

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20090191566**

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

RE: Cutler Securities, Inc., Respondent
FINRA-regulated broker-dealer
CRD No. 41230
and
Glenn Cutler, Respondent
Registered Representative
CRD No. 2305818

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Cutler Securities, Inc. ("Cutler Securities" or "Firm Respondent" or "Respondent Cutler Securities") and Glenn Cutler ("Cutler" or "Individual Respondent" or "Respondent Cutler") (collectively ("Respondents")) 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 Cutler Securities and/or Cutler alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondents 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

Cutler entered the securities industry in July 1992. Cutler was continuously employed from that date by other FINRA-regulated broker-dealers until 1996, when he formed Cutler Securities. Cutler Securities was admitted to FINRA membership on September 4, 1996. Cutler Securities was, at all relevant times, a sole proprietorship corporation wholly owned by Cutler. Cutler is the President, Chief Executive Officer ("CEO"), Chief Compliance Officer ("CCO"), Financial and Operations Principal ("FINOP"), Designated Principal and only employee of Cutler Securities.

Cutler Securities was an introducing broker that introduced its accounts to its clearing firm on a fully-disclosed basis. Cutler Securities cleared its accounts through a clearing broker (“Clearing Firm 1”) from July 2007 through April 2009, and cleared its accounts through another clearing broker (“Clearing Firm 2”) on August 3-4 and August 6, 2009.

During the period July 2007 to August 2009 (the “Relevant Period”), Cutler Securities’ sole business activity was proprietary trading, and it operated solely from its main office located in Delray Beach, Florida.

RELEVANT DISCIPLINARY HISTORY

Cutler, on behalf of Cutler Securities, signed an AWC in Matter No. CMS000001 in September 1999. Cutler Securities accepted and consented to findings of violation of NASD Rules 2110, 3010, 3350, 4632, and 4642, based on findings that Cutler Securities executed short sale transactions at or below the inside bid when the then-current inside bid was below the preceding inside bid; executed short sale orders in certain securities and failed to make affirmative determinations for such orders; and executed short sale transactions and failed to report each of these transactions to the automated confirmation transaction service (“ACT”) in violation of applicable securities laws and regulations regarding trade reporting. Cutler Securities was fined \$8,500 and required to review its written supervisory procedures.

FINRA currently retains jurisdiction over both Cutler and Cutler Securities.

OVERVIEW

Throughout the Relevant Period, Cutler was the only person who initiated, entered and/or executed transactions for Cutler Securities using an intra-day trading strategy he developed. In addition, Cutler performed all management and regulatory functions for Cutler Securities, including all Compliance and FINOP functions. All violations by the Firm are directly attributable to Cutler's actions or failures to act.

During the Relevant Period, Cutler and Cutler Securities failed at times to comply with certain rules promulgated by the Securities and Exchange Commission (“SEC”), as well as FINRA Rules, and NASD Rules. Among other deficiencies, Cutler Securities and Cutler violated and/or caused violations of net capital requirements, reporting requirements relating to capital withdrawals and conditions, the order marking, “locate,” and documentation requirements of SEC Regulation SHO, and books and records requirements. Cutler and Cutler Securities also engaged in short sales trading in violation of two Emergency Orders issued by the SEC in July and September 2008. Further, Cutler and Cutler Securities failed to establish and maintain supervisory systems and procedures to ensure compliance with Regulation SHO, the computation and maintenance of net capital, and trade reporting.

On August 6, 2009, Cutler caused Cutler Securities to effect, and Cutler Securities did effect,

purchases and sales in a single security ("XYZ"), that resulted in a short position at the end of the day of 2,466,432 shares, worth approximately \$9.2 million. For the overwhelming majority of this trading day, Cutler Securities was operating in net capital deficiency. The following morning, the clearing firm purchased XYZ to cover the short. Upon closing that position and crediting the approximately \$3 million that was in the Cutler Securities account, the clearing firm had an unsecured debit balance. The clearing firm then issued a margin call to Cutler for \$25 million.

