rule 2010.
9. The Firm failed to disclose its market maker status on certain equity research reports it published in connection with issuers in whose securities it was a market maker, in violation of NASD Rule 2711(h)(8). This conduct also violates NASD Conduct Rule 2110 and FINRA Rule 2010.

B. Baird also consents to the imposition of the following sanctions:

- a. A Censure; and
- b. A Fine in the amount of \$900,000.

Baird agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Baird has submitted an Election of Payment form showing the method by which Baird proposes to pay the fine imposed.

Baird specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter. The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

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

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

Baird 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

Baird 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 Baird; and
- C. If accepted:
 - 1. this AWC will become part of Baird's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Baird;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Baird's 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. Baird 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. Baird 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 Baird's right to take Legal or factual positions in litigation or other Legal proceedings in which FINRA is not a party.

- D. Baird may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Baird 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 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 the Firm to submit it.

01/12/2011
Date (mm/dd/yyyy)

Robert W. Baird and Co. Inc.
Respondent Robert W. Baird & Co. Inc.

By: Brian D. Reifel
ASSOCIATE GENERAL COUNSEL

Reviewed by:

Christopher Barber
Christopher Barber, Esq.
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115 S. LaSalle Street, Suite 3100
Chicago, IL 60603
312-577-1300

Counsel for Respondent Robert W. Baird & Co. Inc.

Accepted by FINRA:

2-11-11

Date

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



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