

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20080146985-01**

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

RE: First Clearing, LLC, Respondent
Broker-Dealer
CRD No. 17344

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

I.

ACCEPTANCE AND CONSENT

- A. The firm 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

The firm has been a member of FINRA since May 30, 1986, and its registration remains in effect.

RELEVANT DISCIPLINARY HISTORY

The firm has no relevant disciplinary history.

SUMMARY

In Review No. 20080146985, the Department of Market Regulation conducted a review of the firm's compliance with short interest reporting rules for certain short interest cycles between June 30, 2008 and February 27, 2009 (and through November 2009 for supervision of short interest reporting).

In Review No. 20090188310, the Department of Market Regulation conducted a review of the firm's compliance with short interest reporting rules for the time period August 29, 2008 through September 2010.

FACTS AND VIOLATIVE CONDUCT

2008146985

1. For settlement dates June 30, 2008 and July 15, 2008, the firm submitted to FINRA its short interest position reports. These reports included 346 short interest positions totaling 2,894,691 shares, when the firm should have reported 63 short interest positions totaling 2,360,435 shares. The firm also failed to report eight short interest positions totaling 70,034 shares. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 3360.
2. For settlement dates June 30, 2008 and July 15, 2008, the firm submitted to FINRA its short interest position reports. These reports included 701 short interest positions totaling 6,154,823 shares, when the firm should have reported 189 short interest positions totaling 4,464,483 shares. The firm also failed to report nine short interest positions totaling 23,750 shares. The conduct described in this paragraph constitutes separate and distinct violations of Incorporated NYSE Rule 421.
3. For settlement date February 13, 2009, the firm submitted to FINRA its short interest position report. The firm failed to report two short interest positions totaling 23,750 shares. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 4560.¹
4. Between at least June 2008 and November 2009, the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Rules of FINRA, concerning short interest reporting. Specifically, the firm's supervisory system did not include written supervisory procedures providing for: (1) the identification of the person(s) responsible for supervision with respect to the applicable rules; (2) a statement of the supervisory step(s) to be taken by the identified person(s); (3) a statement as to how often such person(s) should take such step(s); and (4) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. The conduct described in this paragraph constitutes violations of NASD Rules 3010 and 2110 and, after December 15, 2008, FINRA Rule 2010.²

¹ Effective December 15, 2008, FINRA Rule 4560 incorporated NASD Conduct Rule 3360 and NYSE Rule 421.

² Effective December 15, 2008, NASD Rule 2110 was renumbered as FINRA Rule 2010.

20090188310

5. For four settlement dates from August 29, 2008 through November 28, 2008, the firm submitted to FINRA its short interest position reports. These reports included 126 short interest positions totaling 2,298,572 shares, when the firm should have reported 118 short interest positions totaling 2,076,159 shares. The firm also failed to report 216 short interest positions totaling 106,764 shares. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 3360.
6. For four settlement dates from August 29, 2008 through November 28, 2008, the firm submitted to FINRA its short interest position reports. These reports included 241 short interest positions totaling 2,537,577 shares, when the firm should have reported 234 short interest positions totaling 2,496,044 shares. The firm also failed to report 561 short interest positions totaling 127,587 shares. The conduct described in this paragraph constitutes separate and distinct violations of Incorporated NYSE Rule 421.
7. For 22 settlement dates from December 31, 2008 through September 30, 2010, the firm submitted to FINRA its short interest position reports. These reports included 1,969 short interest positions totaling 55,962,889 shares, when the firm should have reported 1,930 short interest positions totaling 56,692,826 shares. The firm also failed to report 3,109 short interest positions totaling 19,352,405 shares. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 4560.

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

A censure, a fine of \$80,000, consisting of \$70,000 for the short interest reporting violation and \$10,000 for the supervision violation.

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

The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) 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 the firm;
- 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 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.

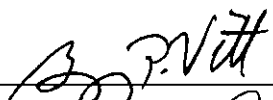
- D. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does 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 it has agreed to the AWC's 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.

8-8-2012

Date

Respondent
First Clearing, LLC

By: 
Name: Gregory P. Vitt
Title: Managing Director

Reviewed by:



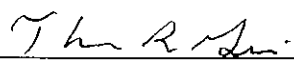
Name: Nicholas T. Chapekis

Counsel for Respondent

Accepted by FINRA:

8/29/12
Date

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


Thomas R. Gira
Executive Vice President
Department of Market Regulation