On August 7, 2009, Cutler caused Cutler Securities to access the NASDAQ Market Center and effect the purchase and sale of securities, and Cutler Securities did so, even though Cutler Securities did not have a clearing arrangement which permitted it to do so, and was not a member of a clearing agency registered with the SEC at that time.

FACTS AND VIOLATIVE CONDUCT

Regulation SHO

Effective September 7, 2004, the SEC adopted 17 CFR Part 242 ("Regulation SHO") under the Securities Exchange Act of 1934 ("Exchange Act") and designated January 3, 2005 as the commencement date for compliance. Regulation SHO was, among other things, designed to control the harmful effects on market prices and the volatility caused by naked short selling. With this primary goal in mind, Regulation SHO was designed to: (i) create uniform order marking requirements for sales of equity securities; (ii) reduce the number of potential failures to deliver (hereinafter referred to as a "fail" or "fail to deliver") by means of a "locate" requirement; and (iii) limit the time in which a broker-dealer can permit a fail to deliver (hereinafter referred to as a "fail" or "fail to deliver") to persist for securities on the various SRO threshold security lists ("threshold securities").¹

Under Rule 200(g) of Reg SHO a broker-dealer was required to mark all sell orders of any security either "long," "short," or "short exempt."² Moreover, an order may be marked long only if the seller "owns" the security pursuant to Rule 200(a) through (f) and either has physical possession of the security or reasonably expects to have such possession by the settlement date.

Mismarking

Cutler was aware that all short sale orders were required to be marked as such. Nevertheless, beginning in or about July 2007, Cutler stopped marking his sell short orders as short and instead entered all his sell short orders as long sale orders. Cutler maintained this practice throughout April 2009, which was the time that Cutler Securities cleared through Clearing Firm 1, and he continued this practice when Cutler Securities cleared through Clearing Firm 2 in August 2009.

¹ Threshold Securities are equity securities that have an aggregate fail to deliver position for: (i) five consecutive settlement days at a registered clearing agency (e.g., National Securities Clearing Corporation ("NSCC")); (ii) totaling 10,000 shares or more; and (iii) equal to at least 0.5% of the issuer's total shares outstanding.

² Effective October 5, 2007, broker-dealers are no longer permitted to mark sales "short exempt." Instead, all short sales must now be marked "short."

A review of a sample of Cutler's positions and trading during the periods of July 18 through August 13, 2008; September 17 through October 9, 2008; and August 3 and August 6, 2009 shows that Cutler mismarked at least hundreds of short sale orders as long sales.

Based upon the foregoing conduct, Cutler violated NASD Rule 2110 during the period July 2007 to December 14, 2008, and FINRA Rule 2010 on or after December 15, 2008,¹ in that he caused his FINRA-registered broker-dealer employer to violate Rule 200(g) of Reg SHO and NASD Rule 2110 and FINRA Rule 2010 because he marked sell orders for the Firm account as "long" when the Firm did not own the security being sold.

Based upon the foregoing conduct, Cutler Securities violated Rule 200(g) of Reg SHO during the period July 2007 through April 2009, and August 2009 by mismarking proprietary short sale orders as long sales. This conduct also constitutes a violation of NASD Rule 2110 during the period July 2007 through December 14, 2008, and FINRA Rule 2010 on or after December 15, 2008, both of which require that a firm, in the conduct of its business, observe high standards of commercial honor and just and equitable principles of trade.

Failure to Obtain and Document Locates

A review of the above-described sample reveals that, during the period of July 18 through August 13, 2008 and September 17 through October 9, 2008, Cutler effected at least hundreds of short sales in securities on these trade dates. However, he received locates in a total of only five securities over three different trade dates. Thus, Cutler effected hundreds, if not thousands, of short sales in securities in which he received no locate and/or short sales for a number of shares far in excess of the number of shares for which he received locates.

