

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2011028261501**

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

RE: Janney Montgomery Scott LLC, Respondent
Member Firm
CRD No. 463

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 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

Janney Montgomery Scott LLC ("Janney" or "the Firm") has been a registered broker-dealer and a FINRA member since 1936. The Firm is also registered with the Municipal Securities Rulemaking Board ("MSRB"), and a participant in a registered clearing agency. Its main office is in Philadelphia, Pennsylvania. Janney is a full-service brokerage firm that conducts a general securities business on a self-clearing basis. It has about 106 active branches and employs approximately 1,380 registered representatives.

RELEVANT DISCIPLINARY HISTORY

The Firm has been the subject of FINRA disciplinary proceedings and federal administrative proceedings in the past five years, including the following:

In May 2009, FINRA entered into an AWC with Janney in which the Firm agreed, without admitting or denying the findings, to a censure and a \$200,000 fine and to other specified actions, including completing voluntary purchases of eligible auction rate securities ("ARS") from investors in a relevant class, for violating NASD and MSRB rules relating to communications with the public in its marketing and sale of ARS and for failing to maintain adequate supervisory procedures concerning its ARS sales and marketing activities.

OVERVIEW

At various times from June 2008 to May 2010, Janney failed to settle the syndicate account for two municipal securities offerings timely, filed a document with the MSRB late in 13 instances, filed an inaccurate document with the MSRB in three instances, failed to update promptly its written procedures to reflect guidance the MSRB issued concerning Variable Rate Demand Obligation ("VRDO") securities and failed to enforce its internal written procedures in connection with the receipt of a certificate for a penny stock from a customer. This conduct violated MSRB Rules G-11, G-32, G-36 and G-27, NASD Conduct Rule 3010 and FINRA Rule 2010.

During the period November 2009 to June 2010, the Firm violated Rules 204(a) and 204(b) of 17 CFR Part 242 ("Reg SHO") under the Securities Exchange Act of 1934 (the "Exchange Act") by failing to comply with the close-out requirements on at least 25 occasions in its proprietary accounts. Moreover, from about July 2010 to December 2011, the Firm violated Reg SHO Rules 204(a) and 204(b) by failing to comply with the close-out requirements on at least nine occasions in its customer accounts. These failures to comply with Reg SHO Rules 204(a) and 204(b) resulted, in part, from the Firm's failure to have in place an adequate supervisory system and procedures to ensure that fail to deliver positions resulting from short sales in the Firm's proprietary accounts were closed out in compliance with Reg SHO during the period November 2009 through June 2010. In connection therewith, the Firm violated NASD Conduct Rule 3010 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

MSRB Violations

Applicable MSRB Rules

MSRB Rule G-11(i) formerly required that final settlement of a syndicate or similar account formed for the purchase of securities be made within 60 calendar days after the issuer delivered the securities to the syndicate. In about September 2009, the MSRB amended the rule, effective as of about October 28, 2009, to require settlement to be made within 30 calendar days after the issuer delivered the securities to the syndicate.

Under MSRB Rule G-36(d), as in effect throughout 2008, if a dealer had filed an official statement with the MSRB and then amended the official statement during the new issue disclosure period, the dealer was required to send the amended official statement and an amended Form G-36(OS) to the MSRB within one business day after receipt of the amended official statement.

MSRB Rule G-32(b)(i)(B)(1), as in effect since June 1, 2009 (and subject to certain exceptions that are not applicable), requires the underwriter of a primary offering of municipal securities to submit the official statement for the offering to the Electronic Municipal Market Access (EMMA) system within one business day after receiving the official statement from the issuer, but by no later than the closing date.

Late Syndicate Closings and Late and Inaccurate Filings in Connection with Municipal Securities Offerings

From about June 2009 to January 2010, in connection with three municipal securities offerings, Janney filed a Form G-32 with the MSRB containing an incorrect date. This conduct violated MSRB Rule G-32.

From about October 2009 to about May 2010, Janney failed to send the final settlement letters to the syndicate account members timely, thereby failing to accomplish timely a final settlement of the accounts, for two municipal securities offerings. The settlement letters were sent about 74 and 104 calendar days late, respectively. This conduct violated MSRB Rule G-11.

In June 2008, Janney acted as the underwriter in three municipal securities offerings in which the official statement was amended. In each instance, the Firm sent the amended official statement to the MSRB one day late. This conduct violated MSRB Rule G-36.

