

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20100236877-XX**

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

RE: Daiwa Capital Markets America, Inc. ("Daiwa" or the "Firm"), Respondent
CRD No. 1576

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. Daiwa 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

Daiwa has been a FINRA-regulated entity since January 26, 1965, and its registration remains in effect. The Firm is a registered carrying and clearing broker. Its principal place of business is located in New York, New York. Daiwa operates three branch offices in addition to its main office, and employs approximately 200 registered representatives.

RELEVANT DISCIPLINARY HISTORY

In NYSE Hearing Board Decision 06-113 (June 28, 2006), Daiwa consented to a censure and a \$400,000 fine, based on findings that the Firm violated Rules 200(f) (by utilizing independent trading unit aggregation to determine its net position when it did not have written plan of organization); 200(g) (by failing to mark certain sell orders as "long," "short," or "short exempt"); and 203(b)(1) of Regulation SHO (by on multiple occasions effecting short sales for its own account without having: a) borrowed the securities, or entered into bona-fide

arrangements to borrow securities, or having reasonable grounds to believe that securities could be obtained for delivery when due and b) documented that it had borrowed the security, or entered into bona-fide arrangements to borrow the security, or had reasonable grounds to believe that securities could be obtained for delivery when due); and engaged in related books and records and supervisory violations.

OVERVIEW

In July 2009 and October 2011 respectively (the "relevant period"), the Firm violated Rule 204T(a) and Rule 204(a) of Regulation SHO. More specifically, the Firm inadvertently failed to close out a total of three fail to deliver positions in short sales of two equity securities by the beginning of regular trading hours on the settlement day following the settlement date (T+4). As a result of its failures to comply with Rule 204T(a) and Rule 204(a) of Regulation SHO, the Firm also violated FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Rule 204T and Rule 204 of Regulation SHO

Regulation SHO promulgated under the Securities Exchange Act of 1934 ("Exchange Act") established a regulatory framework to govern short sales. Among other things, Regulation SHO attempted to reduce fails to deliver¹ in certain equity securities by imposing a "close-out" requirement. On October 17, 2008, in order to address concerns over "naked" short-selling and general market upheaval, the Securities and Exchange Commission ("SEC") adopted temporary Rule 204T to enhance the close-out requirement of Regulation SHO for failures to deliver resulting from sales of any equity security.

Rule 204T was in effect from October 17, 2008 through July 30, 2009. On July 31, 2009, the SEC made permanent the amendments in Rule 204T by adopting Rule 204 of Regulation SHO.

Rule 204T(a) and Rule 204(a) both require that participants of a registered clearing agency deliver securities by settlement date, which for equity securities, is the third business day after the trade date ("T+3"). If the participants have not delivered securities by settlement date, the participant must immediately purchase ("buy-in") or borrow securities to close out the fail-to-deliver position by no later than the beginning of regular trading hours on the fourth day after the trade date, i.e. trade date plus four days ("T+4"), subject to certain exceptions. Failure to comply with these close-out requirements is a violation of either Rule 204T(a) or Rule 204(a), depending on the date of the non-compliance.

Daiwa's Violation of Rule 204T(a) – July 2009

In January 2010, the staff of FINRA's Risk Oversight and Operational Regulation Department ("ROOR") conducted a Financial/Operational and Sales Practice ("FINOP") cycle examination

¹ A "fail to deliver" occurs when a broker-dealer fails to deliver securities to the party on the other side of the short sale transaction on settlement date.

of Daiwa. The examination included a review of the Firm's compliance with Rule 204T and Rule 204 of Regulation SHO. The review disclosed two instances involving short sales of Citigroup, Inc. ("Citigroup," ticker C) stock in July 2009 where Daiwa did not properly comply with the close-out requirement of Rule 204T(a).

Daiwa did not close out two CNS¹ fail to deliver positions originating from proprietary short sales of Citigroup stock on trade dates July 21, 2009 (237,900 shares) and July 23, 2009 (32,000 shares) by the beginning of regular trading hours on the settlement days following the settlement dates (T+4), as required. The Firm covered the short positions on July 30, 2009 (three days late for the fail to deliver originating from the July 21 short sale and one day late for the fail to deliver originating from the July 23 short sale).

The above conduct constitutes a violation of Rule 204T(a) of Regulation SHO and FINRA Rule 2010.

Daiwa's Violation of Rule 204(a) – October 2011

In January 2012, ROOR conducted another FINOP cycle examination of Daiwa. The examination included a review of the Firm's fail to deliver close out procedures.

The review disclosed that Daiwa did not close out a CNS fail to deliver position originating from the proprietary short sale of 1,160 shares of Deutsche Post AG ADRs (ticker DPSGY) on trade date October 3, 2011² by the beginning of regular trading hours on the settlement day following the settlement date (T+4). The Firm borrowed the shares to cover the short position on October 12, 2011 (three days late).

The above conduct constitutes a violation of Rule 204(a) of Regulation SHO and FINRA Rule 2010.

B. The Firm also consents to the imposition of the following sanctions:

a censure; and

a \$30,000 fine.

The Firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. The Firm has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

¹ CNS is the "Continuous Net Settlement System" by which the National Securities Clearing Corporation nets, allocates, and allots securities and money positions.

² The daily trading volume of Deutsche Post AG ADRs on trade date October 3, 2011 was 15,400 shares.

The Firm 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

The Firm specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against the Firm;
- 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, the Firm 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.

The Firm 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

The Firm understands that:

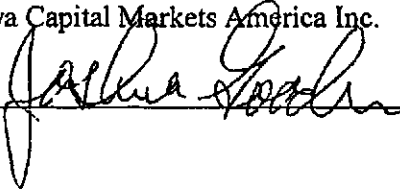
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will 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 the Firm;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my 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. The Firm 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. The Firm 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 the Firm's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. The Firm 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.

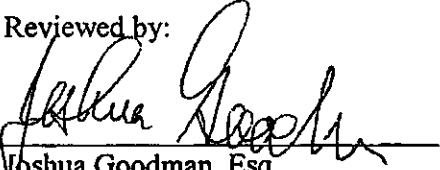
3/1/13
Date (mm/dd/yyyy)

Respondent

Daiwa Capital Markets America Inc.

By: 

Reviewed by:

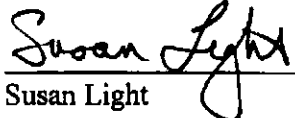


Joshua Goodman, Esq.
Executive Director and Associate General Counsel
Daiwa Capital Markets America Inc.
32 Old Slip
New York, NY 10005
(212) 612-6272
Counsel for Respondent

Accepted by FINRA:

March 6, 2013
Date

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



Susan Light
Senior Vice President and Chief Counsel
FINRA Department of Enforcement
One World Financial Center
200 Liberty Street
New York, NY 10281
646-315-7333