Cutler failed to document any locates he received from Clearing Firm 1 from at least July 2007 through April 2009.

On August 6, 2009, Cutler Securities entered short sale orders mismarked as long sales, the result of which it accumulated an end of day short position in XYZ stock of 2,466,432 shares. Cutler did not receive a valid locate from any source for his short sales in XYZ on August 6, 2009.

Based upon the foregoing conduct, Cutler caused Cutler Securities to violate Rule 203(b)(1) of Reg SHO, as well as NASD Rule 2110 during the period July 2007 to December 14, 2008, and FINRA Rule 2010 on or after December 15, 2008.

Moreover, Cutler Securities violated Rule 203(b)(1) of Reg SHO during the Relevant Period by, effecting short sales without having obtained a valid locate prior to entering the orders for execution, and failing to document locates which were obtained. For the period July 2007 to December 14, 2008, this violative conduct also constitutes a violation of NASD Rule 2110, and for the period December 15, 2008 to August 6, 2009, this violative conduct also constitutes a violation of FINRA Rule 2010.

¹ See FINRA Regulatory Notice 08-57, which describes certain changes to FINRA's rules including the change of NASD Rule 2110 to FINRA Rule 2010, effective December 15, 2008.

SEC Emergency Orders

The SEC issued an emergency order on Tuesday, July 15, 2008 (“Emergency Order I”).¹ The SEC posted Emergency Order I and an accompanying press release on its website on July 15, 2008. Emergency Order I provided, in pertinent part, that no person could effect a short sale in the publicly traded securities of certain “Substantial Financial Firms” unless such person or its agent borrowed or arranged to borrow the security or otherwise had the security available to borrow in its inventory prior to effecting such short sale. An appendix to Emergency Order I specifically identified 19 financial firms as “Substantial Financial Firms.”

Emergency Order I was effective on Monday, July 21, 2008 through Tuesday, July 29, 2008. On Tuesday, July 29, 2008, the SEC amended Emergency Order I. The amendment extended the effective period of the order through Tuesday, August 12, 2008.

During the period July 21, 2008 through August 12, 2008, Cutler and Cutler Securities effected numerous proprietary short sales in the securities of the Substantial Financial Firms identified in Emergency Order I without having borrowed or arranged to borrow the security or otherwise having the security available to borrow in its inventory prior to effecting such short sale. Cutler and Cutler Securities effected numerous short sales mismarked as long sales, on a principal basis, in the securities of the Substantial Financial Firms covered by Emergency Order I from July 21, 2008 through August 12, 2008.

The SEC issued “Emergency Order II” on Thursday, September 18, 2008.² Emergency Order II provided, among other things, that “all persons are prohibited from short selling any publicly traded securities of any Included Financial Firm.” An appendix to Emergency Order II specifically identified 799 financial firms as “Included Financial Firms.” The Emergency Order was effective on September 19, 2008 through October 8, 2008.

During the period of September 19, 2008 through October 8, 2008, Cutler and Cutler Securities effected numerous proprietary short sale orders in the securities of Included Financial Firms identified in Emergency Order II. Cutler and Cutler Securities effected numerous short sale orders mismarked as long sales, on a principal basis, in the securities of the Included Financial Firms covered by Emergency Order II from September 19 through October 8, 2008.

Both Emergency Order I and Emergency Order II had been promulgated by the SEC pursuant to authority granted it under Section 12 of the Securities Exchange Act of 1934 (“Exchange Act”). Based upon the foregoing conduct, Cutler and Cutler Securities violated Section 12(k) of the Exchange Act by effecting short sales in the securities of Substantial Financial Firms without having borrowed or pre-borrowed the securities, and by effecting short sales in the securities of Included Financial Firms. This violative conduct also constitutes a violation of NASD Rule 2110.

¹See Exchange Act Rel. No. 58166 (July 15, 2008); Exchange Act Rel. No. 58190 (July 18, 2008); and Exchange Act Rel. No. 58248 (July 29, 2008).

