

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2009018503501**

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

RE: Janney Montgomery Scott LLC, Respondent
Member Firm
CRD No. 463

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 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

Janney Montgomery Scott LLC ("JMS") has been a registered broker-dealer and a member of FINRA since 1936. JMS is a full service brokerage firm headquartered in Philadelphia, Pennsylvania. It has 105 active branches and employs approximately 1360 registered representatives.

RELEVANT DISCIPLINARY HISTORY

On November 3, 2010, JMS entered into an AWC with FINRA in which it agreed to a censure and a fine of \$175,000. FINRA found that for certain periods of time from 2003 to 2005, JMS' anti-money laundering program was not reasonably designed to achieve compliance with the Bank Secrecy Act and related regulations. In addition, during the same period, JMS failed to ensure proper branch office supervision relating to updating order ticket forms, and reviewing instant messages, outside securities accounts, and communications with the public. (AWC 2007009458001)

000059132 2011

On January 10, 2010, JMS entered into an AWC with FINRA in which it agreed to a \$5,000 fine for failing to report to TRACE large block transactions in TRACE-eligible corporate bonds within 15 minutes of the time of execution. (AWC No. 2007009222201)

On May 6, 2009, JMS entered into an AWC with FINRA in which it agreed to: a censure; a fine of \$200,000; complete voluntary purchase of eligible auction rate securities ("ARS") from investors in relevant class; make best efforts to provide liquidity to ARS purchasers not in relevant class; pay difference between par and price at which any investor in relevant class who sold eligible ARS at below ARS; agree to arbitrate claims for consequential damages filed by those in relevant class through a special arbitration program; and provide FINRA with reports of the repurchase and liquidity provisions of the AWC for violating NASD and MSRB rules relating to communications with the public in its marketing and sale of ARS and for failing to maintain adequate supervisory procedures concerning its sales and marketing activities regarding ARS. (AWC No. 2007009458001)

On August 10, 2007, JMS entered into a Stipulation and Consent with the NYSE in which it agreed to a censure, a fine of \$2,500,000 and an undertaking requiring the firm to continue to record the telephone conversations of its stock loan department and retain recordings for a period of no less than one year for activities involved in JMS's away-from-market stock loan transactions. (Case No. HPD #07-107)

On July 27, 2007, JMS entered into an AWC with NASD in which it agreed to a \$5,000 fine for failing to display immediately customer limit orders in NASDAQ securities in it public quotation. (AWC No. 20050001285-01)

OVERVIEW

JMS failed to deliver official statements by settlement date to numerous customers who purchased new issue municipal securities. While JMS maintained records regarding delivery of official statements to purchasers of new issue municipal securities, those records did not reflect certain required information. In addition, JMS failed to enforce its written supervisory procedures pertaining to its obligation to deliver official statements to customers who purchased new issue municipal securities. As a result of the foregoing, JMS violated MSRB Rules G-32, G-8, G-27 and G-17.

FACTS AND VIOLATIVE CONDUCT

MSRB Rule G-32: Disclosures in Connection with New Issues

MSRB Rule G-32(a) requires, with limited exceptions, all broker-dealers selling a new issue municipal bond to deliver a copy of the issue's official statement to the customer on or before settlement date of the purchase.¹ Delivery by settlement date is presumed to have been made if the official statement is placed in the mail at least three business days before settlement date.²

A new issue municipal bond is a municipal bond sold during the primary offering disclosure period.³ The primary offering disclosure period begins with the first submission to the underwriters of an order for the purchase of offered municipal securities⁴ or the purchase of securities from the issuer, whichever first occurs, and ends 25 days after the final delivery by the issuer or its agent of all securities of the issue to or through the underwriting syndicate or sole underwriter (usually the issue closing date).⁵ Under Rule G-32, the obligation to deliver the official statement is not limited to the underwriters of the municipal bond issue. The obligation to deliver an official statement by settlement date applies not only to underwriters, syndicate managers, syndicate members, and selling group members, but also to firms not participating in the offering that sell the municipal securities during the primary offering period and to secondary market transactions during that period.⁶

¹ Alternatively, effective June 1, 2009, MSRB Rule G-32 was amended to permit broker-dealers to satisfy this delivery obligation by notifying customers how they may obtain a copy of the issue's official statement electronically.

² MSRB's "Notice Regarding the Disclosure Obligations of Brokers, Dealers and Municipal Securities Dealers in Connection with new Issue Municipal Securities Under Rule G-32," November 19, 1998; NASD Regulation, Inc.'s "Municipal Securities Update – Disclosure to Purchasers of New Issue Securities," *Regulatory & Compliance Alert*, Vol. 12, No. 3 (Sept. 1998).

³ MSRB Rule G-32(d)(vi).

⁴ The term "offered municipal securities" shall mean municipal securities that are sold by a broker, dealer or municipal securities dealer during the securities' primary offering disclosure period, including but not limited to municipal securities reoffered in a remarketing that constitutes a primary offering and municipal securities sold in a primary offering but designated as not reoffered. See MSRB Rule G-32(d)(vi).

