**FINANCIAL INDUSTRY REGULATORY AUTHORITY**
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**
**NO. 2010022640023**

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

RE: Guggenheim Securities, LLC, Respondent
Member Firm
CRD No. 40638

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent 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

Guggenheim Securities, LLC ("Guggenheim Securities" or the "Firm") and its predecessor firms, Links Securities LLC and Guggenheim Capital Markets, LLC, has been a FINRA member since 1997. It is a broker-dealer affiliate of Guggenheim Partners LLC. The Firm's principal offices are located in New York, New York. It employs over 250 registered individuals and maintains fifteen branch offices in the United States and one branch office in Dubai.

### RELEVANT DISCIPLINARY HISTORY

In September 2011, the Firm was censured and fined $13,500 pursuant to a Letter of Acceptance, Waiver & Consent for failing to report information regarding transactions in municipal securities on a timely basis, and for failing to provide documentary evidence that it performed the supervisory reviews set forth in its written supervisory procedures concerning reporting municipal securities trades. The AWC found that by doing so, Guggenheim Securities violated MSRB Rules G-8, G-14, G-14(B)(II) and G-27.

## OVERVIEW

Between March 2008 and October 2009 (the "relevant period"), Guggenheim Securities failed to reasonably supervise two traders on its Collateralized Debt Obligation ("CDO") trading desk. As a result, the Firm failed to detect and prevent a series of actions by the two traders intended to disguise a loss on a Collateralized Loan Obligation ("CLO"). Those actions included making misleading statements to a customer of the Firm to induce the customer to overpay for the CLO, agreeing to reimburse the customer for that overpayment through other transactions, and creation of records for those transactions which did not disclose the purpose of the transactions. The traders were able to engage in these repeated actions because they were not subject to adequate supervision.

In October 2008, Guggenheim Securities was forced to buy a position in a "junk" rated tranche of a Euro denominated CLO as a result of a failed riskless principal trade. In order to avoid the appearance of a loss on the position, the head of the CDO Desk (the "Desk Head") and another trader (the "Trader") on the Desk misrepresented to a customer that the CLO was part of a "package" of securities offered by a third party. The misrepresentations were made to induce the customer to purchase the CLO and to do so at an inflated price. The Desk Head and the Trader agreed to reimburse the customer for the overpayment through other transactions, including pricing adjustments on future trades, a cash payment, and waivers of fees for structuring services the Firm performed for the customer. However, the records relating to those transactions did not reflect the true nature or circumstances of the transactions.

During the relevant period, Guggenheim Securities failed to establish and maintain a system to supervise the activities of its CDO Desk that was reasonably designed to ensure compliance with applicable securities laws and regulations. As a result, the Desk Head and the Trader were able to carry out their actions without adequate supervision or detection by the Firm. Between July 2007 and October 2008, the Firm also failed to identify in its written supervisory procedures the designated supervisor responsible for supervising various members of the CDO Desk. By failing to establish and maintain a system reasonably designed to supervise the activities of the CDO Desk, Guggenheim Securities violated NASD Rules 3010 and 2110 and FINRA Rule 2010.

In addition, from April 2007 through March 2010, Guggenheim Securities failed to establish and maintain written procedures that were reasonably designed to ensure that the Firm and its registered representatives charged markups and commissions on securities transactions that were fair and reasonable in accordance with NASD Conduct Rule 2440. As a result, Guggenheim Securities violated NASD Rules 3010(b) and 2110 and FINRA Rule 2010.

## FACTS AND VIOLATIVE CONDUCT

### 1. The Firm's CDO Desk

*Composition and Supervision of the Desk*

During the relevant period, Guggenheim Securities' CDO Desk, which is located in the Firm's home office in New York City, was composed of between four and five employees. The Desk Head was in charge of the Desk and was the lead CDO trader. During the relevant period, the Trader worked on the Desk's structured credit securitizations business and served as a CDO trader as required by the Desk Head or the needs of the Desk. The Desk Head resigned from the Firm in October 2011.

During the relevant period, the Firm's Chief Compliance Officer was the designated supervisor for the members of the CDO Desk. However, supervision of certain of the Desk's activities, including oversight of the Desk's trading and securitization activities, was performed by an individual who was then the co-head of the Firm. During 2008, the CDO Desk's trading activities were primarily limited to performing riskless-principal trades for the Firm's institutional customers.