²See Exchange Act Rel. No. 58592 (Sept. 18, 2008); Exchange Act Rel. No. 58723 (Oct. 2, 2008).

Net Capital Violations

Withdrawal of Excess Net Capital Without Proper Notification

SEC Rule 15c3-1(e)(1)(i) states in pertinent part that equity capital of the broker or dealer may not be withdrawn by action of a stockholder without written notice two business days prior to any such withdrawals, if the withdrawals, on a net basis exceed in the aggregate in any 30 calendar day period, 30 percent of the broker or dealer's excess net capital.

On January 2, 2009, Cutler made a capital withdrawal from Cutler Securities in excess of 30% of Cutler Securities' excess net capital.

Cutler and Cutler Securities failed to provide written notice to FINRA on December 30, 2008 for this capital withdrawal made on January 2, 2009 for an amount that exceeded 30% of the firm excess net capital.

FINRA did not become aware of the capital withdrawal until April 24, 2009, when Cutler, acting on behalf of Cutler Securities, filed the Firm's quarterly FOCUS report for the First Quarter 2009. Staff contacted Cutler on May 6, 2009 and informed him that the Firm had failed to provide the required prior written notification to FINRA of the withdrawal in excess of 30% of the Firm's excess net capital. Cutler on behalf of Cutler Securities submitted the written notification after this consultation with staff.

Based upon the foregoing conduct, Cutler violated FINRA Rule 2010 in that as the Firm's FINOP he caused his FINRA-registered broker-dealer employer to violate SEC Rule 15c3-1(e)(1)(i) and FINRA Rule 2010 when he failed to provide FINRA with written notification two days prior to a withdrawal of capital, which represented more than 30% of the Firm's excess net capital.

Based upon the foregoing conduct, Cutler Securities violated SEC Rule 15c3-1(e)(1)(i) on December 30, 2008, which continued to May 6, 2009, because the Firm failed to provide FINRA with written notification two days prior to a withdrawal of capital as the withdrawal represented more than 30% of the Firm's excess net capital.

Failure to Maintain Minimum Net Capital

During the Relevant Period, including in August 2009, Cutler Securities operated pursuant to subparagraph (a)(2)(3)(iii) of SEC Rule 15c3-1 (The Net Capital Rule). SEC Rule 15c3-1(a) states that "every broker or dealer shall at all times have and maintain net capital no less than the greater of the highest minimum requirement applicable to its ratio requirement under paragraph (a)(1) of this section, or to any of its activities under paragraph (a)(2) of this section." (emphasis supplied). Pursuant to this rule, Cutler Securities was required to maintain a minimum net capital of \$100,000 because it conducted more than 10 trades annually on a principal basis for its trading account.

Cutler Securities, acting through Cutler, failed to maintain its minimum net capital requirement and conducted a securities business on August 6, 2009, in violation of SEC Rule 15c3-1. The net capital deficiencies were caused by the Firm's failure to properly monitor haircuts for short positions on a moment to moment basis.

Cutler Securities had net capital of approximately \$3 million at the beginning of the trading day on August 6, 2009. The Firm started short selling XYZ at 10:26:17 a.m. Less than one hour later, at 11:06:52, the Firm was below 120% of minimum net capital and below net capital of \$100,000, and the Firm failed to provide the required notice to FINRA that its capital had decreased to less than 120% of minimum net capital. Cutler's practice was to only compute net capital position at the end of the trading day and did not take into consideration the potential impact that charges from haircuts in short positions could have on a moment to moment basis.

At 11:06:56 a.m., the Firm was net capital deficient in the amount of \$96,475. By this point, the Firm had accumulated a total short position of 838,143 shares of XYZ with a value of \$20,487,138 and a required 15% haircut of \$3,073,071. The Firm had also mismarked its short sale orders as long sales.

