

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20130363055-01**

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

RE: Capital One Sharebuilder, Inc., Respondent
Broker-Dealer
CRD No. 45744

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Capital One Sharebuilder, Inc. ("Respondent," "NSIC" 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. 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

NSIC became a member of FINRA on November 9, 1998, and its registration remains in effect. The Firm does not have any relevant prior disciplinary history.

SUMMARY

In Review No. 20130363055, the Department of Market Regulation's Options Regulation Staff (the "Staff") conducted an options reporting review of the Firm, which ultimately covered the period from January 2010 through March 2015 (the "Review Period"), after the Firm had self-reported an issue regarding its submission of reportable options positions to the Large Options Positions Report ("LOPR") on March 19, 2013.

As a result of the Staff's review, the Staff found that during the Review Period, NSIC had failed to report and failed to correctly report positions to the Options Clearing Corporation ("OCC") LOPR as required by pertinent rules. In addition, NSIC failed to have an adequate system of supervision, and had deficient written supervisory procedures, to ensure compliance with the reporting of such positions to LOPR. During

the course of Staff's review, NSIC conducted a comprehensive internal review, which resulted in the Firm self-reporting additional options reporting issues that were not detectable by FINRA or other regulators.

FACTS AND VIOLATIVE CONDUCT

1. LOPR data is used extensively by FINRA and self-regulatory organizations to identify holders of large options positions who may be, among other things, attempting to manipulate the market or otherwise violate securities rules and regulations.
2. The accuracy of LOPR data is essential in the surveillance for and analysis of potential violations related to, among other things, insider trading, position limits, exercise limits, front-running, capping and pegging, mini-manipulation, and marking-the-close.
3. During the period between January 19, 2010 and June 24, 2010, in approximately 25,511 instances,¹ NSIC failed to correctly report options positions to the LOPR with the correct Clearing Member number.
4. During the period between June 25, 2010 and March 26, 2013, NSIC submitted options positions to LOPR in approximately 146,551 instances using a file name that differed from the Firm's prior OCC LOPR submissions, which prevented the OCC from processing the LOPR position files, and therefore caused NSIC to fail to report any of its reportable options positions. All of NSIC's positions, however, had been reported to the LOPR via its clearing firm's omnibus account.
5. During the period between January 4, 2010 and July 18, 2014, NSIC failed to aggregate certain accounts that were acting in concert ("AIC") and consequently failed to report options positions in 5,555 instances; the Firm's aggregation failures impacted approximately 131 distinct AIC groups and a total of 301 accounts.
6. The conduct described in paragraphs one through five constitutes a violation of FINRA Rule 2360(b)(5).

Supervision

7. During the Review Period, NSIC failed to maintain an adequate system of supervision, including systems of follow-up and review, which were reasonably designed to achieve compliance with the rules governing the reporting of options positions to LOPR. The Firm also lacked sufficient written supervisory procedures relating to its reviews of rejected LOPR submissions, the accuracy of its LOPR submissions, and the identification and reporting of options positions appropriately as AIC.

¹ An "instance" is a single failure to report, or inaccurately report, a given option position. The number of instances is determined by multiplying a given reportable position by the number of trade dates the position had not been reported or was reported incorrectly.

8. The conduct described in paragraph seven constitutes separate and distinct violations of NASD Rule 3010(a) (for the period prior to December 1, 2014), and FINRA Rules 3110(a) (for the period after November 30, 2014) and 2010.

OTHER CONSIDERATIONS

In determining to resolve this matter on the basis set forth herein, Market Regulation considered: (i) that NSIC had self-reported its AIC LOPR failures during the Review Period and promptly took action to correct this activity prior to the completion of the Staff's investigation; and (ii) that NSIC developed and implemented an enhanced reporting system and revised its written supervisory policies, procedures, and reviews governing the submission of options positions to the LOPR.

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

A censure and fine of \$100,000.

Respondent agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) is due and payable. It 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(s) 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 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 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. 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 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 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 Respondent to submit it.

6/23/2015
Date

Respondent
Capital One Sharebuilder, Inc.

By: Yvette S Butler
Name: Yvette S Butler
Title: President

Reviewed by:

Christopher M. Salter
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Accepted by FINRA:

7/10/15
Date

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

Robert A. Marchman
Robert A. Marchman
Executive Vice President
Department of Market Regulation