

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20080161669-01**

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

RE: Daiwa Capital Markets America Inc.
Broker-Dealer
CRD No. 1576

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Daiwa Capital Markets America 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 January 26, 1965, and its registration remains in effect. On April 1, 2010, the firm changed its name from Daiwa Securities America Inc. to Daiwa Capital Markets America Inc.

RELEVANT DISCIPLINARY HISTORY

On November 25, 2008, an AWC became final pursuant to which the firm was censured and fined \$10,000 for violations of NASD Rule 6955.

SUMMARY

In Market Regulation Review No. 20080161669, the staff of FINRA's Department of Market Regulation (the "staff") conducted a review of the firm's trading and market making activities for trade dates December 15, 2008 through December 30, 2008. A description of the areas reviewed by the staff is attached to this AWC as Exhibit 1.

FACTS AND VIOLATIVE CONDUCT

1. During the review period, the firm transmitted to the Order Audit Trail System ("OATS") 41 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, in 41 instances the firm failed to append the "not held" special handling instruction to the reports. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450.
2. The firm failed to report to the OTC Reporting Facility 127 last sale reports of transactions in OTC Equity securities. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6622.
3. On 24 occasions, the firm inaccurately disclosed to a customer that a transaction was executed at an average price, and on four occasions, the firm inaccurately disclosed to a customer that a long sale was executed as a short sale. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 10b-10.

B. The firm also consents to the imposition, at a maximum, of the following sanctions:

A censure and fine \$20,000 (\$10,000 for violations of FINRA Rule 7450 (OATS), \$7,500 for violations of FINRA Rule 6622 (trade reporting), and \$2,500 for violations of SEC Rule 10b-10 (customer confirmations)).

The firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payments 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.

Date

July 7, 2010

Respondent

Daiwa Capital Markets America Inc.

By:

Name: STEWART M SCOTT III

Title: EVP & CCO

Reviewed by:

Joshua D. Goodman

Attorney Name Joshua D. Goodman

Counsel for Respondent

Firm Name Daiwa Capital Markets America Inc.

Address 32 Old Slip

City/State/Zip New York, NY 10005

Phone Number 212-612-6272

Accepted by FINRA:

8/24/10

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

2009 Market Regulation Examination Samples

RAWC Exhibit No. 1

DAWA

Exam No. 20080161669

Sample Source/Period*:

December 15-30, 2008

Sample

Size

Sample Description

- | | |
|-----|---|
| 54 | Sales reviewed for compliance with SEC Rule 200(g) long/short sale recording requirements |
| 0 | Short Sales reviewed for compliance with SEC Rule 203(b) security location requirements |
| 0 | Sales reviewed for compliance with SEC Rule 204T fail-to-deliver requirements |
| 205 | Trades reported to a TRF or OTCTRF for compliance with FINRA Rules 7230A, 7330, 6182, 6380A, 6380C, 6622 and 6624 |
| 205 | for general trade reporting requirements. |
| 0 | for Cancellation of reported trade requirements |
| 0 | for Principal, Riskless Principal, or Agency executions effected otherwise than on an exchange |
| 0 | for compliance with the use of the PRP (Prior Reference Price) trade modifier |
| 0 | for compliance with the requirements of odd-lot trade reporting |
| 0 | for compliance with the use of the .RA trade modifier (prices away from the market) |
| 0 | for compliance with the use of the .RX trade modifier (exercise OTC options contract) |
| 0 | for compliance with SEC '34 Act Section 28(e) guidelines relating to Soft Dollar Agreements |
| 0 | for Sale Indicator requirements |
| 1 | Disclosures to customers relating to trading in the Extended Hours session for compliance with FINRA Rule 2265 and Nasdaq Rule 4631 |
| 61 | Orders entered into Nasdaq Exchange execution systems for compliance with Nasdaq Rule 4755 long/short reporting requirements |
| 61 | Orders entered into Nasdaq Exchange execution systems for compliance with Nasdaq Rule 4611 capacity reporting requirements |
| 1 | Orders for compliance with best execution requirements of NASD Rule 2320 |
| 0 | Orders executed as principal for compliance NASD Rule 2320 and with the order protection requirements of FINRA Rule 2010, NASD Rules IM 2110-2, and 2111 and Nasdaq Rules 2110, IM-2110-2, and 2111 |
| 0 | 'Not Held' orders for compliance with NASD Rule 2320 and Nasdaq Rule 2320 best execution requirements |
| 0 | Customer market orders in CQS securities for compliance with NASD Rule 2320 and Nasdaq Rule 2320 best execution requirements |
| 1 | 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 |
| 51 | Orders in securities required to be submitted to OATS for compliance with FINRA Rules 7440 and 7450 and Nasdaq Rules 6954 and 6955 requirements |

2009 Market Regulation Examination Samples

RAWC Exhibit No. 1

DAWA

Exam No. 20080161669

Sample Source/Period*:

December 15-30, 2008

<u>Sample Size</u>	<u>Sample Description</u>
57	Customer confirmations prepared and maintained in connection with select samples 57 for compliance with SEC Rule 10b-10 disclosure requirements 0 for compliance with SEC '34 Act Section 28(e) guidelines relating to Soft Dollar Agreements
1	Quarterly Routing Report for compliance with SEC Rule 606 requirements
14	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
All Provided	Member's "Regular & Rigorous" review procedures regarding order execution quality for compliance with NASD Rules 2320 and 3010
All Provided	Member's supervisory system, written supervisory procedures ("WSPs") and documentation evidencing execution of the WSPs for compliance with NASD Rule 3010 and BATS Rule 5.1 requirements
All Provided	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
233	Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4 and NASD Rule 3110