Cutler Securities continued to effect tens of thousands of purchases and sales of XYZ throughout the rest of the August 6, 2009 trading day, including transactions effected after close of market hours until 4:41:16 p.m. The Firm's net capital deficiency continued to rise throughout the day (with certain downswings as the Firm was also purchasing stock) and at its maximum the net capital deficiency exceeded seven million dollars.

At the end of August 6th 2009, Clearing Firm 2 took control of the remaining short position of 2,466,432 XYZ shares which had a total value of \$56,636,441. This position required Cutler Securities to take a haircut charge of approximately \$8,495,466, which ultimately left the Firm with a deficient net capital position of \$5,524,870.

On the morning of August 7, 2009, Clearing Firm 2 issued Cutler Securities a margin call in the amount of \$25 million. On August 7, 2009, Cutler acknowledged to FINRA staff that Cutler Securities did not have the funds to meet the margin call.

Based upon the foregoing conduct, Cutler violated FINRA Rule 2010 in that as the Firm's FINOP he caused his FINRA-registered broker-dealer employer to fail to maintain required minimum net capital requirement and conduct a securities business without the required minimum net capital. The net capital deficiencies were caused by Cutler's failure to properly monitor haircuts for short positions on a moment to moment basis.

Based upon the foregoing conduct, Cutler Securities violated SEC Rule 15c3-1 by failing to maintain required minimum net capital requirement and conducting a securities business without the required minimum net capital. The net capital deficiencies were caused by the Firm's failure to properly monitor haircuts for short positions on a moment to moment basis. By that same misconduct, the Firm also violated FINRA Rule 2010.

Effecting Trades Without A Clearing Arrangement

By electronic mail sent at 6:13 p.m. Central Time, on August 6, 2009, Clearing Firm 2 informed Cutler and Cutler Securities of the following:

[U]ntil further notice and effective immediately we will not clear any transactions that you execute away from [Clearing Firm 2]. In addition, we have notified [National Securities Clearing Corporation] that [Clearing Firm 2] is no longer clearing for you[] .

...

Despite having received this notice, Cutler and Cutler Securities effected purchases and sales of securities away from Clearing Firm 2 on August 7, 2009. On August 7, 2009, Cutler purchased and sold tens of thousands of shares of a NYSE listed security. In email communications with Clearing Firm 2 on August 7, 2009, Cutler stated that he had done the trades out of habit.

Based on the foregoing conduct, on August 7, 2009, Cutler and Cutler Securities violated FINRA Rule 2010 in that Cutler Securities accessed the NASDAQ Market Center and effected the purchase and sale of securities when Cutler Securities was not a member of a clearing agency registered with the SEC and did not have a clearing arrangement which permitted Cutler Securities to effect these trades.

Reporting Violations

Order Audit Trail System ("OATS")

During the Relevant Period, Cutler Securities entered the vast majority of its orders through NASDAQ VTE, which provided a front-end interface to the NASDAQ Market Center Execution System. During that time frame, Cutler Securities was a "Reporting Member" within the definition set forth in NASD Order Audit Trail System ("OATS") Rule 6951(n) until December 14, 2008, and then in Rule 7410(n). Pursuant to the procedures set forth in Rule 6954 until December 14, 2008, and thereafter in FINRA Rule 7440, Cutler Securities was, among other things, required to record the designation of an order as a short sale order. Further, pursuant to NASD Rule 6955(a) until December 14, 2008, and thereafter under NASD Rule 7450(a), Cutler Securities, the Reporting Member, was responsible to transmit to OATS all the order information it was required to record. However, pursuant to NASD Rule 6955 and FINRA Rule 7450, Cutler Securities remained primarily responsible for compliance with the OATS requirements.

As noted earlier, Cutler Securities designated at least hundreds of its short sale orders as long sales. Accordingly, Cutler Securities failed to properly record the designation on at least hundreds of its short sale orders.

