

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20080142618-01

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

RE: KBC Securities USA, Inc. f/k/a KBC Financial Products USA, Inc., Respondent
Broker-Dealer
CRD No. 46709

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, KBC Securities USA, Inc. f/k/a KBC Financial Products USA, Inc. (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

The firm has been a member of FINRA since September 20, 1999, and its registration remains in effect.

RELEVANT DISCIPLINARY HISTORY

On August 17, 2009, FINRA accepted an AWC from the firm that imposed a censure and a \$27,500 fine, consisting of \$7,500 fine for Trade Reporting and Compliance Engine ("TRACE") reporting violations; a \$15,000 fine for equity trade reporting violations; and a \$5,000 fine for supervision violations.

On June 26, 2008, FINRA accepted an AWC from the firm that imposed a censure and a \$25,000 fine, consisting of a \$15,000 fine for TRACE reporting violations and a \$10,000 fine for supervision violations.

SUMMARY

Equity Trade Reporting Matters

In connection with 20080142618, the Trade Reporting Staff of FINRA's Department of Market Regulation (the "Trade Reporting Staff") reviewed the firm's compliance with the equity trade reporting rules for consolidated quotation system ("CQS") securities during the period January 1, 2008 through April 30, 2008.

In connection with 20090184347, the Trade Reporting Staff reviewed the firm's compliance with the equity trade reporting rules for national market system ("NMS") securities during the period January 1, 2009 through April 30, 2009.

In connection with 20110264202, the Trade Reporting Staff reviewed the firm's compliance with the equity trade reporting rules for NMS securities during the period September 1, 2010 through December 31, 2010.

TRACE Reporting Matters

In connection with 20080163829, the TRACE Corporate Bonds Staff of FINRA's Department of Market Regulation (the "TRACE Corporate Bonds Staff") reviewed the firm's compliance with the rules applicable to TRACE reporting during the period July 1, 2007 through September 30, 2007.

In connection with 20080164321, the TRACE Corporate Bonds Staff reviewed the firm's compliance with the rules applicable to TRACE reporting during the period October 1, 2007 through December 31, 2007.

In connection with 20090198616, the TRACE Corporate Bonds Staff reviewed the firm's compliance with the rules applicable to TRACE reporting during the period July 1, 2008 through September 30, 2008.

In connection with 20100234371, the TRACE Corporate Bonds Staff reviewed the firm's compliance with the rules applicable to TRACE reporting during the period April 1, 2009 through June 30, 2009.

In connection with 20110272048, the TRACE Corporate Bonds Staff reviewed the firm's compliance with the rules applicable to TRACE reporting during the period April 1, 2010 through June 30, 2010.

The Securities and Exchange Commission's September 18, 2008 Emergency Order

In connection with 20090207893, the Short Sales Staff of FINRA's Department of Market Regulation reviewed, *inter alia*, the firm's compliance with the Securities and Exchange Commission's (the "Commission") Emergency Order of September 18, 2008 (the "Emergency Order")¹ during the period September 19, 2008 through October 8, 2008.

FACTS AND VIOLATIVE CONDUCT

Trade Reporting Matters

20080142618

1. During the period reviewed, the firm failed, within 90 seconds after execution, to transmit to the FINRA/Nasdaq Trade Reporting Facility ("FINRA/Nasdaq TRF") 148 last sale reports of transactions in CQS securities. These transactions constituted over six percent of the transactions in CQS securities that the firm reported to the FINRA/Nasdaq TRF during the period reviewed. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 4632(a) and a pattern or practice of late reporting without exceptional circumstances in violation of NASD Rule 2110.
2. The firm failed, within 90 seconds after execution, to transmit to the FINRA/Nasdaq TRF 16 last sale reports of transactions in CQS securities, and failed to designate through the FINRA/Nasdaq TRF such last sale reports as late. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 4632(a).
3. During the review period, the firm double reported to the FINRA/Nasdaq TRF 13 last sale reports of transactions in CQS securities. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 4632.
4. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Rules of FINRA, concerning equity trade reporting. Specifically, the firm's supervisory system did not include written supervisory procedures providing for: (1) the identification of the person(s) responsible for supervision with respect to the applicable rules; (2) a statement of the supervisory step(s) to be taken by the identified person(s); (3) a statement as to how often such person(s) should take such step(s); and (4) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. The conduct described in this paragraph constitutes a violation of NASD Rules 2110 and 3010.

¹ See Exchange Act Rel. No. 58,592 (Sept. 18, 2008), which, as amended by Exchange Act Rel. No. 58,611 (Sept. 21, 2008), was effective from September 18 through October 8, 2008.

20090184347

5. During the period reviewed, the firm failed, within 90 seconds after execution, to transmit to the FINRA/Nasdaq TRF 152 last sale reports of transactions in NMS securities. These transactions constituted over 11 percent of the transactions in NMS securities that the firm reported to the FINRA/Nasdaq TRF during the period reviewed. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6380A(a) and a pattern or practice of late reporting without exceptional circumstances in violation of FINRA Rule 2010.
6. The firm failed, within 90 seconds after execution, to transmit to the FINRA/Nasdaq TRF 13 of the 152 last sale reports of transactions in NMS securities, identified in paragraph five, above, and failed to designate through the FINRA/Nasdaq TRF such last sale reports as late. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6380A(a).

