

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2009016348801**

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

RE: First Midwest Securities, Inc.
BD No. 21786

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent First Midwest Securities, Inc. ("First Midwest" 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 Midwest has been registered with the Securities and Exchange Commission since January 7, 1988 and with FINRA since May 20, 1988. The Firm conducts a general securities business on a fully disclosed basis. During the relevant time period, from January 2009 through March 2010, the Firm maintained approximately 60 branch offices, one of which was located in Farmingdale, New York. First Midwest's registrations with FINRA and the SEC currently remain in effect. The Firm has no disciplinary history relevant to the issues in this matter.

OVERVIEW

From January 2009 through March 2010, First Midwest charged its customers who purchased securities through the Firm's Farmingdale, New York Branch Office ("Farmingdale Branch") as much as \$99.75 as a "handling fee," in addition

000061250 2011

to a commission. The "handling fee" charged by First Midwest was not reasonable because it was effectively the same as a commission, and the amount of the fee was not reasonably related to any direct handling-related services performed by the Firm, or handling-related expenses incurred by the Firm, in processing the transaction. The "handling fee" was also unfairly discriminatory in that customers of the Farmingdale Branch paid "handling fees" of more than twice the amount that customers of the Firm's other branch offices paid. First Midwest also improperly characterized the charge as a "handling fee" on customer trade confirmations.

In addition, in July 2008, First Midwest effected a total of six municipal securities transactions with markups or markdowns that were not fair and reasonable, in violation of MSRB Rule G-30. During this same time period, First Midwest failed to establish and maintain adequate supervisory procedures reasonably designed to ensure compliance with MSRB Rules, in violation of MSRB Rule G-27.

FACTS AND VIOLATIVE CONDUCT

Charging Unreasonable "Handling Fees" and Improper Disclosure of Such Fees

NASD Conduct Rule 2430 (Charges for Services Performed) requires charges, if any, for services performed, including miscellaneous services such as collection of moneys due for principal, dividends, or interest; exchange or transfer of securities; appraisals, safe-keeping or custody of securities, and other services, shall be reasonable and not unfairly discriminatory between customers.

Exchange Act Rule 10b-10 (Confirmation of Transactions) requires broker-dealers to disclose specified information in writing to customers at or before the completion of a transaction. Pursuant to Rule 10b-10, it shall be unlawful for any broker or dealer to effect for or with an account of a customer any transaction in, or to induce the purchase or sale by such customer of, any security (other than U.S. Savings Bonds or municipal securities) unless such broker or dealer, at or before completion of such transaction, gives or sends to such customer written notification disclosing, among other things, if the broker or dealer is acting as agent for such customer, for some other person, or for both such customer and some other person, the source and amount of any other remuneration received or to be received by the broker in connection with the transaction.

FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade) requires that a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

From January 2009 through March 2010, First Midwest charged its customers of the Farmingdale Branch a fee of up to \$99.75 on certain transactions, in addition

to a commission. First Midwest characterized the fee as a "handling fee" on customer trade confirmations. The Firm charged the highest "handling fee" of \$99.75 in 4,992 transactions. First Midwest designed the fee primarily to serve as a source of additional transaction based remuneration or revenue to the Firm and the Farmingdale Branch, in the same manner as a commission, rather than to cover any direct handling-related services performed by the Firm's Farmingdale Branch or handling-related expenses incurred by the Firm's Farmingdale Branch in connection with the transactions in question. Nevertheless, the Firm improperly and inaccurately characterized the fee as attributable to "handling." By designating the charge as a "handling fee," on customer trade confirmations, First Midwest understated the amount of the total commissions charged by the Firm and misstated the purpose of the handling fee.

In addition, the "handling fees" First Midwest charged customers of its Farmingdale Branch were unfairly discriminatory as compared to what it charged its other customers. The Firm charged customers of its Farmingdale Branch more than double the amount of "handling fees" than the amount it charged customers who held accounts at its other branch locations.

By reason of the foregoing, First Midwest violated NASD Conduct Rule 2430, Exchange Act Rule 10b-10 and FINRA Rule 2010.

*Effecting Unfair and Unreasonable Markups or Markdowns, in
Violation of MSRB Rule G-30*

MSRB Rule G-30(a) requires dealers to execute municipal securities transactions with customers at prices that are fair and reasonable, taking into consideration all relevant factors. One of those factors is the fair market value of the security at the time of the transaction. It is the responsibility of dealers to take necessary steps to make an accurate determination of a specific security's value.