Moreover, because Cutler Securities failed to properly record the designation of at least hundreds of its short sale orders, Cutler Securities failed to accurately transmit to OATS all the order information it was required to record.

Based upon the foregoing conduct, during the period July 2007 through December 14, 2008, Cutler Securities violated NASD Rules 6955(a) in that it transmitted inaccurate information to OATS regarding orders initiated at the Firm, because it transmitted short sales as long sales. Based upon this same conduct, Cutler Securities violated FINRA Rule 7450(a) during the period December 15, 2008 through August 7, 2009.

ACT

During the period July 2007 through December 14, 2008, for ACT reporting purposes, Cutler Securities entered orders in "Reportable Securities," as defined by NASD Rule 6110(a) and as the "Reporting Party," as defined by NASD Rule 6110(n), was required to input the trade information, according to the trade input report rules set forth in NASD Rule 6130. After December 15, 2008, Rule 6130 was superseded by Rule 7230A.

During the period July 2007 through December 14, 2008, NASD Rule 6130(d)(6) – Trade Information To Be Input - provided in pertinent part, "[e]ach report to the NASDAQ Market Center shall contain...a symbol indicating whether the transaction is a buy, sell, sell short, sell short exempt or cross." On and after December 15, 2008, Rule 7230A(d)(6) imposed the same requirements.

Orders which Cutler Securities executed through the NASDAQ Market Center Execution System were automatically reported to ACT. However, Cutler Securities, as the Reporting Party, was responsible for the input of complete and accurate transaction information. As indicated earlier, Cutler Securities failed, on at least hundreds of occasions, to properly record short sales and instead recorded them as long sales.

Based upon the foregoing conduct, Cutler caused Cutler Securities to violate NASD Rule 6130(d)(6) and NASD Rule 2110 during the period July 2007 through December 14, 2008, in that he failed to report to the NASDAQ Market Center the correct symbol indicating transactions in Reportable Securities as short sells. Based upon this same conduct, Cutler caused Cutler Securities to violate FINRA Rule 7230A(d)(6) and FINRA Rule 2010 during the period December 15, 2008 through August 7, 2009.

Based upon the foregoing conduct, Cutler Securities violated NASD Rule 6130(d)(6) and NASD Rule 2110 during the period July 2007 through December 14, 2008, in that it failed to report to the NASDAQ Market Center the correct symbol indicating transactions in Reportable Securities as short sells. Based upon this same conduct, Cutler Securities violate FINRA Rule 7230A(d)(6) and FINRA Rule 2010 during the period December 15, 2008 through August 7, 2009.

Further, NASD Rule 6170 – Audit Trail Requirements – stated the following:

The data elements specified in Rule 6130(d) are critical to the association's compilation of a transaction audit trail for regulatory purposes. As such, all member firms utilizing the trade reporting service of the NASDAQ Market Center have an ongoing obligation to input 6130(d) information accurately and completely.

NASD Rule 6170 was superseded, on and after December 15, 2008, by FINRA Rule 7260A, which imposed parallel requirements, and changed the internal reference to Rule 7230A(d).

Based upon the above-described conduct, Cutler caused Cutler Securities to violate NASD Rule 6170 and NASD Rule 2110 during the period July 2007 through December 14, 2008, in that he caused the Firm to fail in its ongoing obligation to input 6130(d) information to the NASDAQ Market Center accurately and completely. Based upon this same conduct, Cutler caused Cutler Securities to violate FINRA Rule 7260A and FINRA Rule 2010 during the period December 15, 2008 through August 7, 2009.

Based upon the foregoing conduct, Cutler Securities violated NASD Rule 6170 and NASD Rule 2110 during the period July 2007 through December 14, 2008, in that the Firm failed in its ongoing obligation to input 6130(d) information to the NASDAQ Market Center accurately and completely. Based upon this same conduct, Cutler Securities violated FINRA Rule 7260A and FINRA Rule 2010 during the period December 15, 2008 through August 7, 2009.