From about June 2009 to January 2010, Janney failed in ten instances to submit an official statement to EMMA timely. Janney submitted the statements from 2 to about 150 business days late. This conduct violated MSRB Rule G-32.

Supervisory Failures

On July 14, 2009, the MSRB filed with the SEC, for immediate effectiveness, Regulatory Notice 2009-42 ("Notice") titled, "Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities." The Notice, among other things, applied guidance the MSRB had previously announced concerning certain municipal securities transactions to transactions in VRDOs with retail investors.

Thereafter, Janney executed four retail VRDO trades without updating its Written Supervisory Procedures to address the disclosure of all material information to customers in connection with such transactions. This conduct violated MSRB Rule G-27.

NASD Conduct Rule 3010(b)(1) requires each member firm to establish, maintain, and enforce written procedures to supervise the types of business in which it engages.

In about March 2007, Janney promulgated an internal policy that prohibited the acceptance of a certificate for 50,000 or more shares of a security that traded on the OTC Bulletin Board unless special circumstances warranted an exception being made, and for which permission was required to be obtained.

In or about January 2010, a Janney branch office accepted from a customer for deposit a certificate for 5 million shares of a security that then traded on the OTC Bulletin Board ("OTCBB") at about \$0.01 per share. Thereafter, the customer liquidated all the shares. By accepting the shares for this deposit without obtaining an exception from the Firm policy, Janney failed to enforce its written policies and procedures pertaining to deposits of low-priced securities that traded on the OTCBB. This conduct violated NASD Conduct Rule 3010 and FINRA Rule 2010.

Reg SHO Violations

Requirements of Rule 204T and Rule 204 of Reg SHO and NASD Conduct Rule 3010

On July 28, 2004, the SEC adopted Reg SHO under the Exchange Act, effective September 7, 2004, with a compliance date of January 3, 2005. Reg SHO was, among other things, established to address potentially abusive naked short selling and other problems associated with failures to deliver¹ while protecting and enhancing the operation, integrity and stability of the markets.

Effective July 21, 2009, Rule 204(a) of Reg SHO requires that participants of a registered clearing agency deliver securities by settlement date, which for equity securities in regular way transactions is the third day after the trade date ("T+3"). Subject to certain specified and limited exceptions, if a participant has not delivered securities by settlement date, the participant must immediately purchase or borrow securities to close out the fail-to-deliver position by no later than the beginning of regular trading hours on the first settlement date after settlement date i.e. trade date plus four settlement days ("T+4"). For fails resulting from long sales or certain bona-fide market making activity, the fails must be closed out no later than the beginning of regular trading hours on the third settlement day after settlement date, i.e. trade date plus six settlement days ("T+6"). Failure to comply with these close-out requirements is a violation of Rule 204(a).

Rule 204(b) prohibits a firm with an unaddressed open-fail position on T+4 or T+6 for fails resulting from short and long sales respectively from executing or accepting short sale orders in that security without first borrowing or arranging to borrow the security. In these instances, the firm must first close out the fail by purchasing securities of like kind and quantity and wait until that purchase settled.

NASD Conduct Rule 3010(a) requires firms to "establish and maintain a system to supervise activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD rules."

Under NASD Conduct Rule 3010(b), firms must document its supervisory system in written procedures and maintain and enforce those procedures.

Failure to Effect Buy-In Transactions before Market Opening on T+4 or T+6, Failure to restrict Short Sale transactions in Securities with Open Fail Positions, and Failure to Supervise Adequately and have Adequate Systems and Procedures to Ensure Compliance with Reg SHO Rule 204

During the period November 2009 to June 2010, the Firm violated Reg SHO Rule 204(a) by failing to close out fails to deliver resulting from sale transactions in its proprietary accounts (short sales to be closed out by T+4 and long sales by T+6) on at least 25 occasions in its proprietary accounts. During this period, the Firm did not determine which securities should

¹ A "fail to deliver" occurs when a broker-dealer fails to deliver securities on the settlement date (i.e., the third day after the trade date or "T+3").

have been restricted from further short sales as the result of its failure to timely close out fails to deliver, as required by Reg SHO Rule 204(b) and therefore did not restrict such short sales.

