

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2010022518101**

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

RE: Securities America, Inc., Respondent  
CRD No. 10205

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, Respondent Securities America, Inc. 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 Respondents 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**

Securities America, Inc., whose principal offices are located in La Vista, Nebraska, has been registered with FINRA since November 3, 1981. Securities America is a full service brokerage firm and currently has 1,081 branch offices with over 1,600 total registered representatives.

**RELEVANT DISCIPLINARY HISTORY**

On May 10, 2007, Securities America, Inc. submitted a Letter of Acceptance, Waiver and Consent (No 2005001520702) for violations of NASD Conduct Rules 3010(a), 2510 and 2110. The sanctions imposed were a censure and a monetary fine in the amount of \$250,000.

On July 11, 2007, Securities America, Inc. submitted a Letter of Acceptance, Waiver and Consent (No. 2005003437101) for violations of NASD Rules 3010(a), 2830(k)(7) and 2830(k)(4). The sanctions imposed were a censure and a monetary fine in the amount of \$375,000.

**Letter of Acceptance, Waiver and Consent No. 2010022518101**  
**Securities America, Inc.**  
**Page 2**

On March 24, 2008, Securities America, Inc. submitted a Letter of Acceptance, Waiver and Consent (No. EAF0401370002) for violations of NASD Conduct Rules 2110, 2310 and 3010. The sanctions imposed were a censure, a monetary fine in the amount of \$322,000 and a series of undertakings relating to the firm's sales of Class B and Class C shares of mutual funds between January 1, 2003 and July 31, 2004.

On March 23, 2009, Securities America, Inc. submitted a Letter of Acceptance, Waiver and Consent (No. 2005001164501) for violations of NASD Conduct Rule 2110. The sanctions imposed were a censure and a monetary fine in the amount of \$55,000.

**Overview**

Securities America, Inc. (i) failed to conduct adequate product due diligence on the Shale Royalties 15, Inc. and Shale Royalties 20, Inc. private placements offered by Provident Royalties, LLC pursuant to Regulation D sufficient to have reasonable grounds to believe that the offerings were suitable for any customer; and (ii) failed to enforce a supervisory system reasonably designed to achieve compliance with applicable securities laws and regulations and NASD and FINRA Rules in connection with approving the sale of these two private placements. Accordingly, Securities America, Inc. violated NASD Conduct Rules 2310, 3010 and 2110 and FINRA Rule 2010.

**Facts and Violative Conduct**

**Private Placement Offerings by Provident Royalties**

From at least September 2006 through January 2009, Provident Asset Management, LLC (PAM) marketed and sold preferred stock and limited partnership interests in a series of 23 private placements offered by an affiliated issuer, Provident Royalties, LLC, which was a non-registered entity. PAM's only business line was acting as the wholesaling broker-dealer for the Provident offerings, which were sold to customers through more than 50 retail broker-dealers nationwide and which raised approximately \$485 million from over 7,700 investors. Provident's business plan included the acquisition of a combination of producing and non-producing sub-surface mineral interests, working interests and production payments in real property located within the United States.

The Provident-affiliated offerings each claimed an exemption from the registration of the offerings pursuant to Rule 506 of Regulation D. The Provident offerings, designated as Shale Royalties, Inc., numbered II through 20 (Shale Royalties offerings), offered two series of non-convertible redeemable cumulative preferred stock. Each share of stock was offered for \$5,000 through a private placement memorandum. The Shale offerings were virtually identical in their terms, had the same investment purpose, and were offered continuously for 30 consecutive months. The periods of many of the offerings overlapped and each offering was also limited to 500 investors and to varying dollar amounts. As an offering would approach a limit, Provident would create the next Shale offering. Audited financial statements were not prepared with respect to any of the Shale Royalties offerings.

At the outset of the Shale Royalties offerings by Provident, dividends on each share of Series A preferred stock were to accrue at the rate of 1.5% per month, and dividends on each share of Series B preferred stock were to accrue at the rate of 1.25% per month. Series A preferred stock was redeemable at the end of either 24 or 36 months, and Series B preferred stock at the end of 24 months. At some point in time, Provident reduced the amount payable for dividends on Series A preferred stock to 1.375% and on Series B preferred stock to 1.167%. At the same time, the private placement memoranda for the Shale offerings changed the maturity to 48 months for Class A Preferred Shares and 36 months for Class B Preferred Shares. Dividend payments to the investors were to be paid four months in arrears, and thereafter monthly on the last day of each month.