Books and Records Violations

FINRA Rule 3110 provides that:

Each member shall make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations and statements of policy promulgated thereunder and with the Rules of this Association and as prescribed by SEC Rule 17a-3. The record keeping format, medium, and retention period shall comply with Rule 17a-4 under the Securities Exchange Act of 1934.

Rule 17a-3(a) requires every broker or dealer to make and keep current certain books and records, including:

A memorandum of each purchase and sale for the account of the member, broker, or dealer showing the price and, to the extent feasible, the time of execution . . . [and]

A record of the proof of money balances of all ledger accounts in the form of trial balances, and a record of the computation of aggregate indebtedness and net capital, as of the trial balance date, pursuant to Rule 15c3-1.

Further, Rule 17a-4(b)(5) requires that every broker and dealer preserve for a period of not less than 3 years, the first two years in an accessible place:

All trial balances, computations of aggregate indebtedness and net capital (and working papers in connection therewith), financial statements, branch office reconciliations, and internal audit working papers, relating to the business of such member, broker or dealer, as such.

As noted above, beginning in July 2007, Cutler marked all sell short orders for Cutler Securities as long sales. As a result, the short sell orders were improperly recorded as long sell orders and the orders and related executions were improperly transmitted for OATS and ACT reporting purposes.

In addition, Cutler claimed that he calculated his Firm's net capital intermittently throughout the trading day but maintained no records of these intra-day net capital calculations. Moreover, the method by which he purportedly calculated Cutler Securities intra-day net capital requirements was completely inaccurate.

Based upon the foregoing conduct, Cutler violated NASD Rules 3110 and 2110 from July 2007 through December 14, 2008, and violated NASD Rule 3110 and FINRA Rule 2010 on and after December 15, 2008, in that as Cutler Securities' Chief Executive Officer, Chief Compliance Officer and Financial and Operation Principal he caused his FINRA-registered broker-dealer employer to fail to create and preserve accurate books and records in violation of Section 17(a) of the Securities Exchange Act of 1934 and SEC Rules 17a-3 and 17a-4 promulgated thereunder in that he failed to make and keep accurate records reflecting: memoranda of sell orders for its own account; net capital computations, and trade reports.

Based upon the foregoing conduct, Cutler Securities violated Section 17(a) of the Securities Exchange Act of 1934 and Rules 17a-3 and 17a-4 promulgated thereunder and NASD Rules 3110; moreover, Cutler Securities violated NASD Rule 2110, from July 2007 through December 14, 2008, and violated FINRA Rule 2010 from December 15, 2008 through August 2009, in that the Firm failed to make and keep accurate records reflecting: memoranda of sell orders for its own account; net capital computations, and trade reports.

Failure to Supervise

NASD Rule 3010(a) requires that each member "establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules." Rule 3010(a) goes on to provide that, at a minimum, a member's supervisory system shall provide, at a minimum, for the establishment and maintenance of written procedures as required by paragraph (b) of the Rule.

NASD Rule 3010(b) requires that each member shall "establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of NASD."

Regulation SHO

Regulation SHO was in effect, and Cutler and Cutler Securities subject to its provisions throughout the Relevant Period. Cutler effected short sales on behalf of Cutler Securities throughout the Relevant Period. At no time during the period July 2007 through August 7, 2009, did Cutler or Cutler Securities establish or maintain a system to supervise its activities for compliance with Regulation SHO.

Cutler last amended Cutler Securities' procedures with regard to short sales soon after Cutler Securities received the aforementioned disciplinary action in 2000. Cutler Securities' written policies and procedures were not updated or otherwise amended to include Regulation SHO. The written policies and procedures which Cutler and Cutler Securities submitted to FINRA in connection with this investigation contained no reference to Regulation SHO. Therefore, Cutler Securities' supervisory system did not provide for any supervision designed to achieve compliance with respect to Regulation SHO during the Relevant Period.

