

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20100237623-01**

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

RE: First New York Securities, L.L.C., Respondent
Broker-Dealer
CRD No. 16362

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, First New York Securities, L.L.C. (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 the firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The firm 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

The firm has been a member of FINRA since June 5, 1985, and its registration remains in effect.

RELEVANT DISCIPLINARY HISTORY

The firm has no relevant disciplinary history.

FACTS AND VIOLATIVE CONDUCT

In Market Regulation Review No. 20100237623, staff of FINRA's Department of Market Regulation reviewed the firm's compliance with Rule 200(f) of Regulation SHO and related supervision during the period of May 1, 2008 through May 31, 2008 (the "review period").

In connection with Review No. 20100237623,

1. During the review period, the firm lacked a written plan of organization that identified each aggregation unit, specified each aggregation unit's trading objective(s) and supported each aggregation unit's independent identity. The conduct described in this paragraph violates Rule 200(f)(1) of Regulation SHO.¹
2. The firm failed to preserve for a period of not less than six years, the first two in an accessible place, a securities record or ledger, as defined by SEC Rule 17a-3(a)(5), concerning trading that occurred during the review period in three respective firm accounts that the firm claimed collectively constituted an aggregation unit of the firm. Accordingly, the firm could not substantiate (with documentary evidence) that trading in the above accounts in each security was netted together for purposes of Rule 200(f)(2). The conduct described in this paragraph constitutes violations of SEC Rule 17a-4 and NASD Rule 3110.
3. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to Rule 200(f) of Regulation SHO. Specifically, the firm's supervisory system did not include written supervisory procedures providing for: (1) the identification of the person(s) responsible for supervision with respect to the applicable rule; (2) a statement of the supervisory step(s) to be taken by the identified person(s) responsible for ensuring compliance with the rule; (3) a statement as to how often such person(s) should take such step(s); and (4) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. The conduct described in this paragraph constitutes violations of NASD Rules 2110 and 3010.

¹ The firm's lack of an adequate written plan of organization pursuant to Rule 200(f) rendered the firm ineligible to net its positions in a security by aggregation unit instead of across all the firm's positions in the security. This resulted in various potential regulatory compliance issues (since it cast doubt on the accuracy of the firm's netting calculations, which implicated the firm's proprietary order marking for trade reporting, Order Audit Trail System reporting, books and records, short interest reporting and other regulatory requirements). Any such resulting violations were not quantified due to the difficulties in reconstructing virtually all the firm's positions historically during the review period.

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

A censure and a fine of \$150,000.

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

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(s) 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 the firm'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. 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 it has agreed to the AWC's 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.

8/20/13
Date

Respondent
First New York Securities, L.L.C.

By: [Signature]

Name: James J. Sullivan

Title: General Counsel

Reviewed by:

[Signature]
Michele A. Coffey
Morgan, Lewis & Bockius LLP
Counsel for Respondent
101 Park Avenue
New York, NY 10178-0060

Accepted by FINRA:

Date

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

[Signature] 9/17/13
David E. Rosenstein
Senior Vice President and Counsel
Department of Market Regulation