In addition, from about November 2009 to June 2010, Janney violated NASD Conduct Rule 3010 by failing to maintain and apply written supervisory procedures that addressed the requirements of Rules 204(a) and Rule 204(b) with respect to fails resulting from sale transactions in the Firm's proprietary accounts. During this period, the Firm failed to apply the close-out requirements of Rule 204 to fails to deliver resulting from sale transactions in the Firm's proprietary accounts.

In addition, a review of 36 fail to deliver positions in customer accounts from about July 2010 to December 2011 disclosed nine instances in which the Firm failed to comply with the close-out requirements of Rule 204(a) and the restriction requirements of Rule 204 (b).

Five of the nine instances resulted from the Firm's attempt to close out fail to deliver positions by issuing stock loan recalls within T+4 rather than effecting the required affirmative action to purchase or borrow of securities. In each of the five instances, based on the Firm's issuance of the stock loan recall, the return of the securities was beyond the required close-out date.

In order to qualify for the pre-fail close-out credit pursuant to Rule 204 (E) the pre-fail borrow or purchase must be: (1) effected by the broker-dealer, (2) the broker-dealer that is purchasing or borrowing securities must be net flat or net long in that security on its books and records on the day of the purchase or borrow, and (3) the broker-dealer must demonstrate that it has complied with these requirements.

In the sixth instance, fails to deliver resulted from naked call option assignments to a customer's account. The Firm failed to take affirmative action to close out the resulting fails to deliver on T+4 because the customer had previously effected unsettled closing stock purchases within T+4 in his account. These purchases by the customer for the amount of the fail to deliver resulting solely from transactions in his own account did not qualify for the pre-fail close-out credit pursuant to Rule 204(e)

Rule 204(a)(2) provides that if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security resulting from the sale of a security that a person is deemed to own pursuant to Rule 200 of Regulation SHO and that such person intends to deliver as soon as all restrictions on delivery have been removed, the participant shall, by no later than the beginning of regular trading hours on the 35th consecutive calendar day following the trade date for the transaction, immediately close out the fail to deliver position by purchasing securities of like kind and quantity. This 35-day settlement period only applies, however, to fails to deliver resulting from sales of certain "deemed to own" securities that cannot be delivered by settlement date due solely to processing delays outside the seller's or broker-dealer's control.

In the seventh instance, the short position resulted from a corporate customer's long sale and delivery of physical securities certificates requiring the customer's own corporate resolution, which the customer failed to issue timely. Given that the delivery was within the control of the selling customer, the resulting fail to deliver did not qualify for the extended close-out period.

The eighth instance resulted from Janney's failure to recognize a "lock up" that it had placed on shares of a certain security on deposit at DTC. The Firm failed to deduct from the total number of shares available for delivery the shares that had been placed on hold because they had already been committed. As a result of this "lock up" these shares were not available to satisfy a delivery requirement resulting from a sale, thereby resulting in a fail to deliver.

In the ninth instance, a client sold long shares held at multiple depositories including a foreign depository. Due to internal processing errors, the Firm failed to issue timely the required manual delivery instructions to the foreign custodian. The Firm failed to detect that the manual delivery instructions had not been timely issued and did not take affirmative steps to close out the resulting fail to deliver by T+6.

In addition, prior to November 2011, Janney used a "Daily Fail Report" to monitor for its fail to deliver positions. While this report reflected daily outstanding fail to deliver positions, the report failed to reflect the cumulative age of each fail. As a result, from about July 2010 to November 2011, Janney was unable to systemically monitor the age of its fails to deliver at DTC.

Accordingly, based on the foregoing, the Firm violated Reg SHO Rules 204(a) and 204(b), NASD Conduct Rules 3010(a) and (b) and FINRA Rule 2010.

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

- a censure and a \$52,500 fine (\$5,000 of which pertains to the MSRB rule violations).

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is 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 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 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, 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:

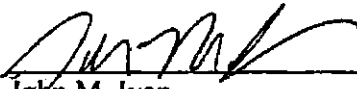
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent;
- 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 it;
 - 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; and

- 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 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 Respondent, 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.

Janney Montgomery Scott LLC

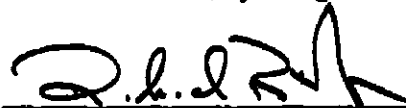
07/30/2012
Date (mm/dd/yyyy)

By: 
John M. Ivan
Senior Vice President, General Counsel

Accepted by FINRA:

8-7-12
Date

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


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