

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2009016281001**

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

RE: Cohen & Company Securities, LLC, Respondent
Member
CRD No. 104002

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent 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. 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

Cohen & Company Securities, LLC ("CCS") has been a FINRA member since 2000. Its main office is in Philadelphia, Pennsylvania and it also conducts business through a branch office in New York City. The firm employs approximately 31 registered persons. It conducts a general securities business on a fully disclosed basis.

RELEVANT DISCIPLINARY HISTORY

In August 2006, CCS entered into an AWC with NASD in which the firm agreed, without admitting or denying the findings, to a censure and \$10,000 fine for failing to report timely transactions in TRACE-eligible securities and for failing to establish, maintain and enforce written supervisory procedures that were reasonably designed to achieve compliance with its trade reporting obligations.

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OVERVIEW

CCS charged customers excessive mark-ups of approximately 10.3%, 85% and 58%, respectively, in the sales of three investment grade Collateralized Debt Obligation ("CDO") securities in which it acted as principal. At the time of those transactions, CCS had failed to establish, maintain and/or enforce a supervisory system and written supervisory procedures that were reasonably designed to achieve compliance with all applicable laws, rules and regulations pertaining to effecting principal transactions with customers. This conduct violated NASD Conduct Rules 2440 ("Rule 2440"), 3010 ("Rule 3010") and 2110 ("Rule 2110").

FACTS AND VIOLATIVE CONDUCT

Mark-Up Policy

On April 16, 2007, the Securities and Exchange Commission ("SEC") approved NASD IM-2440-2, *Additional Mark-Up Policy for Transactions in Debt Securities, Except Municipal Securities*. IM-2440-2 became effective on July 5, 2007. When the SEC approved IM-2440-2, NASD IM-2440 was renumbered IM-2440-1. IM-2440-2(a) specifically stated that it supplemented the guidance provided in IM-2440-1 regarding debt securities transactions. IM-2440-2(b)(1) establishes a presumption that when a dealer sells a debt security to a customer as principal, the dealer's contemporaneous cost constitutes the prevailing market price of the security for purposes of computing a mark-up. IM-2440-2(b)(2) states, in substance, that when a dealer *sells* a security to a customer, countervailing evidence of the prevailing market price of the security may be considered only where the dealer had no *contemporaneous purchase* in that security, or can show that in the particular circumstances the dealer's *contemporaneous cost* is not indicative of the prevailing market price.

IM-2440-2(b)(4) instructs that when a dealer sells a debt security to a customer as principal and identifies the prevailing market price using a measure other than its own contemporaneous cost, it must be prepared to provide evidence sufficient to overcome the presumption that its contemporaneous cost constituted the best measure of the prevailing market price. It further provides three specific situations under which a dealer may be able to show that its contemporaneous cost is not indicative of prevailing market price, thereby overcoming the presumption. IM-2440-2(b)(9) provides that, under certain circumstances, in a principal transaction between a member firm and a Qualified Institutional Buyer ("QIB") (as defined in Rule 144A under the Securities Act of 1933) involving a non-investment grade debt security, the QIB is deemed *not* to be a customer of the member firm for purposes of Rule 2440.

Excessive Mark-Ups

On three occasions, CCS sold, as principal, CDO securities to institutional customers at prices that were not fair and reasonable taking into consideration all relevant circumstances, including that the price was not reasonably related to the amount the firm contemporaneously paid for the CDO securities and that the securities had an investment grade rating as determined in accordance with NASD IM-2440-2(b)(9).

On August 16, 2007, CCS purchased a CDO having a par value of \$10 million at \$82.50 from a dealer. On August 17, 2007, CCS sold those securities to MFB, an institutional customer, at \$91, a mark-up of approximately 10.3% on the sale measured from its contemporaneous cost in acquiring the CDO.

On January 3, 2008, CCS purchased a CDO having a par value of \$4.5 million at \$7.00 from an institutional customer. On January 4, 2008, CCS sold those securities to HCP, an institutional customer, at \$13.00, a mark-up of approximately 85% on the sale measured from its contemporaneous cost in acquiring the CDO.

On June 6, 2008, CCS purchased a CDO having a par value of \$8 million at \$5.00 from a dealer. Later that day, CCS sold those securities to CIG, an institutional customer, at \$7.50, a mark-up of approximately 58% on the sale measured from its contemporaneous cost in acquiring the CDO and including interest the firm received from customer CIG on the sale.

By charging customers excessive mark-ups, CCS violated Rules 2440 and 2110.

Supervisory Deficiencies

During the period at issue, a substantial portion of CCS's total business activity comprised effecting transactions in debt securities, as principal, with other dealers and with customers who qualified as QIBs. Nevertheless, from about July 2007 to at least June 6, 2008, the firm's supervisory system and written supervisory procedures were not reasonably designed to ensure that prices at which it bought debt securities from, and at which it sold debt securities to, customers in principal transactions were fair and reasonable and to otherwise achieve compliance with all applicable laws, rules and regulations pertaining to effecting principal transactions with customers. Among other things, CCS's written supervisory procedures in effect during the specified period did not address or discuss, to any material extent, IM-2440-1 and did not contain procedures for weighing or applying (including how to weigh or apply) the various factors set forth in IM-2440-1 in reviewing and evaluating the

fairness of prices in principal transactions with customers. Likewise, notwithstanding that a substantial amount of CCS's business involved secondary market transactions as principal in debt securities, its written supervisory procedures in effect during the specified period did not address or discuss, to any material extent, IM-2440-2 and thus did not include procedures for implementing that guidance.

