

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2018058651301**

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

RE: Gelber Securities, LLC, Respondent
Member Firm
CRD No. 18367

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Gelber Securities, LLC ("Gelber" 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 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

The Firm has been a member of FINRA since May 1987, and its registration remains in effect. The Firm conducts a general securities business on a fully disclosed basis. Headquartered in Chicago, the Firm currently has approximately 61 registered individuals.

The Firm does not have any relevant disciplinary history with the Securities and Exchange Commission, any state regulator, FINRA, or any other self-regulatory organization.

OVERVIEW

On November 16, 2017 and March 5, 2018, the Firm violated Rule 14e-4 promulgated under the Securities Exchange Act of 1934, as amended ("SEA Rule 14e-4") and FINRA Rule 2010 when it tendered shares in excess of its net long position, as defined under SEA Rule 14e-4, in two separate partial tender offers.

Additionally, from October 2017 through April 2019, the Firm violated FINRA Rules 3110(a) and (b) and 2010 in that its supervisory systems and written supervisory

procedures (“WSPs”) were not reasonably designed to achieve compliance with SEA Rule 14e-4.

FACTS AND VIOLATIVE CONDUCT

SEA Rule 14e-4 Violations

1. SEA Rule 14e-4 governs partial tender offers. SEA Rule 14e-4(a)(5) defines a partial tender offer as “a tender offer or request or invitation for tenders for less than all of the outstanding securities subject to the offer in which tenders are accepted either by lot or on a *pro rata* basis for a specified period, or a tender offer for all of the outstanding shares that offers a choice of consideration in which tenders for different forms of consideration may be accepted either by lot or on a *pro rata* basis for a specified period.”
2. SEA Rule 14e-4(b)(1) prohibited a participant in a partial tender offer from tendering shares in excess of its net long position.
3. The amount of a participant’s “net long position” in a subject security was defined under SEA Rule 14e-4(a)(1), and shall equal the excess, if any, of such participant’s “long position” over its “short position.”
4. The participant’s “net long position” was to be calculated at a Firm-wide level for Firm participants tendering on the Firm’s behalf.
5. SEA Rule 14e-4(a)(1)(ii) defined the components of a participant’s “short” position. SEA Rule 14e-4(a)(1)(ii)(D) provided that shares underlying relevant call options with exercise prices below the highest tender offer price or stated amount of the consideration offered for the subject security which were sold on or after the announcement of a tender offer are part of the short position.
6. FINRA Rule 2010 states that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.” A violation of an SEC rule constitutes a violation of FINRA Rule 2010.
7. The Firm participated in a partial tender offer for ABC Corporation (“ABC”) on November 16, 2017. The ABC partial tender offer was an Exchange Offer,¹ announced on October 19, 2017, in which ABC Class B common stock was to be exchanged for GHI Corporation (“GHI”) stock at a 7% discount per share value subject to an upper limit of 5.766 shares of the new GHI stock for each share of ABC stock tendered. On November 14, 2017, two days prior to the tender expiration date of November 16, 2017, the final exchange ratio of 5.6796 was announced.

¹ An “Exchange Offer” is a tender offer in which securities are offered as consideration.

8. On or about November 16, 2017, in the ABC partial tender offer, Gelber failed to account for relevant short call options positions with exercise prices below the highest tender offer price or stated amount of the consideration offered for ABC stock when determining its “net long position”. As a result, Gelber over-tendered 27,735 shares when participating in the ABC partial tender offer, and obtained \$21,564.55 in ill-gotten gain as a result of its over-tender.
9. The Firm participated in a partial tender offer for DEF Corporation (“DEF”) on March 5, 2018. The DEF partial tender offer was a “Dutch Auction” tender offer announced on February 5, 2018, in which DEF stock was to be exchanged for cash within a range of \$175 to \$200 as described in the partial tender offer announcement.² The final tender offer price of \$192 was announced after the proration period expired on March 5, 2018.
10. On or about March 5, 2018, in the DEF partial tender offer, Gelber failed to aggregate the Firm’s “net long position” across all of the Firm’s individual trading units when determining such position. As a result, Gelber over-tendered 12,800 shares when participating in the DEF partial tender offer, and obtained \$6,449.63 in ill-gotten gain as a result of its over-tender.
11. By virtue of the foregoing, the Firm violated SEA Rule 14e-4(b) and FINRA Rule 2010.

Supervision

12. FINRA Rule 3110(a) provides, in relevant part, that “[e]ach member shall establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.”
13. FINRA Rule 3110(b) provides, in relevant part, that “[e]ach member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.”
14. FINRA Rule 2010 states that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.” A violation of a FINRA rule constitutes a violation of FINRA Rule 2010.

² A “Dutch Auction” tender offer is an auction structure in which tendering stockholders specify, from within a given range, a price at which they are willing to tender all or a portion of their shares. Once all tenders are received, the purchase price for all tendered shares accepted for payment is the lowest price per share from among the specified offer range at which the shares have been tendered that will enable the buyer to purchase the maximum number of shares, subject to the conditions of the tender offer.

15. From October 2017 through March 1, 2018, the Firm lacked any supervisory system or WSPs to achieve compliance with SEA Rule 14e-4.

16. From March 1, 2018 through April 2019, the Firm maintained WSPs that governed supervision of Gelber's participation in partial tender offers subject to SEA Rule 14e-4. While these procedures accurately tracked the rule, and provided guidance to traders and the Firm's designated supervisor, the Firm failed to establish, maintain and enforce a supervisory system and WSPs reasonably designed to achieve compliance with Rule 14e-4 with respect to calculating the Firm's "net long position". Instead of calculating it on a Firm-wide basis, its supervisory system and WSPs calculated such positions at the individual aggregation unit level. In April 2019, the Firm amended its supervisory policies and procedures to correctly calculate these positions on a Firm-wide basis.

17. By virtue of the foregoing, the Firm violated FINRA Rules 3110(a) and (b), and 2010.

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

1. A censure;
2. A fine of \$50,000; and
3. Disgorgement in the amount of \$28,014.18.

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.

Disgorgement of unlawful profits is ordered to be paid to FINRA in the amount of \$28,014.18, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621, from May 29, 2018 until the date this AWC is accepted by the National Adjudicatory Council ("NAC").

Respondent specifically and voluntarily waives any right to claim an inability 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 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 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 Chief Legal Officer, 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 action brought by FINRA or any other regulator against Respondent;
 - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;

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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 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 it to submit this AWC.

Gelber Securities, LLC
Respondent

July 15, 2020
Date

By: Patrick Coffey

Print Name: PATRICK COFFEY

Title: CHIEF OPERATING OFFICER

Accepted by FINRA:

July 24, 2020
Date

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

Michael M. Zmora

Michael M. Zmora
Senior Counsel
FINRA
Department of Enforcement