

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 20080136045-01**

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. (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.<sup>1</sup>

**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**

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

**RELEVANT DISCIPLINARY HISTORY**

The firm understands that its disciplinary history may be a factor that will be considered in deciding whether to accept this AWC. The firm has the following relevant disciplinary history. On September 14, 2006, FINRA accepted an AWC in which the firm and a Managing Member each were censured and fined \$100,000 (with the firm also entering into a supervisory undertaking) for supervisory failures related to improper trading by

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<sup>1</sup> Additional items arising from Examination No. 20080136045 related to registration, aggregation unit, and related supervisory topics are being pursued through a separate FINRA investigation.

certain registered representatives that violated securities law antifraud and registration provisions. In that connection, the AWC also found the firm violated NASD Rules 2110, 3370, and 6130 for numerous failures to make affirmative determinations and trade reporting issues associated with the above trading.

### **FACTS AND VIOLATIVE CONDUCT**

In Trading and Market Making Surveillance ("TMMS") Examination No. 20080136045, the staff of FINRA's Department of Market Regulation (the "staff") reviewed the trading activity of the firm set forth in Exhibit 1 for trade dates May 14-15, 2008, unless otherwise noted (the "2008 TMMS Review Period").

In connection with TMMS Examination No. 20080136045,

1. During the TMMS Review Period, the firm, on 8 occasions, effected a short sale in an equity security for its own account, without (1) borrowing the security, or entering into a bona-fide arrangement to borrow the security; or (2) having reasonable grounds to believe that the security could be borrowed so that it could be delivered on the date delivery is due; and (3) documenting compliance with SEC Rule 203(b)(1) of Regulation SHO. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 203(b)(1) of Regulation SHO.
2. During the TMMS Review Period, the firm transmitted Order Audit Trail System ("OATS") reports concerning 44 orders that contained inaccurate, incomplete, or improperly formatted data. Specifically, the firm (a) incorrectly denoted 32 proprietary orders and one employee order as "retail" orders, (b) failed on 8 occasions to report employee and proprietary orders as separate events or utilize the "combined" account type code, (c) failed to submit New Order Reports and incorrectly submitted Cancel Reports for five of the orders, (d) failed to record route timestamps for six of the orders, and (e) failed to submit a Cancel Report for one of the orders. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).
3. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to certain applicable securities laws and regulations, and/or the Rules of NASD. At a minimum, adequate written supervisory procedures addressing quality of markets topics should describe the following:
  - (a) specific identification of the individual(s) responsible for supervision;
  - (b) the supervisory steps and reviews to be taken by the appropriate supervisor;
  - (c) the frequency of such reviews; and
  - (d) how such reviews shall be documented.

During the review period, the firm's written supervisory procedures failed to provide for one or more of the four above-cited minimum requirements for adequate written supervisory procedures, in aspects of the following subject areas: Best Execution [(b)]; Sales Transactions [(b)]; OATS [(b) and (d)]; and, Information Barriers [(b) and (d)]. The conduct described in this paragraph constitutes violations of NASD Rules 2110 and 3010.

The firm also failed to provide sufficient documentary evidence that on the trade date(s) reviewed in the review period it performed the supervisory reviews set forth in its written supervisory procedures concerning Information Barriers. The conduct described in this paragraph constitutes a violation of NASD Rules 2110 and 3010.

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

**A censure, a fine of \$20,000 (consisting of \$7,500 for the SEC Rule 203(b) violations, \$7,500 for the OATS violations, and \$5,000 for the supervisory findings); and, an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph I.A.3 above.**

**In addition, within 30 business days of acceptance of this AWC by the National Adjudicatory Council ("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, 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.3; and, (3) the date the revised procedures were implemented.**

The firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. It has submitted an Election of Payment form showing the method by which it proposes to pay the fine 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 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 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 record;
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.

9-14-10  
Date

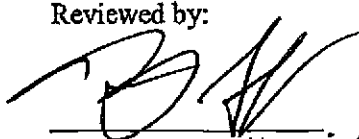
Respondent  
First New York Securities L.L.C.