During the period from July 11, 2008 to July 26, 2008, First Midwest sold five municipal bonds from its riskless principal account executed with the street to the accounts of four customers, and purchased one municipal bond from a customer for its riskless principal account executed with the street, at aggregate prices that were not fair and reasonable, taking into consideration all relevant factors. Specifically, the markups charged to the four customers for the bonds ranged from 3.61% to 3.70%, and the markdown for the sale of the bonds to the one customer was 3.53%, as shown on Schedule A, attached hereto and incorporated by reference.

Such acts, practices, and conduct constitute separate and distinct violations of MSRB Rules G-30 by First Midwest.

Inadequate Written Supervisory Procedures

MSRB Rule G-27(c) requires dealers to adopt, maintain and enforce written supervisory procedures reasonably designed to ensure that the conduct of the municipal securities activities of the dealer and its associated persons are in compliance with MSRB Board Rules and the applicable provisions of the Exchange Act of 1934 and the rules promulgated thereunder.

During July 2008, First Midwest's written supervisory procedures were inadequate in the area of municipal markups. Specifically, the Firm's written supervisory procedures did not adequately ensure compliance with the information included in *MSRB Notice 2004-3*. This Notice clarifies that the "MSRB has stated that the most important factor in determining whether the aggregate price to the customer is fair and reasonable is that the yield should be compared to the yield on other securities of comparable quality, maturity, coupon rate and block size then available in the market." During July 2008, First Midwest's written supervisory procedures did not require its employees to make these comparisons in determining the aggregate price it charged customers in municipal securities transactions.

Such acts, practices, and conduct constitute separate and distinct violations of MSRB Rules G-27(c) by Respondent First Midwest.

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

- A censure;
- A fine of \$150,000 (\$10,000 of which pertains to the violations of MSRB Rules G-30 and G-27(c));
- With respect to the MSRB violations, disgorgement of ill-gotten gains in partial restitution is ordered to be paid to the customers listed on Attachment A hereto in the total amount of \$1,121.99, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from July 2008, until the date this AWC is accepted by the NAC;
- A registered principal on behalf of First Midwest shall submit satisfactory proof of payment of restitution or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted to Richard S. Schultz, Senior Regional Counsel, 55 West Monroe Street, Suite 2700, Chicago, IL 60603-5052, either by letter that identifies First Midwest and the case number or by e-mail from a work-related account of the registered principal of Respondent firm to EnforcementNotice@FINRA.org. This

proof shall be provided to the FINRA staff member listed above no later than 120 days after acceptance of the AWC; and

- An undertaking by Respondent to certify, within 90 days of FINRA's acceptance of this AWC, that it has implemented corrective action, to remedy the handling fee-related violations set forth above. Such corrective action shall include, but not be limited to: (1) identifying as commissions or mark-ups (mark-downs), as the case may be, and not as postage, handling or any other miscellaneous fee, all transaction-based remuneration, and any other fees which do not constitute reasonable fees under NASD Rule 2430 and do not comply with subsection (2) of this undertaking; (2) for any charges or fees for services (such as postage costs and clearing firm charges), other than commissions or mark-ups (mark-downs), fully and accurately disclosing on confirmations, as well as any communication with a customer or the public where fees are discussed (including fee schedules, if any, or new account documentation that contains fee information), the specific service performed or to be performed or the specific use, and the amount of the fee paid or to be paid in connection with each service or use, and retaining detailed records to substantiate such services and uses and the fee amounts; and (3) revising the Firm's written supervisory procedures and providing training to the Firm's registered representatives and associated persons to address this undertaking related to transaction-based remuneration, reasonable fees, their appropriate disclosure to customers, and retention of related records.

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;
- 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; and
- 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 First Midwest, 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 First Midwest 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.

First Midwest Securities, Inc.

7-27-11
Date

Kim Sparks
By Kim Sparks
Its Chief Compliance Officer

Reviewed by:
[Signature]
Counsel for Respondent

Accepted by FINRA:

9/8/11
Date

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

[Signature]
Richard S. Schultz
Senior Regional Counsel
FINRA Department of Enforcement
55 West Monroe Street, Suite 2700
Chicago, Illinois 60603-5052 (312)899-4334