Although PAM made some direct retail sales of the Provident private placements, it primarily solicited retail broker-dealers to enter into sales agreements for each of the Shale Royalties offerings, and those retail broker-dealers sold the stock of the offerings to investors nationwide. The retail broker-dealers received fees and/or commissions for soliciting investors in the Shale Royalties offerings, including a specific fee related to due diligence that was performed in connection with each offering. In an effort to market the Shale Royalties offerings, PAM made presentations to retail broker-dealers in its Dallas, Texas offices, during which it represented that: (1) investors' funds would be used by each individual Shale Royalties offering to purchase interests in the oil and gas business for that offering; (2) the subscription proceeds of each offering would be deposited into an account for that offering and become assets for that offering; (3) approximately 86% of the subscription proceeds would be allocated to acquiring interests in the oil and gas business; and (4)

dividends paid to investors would be derived from revenues, primarily from the sale of oil and gas assets.

The owners and principals of Provident deposited investors' funds into the appropriate separate bank account designated for each Shale Royalties offering, knowing that the Shale Royalties offerings did not have sufficient revenues to pay investors' dividends as they became due. Although a portion of the proceeds of the Shale Royalties offering was used for the acquisition and development of oil and gas exploration and development activities, millions of dollars of investors' funds were transferred from the later Shale Royalties offerings' bank accounts to the Provident operating account in the form of undisclosed and undocumented loans, and were used to pay dividends and returns of capital to investors in the earlier Shale Royalties offerings.

The owners and principals of Provident and PAM did not tell investors or selling broker-dealers such as SAI, and the Shale Royalties private placement memoranda do not disclose, that the investors' funds would be used to pay earlier investors their dividends and return of principal, rather than being invested in oil and gas assets.

On July 2, 2009, the SEC filed a civil injunctive action in the Northern District of Texas naming Provident, PAM and others, and the Court granted its request for a temporary restraining order and an emergency asset freeze and appointment of a receiver to take control of the entities and marshal and preserve the assets for the benefit of the defrauded investors. The Court set a hearing on the SEC's motion for a preliminary injunction. Subsequently, the order for the hearing was vacated when all the named defendants agreed to the entry of a preliminary injunction, which remains in effect.

#### Securities America's Sales of the Shale Royalties Private Placements

Securities America considered but did not approve and sell any Shale Royalties offerings prior to Shale Royalties 6. In December 2007, Securities America entered into a sales agreement allowing the firm's registered representatives to market and sell the Shale Royalties 6 Regulation D offering. The firm subsequently executed five additional sales agreements to sell later Shale Royalties offerings—Shale Royalties 7, 9, 12, 15 and 20. Consistent with the terms of those sales agreements, Securities America received fees and/or commissions for soliciting

investors in these Shale Royalties offerings, including a specific fee related to due diligence in connection with each offering.

On or about July 31, 2008, Securities America executed a sales agreement which allowed the firm's registered representatives to market and sell the Shale Royalties 15 offering. Thereafter, on or about November 22, 2008, Securities America executed a sales agreement which allowed the firm's registered representatives to market and sell the Shale Royalties 20 offering. For the period of July 31, 2008 through January 22, 2009, Securities America sold a total of approximately \$25,000,000 of Shale Royalties 15 and 20 to approximately 400 investors. These sales represented approximately 5.2 % of both the total funds raised by Provident and the total number of investors in the various Shale Royalties offerings.

Securities America received a fee related to due diligence performed in connection with each offering, but beyond reviewing the private placement memorandum for Shale Royalties 15 and 20, the firm did not perform adequate product due diligence to determine that the offerings were suitable for any customer. Other than reviewing the private placement memoranda for these offerings, the firm primarily relied on the product due diligence it had performed on prior Provident offerings, and its review of the Shale Royalties 15 and 20 offerings was done primarily to ensure that these offerings did not have any meaningful substantive differences from prior Shale Royalties offerings. The firm did not see, or request, any financial information regarding Shale Royalties 15 or 20, other than the information contained in the private placement memoranda and the third party due diligence reports prepared by an outside analyst. Further, once the firm had concluded that it would sell the Shale Royalties 15 and 20 offerings, it did not conduct sufficient continuing due diligence or follow-up.

Securities America received third-party due diligence reports regarding the Shale Royalties 15 and 20 offerings and these due diligence reports identified a number of red flags with respect to the offerings. For instance, the reports detailed that the affiliated Shale Royalties offerings were collectively reporting a net operating loss for the first nine months of 2008, and in the absence of additional credit line funds, Provident Royalties' operating funds would need to come from (i) a higher level of production revenues going forward, or (ii) future divestures of lease/mineral assets in order to pay dividends and principal redemptions when they became due. Unlike prior offerings, too much time had elapsed

without sufficient apparent progress by Provident on these issues. In addition, the reports noted that certain Shale Royalties offerings were advancing funds to, or buying assets from, other Shale Royalties offerings. The reports observed that, because of the lack of transparency in Provident Royalties' financial statements, it was difficult to ascertain the asset and liability positions of the Shale offerings at any given moment in time. Finally, the reports cautioned that the financial statements for the affiliated Shale Royalties offerings had not been formally audited or confirmed by an outside accounting firm necessary to validate the financial information reported by Provident Royalties. While audited financials have never been a per se requirement for the approval of Regulation D offerings, too much time had elapsed by July 31, 2008 without sufficient action by Provident to address the analyst's concerns, unlike prior offerings. The firm did not take the necessary steps, through obtaining financial information or otherwise, to address this red flag and engage in greater scrutiny of this issue for Shale Royalties 15 and 20.