By: 

Name: Joseph Schenk

Title: CEO

Reviewed by:

  
Attorney Name Harris Sufin

Counsel for Respondent

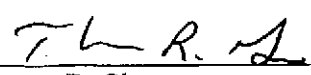
Firm Name FIRST NEW YORK SECURITIES, LLC.

Address 90 PARK AVENUE, 5<sup>TH</sup> FLOOR  
N.Y., N.Y. 10016

Accepted by FINRA:

10/29/10  
Date

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

  
Thomas R. Gira  
Executive Vice President  
Department of Market Regulation

2008 Market Regulation Examination Samples  
First New York Securities L.L.C.  
("FNYS")  
Exam No. 20080136045  
Sample Period: 5/14 and 15, 2008

Exhibit No. 1

| <u>Sample Size</u> | <u>Sample Description</u>                                                                                                                                                                           |
|--------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 51                 | Sales reviewed for compliance with SEC Rule 200(g) long/short sale recording requirements                                                                                                           |
| 35                 | Short Sales reviewed for compliance with SEC Rule 203(b) security location requirements                                                                                                             |
| 219                | Trades reported to a TRF or OTCTRF for compliance with FINRA Rules 7230A and 7330 (formerly known as NASD Rule 6130)                                                                                |
|                    | <u>219</u> for general trade reporting requirements                                                                                                                                                 |
|                    | <u>0</u> for Cancellation of reported trade requirements                                                                                                                                            |
|                    | <u>219</u> for Principal, Riskless Principal, or Agency executions effected otherwise than on an exchange                                                                                           |
|                    | <u>0</u> for compliance with the use of the .PRP (Prior Reference Price) trade modifier                                                                                                             |
|                    | <u>0</u> for compliance with the requirements of odd-lot trade reporting                                                                                                                            |
|                    | <u>0</u> for compliance with the use of the .RA trade modifier (prices away from the market)                                                                                                        |
|                    | <u>0</u> for compliance with the use of the .RX trade modifier (exercise OTC options contract)                                                                                                      |
|                    | <u>0</u> for compliance with SEC '34 Act Section 28(e) guidelines relating to Soft Dollar Agreements                                                                                                |
|                    | <u>182</u> for Sale Indicator requirements                                                                                                                                                          |
| N/A                | Disclosures to customers relating to trading in the Extended Hours session for compliance with Nasdaq Rule 4631                                                                                     |
| 476                | Orders entered into Nasdaq Exchange execution systems for compliance with Nasdaq Rules 4755 and 2110                                                                                                |
| N/A                | Limit orders for NMS securities in which the member acts as an exchange market maker for compliance with the display requirements of SEC Rules 602 and 604 and Nasdaq Rule 3390                     |
| 15                 | Orders for compliance with best execution requirements of NASD Rule 2320                                                                                                                            |
|                    | <u>0</u> Orders executed as principal for compliance NASD Rule 2320 and with the order protection requirements of NASD Rules 2110, IM-2110-2, 2111, 6541 and Nasdaq Rules 2110, IM-2110-2, and 2111 |
|                    | <u>0</u> 'Not Held' orders for compliance with NASD Rule 2320 and Nasdaq Rule 2320 best execution requirements                                                                                      |
| 15                 | Customer orders in OTC equity securities for compliance with NASD Rules 2320 and 3110(b) requirements to ascertain and document best interdealer market related to execution of orders              |
| 0                  | Open Limit orders to buy and/or open Stop orders to sell securities that traded ex-dividend for compliance with NASD Rule 3220 and Nasdaq Rule 4761                                                 |
| N/A                | Order memoranda and Net Trading agreements for compliance with NASD Rule 2441 requirements                                                                                                          |
| 50                 | Orders in securities required to be submitted to OATS for compliance with FINRA Rules 7440 and 7450 (formerly known as NASD Rules 6954 and 6955) and Nasdaq Rules 6954 and 6955 requirements        |
| 13                 | Customer confirmations prepared and maintained in connection with select samples                                                                                                                    |
|                    | <u>11</u> for compliance with SEC Rule 10b-10 disclosure requirements                                                                                                                               |
|                    | <u>2</u> for compliance with SEC '34 Act Section 28(e) guidelines relating to Soft Dollar Agreements                                                                                                |

