

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DAVID MICHAEL GUTMAN  
(CRD 2779960)

AND

CHRISTOPHER JOHN TYNDALL  
(CRD 3156096)

Respondents.

DISCIPLINARY PROCEEDING  
No. 2012033227402

HEARING OFFICER: MAD

**ORDER ACCEPTING DAVID M.  
GUTMAN'S OFFER OF SETTLEMENT**

December 31, 2013

**INTRODUCTION**

Disciplinary Proceeding No. 2012033227402 was filed on May 17, 2013, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent David Gutman submitted an Offer of Settlement (Offer) to Complainant dated December 12, 2013. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint (as amended by the Offer of Settlement), 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, to the entry of findings and violations consistent with the allegations of the Complaint (as amended by the Offer of Settlement), and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

### **BACKGROUND**

Gutman was first registered with a FINRA member firm in 1996. He has been registered with J.P. Morgan Securities LLC (formerly J.P. Morgan Securities Inc.) since 2001, and is currently registered with the firm.

### **FINDINGS AND CONCLUSIONS**

It has been determined that the Offer be accepted and that findings be made as follows:

The findings herein are pursuant to Respondent Gutman's Offer of Settlement and are not binding on any other person or entity named as a Respondent in this or any other proceeding.

As set forth in Cause Two of the Complaint, Respondent failed to comply with his obligation to observe high standards of commercial honor and just and equitable principles of trade, in violation of NASD Rule 2110.

Respondent began working in J.P. Morgan's Conflicts Office in 2003. The Conflicts Office reviews all transactions that may give rise to a conflict of interest for the firm. These include instances where J.P. Morgan works with multiple clients whose interests may conflict and situations where J.P. Morgan's interests may conflict with those of a client. The Conflicts Office manages conflicts of interest by monitoring, clearing, and, when appropriate, limiting the

firm's business activities and deal team staffing.

The Conflicts Office is responsible for clearing corporate finance and mergers and acquisitions advisory assignments, debt or equity acquisition financings, and acquisitions, joint ventures or similar arrangements undertaken by J.P. Morgan or its affiliates. After an activity is approved, the Conflicts Office also reviews and clears proposed material changes in reported information, including changes in J.P. Morgan's role, the nature of the activity, and the completion or abandonment of the activity.

The Conflicts Office maintained a database called the Conflicts Reporting System ("CRS") which recorded J.P. Morgan's activities or engagements with its investment banking clients. CRS was updated, as events or developments warranted, by personnel assigned to the Conflicts Office, including Gutman.

Approximately 15 persons worked in the Conflicts Office in 2006 and 2007. Everyone in the Conflicts Office, including Gutman, had access to the CRS database and could review what deals were being reviewed for conflicts purposes, along with updates or changes to the status of each deal as developments warranted.

Everyone in the Conflicts Office, including Gutman, received an identifying email each time a new matter came into the office to be added to the CRS database. Conflicts Office personnel informally collaborated with one another on conflicts reviews. The Conflicts Office also held weekly staff meetings to discuss developments with respect to conflicts reviews.

At all relevant times, J.P. Morgan maintained investment banking and compliance procedures applicable to all personnel, including those in the Conflicts Office. The firm's written procedures and rules imposed an obligation to safeguard material, nonpublic or confidential information.

From his position in the Conflicts Office, Gutman had access to and became aware of confidential and material information concerning mergers and acquisitions before the public dissemination of news.

Gutman and Christopher Tyndall were long-time personal friends and regularly socialized with each other. They grew up near each other, knew each other in high school, and attended the same university for one year. During 2006-2008, they also telephoned, texted, and emailed each other frequently. Tyndall was a registered representative at Meyers Associates, L.P.

In conversations with Tyndall, Gutman failed to maintain the confidentiality of material, nonpublic information about pending mergers and acquisitions to which he had access as part of his work in the Conflicts Office. From March 2006 to October 2007, Tyndall used the information to trade for himself and to recommend to his customers that they invest in multiple companies about which he was given information. Tyndall also gave that information to friends of his who also traded on the basis of the information. The persons who traded on the basis of the information made over \$9 million in profits.

By engaging in the misconduct described above, Respondent failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of NASD Rule 2110.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

## SANCTIONS

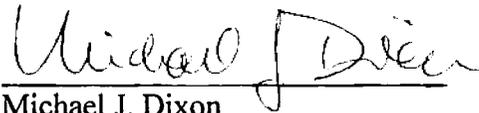
It is ordered that Respondent Gutman be barred in all capacities.

The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to FINRA Rule 8313(e), a bar or expulsion shall become effective upon approval or acceptance of this Order.

**SO ORDERED.**

FINRA

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

A handwritten signature in black ink, appearing to read "Michael J. Dixon", is written over a horizontal line.

Michael J. Dixon

Senior Counsel

FINRA Department of Enforcement

15200 Omega Drive, Third Floor

Rockville, MD 20850

Tel: 301-258-8522

Fax: 202-303-3980

*michael.dixon@finra.org*