

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20090191089~~04~~**

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

RE: James Sloan Altschul (CRD 2854032)
Respondent

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent, James Sloan Altschul ("Altschul" or "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

James Altschul was first registered with a FINRA member firm in February 1997 as a general securities representative and was first registered as a general securities principal in January 2002. He was registered with First Merger Capital, Inc. ("First Merger" or "the firm") from January 5, 2010 to May 3, 2010. He has not been registered with a FINRA member firm since then. FINRA retains jurisdiction over Altschul pursuant to Article V, § 4(a) of the By-Laws because the conduct which serves as the basis for this action commenced prior to his termination of registration and it is less than two years after the effective date of his termination of registration from the firm.

FACTS AND VIOLATIVE CONDUCT

FAILURE TO SUPERVISE SOLICITATIONS OF DEER

Altschul became the Chief Compliance Officer and the AML Compliance Officer at the New York branch of First Merger on January 5, 2010, and he worked in those capacities until May 3, 2010. As the Chief Compliance Officer and AML Compliance Officer, Altschul was the

designated supervisor at the branch responsible for, among other things, reviewing new customer account applications, the overall review of registered representatives' sales and trading activities, and investigating possible money laundering and taking corrective action when necessary.

By February 2010, Altschul learned that Deer Consumer Products, Inc. ("DEER"), a publicly traded company based in China, had intended to pay entities controlled by the operators of the First Merger branch office, who were in the process of becoming owners of the firm, \$350,000 for certain unspecified services. Beginning in February 2010 and continuing through May 3, 2010, registered representatives at the First Merger branch office, working under the direction of some of the operators of the branch office, solicited the purchase of approximately \$674,184 in DEER securities from First Merger customers. When they solicited customers to purchase DEER stock, the First Merger registered representatives did not disclose to customers that the operators of the branch had received \$350,000 in compensation from DEER.

DEER was the most heavily solicited security by First Merger's registered representatives while Altschul was registered with the firm. Altschul knew that the registered representatives in the New York branch were actively soliciting customers to purchase DEER stock. While the firm's registered representatives were soliciting purchases of DEER, Altschul learned that DEER had in fact paid \$350,000 to entities controlled by the operators of the branch. Despite knowing about the DEER payment, he did not take any action to reasonably ensure that the firm's brokers disclosed all material information regarding the \$350,000 payment from DEER when they solicited customers to purchase DEER.

FAILURE TO SUPERVISE CUSTOMER LIQUIDATIONS OF HEAT

In February 2010, counsel for SmartHeat, Inc. ("HEAT"), a publicly traded company based in China, referred four Chinese customers to First Merger. The customers allegedly were current or former HEAT employees. HEAT's counsel in the United States obtained customer signatures on new account forms and supplied supporting documentation. According to their new account documents, three of the four Chinese customers had annual incomes between \$25,000 and \$50,000 and the fourth had an income between \$50,000 and \$100,000; they each had a net worth of between \$50,000 and \$100,000; and each had a liquid net worth of between \$25,000 and \$50,000. Altschul approved the opening of each of the accounts for the four customers.

Altschul never spoke to the four customers or attempted to confirm the accuracy of the information about the accounts before approving the accounts to be opened. In addition, no one from the firm ever had any direct contact with any of the customers during the time their accounts were open at First Merger.

The four customers deposited collectively over 3.8 million shares of HEAT on February 18, 2010. Pursuant to powers of attorney he obtained to control the sales of HEAT stock on behalf of the four First Merger customers, HEAT's CEO, through counsel in the United States, directed the firm to begin selling the HEAT shares from the four accounts beginning on February

24, 2010. Between February 24 and May 3, 2010, while Altschul was registered with the firm, the four customers collectively sold over \$23 million of HEAT stock, all on instructions the firm received from the CEO. The HEAT transactions were the only transactions in the four customers' accounts. The HEAT sales by the four customers generated over \$1.1 million in commissions for First Merger, amounting to approximately 75 percent of all commissions it earned while Altschul was registered with the firm.

Despite the foregoing multiple red flags that should have alerted him to take action, Altschul failed to adequately monitor, analyze, and investigate the suspicious HEAT transactions in order to determine if it was appropriate to file a Suspicious Activity Report ("SAR-SF") form.

By engaging in the conduct described above, Altschul violated NASD Rule 3010 and FINRA Rules 2010 and 3310.

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

1. a three-month suspension from associating with any FINRA member in all capacities that require a Series 24 license;
2. a \$10,000 fine; and
3. an undertaking to cooperate with FINRA Department of Enforcement staff in its continuing investigation of matter no. 20090191089, including the prosecution of the matter before a FINRA hearing panel, by, among other things, meeting with and being interviewed by the staff without FINRA's resorting to Rule 8210, and testifying truthfully at the hearing of any disciplinary action arising from the matter.

The fine shall be due and payable either immediately upon re-association with a member firm following the three-month suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

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

Respondent understands that if he is barred or suspended from associating with any FINRA member in a capacity requiring a Series 24, he becomes subject to a statutory disqualification as that term is defined in Article III, Section 4, of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, Respondent may not be associated with any FINRA member in any capacity requiring a Series 24 during the period of the bar or suspension (see FINRA Rules 8310 and 8311). Furthermore, because Respondent is subject to a statutory disqualification during the

suspension, if he remains associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

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 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 she 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.

Respondent certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that he 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 him to submit it.

December 21, 2011
Date

James Sloan Altschul
James Sloan Altschul

Reviewed by:

Scott D. Stechman
Scott D. Stechman, Esquire
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Suite 505
50 Charles Lindbergh Blvd.
Uniondale, New York 11553
Counsel for Respondent

Accepted by FINRA:

Jan 31, 2012
Date

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

Michael J. Dixon
Michael J. Dixon
Senior Counsel
Department of Enforcement