

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2008012757902**

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

RE: First Allied Securities, Inc. (BD No. 32444),
Respondent

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, First Allied Securities, Inc. ("First Allied" 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

First Allied has been a FINRA regulated broker-dealer since February 1994. Its principal offices are located in San Diego, California. First Allied is a full-service independent broker dealer with more than 900 registered persons. First Allied's securities business primarily consists of retail sales. FFP Securities, Inc. ("FFP" or the "Firm") was a FINRA regulated broker-dealer that merged into First Allied in June 2008.

OVERVIEW

Between 2005 and 2007, FFP acted as a broker on behalf of its customer, JM, in three variable life settlement transactions. In each of the transactions, the Firm, acting through one of its registered representatives, utilized a Firm-approved life settlement broker for the transaction. In each transaction, the Firm provided JM with a purchase agreement that stated the net purchase price that JM was to receive for the life settlement

000002133 2010

transaction. At no time either before or after each variable life settlement did the Firm inform JM of the gross amount. In addition, since variable life settlements are securities transactions, the Firm was required to provide JM with a confirmation of each transaction. It did not. By virtue of the above actions, FFP violated Rule 10b-10 promulgated under the Securities Exchange Act of 1934 ("Exchange Act") and NASD Conduct Rules 2230 and 2110.

In addition, between 2003 and 2007, the Firm also failed to enforce its written supervisory procedures relating to variable life settlement transactions and failed to reasonably supervise the registered representative who handled JM's life settlement transactions in violation of NASD Conduct Rules 3010(a) and (b) and 2110.

FACTS AND VIOLATIVE CONDUCT

I. Life Settlements in General

A life settlement is a sale of an existing life insurance policy in the secondary market to a third party for less than the net death benefit, but more than the cash surrender value of the policy.¹ The purchaser becomes the new beneficiary of the policy at maturation and is responsible for all subsequent premium payments.

A variable life insurance contract is a security subject to federal securities laws and FINRA rules.² When a person sells a variable life insurance contract through a life settlement, it is a securities transaction subject to federal securities laws and FINRA rules.³

II. The Life Settlement Transactions for Customer JM

Failure to Disclose Commissions

In early 2005, one of FFP's registered representatives, SH, began discussing with his customer, JM, whether JM should sell his variable life insurance policy with a \$210,000 face value in a life settlement transaction. The representative provided JM with information regarding life settlement transactions. Once JM decided to proceed with the variable life settlement transaction, the representative utilized a Firm-approved life settlement broker for the transaction.

On February 28, 2005, JM signed a purchase agreement effectuating the sale of his

¹ NASD Notice to Members ("NtM") 06-38 (August 2006).

² See generally NtM 00-44, Variable Contracts: The NASD Reminds Members of their Responsibilities Regarding the Sale of Variable Life Insurance (July 2000); NtM 99-35, The NASD Reminds Members of Their Responsibilities Regarding the Sales of Variable Annuities (May 1999); and NtM 96-86, NASD Regulation Reminds Members and Associated Persons that Sales of Variable Contracts are Subject to NASD Suitability Requirements (December 1996).

³ See NtM 06-38.

variable life insurance policy. The purchaser of JM's policy paid \$91,000. JM received \$85,000 in the transaction. Commissions totaling \$6,000 were split between the registered representative, who received \$4,800, and the life settlement broker, who received \$1,200. The purchase agreement stated the net purchase price of \$85,000 received by JM, but did not disclose the total price paid by the purchaser or the amount of commissions paid by JM in the transaction.

On June 23, 2007, JM signed a purchase agreement effectuating the sale of another \$210,000 face value variable life insurance policy through the Firm. The same Firm-approved life settlement broker participated in the transaction. The total purchase price for the policy was \$36,000, of which JM received \$32,000. SH received \$3,200 in commissions for the transaction and the life settlement broker received \$800. The purchase agreement again disclosed the net purchase price to JM, but did not disclose the total price paid by the purchaser or the amount of commissions paid by JM in the transaction.