\* unless otherwise noted

2008 Market Regulation Examination Samples  
First New York Securities L.L.C.  
("FNYS")  
Exam No. 20080136045  
Sample Period: 5/14 and 15, 2008

Exhibit No. 1

| <u>Sample Size</u>                       | <u>Sample Description</u>                                                                                                                                                                                                                                                        |
|------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| N/A                                      | Orders for NMS securities in which the Firm acts as a market center for compliance with SEC Rule 605 order classification requirements                                                                                                                                           |
| N/A                                      | Data sets published for <Month Year> monthly order execution report for compliance with SEC Rule 605 requirement to publish accurate data (a 'data set' encompasses all required statistical data for single security and order type/size category as described in SEC Rule 605) |
| N/A                                      | Orders underlying data sets reviewed for <Month Year> for NMS securities in which the Firm acts as a market center for compliance with SEC Rule 605 order classification requirements                                                                                            |
| 1                                        | Quarterly Routing Report for compliance with SEC Rule 606 requirements                                                                                                                                                                                                           |
| Excluded<br>Pending<br>Further<br>Review | CRD registration records for persons conducting and/or supervising Firm's trading and/or market making activities for compliance with NASD Rule Series 1020, 1030, 1040 and Nasdaq Rule Series 1020, 1030, 1040                                                                  |
| N/A                                      | Member's "Regular & Rigorous" review procedures regarding order execution quality for compliance with NASD Rules 2320 and 3010                                                                                                                                                   |
| All<br>Provided                          | Member's supervisory system, written supervisory procedures ("WSPs") and documentation evidencing execution of the WSPs for compliance with NASD Rule 3010 requirements                                                                                                          |
| N/A                                      | Member's supervisory and operational policies and procedures and documentation evidencing execution of the policies and procedures for compliance with SEC Regulation NMS Rules 610, 611, and 612                                                                                |
| 63                                       | Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4 and NASD Rule 3110.                                                                                                                                           |

September 8, 2010

Dawn Faris  
Counsel  
FINRA  
Market Regulation  
9509 Key West Avenue  
Rockville, Maryland 20850-3329

Transmittal of Letter of Acceptance, Waiver and Consent  
Corrective Action Statement  
STAR No. 20080136045

Dear Ms. Faris:

This is to acknowledge receipt and review of the Transmittal of Letter of Acceptance, Waiver and Consent dated August 26<sup>th</sup>, 2010 relative to the 2008 TMMS examination.

Please accept this Corrective Action Statement of First New York Securities, LLC (FNY)

1) SEC Rule 203(b) Reg SHO

During the subject time period, FNY did not receive but now receives a daily report from JP Morgan that reflects any trade that did not receive a locate. The operations team will approach the trader responsible for the locate, ascertain why a locate was not obtained and document the details and corrective action. The trader will be reminded of the requirements of the rules, regulations and firm policy regarding short sales.

Additionally, during the FNY Annual Compliance meeting the requirements specific to short sales and Reg SHO are discussed at length. To assure that each member of the trading staff has reaped the benefit of the Reg SHO discussion they are required to sign a sign-in sheet to evidence attendance of the meeting.

2) NASD Rule 6955 OATS (Order Data Transmission Requirements)

FNY has developed an internal solution to the incorrect submissions of OATS reports that were raised during the exam. The back office operations staff responsible for trade reporting will manually code any order required to be reported to OATS as either employee, retail or combined to be sure that the orders will be properly transmitted and reported to OATS in accordance with the rules.

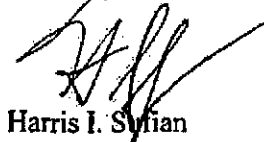
3) NASD Rule 3010 (Supervision and Written Supervisory Procedures)

FNY is in the process of updating and revising our Written Supervisory Procedures. Specifically, we will pay close attention to the subject areas of concern raised by the staff.

This Corrective Action Statement is submitted by the respondent. It does not constitute factual or legal findings by FINRA, or its staff.

Thank you very much for your time and patience.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. Sufian', written over the printed name.

Harris I. Sufian  
General Counsel