

BEFORE THE BUSINESS CONDUCT COMMITTEE
OF THE
CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

_____)	
In the Matter of:)	
)	
Cutler Group, LP)	
440 S. LaSalle Street, Suite 1124)	
Chicago, IL 60605)	
)	
and)	
)	
Daniel Kim)	File No. 09-0048
440 S. LaSalle Street, Suite 1124)	
Chicago, IL 60605)	
)	
and)	
)	
Neal Salmen)	
440 S. LaSalle Street, Suite 1124)	
Chicago, IL 60605)	
)	
Subjects)	
_____)	

DECISION ACCEPTING LETTER OF CONSENT

This proceeding was instituted by the Business Conduct Committee (the "Committee") of the Chicago Board Options Exchange, Incorporated (the "Exchange") as a result of an investigation by the staff of the Exchange. In order to resolve this matter, the subjects, Cutler Group, LP, Daniel Kim and Neal Salmen have submitted a Letter of Consent. Such Letter of Consent was submitted solely for the purposes of this proceeding without admitting or denying that a violation of Exchange Rules has been committed. With due regard to the stipulated facts and findings and the proposed sanction contained therein, the Committee believes it is appropriate to accept the Letter of Consent for File No. 09-0048 which is attached to and made a part of this Decision.

SO ORDERED
FOR THE COMMITTEE

Dated: January 20, 2010

By: /s/ Bruce Andrews
Bruce Andrews
Chairman
Business Conduct Committee

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 Subjects)
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File No. 09-0048

LETTER OF CONSENT

In order to resolve this proceeding pursuant to Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") Rule 17.3, Expedited Proceeding, the Subjects, Cutler Group, LP ("Cutler"), Daniel Kim ("Kim") and Neal Salmen ("Salmen") hereby submit this Letter of Consent in the above captioned matter. Only for purposes of this proceeding and without admitting or denying that a violation of Exchange Rules has been committed, Cutler, Kim and Salmen consent to the Stipulation of Facts and Findings and Sanction set forth below.

Stipulation of Facts and Findings

1. During all relevant periods herein, the Subject, Cutler, was an Exchange member organization registered to conduct business on the Exchange in accordance with Exchange rules as a market-maker.
2. During all relevant periods herein, the Subject, Kim, was an Exchange member registered to conduct business on the Exchange in accordance with Exchange rules as a market-maker and a nominee of Cutler.
3. During all relevant periods herein, the Subject, Salmen, was an Exchange member registered to conduct business on the Exchange in accordance with Exchange rules as a market-maker and a nominee of Cutler.

4. During all relevant periods herein, Exchange Rules 4.1- Just and Equitable Principals of Trade, 4.2 – Adherence to Law, and Regulation SHO of the Securities Exchange Act of 1934, as amended (the “Act”) and SEC Rule 203(b)(1) – Locate Requirement for Short Sales, and SEC Rule 203(b)(3) – Borrowing and Delivery Requirements, were in full force and effect.
5. During the approximate period from on or about April 10, 2006 through on or about July 18, 2007, Cutler, including Kim and Salmen effected numerous short-term FLEX transactions in conjunction with stock purchases to circumvent Regulation SHO closeout obligations.
6. During the approximate period from on or about March 28, 2006 through on or about June 27, 2007, Cutler, including Kim and Salmen effected at least 14 short-term FLEX transactions in conjunction with stock sales to assist other market participants to circumvent their Regulation SHO close-out obligations.
7. During the approximate period from on or about March 28, 2006 through on or about June 26, 2008, Cutler, including Kim and Salmen failed to locate numerous shares of Regulation SHO threshold securities. As a result, Cutler, including Kim and Salmen improperly availed themselves of the Regulation SHO market-maker exception to locate stock before selling short on at least forty-eight (48) occasions, including at least fourteen (14) stock sales described in Paragraph 6 above.
8. During the approximate period from in or about March 2006 through in or about June 2008, Cutler failed to establish and maintain adequate supervisory procedures to ensure compliance with SEC Regulation SHO requirements.
9. The acts, practices and conduct described in Paragraph 5 above constitute violations of Exchange Rules 4.1, 4.2, Regulation SHO of the Act and SEC Rule 203(b)(3) thereunder, by Cutler, including Kim and Salmen, in that Cutler, including Kim and Salmen effected numerous short-term FLEX transactions in conjunction with stock purchases to directly circumvent Regulation SHO closeout obligations.
10. The acts, practices and conduct described in Paragraph 6 above constitute violations of Exchange Rules 4.1, 4.2, Regulation SHO of the Act, and SEC Rule 203(b)(3) thereunder, by Cutler, including Kim and Salmen, in that Cutler, including Kim and Salmen effected at least 14 short-term FLEX transactions in conjunction with stock sales to assist other market participants to circumvent their Regulation SHO close-out obligations.
11. The acts, practices and conduct described in each of Paragraphs 6 and 7 above constitute violations of Exchange Rules 4.1, 4.2, and SEC Rule 203(b)(1) by Cutler, including Kim and Salmen, in that Cutler, including Kim and Salmen failed to locate numerous shares of Regulation SHO threshold securities. As a result, Cutler, including Kim and Salmen improperly availed themselves of the Regulation SHO market-maker exception to locate stock before selling short on at least forty-eight (48) occasions.
12. The acts, practices and conduct described in Paragraph 8 above constitute violations of Exchange Rule 4.2 by Cutler, in that Cutler failed to establish and maintain adequate supervisory procedures to ensure compliance with SEC Regulation SHO requirements.

Sanction: A \$75,000 joint and several fine, a censure of each Subject and disgorgement in the amount of \$135,646.

Subjects acknowledge that they have read the foregoing Letter of Consent, that no promise or inducement of any kind has been made to them by the Exchange or its staff, and that this Letter of Consent is voluntary on their part.

Subjects understand and acknowledge that the Committee's decision in this matter will become part of their disciplinary record and may be considered in any future Exchange proceeding.

Subjects also acknowledge that the Committee's decision to accept or reject this Letter of Consent is final, and that they may not seek review thereof in accordance with Exchange Rule 17.3.

Dated: December 9, 2009

By: /s/ Cutler Group, LP
Cutler Group, LP

Dated: December 9, 2009

By: /s/ Daniel Kim
Daniel Kim

Dated: December 9, 2009

By: /s/ Neal Salmen
Neal Salmen