

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT**

NO. 2008015717201

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

**RE: Deutsche Bank Securities Inc.
CRD No. 2525**

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Deutsche Bank Securities Inc. ("Respondent" or "the Firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent 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

Respondent is a FINRA registrant and maintains its principal place of business in New York, New York, with branch offices throughout the United States. The Firm serves as the investment banking and securities arm of Deutsche Bank AG in the United States. During the relevant time period, the Firm engaged in a general securities business that included retail and institutional brokerage services, trading and advisory services. The Firm trades securities for institutional and individual clients as well as for proprietary accounts.

RELEVANT DISCIPLINARY HISTORY

The Firm has previously been disciplined on a number of occasions for violations of Rules pertaining to supervisory procedures, including the following:

- In July 2010, the Firm consented to a \$575,000 fine. The sanction was based on findings that the Firm violated multiple Regulation SHO provisions, and failed to establish and maintain a supervisory system that would ensure compliance with Regulation SHO (AWC 2008014450501).

OVERVIEW

During the period 2006-2011 (the "Relevant Time Period"), the Firm violated FINRA rules by failing to establish and enforce adequate written supervisory procedures regarding dividend-related yield enhancement on total return swap transactions that involved U.S. equities.

The Firm failed to establish written supervisory procedures for the transactions themselves, the review of these transactions, or for documenting supervision that occurred. Although the Firm conducted reviews, it relied on incomplete data that did not provide enough information to ensure a comprehensive review. The Firm also failed to document any supervisory reviews.

Based on the above supervisory failures, the Firm violated NASD Rules 3010 and 2110 and FINRA Rule 2010.¹

FACTS AND VIOLATIVE CONDUCT

Total Return Swaps

An equity-based swap is a contractual arrangement between two parties who agree to exchange cash flows that replicate the economics of owning an underlying equity (or index or basket of stocks). The buyer of a swap has the risks and benefits similar to those of owning the underlying equity, while the seller of the swap has countervailing risks and benefits. In the swaps at issue here, the "total return" that the buyer received also included an amount equivalent to any dividends declared or receivable on the equity while the swap was open.

Generally, under tax law in effect during the Relevant Time Period, if an offshore investor owned a U.S. security and received a dividend, federal taxes would be withheld on that dividend payment. But under tax law in effect during much of the Relevant Time Period, no taxes would be withheld if the same investor entered into a swap agreement involving the same security and received a total return that included an amount equivalent to the dividend. This payment in lieu of the dividend was known by various terms throughout the industry, including "dividend uplift,"

¹ NASD Rule 2110 applies to conduct on or before December 14, 2008 and FINRA Rule 2010 applies to conduct on or subsequent to December 15, 2008.

"dividend enhancement," and "yield enhancement." This difference in tax treatment under U.S. tax law could provide some offshore investors with incentive to enter into swaps involving dividend-paying U.S. securities over the dividend record date. The Firm, therefore, needed to supervise these transactions adequately to ensure that they were handled appropriately.

Failure to Supervise Total Return Swaps

NASD Rule 3010 requires that a FINRA registrant both establish a system of supervision and have written procedures. The Rule requires that a FINRA registrant develop procedures tailored to every aspect of its business. Moreover, "once a member has designed its supervisory system, Rule 3010(b) requires the member to memorialize this system in writing and implement and enforce these written procedures." See Notice to Members 99-45 (June 1999).

Rule 3010(d)(1) further provides that members must establish written procedures for the review of all transactions. The Rule also requires that firms maintain evidence that their supervisory procedures have been implemented.

NASD Rule 2110 and FINRA Rule 2010 require that FINRA registrants observe "high standards of commercial honor and just and equitable principles of trade."

1. The Firm failed to establish written procedures for the swaps trading.

From at least 2002 through 2011, the Firm did not maintain any written procedures for how to supervise or document decisions that impacted dividend uplift on swap trades referencing U.S. dividend-paying securities.

