

**-FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2012033562801**

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. ("FNYS" 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 the firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. FNYS 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

FNYS, a FINRA member since June 1985, engages in proprietary trading services in stocks, bonds, options, commodities, and other financial instruments. The Firm employs approximately 99 registered individuals from its three branch offices and is based in New York, New York.

OVERVIEW

During the period November 1, 2011 to November 30, 2011, the Firm violated Section 15(c) of the Securities Exchange Act of 1934 ("Exchange Act") and Exchange Act Rule 15c3-1 thereunder, and FINRA Rule 2010 by conducting a securities business while failing to maintain the required minimum net capital.

The Firm also violated: (1) Exchange Act Rule 15c3-1 and FINRA Rule 2010 by failing to take certain required deductions in its net capital computation; (2) Exchange Act Rules 15c3-1(c)(2)(vi)(F)(2) and 15c3-1(c)(2)(vi)(A), and FINRA Rule 2010 by improperly hedging its certificate of deposit ("CD") inventory and applying an incorrect haircut charge in the net capital calculation; and (3) Exchange Act Rule 17a-5 by submitting an inaccurate FOCUS report.

FACTS AND VIOLATIVE CONDUCT

1. The Firm Failed to Accurately Calculate its Net Capital and Maintain the Minimum Net Capital

Exchange Act Rule 15c3-1 prohibits broker-dealers from engaging in a securities business if their net capital falls below a certain amount. The failure to maintain required net capital constitutes a violation of Exchange Act Rule 15c3-1, as well as a violation of FINRA Rule 2010.

The Firm filed a FOCUS Report with FINRA on November 30, 2011 (the "FOCUS Report"). The report disclosed that between November 1, 2011 and November 30, 2011, the Firm had a net capital deficiency of \$3,712,094. The net capital deficiency resulted from the Firm's failure to accurately calculate its net capital and required that it make \$7,657,320 in adjustments to its computation. The Firm returned to net capital compliance on December 1, 2011.

Accordingly, the Firm violated Exchange Act Rule 15c3-1 and FINRA Rule 2010 by conducting a securities business from November 1, 2011 to November 30, 2011 while below its minimum net capital requirement.

2. The Firm's Inaccurate Net Capital and Assets and Liabilities Computations and Inaccurate FOCUS Report Filing

Pursuant to Exchange Act Rules 15c3-1(c)(2)(vi)(F)(2) and 15c3-1(c)(2)(vi)(A), firms are prohibited from hedging their CD inventory against government and corporate securities when applying haircut charges as part of their net capital computations.

Exchange Act Rule 17a-5(a)(2) requires certain broker-dealers to provide accurate FOCUS Reports within 17 business days after the end of each calendar quarter and within 60 business days after the end of a fiscal year. The failure to file an accurate FOCUS report constitutes a violation of Exchange Act Rule 17a-5, as well as a violation of FINRA Rule 2010.

a. Adjustments to the Firm's Net Capital Computation

As discussed above, the Firm incorrectly calculated its net capital in the FOCUS Report, which resulted in \$7,657,320 in adjustments. The adjustments resulted from the Firm improperly: (1) treating a long proprietary equity position as a non-allowable asset; (2) applying a 15 percent haircut charge to a long equity position in another security; (3) netting a short position in a security with a long position in a different security because of a merger between the two companies; (4) including a haircut charge on a short position of an equity security, which should have been hedged against a long position of a recently merged company; (5) hedging long convertible bonds against short equity positions in the same company without factoring the gain or loss of the convertible bond into the

haircut charge; (6) classifying mark-to-market receivables on swaps and forward contracts as allowable assets; and (7) calculating an undue concentration charge.

b. Misclassification of Non-Marketable Equity Securities

The Firm misclassified non-marketable equity securities with a total market value of \$406,496 as marketable securities. As a result, the Firm improperly applied a 100 percent haircut charge to those securities in the FOCUS Report.

c. Improper Hedging of the Firm's CD Inventory

The Firm incorrectly treated CDs in the Firm's inventory like government securities. As a result, the Firm improperly hedged the CDs against government and corporate securities and erroneously reduced the haircut charge applied to them. This caused the valuation of the CDs in the FOCUS Report to be inaccurate.

d. Conclusion

Based upon the foregoing, the Firm violated Exchange Act Rule 17a-5 by submitting the FOCUS Report that included an inaccurate net capital computation and improperly applied a haircut charge to non-marketable securities.

The Firm also violated Exchange Act Rules 15c3-1(c)(2)(vi)(F)(2), 15c3-1(c)(2)(vi)(A) and 17a-5 by incorrectly reducing the haircut charge for certain CDs in the FOCUS Report.

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

- Censure; and
- an \$80,000 fine.

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. The Firm 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

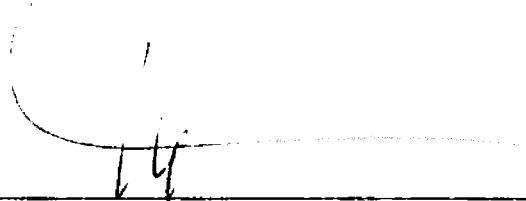
C. If accepted:

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 understand all of the provisions of this AWC and have 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.

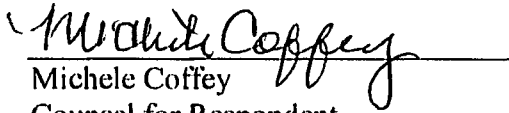
10/20/2014
Date (mm/dd/yyyy)


Respondent

First New York Securities L.L.C.

By: Donald Motschwiller

Reviewed by:



Michele Coffey

Counsel for Respondent

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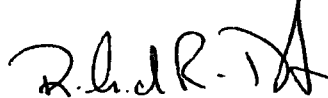
(212) 309-6917

mcoffey@morganlewis.com

Accepted by FINRA:

11.6.14
Date

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



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