⁵ MSRB Rule G-32(d)(ix).

⁶ MSRB G-32(a). See also MSRB's "Notice Regarding the Disclosure Obligations of Brokers, Dealers and Municipal Securities Dealers in Connection with new Issue Municipal Securities Under Rule G-32," November 19, 1998; NASD Regulation, Inc.'s "Municipal Securities Update – Disclosure to Purchasers of New Issue Securities," *Regulatory & Compliance Alert*, Vol. 12, No. 3 (Sept. 1998).

Failure to Deliver Official Statements to Customers

At various times from January 2009 through December 2009 ("relevant period"), JMS failed to deliver official statements by settlement date to numerous customers who purchased new issue municipal securities during the primary offering disclosure period. In each of these transactions, JMS was neither an underwriter nor part of the underwriting syndicate. However, MSRB Rule G-32 *required the firm to deliver an official statement to each customer by settlement date.*

Failure to Keep Records Required by MSRB Rule G-8(a)(xiii)

MSRB Rule G-8(a)(xiii) requires broker-dealers to keep a record of all deliveries of official statements to purchasers of new issue municipal securities required to be provided under MSRB Rule G-32. Interpretive guidance notes that MSRB Rule G-8 requires broker-dealers to keep a record of the customer's name, a description of the security, the settlement date, the type of disclosure sent (*i.e.*, a preliminary or final official statement), the date the disclosure was sent, and the name of the person(s) sending the disclosure.⁷ Firms must do more than merely establish a file containing a copy of the customer's confirmation and a copy of a mailing label used to send the official statement. At various times during the relevant period, JMS failed, among other things, to document the type of disclosure sent and the name of the person sending the disclosure, each of which was required by MSRB Rule G-8(a)(xiii).

Failure to Enforce Written Supervisory Procedures as Required by MSRB Rule G-27

MSRB Rule G-27(a) requires broker-dealers to supervise the conduct of their municipal securities activities and to ensure compliance with MSRB Rules. Rule G-27(c) requires each broker-dealer to adopt, maintain and enforce written supervisory procedures reasonably designed to ensure that the conduct of municipal securities activities is in compliance with MSRB rules. The firm's written policies and procedures and internal compliance review procedures should clearly address both new issue municipal securities customer disclosures and recordkeeping relating to MSRB Rule G-32.⁸

⁷ MSRB's "Notice Regarding the Disclosure Obligations of Brokers, Dealers and Municipal Securities Dealers in Connection with new Issue Municipal Securities Under Rule G-32," November 19, 1998; NASD Regulation, Inc.'s "Municipal Securities Update – Disclosure to Purchasers of New Issue Securities," *Regulatory & Compliance Alert*, Vol. 12, No. 3 (Sept. 1998).

⁸ NASD Regulation, Inc.'s "Municipal Securities Update – Disclosure to Purchasers of New Issue Securities," *Regulatory & Compliance Alert*, Vol. 12, No. 3 (Sept. 1998).

MSRB Rule G-27 applies to activities undertaken by a member firm directly as well as those that are outsourced to third parties. As FINRA reminded firms in Notice to Members ("NtM") 05-48 ("Members' Responsibilities When Outsourcing Activities to Third-Party Providers") issued in July 2005, "outsourcing an activity or function to a third party does not relieve members of their ultimate responsibility for compliance with all applicable federal securities laws and regulations and [FINRA] and MSRB rules regarding the outsourced activity or function." As noted in NTM 05-48, firms have a "continuing responsibility to oversee, supervise, and monitor the service provider's performance of covered activities."

During the relevant period, JMS allowed a third party service provider to deliver official statements to firm customers. JMS, however, failed to enforce its written supervisory procedures pertaining to: (1) the firm's official statement delivery requirements to customers; and (2) the firm's requirements to maintain various records pertaining to its obligation to deliver official statements to customers who purchased new issue municipal securities. For example, the firm's written supervisory procedures specifically required firm operational personnel to conduct periodic reviews of the service provider to ensure that the official statements were timely delivered. During the relevant period, however, JMS's operational personnel failed to conduct a sufficiently thorough review of the service provider, or an adequate number of reviews, and in certain instances failed to verify timely delivery of the official statements.

In light of the foregoing, JMS violated MSRB Rules G-32, G-8, G-27 and G-17.

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

- a censure and a \$75,000 fine.

Respondent agrees to pay the monetary sanction 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 it proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction 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 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 Respondent;
- 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 it;
 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 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 they 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 Respondent, 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.

Janney Montgomery Scott LLC

April 28, 2011
Date (mm/dd/yyyy)

By: [Signature]
John M. Ivan
Senior Vice President, General Counsel
Janney Montgomery Scott LLC

Accepted by FINRA:

5/10/2011
Date

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

[Signature]
Noel C. Downey
Senior Regional Counsel
FINRA Department of Enforcement
581 Main Street – Room 710
Woodbridge, NJ 07095
732-596-2042 (telephone)
202-721-6548 (facsimile)