

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20070091943**

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

RE: First American Capital and Trading Corporation
Broker-Dealer
CRD No. 118812 /

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, First American Capital and Trading Corporation (FACT or Respondent) 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 Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent 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

In March 2002, FACT became registered as a Broker-Dealer with a \$5,000 minimum net capital requirement and conducts a general securities business involving mutual funds, municipal securities, private placements, options, variable annuities, and investment advisory services.

RELEVANT DISCIPLINARY HISTORY

Within the last five years, FACT has entered into three AWCs:

In August 2005, FACT was censured and fined \$13,000 for violations of SEC Rule 11 ACI-5 involving trade reporting deficiencies for trades that were required to be reported to the Nasdaq Market Center.

In June 2007, FACT was censured and fined \$30,000 for failing to implement an

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adequate Anti-Money Laundering Compliance Program.

In October 2008, FACT was censured and fined for failing to display 29 customer limit orders, transmitting OATS reports with inaccurate, incomplete or improperly formatted data and inadequate written supervisory procedures.

OVERVIEW

On or about May 24, 2007 and May 25, 2007, FACT failed to maintain its minimum net capital when it engaged in securities business by carrying a large proprietary short position in US Treasury bonds which resulted in a net capital deficiency of \$5.6 million. FACT failed to maintain the order tickets for two bond transactions on May 24, 2007 that led to the net capital deficiency.

FACTS AND VIOLATIVE CONDUCT

1. SEC Regulation §240.15c3-1 provides, generally, that every broker or dealer shall at all times have and maintain net capital no less than the greater of the highest minimum requirement applicable to its ratio requirement under (a)(1) of such section, or to any of its activities under paragraph (a)(2) of such section.
2. During the relevant period, FACT's Membership Agreement with FINRA dated September 18, 2002, provided that it would operate pursuant to SEC Rule 15c3-1, and provided certain restrictions, including that it maintain minimum net capital in the amount of \$100,000.
3. FACT engaged in securities business on May 24, 2007 while failing to maintain its minimum net capital requirement from May 24, 2007 until May 25, 2007, when it erroneously carried two short sales each in the amount of \$50,000,000 U.S. Treasury bonds, totaling \$100,000,000 in its proprietary account, instead of executing a long position of \$50,000,000 and a short position of \$50,000,000 U.S. Treasury bonds.
4. The U.S. Treasury bond transactions resulted in a \$5,584,444 deficiency in FACT's net capital from May 24, 2007 until May 25, 2007, in violation of SEC Rules 15c3-1, 17a-3 and 17a-4, and NASD Conduct Rule 2110.
5. FACT failed to make, keep, and preserve the order tickets for each of the two transactions for \$50,000,000 U.S. Treasury bonds that were executed on May 24, 2007, in violation of SEC Rules 17a-3 and 17a-4, and NASD Rule 3110.
6. FACT failed to establish, maintain and enforce written supervisory procedures reasonably designed to supervise and monitor the trading limits for its fixed income traders, which led to the undetected and uncorrected U.S. Treasury bond transactions that caused FACT's net capital to be deficient, in violation of NASD Conduct Rule 3010(b).

B. Respondent also consents to the imposition of the following sanctions:

A Censure and a \$22,500 fine.

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

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

Respondent specifically and voluntarily waives any right to claim that he is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against Respondent;
- 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, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, 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.

Respondent 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

Respondent 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 my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Respondent;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. Respondent 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. Respondent 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 Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent 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 have been given a full opportunity to ask questions about it; that I have agreed to its 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.

10-13-10
Date

Antonio Vazolo President
First American Capital and Trading Corporation
Respondent

By: Antonio Vazolo

Reviewed by..

Roger C. Sumpter, Esq.
Attorney Name
Counsel for Respondent
Firm Name
Address
City/State/Zip
Phone Number

Accepted by FINRA:

November 3, 2010
Date

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

Pamela Shu
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