Moreover, CCS's written supervisory procedures in effect during the specified period, insofar as they provided for or included any procedure(s) for supervisory review of mark-ups and mark-downs in principal transactions with customers, were materially deficient and/or not reasonably designed in that the procedures merely directed the designated principal to review a random sample (of unspecified size) of principal transactions every six months. This frequency was materially inadequate and unreasonable.

The review of a random sample of transactions every six months was further inadequate in that it did not specify the sample size, the types of securities to be included in the sample or other reasonably definitive, detailed and/or comprehensive criteria and methodologies for conducting them. Moreover, although CCS's written procedures provided that, in conducting such reviews a worksheet should be completed that included the "calculated mark-up or mark-down percentage," the procedures did not contain or include any instructions, directives, guidance, standards, principles or other criteria regarding: how the mark-up or mark-down on any particular transaction should be calculated; how prevailing market price should be determined or identified for purposes of the calculations; how or by what criteria or measure (e.g., a specified percentage or a threshold gross dollar profit in relation to the transaction amount) a potentially unfair price, or potentially excessive mark-up or mark-down, would be identified; or, what action(s) should be taken if the review disclosed any trades with potentially unfair prices or excessive mark-ups or mark-downs. Nor did the supervisory procedures encompass or incorporate, for purposes of conducting the supervisory reviews and evaluating mark-ups and marks-downs, how various factors and circumstances such as the size of the transaction, the type of debt security involved and the availability of the security, should be weighed or assessed.

By failing to establish, maintain and/or enforce a supervisory system and written supervisory procedures that were reasonably designed to ensure the fairness of prices in principal transactions with customers, CCS violated Rules 3010 and 2110.

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

- a censure;
- a \$50,000 fine; and
- an order to pay \$899,251 in restitution, plus interest, determined in the manner described below.

Further, Respondent agrees to comply with the following undertaking within the time period specified (unless otherwise extended by FINRA staff following a written request by CCS):

Respondent shall undertake to review its supervisory system and procedures concerning its pricing of principal transactions with customers for compliance with FINRA rules and the federal securities laws. Within 90 calendar days of the issuance of this AWC, CCS's Chief Executive Officer will certify to FINRA in writing that CCS currently has in place systems and procedures reasonably designed to achieve compliance with those laws, regulations, and rules concerning charging fair prices in principal transactions with customers, including transactions in debt securities. The certification, along with the current procedures, must be submitted to Department of Enforcement staff at FINRA's Philadelphia District Office. Although FINRA staff may review the revised procedures, said review shall in no way constitute an approval of the revised procedures. The failure of FINRA staff to alert CCS to any deficiencies in the revised procedures shall not preclude FINRA from instituting a subsequent disciplinary action as a result of deficiencies in the revised procedures.

Respondent agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. The firm has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Restitution is ordered to be paid to the three customers listed on Attachment A hereto in the total amount of \$899,251, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from the date of the respective sales shown on Exhibit A until the date this AWC is accepted by the NAC.

A registered principal on behalf of Respondent firm shall submit satisfactory proof of payment of restitution or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted to Thomas M. Huber, Senior Regional Counsel, FINRA Department of Enforcement, 1835 Market Street, Suite 1900, Philadelphia, PA 19103, either by letter that identifies the Respondent and the case number or by e-mail from a work-related account of the registered principal of Respondent firm to EnforcementNotice@FINRA.org. This proof shall be provided to the FINRA staff member listed above no later than 120 days after acceptance of the AWC.

If for any reason Respondent cannot locate any customer identified in Attachment A after reasonable and documented efforts within 120 days from the date the AWC is accepted, or such additional period agreed to by a FINRA staff member in writing, Respondent shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property or abandoned property fund for the state in which the customer is last known to have resided. Respondent shall provide satisfactory proof of such action to the FINRA staff member identified above and in the manner described above, within 14 days of forwarding the undistributed restitution and interest to the appropriate state authority.

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

The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

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 it;
- 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 it;
- C. If accepted:

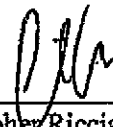
1. this AWC will become part of its permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about its disciplinary record;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

Cohen & Company Securities, LLC,

11/11/10
Date

By: 
Christopher Ricciardi
Chief Executive Officer

Accepted by FINRA:

Nov. 17, 2010
Date

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

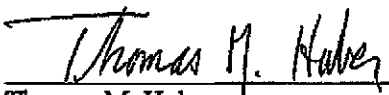

Thomas M. Huber
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EXHIBIT A

LETTER OF ACCEPTANCE, WAIVER AND CONSENT

COHEN & COMPANY SECURITIES, LLC

Customer	Date Interest Calculation Begins	Excess Markup Amount to Which Interest Must Be Applied
MFB	August 17, 2007	\$432,568
HCP	January 4, 2008	\$254,250
CIG	June 6, 2008	\$212,433
		\$899,251 (total restitution amount without interest)