

BATS EXCHANGE, INC.
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20100227065-02

TO: BATS Exchange, Inc.
c/o Department of Market Regulation
Financial Industry Regulatory Authority ("FINRA")

RE: Citigroup Global Markets Inc., Respondent
Broker-Dealer
CRD No. 7059

Pursuant to Rule 8.3 of the Rules of BATS Exchange, Inc. ("BATS"), Citigroup Global Markets Inc. (the "firm" or "SBSH") 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, BATS will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The firm 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 BATS, or to which BATS 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 BATS:

BACKGROUND

The firm has been a member of BATS since September 24, 2008, and a member of BATS Y-Exchange, Inc. since December 15, 2010, and its registrations with both remain in effect.

RELEVANT PRIOR DISCIPLINARY HISTORY

On September 22, 2009, FINRA accepted an AWC in which SBSH consented to a censure, fine of \$175,000, and order to pay restitution to up to approximately 284 customers (to be determined based on customer certification information) for failing, as an underwriter, to implement a supervisory system/procedures concerning its outsourcing of communications with customers about their initial public offering ("IPO") allocations in May 2006, in violation of NASD Rules 3010 and 2110. SBSH also entered into an undertaking to adopt policies and procedures pertaining to its outsourcing arrangements in connection with public offerings.

On July 30, 2009, FINRA accepted an AWC in which SBSH was censured and fined \$600,000 for (1) supervisory failures over two separate trading strategies designed to generate tax advantages for customers, and (2) failing to report certain securities transactions that were part of the above strategies between 2002 and 2005, in violation of NASD Rules 2110, 3010, 6420, and 6620. The supervisory failures included (a) failing to establish supervisory procedures designed to detect and prevent improper coordination of trades between the firm and its counterparties, and between Citigroup entities in U.S. and foreign equities, (2) failing to adequately supervise the relevant desk's trading activities, and (3) failing to ensure compliance with related trade reporting requirements.

SUMMARY

In Review No. 20100227065, FINRA's Offerings Surveillance Group of the Department of Market Regulation, on behalf of FINRA and BATS, conducted a review of the firm's compliance with Rule 105 of Regulation M of the Securities Exchange Act of 1934 (the "Exchange Act") and related supervision during the period of May 26, 2009 through September 21, 2010 (the "review period").

FACTS AND VIOLATIVE CONDUCT

Violations of Rule 105 of Regulation M

Summary

1. During the review period, as set forth below, SBSH's Equity Principal Strategies Desk ("EPSD") sold certain securities short during the five business days leading up to the pricing of five public offerings, and then purchased securities in those offerings in violation of Rule 105 of Regulation M of the Exchange Act.¹ The securities involved included Assured Guaranty, Ltd. ("AGO"); JP Morgan Chase & Co. ("JPM"), Marshall & Lisle Corporation ("ML"), Cal Dive International, Inc. ("DVR") and Health Care REIT, Inc. ("HCN"). The specific incidents are detailed below and identified in Exhibit A accompanying this AWC.
2. EPSD's profits and/or improper financial benefits from these violative transactions totaled approximately \$538,626.

¹ During the review period, Rule 105 of Regulation M of the Exchange Act made it unlawful, subject to certain exceptions not applicable here, "for any person to sell short ... the security that is the subject of [an offering of equity securities for cash pursuant to a registration statement . . . filed under the Securities Act of 1933] and purchase the offered securities from an underwriter or broker or dealer participating in the offering if such short sale was effected during the period ... that is the shorter of the period: (1) Beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) Beginning with the initial filing of such registration statement ... and ending with the pricing [(the "restricted period")]." 17 C.F.R. § 242.105 (2011).

Transactions That Violated Rule 105

JP Morgan Chase & Co. ("JPM") Offering

3. During the restricted period of the JPM offering from May 26, 2009 through June 1, 2009, EPSD sold short 100,000 shares of JPM at a weighted average price of \$36.6185 per share. The firm's short selling of JPM during the restricted period did not qualify for any exception from the trading restrictions of Rule 105 of Regulation M of the Exchange Act. On June 1, 2009, JPM announced the pricing of a follow-on offering of its common stock at \$35.25 per share. Prior to its participation in the offering, EPSD purchased shares of JPM so that its position was flat. EPSD received an allocation of 700,000 shares in the offering. The difference between EPSD's proceeds from the restricted period short sales of JPM shares and the price paid for the 100,000 shares received in the offering was \$136,850. Thus, EPSD's participation in the JPM offering netted total profits and/or improper financial benefits of \$136,850.

Marshall & Isley Corporation ("MI") Offering

4. During the restricted period of the MI offering from June 5, 2009 through June 11, 2009, EPSD sold short 100,000 shares of MI at a price of \$6.16904 per share. The firm's short selling of MI did not qualify for any exception from the trading restrictions of Rule 105 of Regulation M of the Exchange Act. On June 11, 2009, MI announced the pricing of a follow-on offering of its common stock at \$5.75 per share. Prior to its participation in the offering, EPSD purchased shares of MI so that its position was flat. EPSD received an allocation of 400,000 shares in the offering. The difference between EPSD's proceeds from the restricted period short sales of MI shares and the price paid for the 100,000 shares received in the offering was \$41,904. Respondent also improperly obtained a benefit of \$103,920 by purchasing the remaining 300,000 shares at a discount from MI's price. Thus, EPSD's participation in the MI offering netted total profits and/or improper financial benefits of \$145,824.