On October 25, 2007, JM signed another purchase agreement effectuating the sale of his remaining \$210,000 face value variable life insurance policy through the Firm with the same Firm-approved life settlement broker. The total purchase price for this \$210,000 face value variable life insurance policy was \$40,000, of which JM received \$34,000. SH received \$4,440 in commissions for the transaction. The Firm received \$360 and the life settlement broker received \$1,200. As with the other transactions, the purchase agreement disclosed the net purchase price to JM, but did not disclose the total price paid by the purchaser or the amount of commissions paid by JM in the transaction.

At no time did the Firm inform JM of the gross amount of the purchase price of any of the variable life settlements. The gross price that a buyer is willing to pay for a variable life insurance policy is material information that reasonable seller would want in order to decide whether or not to proceed with a life settlement transaction. The Firm's failure to disclose this material information to JM violated NASD Conduct Rule 2110.

In addition, since variable life settlements are securities transactions, the Firm was required to provide JM with a confirmation of each transaction. The Firm never provided JM with a confirmation for any of the transactions in violation of Exchange Act Rule 10b-10 and NASD Conduct Rules 2230 and 2110.

Failure to Reasonably Supervise Life Settlement Business

The Firm failed to enforce its written supervisory procedures relating to variable life settlement transactions. The Firm's written supervisory procedures, which were in effect since 2004, detailed the Firm's life settlement transaction process in specific steps. In relevant part, the procedure required that, at the time the customer completed his initial application for a life settlement transaction, the registered representative was required to

forward the application to a designated principal and to obtain written approval from the Firm's senior management to request an offer. Once the registered representative received an offer, the registered representative had to report the offer to the Firm in writing and disclose the plan that would be presented to the customer. Once the case had been closed and the documents had been executed, the registered representative was required to forward a copy of all transaction-related documents to the Firm's senior management.

The Firm failed to enforce its written procedures to supervise the variable life settlement transactions that it conducted. Specifically, information was not communicated to managers as required and supervisory approvals were not obtained prior to the execution of documents. Supervisory review and approval only occurred after the customer accepted an offer and executed the transaction documents.

FFP also failed to reasonably supervise SH, the registered representative who handled the life settlement transactions for JM. In 2003, the Firm approved SH to sell life settlements through a specific life settlement broker as an outside business activity. In 2004, the Firm changed its policy to require that all life settlement transactions be conducted through the Firm. However, the Firm failed to withdraw its written approval, which allowed SH to conduct life settlements as an outside business activity. Rather, the Firm continued to send annual approval letters to SH listing the relationship with the life settlement broker as an approved outside business activity. SH also disclosed on annual compliance questionnaires for 2005 and 2006 that he had engaged in private securities transactions and had obtained the Firm's approval to do so. As a result, SH handled the first life settlement for JM as an outside business activity. The Firm was not aware of the transaction as it occurred and failed to supervise this transaction in any manner.

By virtue of the above conduct, the Firm violated NASD Rules 3010(a) and (b), and 2110.

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

1. A censure; and
2. A fine in the amount of \$27,500.

The Firm agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. The Firm has submitted an Election of Payment form showing the method by which the Firm proposes to pay the fine imposed.

The Firm specifically and voluntarily waives any right to claim that the Firm is unable to

pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against it;
- 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, The Firm 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.

The Firm 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

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 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 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 FINRA or any other regulator against the Firm;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about The Firm's 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. 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 FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Firm's right to take legal or factual positions in litigation or other legal proceedings in which FINRA 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 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 has been given a full opportunity to ask questions about it; that the Firm has 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.

2/19/10
Date

First Allied Securities, Inc., Respondent

By:


Robert Moses, Senior Vice President and
General Counsel

Accepted by FINRA:

5/12/10
Date

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


Jeremy S. Bloom, Senior Counsel
FINRA Department of Enforcement
14 Wall Street, 14th Floor
New York, New York 10005
(646) 315-7310; Fax: (202) 689-3426