Net Capital

The written policies and procedures which Cutler and Cutler Securities submitted to FINRA in connection with this investigation failed to adequately address the proper methodology for calculation of haircuts on Firm securities positions.

Cutler as Cutler Securities' Chief Compliance Officer and FINOP failed to be aware of the requirements of Regulation SHO and calculation of net capital as they pertained to his trading on behalf of Cutler Securities and his calculation of Cutler Securities' net capital.

Trade Recording and Reporting

The written policies and procedures which Cutler and Cutler Securities submitted to FINRA in connection with this investigation failed to adequately address the proper methodology for recording and transmitting OATS data, as well as for recording and transmitting transaction data to the NASDAQ Market Center.

Cutler as the Firm's Chief Compliance Officer failed to determine the Firm's compliance with these obligations regarding the recording and transmission of data relating to short sale orders and executions.

Summary of Failure to Supervise Violations

Based upon the foregoing conduct, Cutler and Cutler Securities violated NASD Rule 3010(a) by failing to establish and maintain a system to supervise and NASD Rule 3010(b) by failing to establish, maintain, and enforce written procedures to supervise for compliance with Regulation SHO, the computation of net capital and trade recording and reporting obligations. This misconduct also violated NASD Rule 2110 until December 14, 2008, and FINRA Rule 2010 thereafter.

- B. Respondent Cutler Securities also consents to the imposition of the following sanction:

An expulsion from membership in FINRA.

- C. Respondent Cutler also consents to the imposition of the following sanctions:

- a. A bar from associating in a supervisory capacity with any FINRA-regulated broker-dealer;
- b. A bar from associating in a principal capacity, including, but not limited to, as a FINOP, with any FINRA-regulated broker-dealer;
- c. A suspension in all capacities for two years; and
- d. A fine of \$100,000.

Respondent Cutler understands that he is suspended in all capacities for two years, and barred in all principal and supervisory capacities. Respondent Cutler understands that if he is barred or suspended from associating with any FINRA member, he becomes 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, Respondent Cutler may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of his suspension (see FINRA Rules 8310 and 8311). Further, Respondent Cutler understands that if, during his bar, he becomes associated with a member firm in a non-suspended or non-barred capacity, an application to continue that association may be required.

Respondent Cutler understands that this settlement includes a finding that he failed to supervise an individual who violated Section 12(k), as well as Reg SHO, Rules 15c3-1, 17a-3, and 17a-4, of the Exchange Act, and that under Article III, Section 4 of FINRA's By-Laws, this makes him subject to a statutory disqualification with respect to association with a member.

Respondent Cutler Securities understands that this settlement includes a finding that it failed to supervise an individual who violated Section 12(k), as well as Reg SHO, Rules 15c3-1, 17a-3, and 17a-4, of the Exchange Act, and that under Article III, Section 4 of FINRA's By-Laws, and that this makes this Respondent subject to a statutory disqualification with respect to association with a member.

The fine shall be due and payable either immediately upon reassociation with a member firm following the two year suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

Respondent Cutler specifically and voluntarily waives any right to claim that he is unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

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 AWC.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondents specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

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

Respondents 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

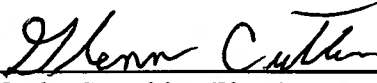
Respondents understand that:

- 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 them; and
- C. If accepted:
 - 1. this AWC will become part of Respondents’ 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 Respondents’ 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. Respondents 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. Respondents 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 Respondents’ right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

Respondent Glenn Cutler certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; and Glenn Cutler, on behalf of Cutler Securities, certifies that a person duly authorized to act on Cutler Securities’ 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 Respondents 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 Respondents to submit it.

Date: December 21, 2010




Cutler Securities, Firm Respondent
By: Glenn Cutler, Chief Executive Officer

Date: December 21, 2010



Glenn Cutler, Individual Respondent

Reviewed by:




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Accepted by FINRA:

January 25, 2011
Date

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



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