

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20100226400~~22~~**

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

RE: Timothy Alexander Day, Respondent
Registered Representative, Guggenheim Securities, LLC
CRD No. 4190874

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I submit 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 me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

A. I hereby accept and consent, 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

From March 2000 to the present, Timothy Alexander Day has been registered with three FINRA member firms. Since July of 2007, Day has been registered with Guggenheim Securities, LLC ("Guggenheim," or the "Firm") as a general securities representative. At all times relevant to this AWC, Day was a trader and structuring analyst on Guggenheim's CDO Desk reporting to the former head trader of the CDO Desk (the "Desk Head").

OVERVIEW

Day engaged in activities to assist in hiding a loss on a Collateralized Loan Obligation ("CLO") that had been purchased by Guggenheim as a result of a failed riskless-principal trade. Day helped convince a Hedge Fund customer of the Firm (the "Hedge Fund") to purchase the CLO at an artificially increased price by misrepresenting that a supposed third party had already settled the trade at a higher price, and thus wanted the Hedge Fund to purchase the CLO at that higher price. The Hedge Fund agreed to pay the increased price for the CLO in exchange for reimbursement for the overpayment through pricing adjustments on future trades, a cash

payment, and waivers of fees associated with a series of re-securitizations the CDO Desk performed for the Hedge Fund.

Day's actions gave the false appearance that the CDO Desk had been successful in exiting a failed riskless-principal trade without incurring a loss, when in fact it had incurred a loss on that position of over \$950,000. Those actions were inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010 and NASD Rule 2110. In addition, as a result of Day's actions, the records used to document transactions failed to reflect the true nature or circumstances of the transactions, including the agreement to reimburse the Hedge Fund. Day thereby caused Guggenheim's books and records to be inaccurate, in violation of NASD Rule 3110(a), NASD Rule 2110, and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

1. The Desk Provided Structuring Services to a Hedge Fund

In August 2008, the CDO Desk was retained by the Hedge Fund to assist in structuring a series of three Special Purpose Vehicles ("SPVs") set-up for the purpose of purchasing portfolios of distressed CDOs and CLOs. Day assumed day-to-day responsibility for interacting with the Hedge Fund with respect to the structuring business, with oversight by the Desk Head. The SPVs funded their CDO and CLO purchases by issuing investment-grade rated structured notes, which were in turn purchased by an investment fund advised by the Hedge Fund. The CDO Desk also interacted with the credit ratings agencies, identified potential portfolio securities for the SPVs, and sold to the SPVs on a riskless-principal basis those securities selected by the Hedge Fund. Under the terms of the agreement with the Hedge Fund, Guggenheim Securities earned a flat fee for its structuring services and markups and markdowns on SPV portfolio transactions.

2. The CDO Desk Is Stuck with an Unwanted Position in a CLO Called Laurelin

On October 9, 2008, a New York-based investment advisor approached Guggenheim Securities to sell a €5,000,000 piece of the Class E tranche of a euro-denominated CLO named Laurelin II B.V. ("Laurelin"). The Class E tranche was rated BB, or below investment grade.

Guggenheim made a number of efforts to sell the Laurelin position for the investment advisor. With the exception of interest received from a foreign customer, the only indication of interest the Desk received for Laurelin was in the teens. Then, on October 20, Day was advised by a sales trader that there was an agreement with the foreign customer to purchase Laurelin at €36. The Desk Head gave Day permission to purchase Laurelin for the Firm's account at a price of €35.25 in anticipation of subsequently selling it to the foreign customer at €36. However, after Guggenheim had already committed to purchasing Laurelin, Day learned that the foreign customer was no longer willing to purchase the CLO at the price it had expressed interest and informed the Desk Head of the situation. Although the Desk Head, Day, and others at Guggenheim asked the seller to cancel the Laurelin trade, the seller refused to do so.

Consequently, the CDO Desk had an unwanted inventory position in Laurelin at €35.25, when the only other indications of interest it had received at the time were in the teens.

3. Day's Efforts to Assist in Hiding the Loss on the Laurelin Position

After purchasing Laurelin, the CDO Desk made a number of efforts to find another buyer for the Laurelin position. However, the prices offered by potential buyers would have required the Firm to sell Laurelin at a large loss. The Hedge Fund ultimately agreed to purchase Laurelin from Guggenheim at "20.00"¹ and two other positions at \$46.00 each as part of a supposed "package" offered by a third-party.

