

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO.2010022181901**

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

RE: Salomon Whitney LLC
CRD No. 145012

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Salomon Whitney LLC ("SW" 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

SW, headquartered in Babylon Village, New York, has been a member of FINRA since January 24, 2008. The firm operates an Office of Supervisory Jurisdiction ("OSJ") branch office in Bohemia, New York. SW is approved to engage in the following business activities: broker or dealer retailing corporate equity securities over-the-counter; broker or dealer selling corporate debt securities; mutual fund retailer; trading via floor broker; private placement of securities; and sale of variable contracts. SW employs approximately 19 registered individuals.

RELEVANT DISCIPLINARY HISTORY

On March 4, 2011, SW entered into a Consent Order with the State of Connecticut pursuant to which the firm was found, among other things, to have willfully violated Connecticut law in connection with the firm's assessment of handling fees. Specifically, the Order found that SW failed to disclose to its Connecticut customers that the

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transactional handling fee included a profit to the firm, that certain customers paid lower fees and that the fee was not based on the costs of handling a particular transaction. These findings were based on FINRA Rules 2210, 2430 and 2440 and were construed as dishonest and unethical practices of securities business within Connecticut law. Pursuant to the Consent Order, among other things, SW agreed to cease and desist from engaging in this conduct and to amend its customer trade confirmations for each Connecticut customer to adequately describe the handling fee.

OVERVIEW

On each transaction placed at the firm from at least July 2008 through the present, SW charged its customers as much as \$69.95 as a separate "handling fee" in addition to a commission. The handling fee charged by SW was not reasonable because it was effectively the same as a commission to the firm and the amount of the fee was not reasonably related to any direct handling-related services performed by the firm, or handling-related expenses incurred by the firm, in processing the transaction. In addition, SW improperly and inaccurately characterized the charge as a "handling fee" on customer trade confirmations and fee schedules. By reason of the foregoing, SW violated NASD Conduct Rules 2430 and 2110, FINRA Rule 2010, and Rule 10b-10 of the Securities Exchange Act of 1934 (Exchange Act).

FACTS AND VIOLATIVE CONDUCT

NASD Conduct Rule 2430 (Charges for Services Performed) requires charges, if any, for services performed, including miscellaneous services such as collection of moneys due for principal, dividends, or interest; exchange or transfer of securities; appraisals, safe-keeping or custody of securities, and other services, shall be reasonable and not unfairly discriminatory between customers.

Exchange Act Rule 10b-10 (Confirmation of Transactions) requires broker-dealers to disclose specified information in writing to customers at or before the completion of a transaction. Pursuant to Rule 10b-10, it shall be unlawful for any broker or dealer to effect for or with an account of a customer any transaction in, or to induce the purchase or sale by such customer of, any security (other than U.S. Savings Bonds or municipal securities) unless such broker or dealer, at or before completion of such transaction, gives or sends to such customer written notification disclosing, among other things, if the broker or dealer is acting as agent for such customer, for some other person, or for both such customer and some other person, the source and amount of any other remuneration received or to be received by the broker in connection with the transaction.

FINRA Rule 2010 (formerly NASD Conduct Rule 2110) (Standards of Commercial Honor and Principles of Trade) requires that a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of

trade.

On each transaction placed at the firm from at least July 2008 through the present, SW has charged its customers as much as \$69.95 as a separate "handling fee" in addition to a commission. The fee was designed primarily to serve as a source of additional transaction based remuneration or revenue to the firm, in the same manner as a commission, rather than to cover any direct handling-related services performed by the firm or handling-related expenses incurred by the firm in connection with the transactions. Nevertheless, the firm improperly and inaccurately characterized the fee as attributable to "handling." By designating the charge as a handling fee on customer trade confirmations, SW understated the amount of the total commissions charged by the firm and misstated the purpose of the handling fee.

By reason of the foregoing, SW violated NASD Conduct Rule 2430, Exchange Act Rule 10b-10 and NASD Conduct Rule 2110 and FINRA Rule 2010.

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

- A censure;
- A \$60,000 fine; and
- An undertaking by Respondent to certify, within 90 days of FINRA's acceptance of this AWC, that it has implemented corrective action to remedy the handling fee-related violations set forth above. Such corrective action shall include, but not be limited to: (1) identifying as commissions or mark-ups (mark-downs), as the case may be, and not as postage, handling or any other miscellaneous fee, all transaction-based remuneration, and any other fees which do not constitute reasonable fees under NASD Rule 2430 and do not comply with subsection (2) of this undertaking; (2) for any charges or fees for services (such as postage costs and clearing firm charges), other than commissions or mark-ups (mark-downs), fully and accurately disclosing on confirmations, as well as any communication with a customer or the public where fees are discussed (including fee schedules, if any, or new account documentation that contains fee information), the specific service performed or to be performed or the specific use, and the amount of the fee paid or to be paid in connection with each service or use, and retaining detailed records to substantiate such services and uses and the fee amounts; and (3) revising the firm's written supervisory procedures and providing training to the firm's registered representatives and associated persons to address this undertaking related to transaction-based remuneration, reasonable fees, their appropriate disclosure to customers, and retention of related records.

Respondent agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are 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(s) 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 SW; and
- C.** If accepted:
 - 1.** this AWC will become part of SW's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against SW;
 - 2.** this AWC will be made available through FINRA's public disclosure program in response to public inquiries about SW'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.** SW 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. SW 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 SW's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D.** SW may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. SW 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 have been given a full opportunity to ask questions about it; that SW 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.

August 11, 2011
Date (mm/dd/yyyy)

Salomon Whitney LLC
Respondent

By: Thomas Diamante

Thomas Diamante, CEO

Reviewed by:



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Counsel for Respondent

Accepted by FINRA:

9/6/11
Date

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



Vaishali Shetty
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