

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2010023303101**

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

RE: J.J.B. Hilliard, W.L. Lyons, LLC, Respondent
(CRD No. 453)

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, J.J.B. Hilliard, W.L. Lyons, LLC ("Hilliard Lyons" or 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 Hilliard Lyons alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Hilliard Lyons 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

Hilliard Lyons became a FINRA member on September 1, 1936. The Firm is headquartered in Louisville, Kentucky, maintains approximately 75 offices located across the United States, and employs approximately 680 registered representatives. During the period December 1, 1998 to March 31, 2008, Hilliard Lyons was a subsidiary of The PNC Financial Services Group, Inc., and the Firm served as the clearing broker-dealer for PNC Investments LLC ("PNC Investments"), an affiliated introducing broker. PNC Investments is a subsidiary of PNC Bank, N.A. ("PNC Bank"). On March 31, 2008, Hilliard Lyons was acquired by HL Financial Services, LLC, a company owned by employees of Hilliard Lyons and their financial partner, Houchens Industries, Inc., a non-member firm.

OVERVIEW

Between September 2008 through July 2010 (the "Relevant Period"), Hilliard Lyons violated Rule 203 of Regulation SHO ("Reg SHO") under the Securities Exchange Act of 1934 (17 CFR Part 242) by accepting four short sales without pre-borrowing the shares

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or having a reasonable basis to believe that shares could be delivered prior to settlement date. With respect to two additional short sales, the Firm failed to document whether it had or had not accepted the short sale orders in compliance with Reg SHO Rule 203's borrowing and locate requirements. The Firm also violated Reg SHO Rule 204 by maintaining two fail to deliver positions that it did not close out in the requisite time frame. In addition, the Firm violated NASD Rules 3010 and 2110 and FINRA Rule 2010 by maintaining an inadequate supervisory system and procedures with respect to monitoring its short sales to determine compliance with Reg SHO Rules 203 and 204.

FACTS AND VIOLATIVE CONDUCT

Hilliard Lyons Failed to Obtain the Requisite Locates as Required by Reg SHO Rule 203

Pursuant to Reg SHO Rule 203, broker-dealers may not accept a short sale order unless the broker-dealer has (i) borrowed the securities or entered into a bona fide arrangement to borrow the securities; or (ii) reasonable grounds to believe the security can be borrowed so that it can be delivered on the date delivery is due;¹ and (iii) documented that it has either borrowed or entered into an arrangement to borrow the securities, or located shares to give the broker-dealer reasonable grounds to believe that the shares will be delivered by the settlement date.

Hilliard Lyons violated Rule 203 in two respects. First, during the Relevant Period, Hilliard Lyons accepted four orders for short sales without either borrowing or entering into an arrangement to borrow the shares, or having reasonable grounds to believe that it could borrow shares so that they could be delivered by settlement date.

- On or around October 22, 2008, Hilliard Lyons accepted a short sale order for 1,000 shares of Crawford & Company stock without having first borrowed or entered into an arrangement to borrow the shares, or without locating the shares to give the firm a reasonable basis that the shares could be borrowed by settlement date.
- In June 2009, Hilliard Lyons failed to obtain a locate prior to entering an order for a short sale of 49,000 shares of Citigroup stock. The Firm acknowledged that the Citigroup order did not qualify for an exception to Reg SHO Rule 203's borrow and locate requirements, nor was the security on the Firm's Easy to Borrow list on the day the order was entered.

¹ Broker-dealers have reasonable grounds if the security is on an Easy to Borrow list that is less than 24 hours old or if they can locate the necessary shares to give them some assurance that the shares are available to be borrowed on or before settlement date.

- On March 1, 2010, Hilliard Lyons failed to obtain a locate prior to entering an order for a short sale of 100 shares of Diamond Foods, Inc. The Firm acknowledged that the Diamond Foods order did not qualify for an exception to Reg SHO Rule 203's borrow and locate requirements, nor was the security on the Firm's Easy to Borrow list on the day the order was entered.
- On March 5, 2010, the Firm entered an order for a short sale of 150 shares of Diamond Foods. While Hilliard Lyons obtained a locate, the locate was for only 100 shares and the Firm had no reasonable grounds to believe that it could borrow the 50 additional shares so that they could be delivered by settlement date.

Second, in October 2008, the Firm failed to document its compliance with Reg SHO Rule 203's borrowing and locate requirements with respect to two additional short sales such that the Firm could not demonstrate that the Firm entered the short sale orders only after it had a reasonable basis to believe that shares could be delivered by settlement date. Specifically, on October 22, 2008, the Firm executed a short sale of 10,000 shares of Wells Fargo purportedly based on a customer's assurance that the shares could be delivered by settlement date, but Hilliard Lyons failed to maintain any documents evidencing details regarding the customer assurance. Similarly, on October 28, 2008, the Firm executed a short sale of 10,263 shares of Aaron Rents Inc. purportedly based on a customer assurance, but Hilliard Lyons again failed to maintain documents evidencing details regarding the customer assurance. Without the records, the Firm could not demonstrate that it entered the short sale orders only after it had a reasonable basis to believe that shares could be delivered by settlement date.