*The Desk Provided Structuring Services to a Hedge Fund*

In August 2008, the CDO Desk was retained by a Chicago-based hedge fund (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. The Trader assumed primary responsibility for development of this 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 structuring arrangement, Guggenheim Securities earned a flat fee and markups and markdowns on SPV portfolio transactions.

### 2. The CDO Desk's Efforts to Hide a Loss on the CLO Purchase

On October 9, 2008, a New York-based investment advisor approached Guggenheim Securities with a request to sell a €5,000,000 piece of the Class E tranche of a euro-denominated CLO named Laurelin II B.V. ("Laurelin"). Laurelin was issued in July 2007 and was collateralized by a portfolio of Senior Secured Commercial Loans, Second Lien Commercial Loans and Mezzanine Commercial Loans. The Class E tranche was the tenth lowest in the twelve tranche capital structure of Laurelin, meaning it was a tranche at substantial risk of being negatively affected, or even wiped out, by loan defaults in the collateral portfolio. Accordingly, the Class E tranche was rated BB, or below investment grade.

The CDO Desk 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 indications of interest the Desk received for Laurelin were at prices in the teens. On October 20, the Trader believed that the Firm had an agreement from the foreign customer to purchase Laurelin at €36. He obtained the Desk Head's 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, shortly after the CDO Desk purchased the bond from the seller, the Desk learned that the foreign customer was no longer willing to purchase the Laurelin position.

The Trader and the Desk Head asked the seller to cancel the Laurelin trade, but the seller would not cancel the trade. The Firm and the CDO Desk therefore purchased the CLO position into the Firm's inventory. Upon learning of the Firm's acquisition of the CLO, a senior trader at the Firm asked the Desk Head for an "exit strategy" for eliminating the CLO position from the Firm's inventory.

The CDO Desk made a number of efforts to find another buyer the Laurelin position. However, the prices offered by potential buyers would have required the Firm to sell Laurelin at a large loss.

In late October the CDO Desk presented Laurelin to the Hedge Fund for purchase as a portfolio security for one of the SPVs. In doing so, the Desk Head and the Trader repeatedly misrepresented to the Hedge Fund that the security was part of a "package" of multiple securities offered by a third-party customer of the Firm. This was not true. In fact, as noted above, Guggenheim Securities owned the Laurelin position.

The Hedge Fund subsequently agreed to purchase Laurelin at "20.00"[1] and two of the other positions offered by Guggenheim at $46.00 each. However, when the Trader emailed trade tickets for the transaction to the Hedge Fund, the Laurelin price had been changed to €32.28938 and the prices for the other two positions had been changed to $44.97387 and $44.62176. Although the aggregate purchase amount for the three bonds was the same as it would have been at the agreed upon prices, the changed price for Laurelin had the effect of reducing the Firm's loss on the Laurelin position substantially.

When the Hedge Fund asked about these adjustments to the prices, the Desk Head and the Trader responded that the supposed third-party seller of the Laurelin position had already settled the trade at a higher price and thus wanted the Hedge Fund to raise its purchase price for Laurelin even further, to €35.25. This was not true. In fact, the €35.25 amount was the price that the Firm had been paid for Laurelin.

[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.

The Hedge Fund agreed to pay the inflated amount for the Laurelin position, an amount approximately $950,000 more than it had previously agreed to pay, because the Desk Head and the Trader agreed to repay the Hedge Fund for its overpayment through other transactions. The purpose of having the Hedge Fund overpay for the Laurelin position, and of returning the overpayment through other transactions, was to hide the loss the CDO Desk had incurred in purchasing Laurelin.

The Desk Head and the Trader subsequently arranged for the Hedge Fund to be repaid for its overpayment of approximately $950,000. The transactions in which the overpayment was returned to the Hedge Fund included the following:

- Between November 2008 and May 2009, the Desk Head and the Trader made adjustments in the Hedge Fund's favor on six riskless-principal trades in amounts totaling $612,105. In the case of each adjustment, the Desk Head or the Trader 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 securities. By doing so, the CDO Desk gave up the profits that otherwise would have been made on the trades. These adjustments were reflected in a spreadsheet the Desk Head and the Trader periodically emailed the Hedge Fund to track the progress in paying off the balance of the Laurelin overpayment, and in amended trade tickets sent to the Hedge Fund.

- In October 2009, the Desk Head and the Trader arranged for a portion of the Laurelin balance to be satisfied by forgiving $188,825 in settlement fees owed by the Hedge Fund under the terms of the SPV structuring agreement

- In October 2009, the Desk Head and the Trader arranged for $150,648, representing the balance of the Laurelin overpayment, to be paid to the Hedge Fund by wire transfer.

