



## Notice, Pursuant to Exchange By-Law 18-2, of Disciplinary Action Against Tiberius Qualified Master Fund, Ltd., Member Organization

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**To:** Members, Member Organizations, Participants and Participant Organizations

**From:** John C. Pickford, Enforcement Counsel, NASDAQ OMX PHLX<sup>SM</sup>

**DATE:** June 27, 2011

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### **FINRA Matter No. 20100215784 Enforcement No. 2011-05**

On June 8, 2011, the Business Conduct Committee (the "Committee") issued a disciplinary decision against Tiberius Qualified Master Fund, Ltd. ("Tiberius" or the "Firm"), a member organization of the Exchange. In response to a Statement of Charges issued in this action, Tiberius 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, Tiberius consented to findings that during the period between January 1, 2009 and September 30, 2009 (the "Relevant Period"), it had violated Section 17 of the Securities Exchange Act of 1934, as amended ("Exchange Act"), Rules 17a-3, 17a-3(a)(19)(ii), 17a-4(b)(7), 17a-5, 17a-5(f)(2), and Rule 200(g) of Regulation SHO promulgated under the Exchange Act, and Exchange Rules 603, 604, 703, 748(a), 748(e)(1), 748(g), and 760, 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 maintain written compensation agreements pertaining to its compensation arrangement with two of its associated persons; (iv) failing to preserve, or to provide evidence that it had preserved, signed, executed and dated written records to reflect its expense sharing agreement with an affiliated entity; (v) failing to file with the Exchange a statement indicating that it had a contractual agreement with accounting firm Rankin Berkower (Cayman) LTD to conduct the Firm's 2008 Annual Audit; (vi) sharing office space with an entity that was not a member of the Exchange but failing to request or secure approval of, or a waiver from, the Exchange to enter into, or to maintain, the joint occupancy of its office space with the non-member; (vii) failing timely to amend the Uniform Application for Securities Industry Registration or Transfer filing of one of its associated persons to reflect his: (a) association with, and his position as Managing General Partner of, an unaffiliated entity; and (b) position as Managing Member of another unaffiliated entity; (viii) improperly marking one options orders as "sell short" rather than as "sell long," and three options orders as "sell long" rather than as "sell short;" and (ix) failing to exercise effective supervision and control over the flow of information regarding its trading activities between its associated persons and the associated persons of two other entities;

The Firm also consented, without admitting or denying the charges, to findings by the Committee that Tiberius had failed to establish, maintain and enforce written supervisory procedures, and a system for applying such procedures, that resulted in supervisory

deficiencies regarding: (i) the adoption of physical and/or informational barriers between the Firm and (a) its affiliate, TF Asset Management, LLC; and (b) Pine Road Asset Management, LLC, O'Neil Alpha Fund, LP, and Three Rivers Trading; (ii) the segregation of electronic communications generated by the Firm from the electronic communications generated by the Augustus family of funds; and (iii) third party and independent review of any electronic communications generated by the Firm employee charged with overall review of its electronic communications.

Tiberius' Offer was accepted by the Committee and was the basis of its Decision. The Committee found that Tiberius had violated Section 17 of the Exchange Act, Rules 17a-3, 17a-3(a)(19)(ii), 17a-4(b)(7), 17a-5, 17a5(f)(2) and Rule 200(g) of Regulation SHO promulgated under the Exchange Act, and Exchange Rules 603, 604, 703, 748(a), 748(e)(1), 748(g), and 760, concurred in the sanctions consented to by it, and ordered the imposition of the following sanctions: (i) a censure; (ii) a \$5,000 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) revise its WSPs to address the deficiencies identified by ROOR; and
- (c) 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.

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For more information, contact:

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