By accepting four short sales without pre-borrowing the shares or having a reasonable basis to believe that the shares could be delivered prior to settlement date, and by failing to document whether it had or had not obtained a locate before accepting two additional short sales orders, Hilliard Lyons violated Reg SHO Rule 203.

Hilliard Lyons Failed to Close Out Positions as Required by Reg SHO Rule 204

Reg SHO Rule 204 requires broker-dealers to close out any failed settlement that exists on settlement date (T+3) by the opening of trading on T+4 (in the case of short sales) and T+6 (in the case of long sales). Broker-dealers that do not close out fail positions in accordance with Rule 204 become subject to a "borrowing penalty" until the broker-dealer purchases securities to close out the fail position and the purchase clears and settles at a registered clearing agency. Under such a penalty, the broker-dealer is required to pre-borrow shares of the stock for which it maintains a fail to deliver position until such time the fail to deliver position is closed out.

During the Relevant Period, Hilliard Lyons did not comply with Reg SHO Rule 204's close-out requirements with respect to the following two fail to deliver positions:

- On July 2, 2009, Hilliard Lyons executed a short sale of 62,000 shares of iShares Russell 2000 Index that created a 60,924 fail to deliver position at CNS.² The Firm did not close-out the fail position on July 6, 2009 (T+4). The Firm closed out the position on July 7, 2009.
- On September 24, 2008, Hilliard Lyons created a 240 share CNS fail to deliver position in Pool Corporation from bona fide market making activity. The Firm did not close-out the fail position on September 29, 2008 (T+6). Hilliard Lyons closed out the fail to deliver position on October 9, 2008. In the month following the fail to deliver position, the Firm conducted no further trading in Pool Corporation.

By maintaining the fail to deliver positions that it did not close out in the requisite time frame, Hilliard Lyons violated Reg SHO Rule 204.

Hilliard Lyons Failed to Establish and Maintain an Adequate Supervisory System Reasonably Designed to Achieve Compliance With Reg SHO Rules 203 and 204

During the Relevant Period, Hilliard Lyons did not have adequate procedures in place to ensure that the Firm complied with the locate provisions of Reg SHO Rule 203 or the closeout provisions of Reg SHO Rule 204. While the Firm made several revisions to its procedures during the Relevant Period, the revisions were not adequate to bring the Firm into compliance with the Reg SHO rules.

In or around early 2009, Hilliard Lyons updated its procedures in an effort to ensure that orders for short sales would no longer be accepted before obtaining a locate. In addition to requiring its registered representatives to contact the Settlements Department so that a locate could be performed, the Firm created a spreadsheet to track and monitor the locates obtained. The spreadsheet included, among other things, the date a locate was requested, the requestor, the quantity, the stock symbol, the stock lender, the time of the locate, the borrow rate, the result of the borrow request and whether or not the position was received. Hilliard Lyons, however, had no systematic controls to prevent a representative from electronically entering a short sale order into the Firm's system without a locate. As such, the Firm continued to accept certain short sale orders without first obtaining a locate.

In or around late 2009, Hilliard Lyons developed a system under which it reviewed all short sales on a T+1 basis to determine whether a locate had been obtained prior to the order being entered into the Firm's systems. Any short sales that were entered on the system that did not have an approved locate were immediately closed out on the system. The T+1 review, however, was not in compliance with Reg SHO Rule 203, which requires broker-dealers to have reasonable grounds to believe a security can be borrowed *prior to the acceptance of a short sale order*.

² CNS is the "Continuous Net Settlement System" by which the National Securities Clearing Corporation nets, allocates and allots securities and money positions.

With respect to the close out provisions of Rule 204, Hilliard Lyons' written supervisory procedures in 2009 did not address the resolution of fail to deliver positions related to long and short sales.

By failing to have in place an adequate system or procedures to ensure that it was in compliance with Reg SHO Rules 203 and 204, Hilliard Lyons violated NASD Rules 3010 and 2110 and FINRA Rule 2010.

* * * * *

B. Hilliard Lyons also consents to the imposition of the following sanctions:

1. A censure; and
2. A fine of \$30,000.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

Hilliard Lyons agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. Hilliard Lyons has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Hilliard Lyons 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.

II.

WAIVER OF PROCEDURAL RIGHTS

Hilliard Lyons 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, Hilliard Lyons 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.

Hilliard Lyons 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

Hilliard Lyons 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 Hilliard Lyons;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Hilliard Lyons'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. Hilliard Lyons 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. Hilliard Lyons 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 Hilliard Lyons's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. Hilliard Lyons 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 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.

7/28/11
Date

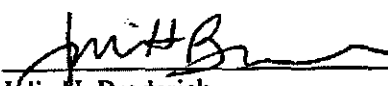
J.J.B. Hilliard, W.L. Lyons, LLC
Respondent

By: 
Wesley L. Ringo
Senior Vice President
Chief Compliance Officer

Accepted by FINRA:

8/4/11
Date

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


Julie H. Broderick
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