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.

### 3. Guggenheim Securities' Inadequate Supervision of the CDO Desk

Guggenheim Securities failed to adequately supervise or monitor the activities of the Desk Head and the Trader. Guggenheim Securities' procedures and supervisory system also contained numerous deficiencies.

For instance, Guggenheim Securities did not have a principal consistently review and approve trades, including the adjustments to many of the trades described above, although its procedures required that it do so. During the relevant period, Guggenheim Securities' procedures required that a Firm principal review and approve blotters for each trading desk, including the CDO Desk, by dating and initialing the blotters. In addition, if any subsequent changes were made to the terms of a trade, such as a change in price, the Operations Department was required to present the principal with a revised blotter showing the revised trade information for his re-review and endorsement.

In spite of the Firm's procedures, during the relevant period, original trade blotters lacked evidence of principal review and revised trade blotters were not consistently reviewed by a designated principal for approval and endorsement. As a result, the Firm's principals did not review the adjustments to the Laurelin price or the prices on the six other trades.

Furthermore, there was no principal review of the numerous emails containing the Desk Head's and the Trader's misstatements and negotiations with the Hedge Fund over the Laurelin overpayment and the various price adjustments. During the relevant period, the Firm randomly selected less than one email sent or received by a member of the CDO Desk per day for supervisory review. Many of the emails that were not reviewed contained statements relating to the traders' activities that should have raised flags, such as "[w]e just want to make sure you understand this is not about the money, but about not getting you and us in any troubles and any change/adjustment/complications with Laurentine (sic) will certainly do that;" and "[t]his is not about the money, but really about not raising any more red flags on a settlement that already caused so much trouble for everyone."

Guggenheim Securities' inadequate supervision of the CDO Desk also allowed the Desk Head and the Trader to waive a structuring fee due from the Hedge Fund of approximately $189,000 without any principal approval, and to arrange for the Firm to send a wire transfer to the Hedge Fund without meaningful review by a principal.

4. Guggenheim Securities' Failure to Maintain Written Supervisory Procedures that Identified the Designated Supervisor Responsible for the Supervision of the CDO Desk Members and Concerning Markups on Riskless Principal Trades

Guggenheim Securities' written procedures also failed to accurately identify responsibility for supervision of the CDO Desk. As described above, the Firm's Chief Compliance Officer was the designated supervisor for the members of the CDO Desk during the relevant period. However, the members of the CDO Desk were not identified in the Firm's written supervisory procedures as individuals to be supervised by that person at various times. For instance, one member of the CDO Desk was not included in the relevant section from the date he joined the Firm in July 2007 through April 2008.

Further, during the period from April 2007 through March 2010, Guggenheim Securities failed to maintain written procedures governing markups and commission charges for riskless principal transactions. Instead, during that period, the Firm relied only on unwritten policies. For customer-to-customer riskless principal transactions, the unwritten policy required that a markup or markdown of no more than 3.5% be charged on either side of the transaction. For customer-to-dealer transactions, the unwritten policy required that a markup or markdown of no more than 5% be charged. The unwritten policy also required that approval be obtained for any charges higher than these amounts. However, none of these policies were reduced to writing or contained in the Firm's written supervisory procedures. In addition, while the Firm's written supervisory procedures for markups generally listed the factors set forth in IM-2440-1, the procedures did not provide any guidance or description as to how those factors were to be applied in determining actual markup, markdown, or commission amounts.

5. Violations

NASD Rule 3010 requires members to, among other things, establish and maintain a system, including written procedures, to supervise the activities of each registered representative, registered principal, and other associated persons that is reasonably designed to achieve compliance with the federal securities laws and with applicable NASD and FINRA Rules. FINRA Rule 2010 and its predecessor, NASD Rule 2110[1], require that a member, in the conduct of its business, observe high standards of commercial honor and just and equitable principles of trade.

Guggenheim Securities violated NASD Rule 3010 by failing to supervise, and failing to establish and maintain a system to supervise, the activities of the CDO Desk in a manner reasonably designed to achieve compliance with the federal securities laws and NASD and FINRA rules. The Firm's inadequate supervision allowed the two traders to engage in extensive and repeated activities which were inappropriate without adequate oversight or review. Those actions included the making of misleading statements to a customer, an agreement with the customer to overpay for a security to hide a loss on that security, the execution of numerous unrelated transactions to repay the customer for the overpayment, and the creation of records relating to those transactions which did not reflect the true nature and circumstances of the transactions.