Assured Guaranty, Ltd. ("AGO") Offering

5. During the restricted period of the AGO offering from June 12, 2009 through June 18, 2009, EPSD sold short 30,000 shares of AGO at a price of \$12.9122 per share. The firm's short selling of AGO did not qualify for any exception from the trading restrictions of Rule 105 of Regulation M of the Exchange Act. On June 18, 2009, AGO announced the pricing of a follow-on offering of its common stock at \$11.00 per share. Prior to its participation in the offering, EPSD purchased shares of AGO so that its position was flat. EPSD received an allocation of 250,000 shares in the offering. The difference between EPSD's proceeds from the restricted period short sales of AGO shares and the price paid for the 30,000 shares received in the offering was \$57,366. Respondent also improperly obtained a benefit of \$84,150 by purchasing the remaining 220,000 shares at a discount from AGO's price. Thus, EPSD's participation in the AGO offering netted total profits and/or improper financial benefits of \$141,516.

Cal Dive International, Inc. ("DVR") offering

6. During the restricted period of the DVR offering from September 11, 2009 through September 17, 2009, EPSD sold short 60,890 shares of DVR at a weighted average price of \$10.9871 per share. The firm's short selling of DVR did not qualify for any exception from the trading restrictions of Rule 105 of Regulation M of the Exchange Act. On September 17, 2009, DVR announced the pricing of a follow-on offering of its common stock at \$10.00 per share. Prior to its participation in the offering, EPSD purchased shares of DVR so that its position was flat. EPSD received an allocation of 151,000 shares in the offering. The difference between EPSD's proceeds from the restricted period short sales of DVR shares and the price paid for the 60,890 shares received in the offering was \$60,104.52. Respondent also improperly obtained a benefit of \$1,243.52 by purchasing the remaining 90,110 shares at a discount from DVR's price. Thus, EPSD's participation in the DVR offering netted total profits and/or improper financial benefits of \$61,348.04.

Health Care REIT, Inc. ("HCN") Offering

7. During the restricted period from September 14, 2010 through September 20, 2010, EPSD sold short 23,000 shares of HCN during the restricted period at a price of \$48.4044 per share. The firm's short selling of HCN did not qualify for any exception from the trading restrictions of Rule 105 of Regulation M of the Exchange Act. On September 20, 2010, HCN announced the pricing of a follow-on offering of its common stock at \$45.75 per share. EPSD received an allocation of 20,000 shares in that offering. The difference between EPSD's proceeds from the restricted period short sales of HCN shares and the price paid for the 20,000 shares received in the offering was \$53,088. Thus EPSD's participation in the HCN offering netted total profits of \$53,088.
8. The conduct described in paragraphs 3-7 above constitutes separate and distinct violations of Rule 105 of Regulation M of the Exchange Act.

Supervisory Findings

9. During the review period, SBSIH's supervisory system did not provide for supervision reasonably designed to achieve SBSIH's compliance with respect to the applicable securities laws and regulations concerning Rule 105 of Regulation M of the Exchange Act. Specifically, the firm's supervisory system did not include written supervisory procedures providing for: (1) the identification of the person(s) responsible for supervision with respect to the applicable rules; (2) a statement of the supervisory step(s) to be taken by the identified person(s); (3) a statement as to how often such person(s) should take such step(s); and (4) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. The conduct described in this paragraph constitutes a violation of BATS Exchange Rule 5.1.

OTHER FACTORS

B. The firm also consents to the imposition of the following sanctions:

A censure, a total fine of \$1,097,939.06 (consisting of disgorgement of \$538,626.04 in profits and/or improper financial benefits from the violative trading, \$269,313.02 for the underlying violations of Rule 105, and \$290,000 for the supervisory findings), plus pre-judgment interest on the above-mentioned disgorgement amount at the rate set forth in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), calculated based on each portion of the disgorgement associated with each of the above offerings set forth in Exhibit A to this AWC from the pricing date of each offering until the date this AWC is accepted by BATS, all to be paid jointly to FINRA and BATS.

In addition, SBSH consents to an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph 9. Within 30 business days of acceptance of this AWC by BATS, a registered principal of the Respondent 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 MarketRegulation.Comp@finra.org, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in paragraph 9 above; (3) the date the revised procedures were implemented; and (4) a representation specifying the amount of the pre-judgment interest the firm paid in connection with this matter and the date such pre-judgment interest was paid.

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 BATS.