20110264202

7. During the period reviewed, the firm failed, within 90 seconds after execution, to transmit to the FINRA/Nasdaq TRF 184 last sale reports of transactions in NMS securities. These transactions constituted over 11 percent of the transactions in NMS securities that the firm reported to the FINRA/Nasdaq TRF during the period reviewed. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6380A(a) and a pattern or practice of late reporting without exceptional circumstances in violation of FINRA Rule 2010.

TRACE Matters

20080163829

8. During the period reviewed, the firm failed to report to TRACE the correct contra-party's identifier for 134 transactions in TRACE-eligible securities. These transactions constituted over 10 percent of the inter-dealer transactions in TRACE-eligible securities that the firm reported to TRACE during the period reviewed. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6230(c)(6).
9. During the review period, the firm failed to report to TRACE 10 transactions in TRACE-eligible securities that it was required to report. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6230(b).
10. During the period reviewed, the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Rules of FINRA, concerning TRACE reporting. Specifically, the firm's supervisory system did not include written supervisory procedures providing for a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. The

conduct described in this paragraph constitutes a violation of NASD Rules 2110 and 3010.

20080164321

11. During the period reviewed, the firm failed to report to TRACE the correct contra-party's identifier for 76 transactions in TRACE-eligible securities. These transactions constituted over six percent of the inter-dealer transactions in TRACE-eligible securities that the firm reported to TRACE during the period reviewed. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6230(c)(6).

20090198616

12. During the period reviewed, the firm failed to report to TRACE the correct contra-party's identifier for 330 transactions in TRACE-eligible securities. These transactions constituted over 28 percent of the inter-dealer transactions in TRACE-eligible securities that the firm reported to TRACE during the period reviewed. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6230(c)(6).
13. During the review period, the firm failed to report to TRACE 13 transactions in TRACE-eligible securities that it was required to report. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6230(b).

20100234371

14. During the period reviewed, the firm failed to report to TRACE the correct contra-party's identifier for 139 transactions in TRACE-eligible securities. These transactions constituted over 17 percent of the inter-dealer transactions in TRACE-eligible securities that the firm reported to TRACE during the period reviewed. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6730(c)(6).
15. During the review period, the firm failed to report to TRACE 66 transactions in TRACE-eligible securities that it was required to report. These transactions constituted over eight percent of the transactions in TRACE-eligible securities that the firm was required to report to TRACE during the review period. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6730(b).

20110272048

16. During the period reviewed, the firm failed to report to TRACE the correct contra-party's identifier for 65 transactions in TRACE-eligible securities. These transactions constituted over eight percent of the inter-dealer transactions in TRACE-eligible securities that the firm reported to TRACE during the period reviewed. The conduct

described in this paragraph constitutes separate and distinct violations of FINRA Rule 6730(c)(6).

The Commission's September 18, 2008 Emergency Order (20090207893)

17. The Commission issued the Emergency Order on September 18, 2008. The Emergency Order provided, among other things, that "[a]ll persons are prohibited from short selling any publicly traded securities of any Included Financial Firm." An appendix to the Emergency Order specifically identified 799 financial firms as "Included Financial Firms." The Emergency Order was effective immediately.
18. During the review period, the firm executed 24 short sales constituting more than 450,000 shares for its proprietary account in the securities of seven financial firms covered by the Emergency Order, and the firm was not otherwise entitled to the market maker exemption to the Emergency Order during that period. The conduct described in this paragraph constitutes separate and distinct violations of Section 12(k)(4) of the Securities Exchange Act of 1934, which requires that brokers and dealers comply with Commission orders, and NASD Rule 2110.
19. During the review period, the firm executed 25 short sale orders and failed to properly mark the orders as short. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 200(g) of Regulation SHO.
20. During the review period, the firm, on 22 occasions, accepted a short sale order in an equity security from another person, or 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.

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

A censure and a fine of \$157,500, consisting of the following:

- \$10,000 fine for trade reporting violations and a \$10,000 fine for supervision violations in 20080142618;
- \$10,000 fine for trade reporting violations in 20090184347;
- \$12,500 fine for trade reporting violations in 20110264202;
- \$10,000 fine for TRACE reporting violations and a \$10,000 fine for supervision violations in 20080163829;
- \$10,000 fine for TRACE reporting violations in 20080164321;

- \$12,500 fine for TRACE reporting violations in 20090198616;
- \$12,500 fine for TRACE reporting violations in 20100234371;
- \$10,000 fine for TRACE reporting violations in 20110272048;
- \$50,000 fine for Emergency Order; SEC Rule 200(g); and SEC Rule 203(b)(1) violations in 20090207893; and
- an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraphs I.A. 4 and 10.

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 paragraphs I.A. 4 and 10; 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

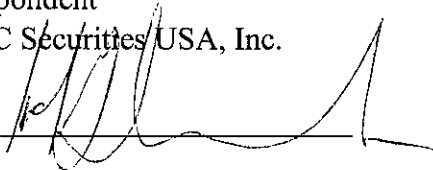
inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- 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.

10/12/2012
Date

Respondent
KBC Securities USA, Inc.

By: 

Name: HUBERT DUBRULE

Title: CEO

Reviewed by:



Paul Eckert, Esq.
Counsel for Respondent
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 663-6537

Accepted by FINRA:

16/03/13
Date

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

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