

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2012033432302**

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

RE: First New York Securities L.L.C., Respondent
Member Firm
CRD No. 16362

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, First New York Securities L.L.C. (the "firm" or "First New York") 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

First New York has been a FINRA member firm since 1985. Its principal place of business is in New York, NY. It currently has three branch offices and employs approximately 100 registered representatives. The firm's traders primarily trade for the firm's own account in domestic and international securities on both U.S. and international exchanges. The firm has an International Trading Desk with traders who trade equities, options and foreign exchange instruments worldwide.

OVERVIEW

From May 15, 2010 to October 31, 2010, First New York failed to establish, maintain, and enforce a reasonable supervisory system and written supervisory procedures to ensure that its registered representatives did not engage in insider trading, in violation of NASD Rule 3010(a) and (b) and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

A First New York Proprietary Trader Engaged in Insider Trading

In July 2014, FINRA barred former First New York proprietary trader Kenneth Allen from the securities industry for shorting the securities of Tokyo Electric Power Company Inc. ("TEPCO") on the Tokyo Stock Exchange ("TSE"), in September 2010, while in possession of material, nonpublic information that the company would announce a secondary public offering of its securities. Allen's actions violated Japanese securities laws, which constituted a violation of FINRA Rule 2010.¹

Beginning in 2007, Allen worked on First New York's International Desk specializing in trading equity securities of Japanese issuers using a firm proprietary account. Before joining First New York, Allen had lived in Japan and had worked in registered and unregistered capacities with member firms in Japan. Allen also spoke Japanese and was generally able to read business materials written in Japanese. In early 2010, Allen retained a Japanese consultant to provide him with information on the Japanese market. He paid this person JP¥300,000 per month (approximately \$3,300 at then-prevailing exchange rates) for the services. The firm approved the arrangement. The consultant sent monthly invoices to First New York, which paid the consultant and then deducted the cost from Allen's monthly compensation. In mid-September 2010, the consultant told Allen that TEPCO would announce a secondary public offering and that it would be underwritten by Nomura Securities Co. Ltd. In firm-supervised instant messages ("IMs") and emails with Allen, the consultant said that the information came from a person in Nomura's sales department and whom the consultant repeatedly identified as "Nomura guy."

Because of the time difference with Japan, unlike most other First New York traders, Allen traded Japanese securities from his home beginning in the evening and until early in the morning. Allen began shorting TEPCO on the TSE on September 15, 2010. He had never traded TEPCO before. By September 27, 2010, he had accumulated an 80,000-share, \$2.2 million short position, one of the largest positions Allen had taken in a security while at First New York. Allen partially covered his 80,000-share short position by buying 30,000 shares of TEPCO on September 27. The next day, September 28, Allen shorted an additional 35,000 shares, increasing his short position in TEPCO to 85,000 shares. After market close on September 28, 2010, *Reuters* announced that TEPCO would raise several billion dollars in new capital. After market close on September 29, 2010, TEPCO announced a secondary public offering underwritten by Nomura of 227.63 million common shares and an additional 26.52 million shares in the event of exceptional demand. The combined 254.15 million new shares constituted approximately 18.8 percent of the total of 1.35 billion TEPCO shares then outstanding.

¹ On June 8, 2012, Japanese securities regulators recommended an administrative action against First New York for violations of Japan's insider trading laws as a result of Allen's proprietary trading in TEPCO on behalf of the firm. See <http://www.fsa.go.jp/sesc/english/news/reco/20120823-1.htm>. In July 2013, First New York consented to the Japanese regulators' findings and paid a fine of JP¥14,680,000, or approximately \$150,000.

Allen covered his 85,000-share short position in TEPCO on September 29 and October 1, 2010, making profits for himself and First New York of approximately \$206,000. First New York never questioned Allen about his trading in TEPCO in September and October 2010.

First New York Maintained an Inadequate Supervisory System And Written Supervisory Procedures

NASD Rule 3010(a) requires member firms to “establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules.” Rule 3010(b) requires that firms establish, maintain, and enforce written procedures to supervise the types of business in which they engage.

First New York’s Written Supervisory Procedures Relating to Insider Trading

First New York’s written supervisory procedures in place at the time contained a “policy statement” on insider trading that prohibited associated persons from trading on material non-public information or communicating such information to others. The procedures also generally outlined the legal elements that would constitute insider trading. The “policy statement” required the firm’s chief compliance officer to engage in a review, at least monthly, of a sample of the trading activity in the firm’s proprietary accounts. The procedures did not describe what the random reviews of trading activity should entail for the purpose of detecting potential insider trading. Nor the did the procedures state whether all trading accounts would be subject to a monthly random review or whether the sampling of trading was limited to only some of the firm’s accounts.

The policies and procedures did not provide guidance regarding “look back” reviews of trading in the case of market moving events, including the identification of red flags indicative of possible insider trading. Red flags would include significant trading before a news announcement, the size of positions in certain stocks, and the amount of profits generated as a result of trading in advance of a news event. The firm failed to engage in a reasonable review when confronted with red flags. Allen’s relationship with the consultant should also have been treated as a red flag that could have led to more detailed reviews of their communications. Although there were no written procedures addressing the issue, it was uncommon for First New York traders to retain a consultant to provide market intelligence. Also, his immediate supervisor on the International Desk did not know that Allen had retained the consultant.