II.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under BATS Rules:

A. To have a Statement of Charges issued specifying the allegations against the firm;

- B. To be notified of the Statement of Charges 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 Appeals Committee of BATS's Board of Directors 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 Regulatory Officer ("CRO"), in connection with her 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 BATS Rule 8.16, 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

The firm understands that:

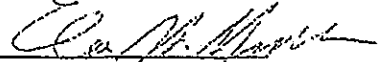
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the CRO, pursuant to BATS Rule 8.3;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. 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 BATS or any other regulator against the firm;
 - 2. this AWC will be published on a website maintained by BATS in accordance with BATS Rule 8.11, *Interpretations and Policies .01*. In addition, this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary record; and

3. 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 BATS, or to which BATS 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 BATS 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 BATS, nor does it reflect the views of BATS 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.

1-9-2014
Date


Citigroup Global Markets Inc.
Respondent

By: 
Name: Elaine H. Munde Bann
Title: Managing Director

Reviewed by:


Michael D. Wolk, Esq.
Counsel for Respondent
Sidley Austin LLP
1501 K Street N.W.
Washington, D.C. 20005
(202) 736-8807

2/11/2014
Date


Tamara Schademann
Chief Regulatory Officer
BATS Exchange, Inc.

Secondary Officer	Trading Date	Restricted Period	SBSH Account	Relevant SBSH Trading Activity During Restricted Period						Total Illicit Profit/Benefit
				Trade Date	Execution Time(s)	b/s/ss	Shares	Price	Position	
JPM	6/1/2009	5/26/2009 through 6/1/2009	SBSH 1	5/20/2009	-	-	-	CLOSE	(100,000)	\$136,850.00
				5/27/2009	10:40:08 - 12:38:39	B	50,000	36.2706	(50,000)	
				5/27/2009	-	-	-	CLOSE	(50,000)	
				5/28/2009	12:46:29 - 12:55:28	SS	25,000	35.79984	(75,000)	
				5/28/2009	13:02:40 - 13:02:41	B	25,000	35.8586	(50,000)	
				5/28/2009	14:48:25 - 14:48:26	SS	25,000	36.4089	(75,000)	
				5/28/2009	-	-	-	CLOSE	(75,000)	
				6/1/2009	9:38:16	B	25,000	36.08	(50,000)	
				6/1/2009	11:07:05 - 11:07:13	SS	25,000	37.67301	(75,000)	
				6/1/2009	14:59:43 - 14:59:50	B	25,000	36.72784	(50,000)	
				6/1/2009	16:00:47 - 16:00:55	SS	25,000	36.59225	(75,000)	
				6/1/2009	16:29:34 - 17:22:14	B	75,000	35.86721	0	
				6/1/2009	-	-	-	CLOSE	0	
				6/2/2009	-	B	700,000	35.25	-	
MI	6/11/2009	6/5/2009 through 6/11/2009	SBSH 2	6/11/2009	-	-	-	OPEN	0	\$145,824.00
				6/11/2009	11:55:04 - 12:49:30	SS	100,000	6.16904	(100,000)	
				6/11/2009	14:38:54 - 14:48:08	B	100,000	6.44080	0	
				6/11/2009	-	-	-	CLOSE	0	
			SBSH 1*	6/12/2009	-	B	200,000	5.75	-	
			SBSH 1*	6/12/2009	-	B	200,000	5.75	-	
AGO	6/18/2009	6/12/2009 through 6/18/2009	SBSH 2	6/16/2009	-	-	-	OPEN	0	\$141,516.00
				6/16/2009	9:38:41 - 9:40:33	SS	30,000	12.9122	(30,000)	
				6/16/2009	-	-	-	CLOSE	(30,000)	
				6/18/2009	11:18:24 - 11:19:23	B	30,000	12.2652	0	
				6/18/2009	-	-	-	CLOSE	0	
			SBSH 1*	6/19/2009	-	B	125,000	11.00	-	
			SBSH 1*	6/19/2009	-	B	125,000	11.00	-	
DVR	9/17/2009	9/11/2009 through 9/17/2009	SBSH 3	9/14/2009	-	-	-	OPEN	0	\$61,348.04
				9/14/2009	15:50:52 - 15:52:25	SS	1,600	11.01	(1,600)	
				9/14/2009	15:54:50 - 15:54:56	SS	9,290	11.0001	(10,890)	
				9/14/2009	-	-	-	CLOSE	(10,890)	
				9/17/2009	9:51:05 - 10:12:38	SS	50,000	10.9839	(60,890)	
				9/17/2009	14:50:06 - 14:50:12	B	890	10.70	(60,000)	
				9/17/2009	14:50:52 - 15:29:42	B	60,000	10.7154	0	
				9/17/2009	-	-	-	CLOSE	0	
				9/17/2009	-	-	87,500	10.00	-	
			9/18/2009	-	-	68,500	10.00	-		
HCN	9/20/2010	9/14/2010 through 9/20/2010	SBSH 4	9/13/2010	-	-	-	CLOSE	(339,547)	\$53,088.00
				9/20/2010	15:52:16 - 15:53:19	SS	23,000	48.4014	(362,547)	
				9/20/2010	-	-	-	CLOSE	(362,547)	
				9/21/2010	-	B	20,000	45.75	-	
									\$538,626.04	

*Account is related to SBSH 2 through a common individual.