

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20090189479-01

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. 20090189479, the Short Sales staff of the Department of Market Regulation (the “staff”) conducted a review of the firm’s compliance with rules related to close-out and borrow requirements for short sales during the period May 1, 2009 through June 30, 2009 (the “May-June 2009 review period”).

In Review No. 20090206225, the staff conducted a review of the firm’s compliance with rules related to close-out and borrow requirements for short sales during the period July 1, 2009 through September 30, 2009 (the “3Q09 review period”).

In Review No. 20100243597, the staff conducted a review of the firm’s compliance with rules related to close-out and borrow requirements for short sales during the period April 1, 2010 through June 30, 2010 (the “2Q10 review period”).

FACTS AND VIOLATIVE CONDUCT

20090189479 (May-June 2009 review period)

1. Beginning on August 3, 2009, in two instances, the firm had a fail-to-deliver position at a registered clearing agency in an equity security that resulted from a sale of a security that the seller was deemed to own pursuant to 17 C.F.R. § 242.200 and intended to deliver once all restrictions on delivery had been removed, and did not close the fail-to-deliver position by purchasing or borrowing securities of like kind and quantity within the time frame prescribed by SEC Rule 204T(a)(2). The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 204T(a)(2).

20090206225 (3Q09 review period)

2. Beginning on September 17, 2009 and continuing through October 7, 2009, in one instance, the firm had a fail-to-deliver position at a registered clearing agency in an equity security that resulted from a sale of a security that the seller was deemed to own pursuant to 17 C.F.R. § 242.200 and intended to deliver once all restrictions on delivery had been removed, and did not close the fail-to-deliver position by purchasing or borrowing securities of like kind and quantity within the time frame prescribed by SEC Rule 204(a)(2). The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 204(a)(2).

20100243597 (2Q10 review period)

3. Beginning on May 11, 2010 and continuing through October 1, 2010, in 73 instances, the firm had a fail to deliver position at a registered clearing agency in an equity security that resulted from long sale transactions, and did not close out the fail to deliver positions by purchasing or borrowing securities of like kind and quantity within the time frame prescribed by SEC Rule 204(a)(1). The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 204(a)(1).

(All review periods)

4. Between at least May 2009 and June 2010, 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 close-out requirements for short sales. 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 Rule 3010 and FINRA Rule 2010.

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

A censure, a fine of \$95,000, consisting of \$80,000 for the close-out violations and \$15,000 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: (i) testimonial obligations; or (ii) 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.

May 14, 2013

Date

Respondent
First Clearing, LLC

By: Kelly Metz

Name: Kelly Metz

Title: Director of Operations

Reviewed by:

Nicholas T. Chapetis

Name: Nicholas T. Chapetis

Counsel for Respondent

Accepted by FINRA:

6/2/13
Date

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

Thomas R. Gira
Thomas R. Gira
Executive Vice President
Department of Market Regulation