



Notice, Pursuant to Exchange By-Law 18-2, of Disciplinary Action Against Optiver US, LLC, Member Organization

To: Members, Member Organizations, Participants and Participant Organizations

From: John C. Pickford, Enforcement Counsel, NASDAQ OMX PHLXSM

DATE: June 27, 2011

FINRA Matter No. 20100215749 Enforcement No. 2011-06

On June 9, 2011, the Business Conduct Committee (the "Committee") issued a disciplinary decision against Optiver US, LLC ("Optiver" or the "Firm"), a member organization of the Exchange. In response to a Statement of Charges issued in this action, Optiver submitted an Offer of Settlement, Stipulation of Facts and Consent to Sanctions ("Offer"). Solely to settle this proceeding, and without admitting or denying the charges, Optiver consented to findings that during the period between January 1, 2009 and October 31, 2009 (the "Relevant Period"), it had violated Sections 15 and 17 of the Securities Exchange Act of 1934, as amended ("Exchange Act"), Rules 15b3-1, 17a-3, 17a-4(b)(7), and 17a-5 promulgated under the Exchange Act, and Section 14(a) of the Securities Investor Protection Act of 1970 ("SIPA"), and Exchange Rules 703, 748(e)(1), 748(g), 760, and 761 by, among other things: (i) failing to keep accurate books and records; (ii) filing an inaccurate Financial and Operational Combined Uniform Single Report with the Exchange; (iii) failing to preserve, or to provide evidence that it had preserved, written records to reflect its expense sharing agreement with several affiliated entities; (iv) failing to amend its Uniform Application for Broker-Dealer Registration filing to disclose an indirect owner of the Firm; (v) not fully paying the first half of its annual assessment to the Securities Investor Protection Corporation ("SIPC"), curing such partial nonpayment, or securing an exemption from paying the partial assessment from the Securities and Exchange Commission, while maintaining its SIPC membership and engaging in business as a broker-dealer; (vi) not documenting or otherwise ensuring that one of its associated persons had attended the Firm's 2009 annual compliance meeting; and (vii) not: (a) ensuring that 11 employees had completed and returned to the Firm their ITSFEA Accounts Form within 10 days of the commencement of their employment with the Firm; (b) detecting that three employees had failed to disclose a total of five accounts on their respective ITSFEA Account Forms, even though Optiver had received and reviewed the account statements pertaining to those accounts; (c) securing and reviewing the account statements of two accounts that were included on its Master Review Sheet; and (d) detecting that four employees had failed to update their ITSFEA Account Forms to disclose accounts that were held away from Optiver.

The Firm also consented, without admitting or denying the charges, to findings by the Committee that Optiver had not adequately established, maintained and enforced written supervisory procedures, and a system for applying such procedures, that resulted in supervisory deficiencies regarding: (i) under Regulation SHO, promulgated under the

Exchange Act, the strategies and objective of, and assignment of traders to, aggregation units, and the manner in which the net position in individual securities is determined within each aggregation unit of the Firm; (ii) the requirement under applicable Exchange rules that the Firm receive and review the brokerage account statements and related confirmations of its associated persons on a monthly rather than on a quarterly basis; (iii) the requirement that all electronic communications be retained in the "Write Once, Read Many" format; (iv) the requirement that all requests for extensions to file financial reports, such as FOCUS Reports, be made through the WebFOCUS financial application and the obligation to file FOCUS Reports within seventeen business days from the end of the month in which the report is due; (v) the Firm's obligation to conduct and file with the appropriate regulatory authorities an annual audit, to designate a independent public accountant to conduct such audit, and to set forth policies regarding requests to extend the deadline for filing its annual audit; (vi) the responsibilities of the Firm's FinOp; (vii) the obligation to register non-registered fingerprint persons; (viii) the Firm's procedures to verify whether its employees and associated persons maintained non-self-directed trading accounts; (ix) the creation of information barriers between the Firm's market making and proprietary trading activities; (x) the prohibition against the use by Firm personnel of squawk boxes, electronic mail, instant messages, video conferencing equipment and other electronic devices to eavesdrop on the trading and/or trading strategy of other broker-dealers, hedge funds, banking institutions, and investment advisors, and against the use of material, non-public information; (xi) the rules and regulations requiring that the Firm maintain, and the Firm's procedures for supervising the maintenance of, written employment agreements setting forth its compensation arrangement with each of its associated persons; and (xii) procedures concerning the receipt of third party checks.

Optiver's Offer was accepted by the Committee and was the basis of its Decision. The Committee found that Tiberius had violated Sections 15 and 17 of the Exchange Act, Rules 15b3-1, 17a-3, 17a-4(b)(7), and 17a-5 promulgated under the Exchange Act, and Section 14(a) of SIPA, Exchange Rules 748(a), 748(e)(1), 748(g), 760, and 761, concurred in the sanctions consented to by it, and ordered the imposition of the following sanctions: (i) a censure; (ii) a \$7,500 fine; and (iii) an undertaking, within 60 days of the issuance of a Decision by the Committee, to:

- (a) correct the deficiencies identified by FINRA's Risk Oversight and Operational Regulation department ("ROOR") during the 2009 examination;
- (b) cooperate with ROOR to develop and implement reasonable procedures, not unacceptable to ROOR, to disclose the foreign-based brokerage accounts, if any, of its associated persons, and to receive and review on a periodic basis the account statements and confirmations pertaining to any such accounts with a view toward identifying the possible misuse of material, nonpublic information;
- (c) revise its WSPs to address the deficiencies identified by ROOR; and
- (d) submit to William Bunting, FINRA Financial Regulation Department, 1900 Market Street, Second Floor, Philadelphia, PA 19103, a signed, dated letter providing the following:
 - (1) a reference to this matter;

- (2) a representation that the Firm has revised its WSPs to address the deficiencies identified by ROOR;
- (3) the date the revised WSPs were implemented; and
- (4) a Corrective Action Statement detailing what specific actions Respondent has taken to correct and prevent future recurrence of the deficiencies identified by ROOR during its examination of Respondent.

For more information, contact:

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