In 2002, the Firm issued guidelines regarding the Total Return Swap program in the form of a memorandum ("the 2002 memo"). The 2002 memo concerned the federal tax withholding risk related to the swaps program – i.e., the risk that customers would engage in improper dividend uplift. The memo provided that the stated policy of the structured finance business in New York is that the Firm will not execute swaps around dividend dates and that the Firm would like the structured finance business to continue to reduce its U.S. withholding tax risk by increasing, as quickly and to the extent possible, the percentage of market executions around swap trading in US equities with foreign clients. As a result, the Firm indicated that it would strive to hedge swaps in market transactions rather than cross shares with counterparties,² and further advised that holding periods for swaps should be modified to require a 45-day minimum term, raised from the then-current 30 day minimum.

The Firm, having provided this advice, did not take any steps to establish written procedures for the members of the swaps desk who were in a position to implement the guidance provided in the 2002 memo. The Firm did not identify who was responsible for enforcing Firm policies in

² In a "cross" trade, the parties conduct the securities transaction directly with each other, and execute it in the over-the-counter market.

-

this area or provide an adequate process for enforcing and documenting supervision of these policies.

In November 2008, the Firm issued additional guidance regarding the Total Return Swap program in the form of "US Tax Guidelines" (the "2008 guidelines"). The 2008 guidelines were designed to set forth the kinds of terms that would be acceptable under the U.S. tax laws. The guidelines generally required swaps to be held open for no less than 45 days, barred crosses with counterparties, and limited swaps involving market-on-close ("MOC") pricing. The 2008 guidelines also stated that the Firm would monitor customer trading patterns to determine whether any offshore counterparty had a practice of establishing swaps near dividend dates, or switched between swaps and their underlying securities while maintaining a long position. However, the Firm did not establish adequate procedures describing how its staff would or should monitor cross-trades, MOC pricing or customer trading patterns, or how staff should assess and document customers' requests for exceptions to the guidelines.

The 2002 memo and 2008 guidelines permitted certain Total Return Swap transactions that were exceptions to the aforementioned guidance under particular circumstances – for example, if the security underlying the swap experienced a specified shift in price within a specified period of time. However, the Firm did not keep adequate records of decisions to allow exceptions, and after-the-fact reviews of such decisions were not adequately documented.

2. The Firm relied on incomplete data in the reviews that it did conduct.

The Firm developed a document so that overall client trading patterns could be monitored and potential red flags regarding the use of Total Return Swaps could be identified by desk personnel. However, this document and the Firm's review of it were insufficient in that the document was based on data that did not facilitate adequate monitoring.

Throughout this period, the Firm was aware that it needed to improve its record keeping regarding swaps, so as to better manage risks associated with yield enhancement on Total Return Swaps. However, the Firm did not put in place systems to retrieve sufficient data for managers' review of executions made by the desk staff. The Firm's records regarding MOC pricing or cross trades were not adequate under NASD Rule 3010, such that it made it difficult for the Firm to supervise desk staff's compliance with the guidelines regarding such pricing.

By reason of these supervisory failures, the Firm violated NASD Rule 3010, as well as NASD Rule 2110 and FINRA Rule 2010.

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

1. a censure; and
2. a fine of \$275,000.

Respondent agrees to pay the monetary sanctions upon notice that this AWC has been accepted

and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which Respondent proposes to pay the fine imposed.

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

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

II.

WAIVER OF PROCEDURAL RIGHTS

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

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

Respondent 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

Respondent 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 Respondent; and**
- C. If accepted:**
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Respondent;**
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondent'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. Respondent 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. Respondent 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 Respondent's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.**
- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent 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 the Firm has 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.

March 22, 2013

Date:

Respondent
Deutsche Bank Securities Inc.

By: Joseph P. [Signature]

By: Robert S. [Signature]

Reviewed by:

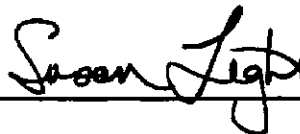
[Signature]

H. Christopher Boehning, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
Telephone: (212) 373-3061
Facsimile: (212) 492-0061
Email: cboehning@paulweiss.com
Counsel for Respondent

Accepted by FINRA:

April 8, 2013
Date

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

A handwritten signature in black ink, appearing to read "Susan Light", is written over a horizontal line.

Susan Light
Senior Vice President and Chief Counsel
FINRA Department of Enforcement
200 Liberty Street
1 World Financial Center – 11th Floor
New York, N.Y. 10005
Phone Number: (646) 315-7333
Fax Number: (646) 315-7425
susan.light@finra.org