The Firm’s Procedures For Reviewing Electronic Communications

The procedures with respect to reviews of incoming and outgoing email and instant message correspondence required that such communications be routed automatically to a supervisory mailbox and be reviewed daily on a random basis. The procedures gave the chief compliance officer or his designee the responsibility to perform this daily review. The firm’s procedures did not state whether every associated person’s electronic correspondence would be reviewed daily or whether the review would be conducted by generating random samples of only some of the firm’s associated persons’ correspondence. The surveillance system used by First New York did

not use key word searches of emails and IMs to generate review samples. Allen sometimes communicated with the consultant in transliterated Japanese and the consultant sent him documents and other materials written in Japanese. Allen and the consultant almost always referred to Japanese issuers by their numerical TSE Stock Identification Codes – as is the practice in Japan – which First New York supervisors were not familiar with.

The firm's review of Allen's emails and IMs was inadequate. Allen was never questioned about any of his suspicious emails and IMs until after Japanese regulators contacted the firm in 2012 about his trading in TEPCO. Nor were any of his suspicious emails or IMs ever brought to the attention of Allen's immediate supervisor on the International Desk who reviewed Allen's trading primarily for profit and loss purposes. Allen's emails and IMs with the consultant and other persons contained ample red flags that, had an adequate supervisory system of review been in place, would likely have triggered a further inquiry.

Examples of Allen's Suspicious Electronic Communications That Were Not Detected by the Firm

With respect to TEPCO, the consultant emailed Allen that "Nomura guy" had just sent a text from his mobile phone saying that the deal would take place on September 29. The consultant asked Allen to pass the information on to a mutual friend and trader at another firm, who like Allen, was also a client of the consultant's. Allen told the friend that "[consultant] saying 29th fyi." After TEPCO announced its secondary offering, Allen told the consultant, in part using transliterated Japanese, that thanks to the consultant "yesterday was a huge day [and] hopefully i am on the right track again." Allen raised the consultant's monthly fee from JP¥300,000 to JP¥350,000, telling the consultant that the reason was the profits made on his TEPCO trades.

Before TEPCO's announcement of its secondary offering, in September 2010, the consultant provided Allen with what appeared to be material nonpublic information about other deals or ratings upgrades that Nomura Securities was involved in. The consultant told Allen that "Nomura guy" was the source of the information and frequently said that certain information was "off record" or "super off record."

In addition to the emails relating to TEPCO referenced above, Allen and the consultant exchanged other suspicious communications involving other Japanese companies that the Firm failed to detect or appropriately follow-up on. For example, in June 2010, the consultant told Allen that "Nomura guy" said that a Japanese energy company would have a secondary offering and asked Allen to tell a mutual friend and trader. Allen asked the consultant a few days later if there was any more news about the company. The consultant said that "Nomura guy" called from his mobile phone to say that an announcement would be made in July 2010. Allen traded the company's stock beginning in mid-June 2010. The energy company announced a secondary offering in early July 2010.

In another example, the consultant told Allen, in early August 2010, that "Nomura guy" said that Nomura Securities would upgrade its rating on a financial institution. Allen told a friend and trader at another firm that an "... upgrade coming. Who ... knows when tho [*sic*]." A few days later, the consultant IM'd Allen that "Nomura guy" had confirmed that the upgrade was coming out. Allen responded, "ok great!" In mid-August 2010, Nomura issued a research report on the

financial institution with a Buy recommendation. Allen had purchased 21,000 shares of the company's stock in the two weeks before the upgrade announcement.

In yet another example, in October 2010, the consultant IM'd Allen that a Japanese real estate company "may revise up" its earnings projections "by my Nomura guy." Later the same day, the consultant IM'd Allen that the company had just announced the upward earnings revision. Allen responded, "yeah I bought 5K [5,000 shares] after we talked . . . thanks for that." The consultant said "my Nomura guy is good as always [isn't it so]!" Allen responded, "he always delivers."

Given the frequency and nature of the electronic communications between Allen and the consultant that went undetected, First New York's supervision for insider trading was inadequate. First New York failed to establish reasonable written supervisory procedures and systems to detect and prevent insider trading by its proprietary account traders. Accordingly, First New York violated NASD Rules 3010(a) and (b) and FINRA Rule 2010.

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

1. A censure; and
2. A fine of \$400,000.

The firm also agrees to comply with the following undertaking:

The firm shall review and revise, as necessary, its policies, procedures, and internal controls relating to detecting and preventing insider trading by its registered representatives. Within 30 business days of the issuance of the Notice of Acceptance of this AWC, the firm's President shall certify in writing to FINRA's Department of Enforcement that (i) the firm has engaged in the review described above; and, (ii) as of the date of the certification, the firm has established and implemented policies, procedures, and internal controls with respect to monitoring its registered representatives so as to detect and prevent insider trading. The Department of Enforcement may in its discretion, upon a showing of good cause, extend the dates for compliance with any of the terms of this provision.

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.

Respondent specifically and voluntarily waives any right to claim bias or prejudice 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; and

C. If accepted:

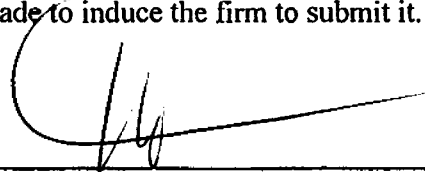
1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
3. FINRA may 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 (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. 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 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 he 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.

January 28, 2015

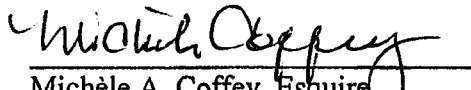
Date



First New York Securities L.L.C.
Respondent

By: Donald Motschwiller, CEO

Reviewed by:

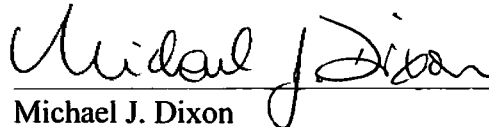


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Counsel for Respondent

Accepted by FINRA:

February 24, 2015
Date

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

A handwritten signature in black ink, reading "Michael J. Dixon", written over a horizontal line.

Michael J. Dixon
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