

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20110273488-01**

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

RE: Deutsche Bank Securities Inc., Respondent
Broker-Dealer
CRD No. 2525

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Deutsche Bank Securities Inc. (the "firm," "Respondent" or "Deutsche Bank Securities") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Deutsche Bank Securities 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

The firm became a member of FINRA on March 16, 1940, and its registration remains in effect.

RELEVANT DISCIPLINARY HISTORY

On December 23, 2014, the firm finalized an AWC for, among other things, violations of Rule 200(g) of SEC Regulation SHO ("Reg. SHO") for conduct which occurred during the trade dates of September 6 and 7, 2012. The firm was censured, fined \$62,500 (of which \$15,000 was for the Rule 200(g) violations), and required to update its written supervisory procedures ("WSPs").

On November 26, 2012, the firm finalized an AWC for, among other things, violations of NASD Rule 3360, FINRA Rule 4560 and NYSE Rule 421 for conduct which occurred during the time period of March 14, 2008 through April 15, 2010. The firm was censured, fined \$175,000 (of which \$50,000 was for the short interest reporting violations), and ordered to pay restitution.

On January 25, 2011, the firm finalized an AWC for, among other things, violations of NASD Rules 3360 and 2110 and NYSE Rule 421.1 for conduct which occurred during the time period of September 15, 2006 through February 15, 2007. The firm was censured and fined \$65,000 (of which \$15,000 was for the short-interest reporting violations).

On February 16, 2010, the firm finalized an AWC for, among other things, violations of Rule 200(g) of Reg. SHO and associated supervisory violations. The firm was censured and fined \$575,000 for all violations.

OVERVIEW

In Review No. 20110273488, the Short Sales Section of FINRA's Department of Market Regulation (the "staff") conducted an investigation of the firm's compliance with SEC and FINRA rules and regulations regarding short sale transactions during the period of January 1, 2011 through March 31, 2011. The staff's investigation disclosed that between January 2005 and continuing through the present (the "Reg. SHO review period"), the firm improperly included as part of its aggregation of net positions in securities within aggregation units ("AGUs") numerous securities positions of a non-US-broker-dealer affiliate.¹ In addition, during the period of April 2004 through September 2012 (the "short interest review period"), the firm improperly reported certain short interest positions on a net, instead of gross, basis. The firm's WSPs regarding AGUs and short interest reporting also were deficient. As set forth below, the above conduct constitutes violations of Rule 200(f) of Reg. SHO, NASD Rule 2110 (for conduct occurring prior to December 15, 2008) and FINRA Rule 2010 (for conduct occurring on or after December 15, 2008), NASD Rule 3360 (for conduct occurring prior to December 15, 2008) and FINRA Rule 4560 (for conduct occurring on or after December 15, 2008), NASD Rules 3010 and 2110 (for conduct occurring prior to December 15, 2008), NASD Rule 3010 and FINRA Rule 2010 (for conduct occurring from December 15, 2008 to November 30, 2014), and FINRA Rules 3110 and 2010 (for conduct occurring on or after December 1, 2014).

FACTS AND VIOLATIVE CONDUCT

1. The Firm Improperly Included the Securities Positions of a non-US-Broker-Dealer Affiliate in Determining the Net Positions of its AGUs

Rule 200(f) of Reg. SHO provides that:

In order to determine its net position, a broker or dealer shall aggregate all of its positions in a security unless it qualifies for independent trading unit aggregation, in which case each independent trading unit shall aggregate all of its positions in a security to determine its net position. Independent trading unit aggregation is available only if: (1) the broker-dealer has a written plan of organization that identifies each aggregation unit, specifies its

¹ The non-US-broker-dealer affiliate maintains securities accounts at the firm, primarily for the purpose of hedging risks in connection with derivative products such as over-the-counter swaps.

trading objectives, and supports its independent identity; (2) each aggregation unit within the firm determines, at the time of each sale, its net position for every security that it trades; (3) all traders in an aggregation unit pursue only the particular trading objective(s) or strategy(s) of that aggregation unit and do not coordinate that strategy with any other aggregation unit; and (4) individual traders are assigned to only one aggregation unit at any time.

Rule 200(f) of Regulation SHO does not permit the inclusion of the securities positions of a broker-dealer's non-US-dealer affiliates in calculating the net securities positions of the independent trading units of a broker-dealer.²

During the Reg. SHO review period, the firm's trading desks were organized into separate AGUs for purposes of compliance with SEC Rule 200(f) concerning the proper use of AGUs. The firm structured its AGUs around particular desks engaging in common trading objectives or strategies. Traders in certain AGUs employ a non-US-broker-dealer affiliate as an integral part of their trading, with such traders booking to the non-US-broker-dealer affiliate transactions in equity securities used to hedge exposure in the broker-dealer and the non-US-broker-dealer affiliate.

