

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2008012791101**

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

RE: First Clearing, LLC (formerly First Clearing Corporation)
Respondent
Broker-Dealer
CRD No.17344

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, First Clearing, LLC (FCLLC) 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 FCLLC alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. FCLLC 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

FCLLC, which was formerly known as First Clearing Corporation, among other names, has been a broker-dealer since 1986. During the time relevant to this matter, FCLLC was engaged in the performance of clearance and settlement of transactions in securities for the accounts of retail customers of affiliated and unaffiliated introducing broker-dealers. During all relevant times, FCLLC was wholly-owned by Wachovia Securities Financial Holdings, LLC. In 2008, Wells Fargo & Company (Wells Fargo) purchased Wachovia Corporation, making FCLLC a part of Wells Fargo.

From approximately January 1, 2007 until September 30, 2008, FCLLC was a clearing firm for approximately 120 unaffiliated introducing broker-dealers/correspondent firms and six affiliated introducing broker-dealers. During that period, FCLLC cleared approximately 735,000 accounts and approximately 60,500 daily transactions for unaffiliated introducing broker-dealers. FCLLC was also a Member of the Municipal Securities Rulemaking Board (MSRB).

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RELEVANT DISCIPLINARY HISTORY

Although FCLLC has a disciplinary history within the last five years, none of it relates to Anti-Money Laundering (AML) program violations.

OVERVIEW

From at least January 1, 2007 through September 30, 2008, FCLLC failed to develop and implement a transaction monitoring program reasonably designed to detect and report suspicious activity in compliance with AML rules and regulations. FCLLC did not consistently review exception reports relating to money movements, and reviewed a limited number of securities transactions by customers of its unaffiliated introducing broker-dealers. Accordingly, FCLLC failed to undertake adequate efforts to monitor, identify, and analyze potentially suspicious activity for purposes of filing Suspicious Activity Reports (SAR-SF), when appropriate.

FACTS AND VIOLATIVE CONDUCT FCLLC FAILED TO ESTABLISH AND IMPLEMENT AN ADEQUATE AML COMPLIANCE PROGRAM

In July 2002, the Department of Treasury issued regulations requiring suspicious transaction reporting for broker-dealers.¹ Consequently, since 2002, broker-dealers have been required by FINRA to, among other things,

- (a) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder;
- (b) Establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder.²

A firm's AML procedures must address a number of areas, including monitoring transactions to report suspicious activity where appropriate. For example, when potentially suspicious activity that warrants investigation is identified, a firm must initiate a review of that activity promptly and complete its review within a reasonable period of time. Firms are required to file a Form SAR-SF ("SAR-SF") with Treasury's Financial Crimes Enforcement Network (FinCEN) reporting "any suspicious transaction relevant to a possible violation of law or regulation."³

Broker-dealers should tailor their AML program to fit their business. In developing an appropriate AML program, a broker-dealer should consider factors such as its size, location, business activities, the types of accounts it maintains, and the types of transactions in which its

¹ 31 C.F.R. Sect. 103.19(a)(1) (2002).

² FINRA Rule 3011; see also FINRA *Notice to Members* ("NIM") 02-21, at 5.

³ 67 Fed. Reg. 44048 (July 1, 2002). See also, 31 C.F.R. Sec 103.19(a)(1)(2002).

customers engage.⁴ A clearing firm should conduct transaction monitoring of the business introduced to it by its introducing firms, otherwise, the clearing firm cannot establish that its SAR reporting program is "reasonably expected to detect and cause the reporting of [suspicious] transactions." FINRA Rule 3011.

FCLLC's AML compliance program was inadequate in that FCLLC reviewed transactions covering only a limited amount of potentially suspicious activity. Although FCLLC generated many exception reports and alerts dealing with potentially suspicious securities transactions and money movements in customer accounts that were introduced by unaffiliated broker-dealers to FCLLC, these reports were tools that FCLLC provided to its correspondent brokers to satisfy the introducing brokers' AML obligations. The reports were not consistently reviewed for SAR reporting by FCLLC.

FCLLC reviewed only a limited number and type of transaction for its own SAR reporting obligation. Since at least 2005, FCLLC had conducted real-time review of outgoing international wires, although not patterns of wire activity. Beginning in April 2007, until September 2008, FCLLC began a limited sampling of alerts dealing with potentially suspicious money movements, including domestic wire transfers. Similarly, beginning in April 2007, FCLLC used credit policy reports to select certain accounts with penny stock activity for further review, but did not create a systematic method to review potentially suspicious penny stock activity during the review period. FCLLC also conducted reviews of referrals of suspicious activity from its introducing brokers.

From at least January 1, 2007 through September 30, 2008, FCLLC failed to establish and implement an adequate AML compliance program for detecting, reviewing and reporting suspicious activity. FCLLC did not review or monitor the suspicious activity in most of the exception reports that it prepared for, and distributed to, the introducing broker-dealers or otherwise conduct sufficient risk-based monitoring of activity in accounts introduced by its unaffiliated introducing broker-dealers. Instead, FCLLC reviewed a limited amount of potentially suspicious money movements and penny stock activity beginning in 2007. As a result, FCLLC failed to establish and implement a transaction monitoring program reasonably designed to achieve compliance with the SAR reporting provisions of 31 U.S.C. 5318(g) and the implementing regulations as required by NASD Rule 3011(a).

As a result of the foregoing conduct, Respondent FCLLC violated NASD Conduct Rule 3011(a). Because FCLLC was a MSRB Member, the aforesaid violations constitute independent violations of MSRB Rule G-41.

⁴ NAM 02-21, at 4.

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

1. A censure; and
2. A fine in the amount of \$400,000 (\$200,000 of which pertains to the violations of MSRB Rule G-41).

Respondent agrees to pay the monetary sanction 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 it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

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

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 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, 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 Respondent's 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 Respondent'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. 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 First Clearing, LLC (formerly First Clearing Corporation), 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 First Clearing, LLC 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 Respondent to submit it.

12-09-2010
Date

Brad Hill
First Clearing, LLC (formerly First Clearing Corporation), Respondent

Reviewed by:

Betty Santangelo
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New York, NY 10022
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By: BRAND MEYER
President of the Independent
Brokerage Group
Wells Fargo Advisors

Accepted by FINRA:

January 26, 2011
Date

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

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