Guggenheim Securities also violated NASD Rule 3010(b) by (a) failing to establish and maintain written procedures governing markups, markdowns and commissions for riskless principal transactions and by maintaining inadequate written supervisory procedures concerning markups, markdown and commissions; and (b) failing to identify the person responsible for supervising members of the CDO Desk in the Firm's written supervisory procedures.

By virtue of violating Rule 3010, Guggenheim Securities violated NASD Rule 2110 (for the period April 2007 to December 14, 2008) and FINRA Rule 2010 (for the period December 15, 2008 to March 2010).

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

1. Censure and a fine of $800,000.

[1] NASD Rule 2110 applies to conduct on or before December 14, 2008. FINRA Rule 2010 applies to conduct on and after December 15, 2008.

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.

Respondent specifically and voluntarily waives any right to claim that it is unable 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.

2. Guggenheim Securities shall:

   a. Retain, within 60 days of the date of the Notice of Acceptance of this AWC, an Independent Consultant, not unacceptable to FINRA staff, to conduct a comprehensive review of the adequacy of the Firm's policies, systems and procedures (written and otherwise) and training relating to the supervisory deficiencies addressed above;

   b. Exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant;

   c. Cooperate with the Independent Consultant in all respects, including by providing staff support. Guggenheim Securities shall place no restrictions on the Independent Consultant's communications with FINRA staff and, upon request, shall make available to FINRA staff any and all communications between the Independent Consultant and the Firm and documents reviewed by the Independent Consultant in connection with his or her engagement. Once retained, Guggenheim Securities shall not terminate the relationship with the Independent Consultant without FINRA staff's written approval; Guggenheim Securities shall not be in and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client privilege or other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports or documents to FINRA;

   d. At the conclusion of the review, which shall be no more than 120 days after the date of the Notice of Acceptance of this AWC, require the Independent Consultant to submit to the Firm and FINRA staff a Written Report. The Written Report shall address, at a minimum, (i) the adequacy of the Firm's policies, systems, procedures, and training relating to the supervisory systems addressed above; (ii) a description of the review performed and the conclusions reached, and (iii) the Independent Consultant's recommendations for modifications and additions to the Firm's policies, systems, procedures and training; and

   e. Require the Independent Consultant to enter into a written agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any other employment, consultant, attorney-client, auditing or other professional relationship with Guggenheim Securities, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any firm with which the Independent Consultant is affiliated in performing his or her duties pursuant to this AWC shall not, without prior written consent of FINRA staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Guggenheim Securities or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

3. Within 60 days after delivery of the Written Report, Guggenheim Securities shall adopt and implement the recommendations of the Independent Consultant or, if it determines that a recommendation is unduly burdensome or impractical, propose an alternative procedure to the Independent Consultant designed to achieve the same objective. The Firm shall submit such proposed alternatives in writing simultaneously to the Independent Consultant and FINRA staff. Within 30 days of receipt of any proposed alternative procedure, the Independent Consultant shall: (i) reasonably evaluate the alternative procedure and determine whether it will achieve the same objective as the Independent Consultant's original recommendation; and (ii) provide the Firm with a written decision reflecting his or her determination. The Firm will abide by the Independent Consultant's ultimate determination with respect to any proposed alternative procedure and must adopt and implement all recommendations deemed appropriate by the Independent Consultant.

4. Within 60days after the issuance of the later of the Independent Consultant's Written Report or written determination regarding alternative procedures (if any), Guggenheim Securities shall provide FINRA staff with a written implementation report, certified by an officer of Guggenheim Securities, attesting to, containing documentation of, and setting forth the details of the Firm's implementation of the Independent Consultant's recommendations.

5. Upon written request showing good cause, FINRA staff may extend any of the procedural dates set forth above.

## 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 Respondent; and

C. If accepted:

1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Respondent;

2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondent'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. 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 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 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 Respondent 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 to submit it.

Guggenheim Securities, LLC

**August 14, 2012**
Date (mm/dd/yyyy)

By: ____________________

**Paul M. Friedman, Sr. MD**
**Chief Operating Officer**

Reviewed by:

Ivan P. Harris
Counsel for Respondent
Morgan, Lewis & Bockius LLP
5300 Southeast Financial Center
200 S. Biscayne Boulevard
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305-415-3398 (phone)
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Accepted by FINRA:

Date

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

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Reviewed by:

______________________________
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Accepted by FINRA:

10/11/2012
Date

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

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