Day then emailed trade tickets for the transaction to the Hedge Fund that increased the price on Laurelin to €32.28938 and decreased the price of the other two positions to \$44.97387 and \$44.62176. He did so at the instruction of the Desk Head. Although the aggregate purchase amount for the three bonds was the same as it would have been at the agreed-upon prices, the altered price for Laurelin had the effect of substantially reducing the loss on the Laurelin position.

When the Hedge Fund asked about these adjustments to the prices, Day responded, at the Desk Head's direction, that the supposed third-party seller of the Laurelin position had already settled the trade at a higher price and had requested that the Hedge Fund raise its purchase price for Laurelin even higher, to €35.25. This was not true. In fact, €35.25 was the price that the CDO Desk had paid for Laurelin.

The Hedge Fund agreed to pay the increased amount for the Laurelin position, an amount approximately \$950,000 more than it had previously agreed to pay, when the Desk Head and Day agreed to reimburse the Hedge Fund for its increased purchase price through other transactions.

4. Day Arranges to Repay the Hedge Fund Through Adjustments to Six Trades, by Forgiving SPV Structuring Fees, and a Cash Wire

Between November 2008 and May 2009, Day arranged for the Hedge Fund to be repaid the increased amount it had agreed to pay for the Laurelin position through a series of other transactions. Day undertook these efforts at the direction of the Desk Head. These included the following:

- Between November 2008 and May 2009, Day made adjustments in the Hedge Fund's favor on six riskless-principal trades in amounts totaling \$612,105. In the case of each adjustment, Day identified trades with the Hedge Fund at previously-agreed upon prices and then reduced the final trade price to Guggenheim Securities' cost in acquiring the

¹ The Hedge Fund was under the misimpression that Laurelin was denominated in dollars at the time it agreed to purchase it for 20.00.

securities. By doing so, the CDO Desk gave up the profits that it otherwise would have been made on the trades. As a result, Guggenheim's books and records, including its blotter and general ledger, did not reflect the true prices at which the Hedge Fund and the CDO Desk had actually agreed the securities would trade.

- In October 2009, Day arranged to forgive settlement fees of \$188,825 owed by the Hedge Fund to the Firm under the terms of the SPV restructuring agreement.
- In October 2009, Day arranged for \$150,648, representing the balance of the Laurelin overpayment, to be paid to the Hedge Fund by wire transfer.

As a result of these actions, the records created to document these transactions did not indicate that the terms or purpose of the transactions were to repay the Hedge Fund for its overpayment for the Laurelin CLO, or even that the transactions were related to the sale of the Laurelin position. The documents thus failed to reflect the true nature of the transactions.

5. Violations

As described above, Day engaged in efforts to assist in the hiding of a loss by making misrepresentations to a hedge fund about the identity of a seller to convince it to agree to adjust the price it was willing to pay for a security. Day's actions were inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010 and NASD Rule 2110.

Day also caused Guggenheims' books and records to inaccurately reflect the prices at which securities had been bought and sold, and caused other records to fail to reflect that transactions and payments had been done to offset overpayments for the Laurelin position. Day thereby violated NASD Rule 3110(a), and by virtue of those violations, violated NASD Rule 2110 and FINRA Rule 2010.

B. I also consent to the imposition of the following sanctions:

- A suspension from associating with any FINRA member for four months; and,
- A fine of \$20,000.

I agree to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. I have submitted an Election of Payment form showing the method by which I propose to pay the fine imposed.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

I understand that if I am barred or suspended from associating with any FINRA member, I become subject to a statutory disqualification as that term is defined in Article III, Section 4 of

FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rules 8310 and 8311).

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against me;
- 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, I specifically and voluntarily waive 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.

I further specifically and voluntarily waive 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.

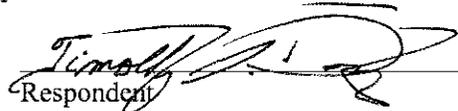
OTHER MATTERS

I understand that:

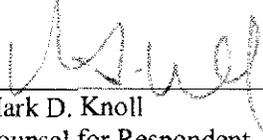
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and
- C. If accepted:
 - 1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my 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. I 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. I 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 my right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I 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.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have 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 me to submit it.

03/16/2012
Date (mm/dd/yyyy)


Respondent

Reviewed by:



Mark D. Knoll
Counsel for Respondent
Bressler, Amery & Ross, P.C.
17 State Street, 34th Floor
New York, NY 10004
212-510-6901

Accepted by FINRA:

10/11/2012
Date

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



Thomas B. Lawson
Vice President & Chief Counsel
FINRA Department of Enforcement
15200 Omega Drive
3rd Floor
Rockville, MD 20850-3241
301-258-8551 (phone)
202-721-8336 (fax)