During the Reg. SHO review period, the firm's derivatives trading was effected with a foreign non-US-broker-dealer affiliate. The firm included the activity of the foreign non-US-broker-dealer affiliate in numerous AGUs where the securities positions were netted together to determine the total net position of each of the AGUs and, accordingly, whether the AGU's orders should be marked long or short. In addition to the firm's positions, each of the implicated AGUs also improperly included the trading positions of the non-US-broker-dealer affiliate in determining the respective AGUs' net positions. As a result, a significant number of the firm's AGUs failed to accurately reflect the correct positions within the appropriate trading books during the Reg. SHO review period in violation of SEC Rule 200(f), NASD Rule 2110 (for conduct occurring prior to December 15, 2008) and FINRA Rule 2010 (for conduct occurring on or after December 15, 2008).

2. The Firm Improperly Reported Netted, Rather Than Gross, Short Interest Positions

FINRA Rule 4560 provides, in part, that "[e]ach member shall maintain a record of total 'short' positions in all customer and proprietary firm accounts in OTC Equity Securities and securities listed on a national securities exchange and shall regularly report such information to FINRA in such a manner as may be prescribed by FINRA." Additionally, pursuant to amendments that went into effect in November 2012, Rule 4560 provides that "[m]embers shall record and report all gross short positions existing in each individual firm or customer account, including the account of a broker-dealer, that resulted from (1) a 'short sale,' as that term is defined in Rule 200(a) of SEC Regulation SHO, or

² Specifically, the SEC in footnote 26 of the Adopting Release of Regulation SHO (July 28, 2004) states that "[t]he Commission has determined not to extend the aggregation unit netting to entities that lack self-regulatory oversight and are not subject to Commission examination."

(2) where the transaction(s) that caused the short position was marked 'long,' consistent with SEC Regulation SHO, due to the firm's or the customer's net long position at the time of the transaction."

During the short interest review period, the firm "rolled up" the trading positions created within numerous AGUs and moved the positions to a financial aggregation account ("FAA") at the end of each trading day. The collapsing of these multiple positions occurred overnight and, therefore, on a short interest reporting date, in certain instances, there would be a temporary long and short position in the same security in a particular FAA. Thus, between April 2004 and September 2012, the firm improperly netted the temporary long and short positions in the firm's FAAs and reported such netted positions as the firm's short interest positions for that particular day in violation of NASD Rule 3360 (for conduct occurring prior to December 15, 2008) and FINRA Rule 4560 (for conduct occurring on or after December 15, 2008).

3. The Firm Failed to Maintain Adequate Written Supervisory Procedures

During the review periods, as noted above, the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with the applicable securities laws and regulations, including SEC and FINRA Rules, regarding aggregation of positions in a security to determine the net positions of the firm's AGUs and the reporting of short interest positions. Specifically, the firm's WSPs regarding aggregation of positions in a security improperly permitted the inclusion of the non-US-broker-dealer affiliate's trading positions in determining the net positions of the firm's AGUs. Also, the firm's WSPs regarding the reporting of short interest positions failed to require that the firm report the short interest positions in the firm's FAAs on a gross, rather than a net, basis. The conduct described in this paragraph constitutes violations of NASD Rules 3010 and 2110 (for conduct prior to December 15, 2008), NASD Rule 3010 and FINRA Rule 2010 (for conduct from December 15, 2008 to November 30, 2014), and FINRA Rules 3110 and 2010 (for conduct occurring on or after December 1, 2014).

B. Deutsche Bank Securities also consents to the imposition of the following sanctions:

A censure, a fine of \$1,400,000 (comprised of \$375,000 for the Rule 200(f) violations, \$650,000 for the short interest reporting violations, and \$375,000 for the supervisory violations), and an undertaking to revise the firm's WSPs with respect to the areas described in Section I.A. Within 120 business days of acceptance of this AWC by the NAC, a registered principal of the firm shall submit to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850, a signed, dated letter, or an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its WSPs to address the deficiencies described in Section I.A; and (3) the date the revised procedures were implemented. For good cause shown and upon receipt of a timely application from the firm, FINRA staff will extend the deadlines set forth in this undertaking.

The firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. It has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against the firm;
- 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, the firm specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, 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.

The firm 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

Deutsche Bank Securities 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 the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 4. The firm 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. The firm 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 the firm's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm 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 the firm, 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 it has agreed to the AWC's 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 the firm to submit it.

10/13/15
Date

Respondent
Deutsche Bank Securities Inc.

By: David Levine
Name: DAVID LEVINE
Title: Managing Director

By: Steven F. Reich
Name: Steven F. Reich
Title: General Counsel - American

Reviewed by:

Attorney Name:
Counsel for Respondent:
Firm Name:
Address:
City/State/Zip:
Phone Number:

Accepted by FINRA:

11/19/2015
Date

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

Robert A. Marchman
Robert A. Marchman
Executive Vice President & Counsel
FINRA Department of Market Regulation