#### **Violations**

##### **A. Rule 2310**

NASD Conduct Rule 2310 requires that a FINRA firm, when making a recommendation to a customer to purchase or sell a security, have reasonable grounds to believe that the recommendation is suitable for such customer. To comply with Rule 2310, a FINRA firm must have an understanding of the potential risks and rewards of the security. A firm must conduct due diligence on its securities products in order to understand the inherent risks of these products and to determine whether these products are suitable for its customers. This due diligence is especially important for alternative investments such as Regulation D offerings, where there is no registration of the securities with the SEC. Rule 2310 may be violated if a firm or the selling broker does not have reasonable grounds to believe that the security is suitable for any customer. Securities America failed to have reasonable grounds for approving the sale and allowing the continued sale of the Shale Royalties 15 and 20 offerings.

Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 2310; and from July 31, 2008, through December 14, 2008, NASD Conduct Rule 2110; and from December 15, 2008, through January 22, 2009, FINRA Rule 2010 by Respondent Securities America, Inc.

**B. Rule 3010**

NASD Conduct Rule 3010(a) requires member firms to establish, maintain and enforce a supervisory system reasonably designed to achieve compliance with applicable securities laws and regulations and NASD Rules and FINRA Rules. Required components of a “reasonable” supervisory system include, among other things, enforcing written supervisory procedures designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules. Broader than its counterpart under the Securities Exchange Act of 1934, Section 15(b)(4)(E), NASD Conduct Rule 3010 imposes an “affirmative obligation” on NASD broker-dealers to establish, and enforce, supervisory systems.

Securities America did not conduct sufficient product due diligence for these offerings prior to approving them for sale to Securities America’s customers. Without adequate product due diligence, Securities America could not identify and understand the inherent risks of the Shale Royalties 15 and 20 offerings. The firm failed to enforce reasonable supervisory procedures to detect or address potential red flags and negative information as it related to the Shale Royalties 15 and 20 offerings. Securities America therefore failed to enforce a supervisory system reasonably designed to achieve compliance with applicable securities laws and regulations and NASD and FINRA Rules in connection with approving the sale of these two private placements.

Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 3010; from July 31, 2008, through December 14, 2008, NASD Conduct Rule 2110; and from December 15, 2008, through January 22, 2009, FINRA Rule 2010 by Respondent Securities America, Inc.

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

Respondent Securities America, Inc. is censured and fined \$250,000.

Securities America, Inc. has specifically and voluntarily waived any right to claim an inability to pay 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 Formal Complaint issued specifying the allegations against them;
- B. To be notified of the Formal 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 it; and

**Letter of Acceptance, Waiver and Consent No. 2010022518101**  
**Securities America, Inc.**  
**Page 9**

C. If accepted:

1. this AWC will become part of its permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against them;
2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about their 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 its 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 Statement of Corrective Action 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 Securities America, Inc. 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; 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 Respondent Securities America, Inc. to submit it.

9/26/2011  
Date (mm/dd/yyyy)

SECURITIES AMERICA, INC.

By: Terrance S. DeWald  
(Signature)

Name: Terrance S. DeWald  
(Print Name)

Title: SVP, General Counsel

**Letter of Acceptance, Waiver and Consent No. 2010022518101**  
**Securities America, Inc.**  
**Page 10**

Reviewed by:

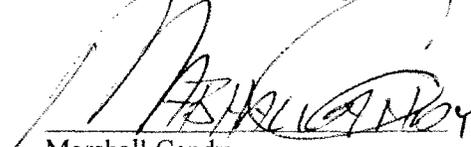


\_\_\_\_\_  
Bruce Bettigole  
Counsel for Respondent  
Sutherland Asbill & Brennan LLP  
1275 Pennsylvania Avenue, NW  
Washington, District of Columbia 20004-2415  
Phone: 202-383-0165  
Fax: 202-637-3593  
bruce.bettigole@sutherland.com

Accepted by FINRA:

October 13, 2011  
Date

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



\_\_\_\_\_  
Marshall Gandy  
Senior Regional Counsel  
FINRA Department of Enforcement  
12801 North Central Expressway  
Suite 1050  
Dallas, TX 75243  
Telephone: 972-716-7692  
Fax Number: 972-716-7612  
E-mail: marshall.gandy@finra.org