

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2009020663201**

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

RE: First Midwest Securities, Inc., Respondent
Member Firm
CRD No. 21786

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, 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 it 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 Securities, Inc. ("First Midwest") has been a member of FINRA since May 20, 1988. The firm maintains its principal place of business in Bloomington, Illinois and employs approximately 117 registered individuals operating from 47 branch locations throughout the country.

RELEVANT DISCIPLINARY HISTORY

In September 2011, First Midwest agreed to an AWC through which it was censured and fined \$150,000 for charging a "handling fee" that was unfairly discriminatory and not accurately disclosed on confirmations, charging excessive mark-ups on riskless principal transactions involving municipal securities, and failing to implement adequate written supervisory procedures concerning mark-ups on municipal securities.

In January 2010, First Midwest agreed to an AWC through which it was censured and fined \$10,000 and ordered to pay restitution of \$1,320 for failing to sell bonds at a price that was fair, taking into consideration, all relevant circumstances, and failing to implement a supervisory system and written supervisory procedures reasonably designed to achieve compliance with applicable rules and laws concerning fair pricing in corporate bonds.

OVERVIEW

From in or about January 2006 through in or about December 2009 (the “relevant time period”), First Midwest failed to establish and maintain a supervisory system and establish, maintain and enforce written supervisory procedures reasonably designed to identify and prevent excessive trading of equities. As a result of those supervisory deficiencies, First Midwest failed to prevent excessive trading by one of its registered representatives. This conduct violated NASD Conduct Rules 3010 and 2110 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Unsuitable Recommendations by Representative DC

At various times from in or about September 2006 through August 2008, First Midwest registered representative DC recommended and engaged in excessive and unsuitable trading in the accounts of four customers. Each of the four accounts were subjected to excessive, short-term trading by DC, and excessive use of margin, which resulted in annualized cost-to-equity ratios ranging from 115 to 226 percent. DC’s trading resulted in gross commissions of approximately \$149,000 and customer losses of approximately \$287,380.

DC did not have reasonable grounds for believing that the recommended transactions were suitable for the customers in view of their financial situation and needs. By recommending and engaging in excessive and unsuitable trading, DC violated NASD Conduct Rules 2310 and 2110 and IM-2310-2.

First Midwest’s Supervisory Deficiencies

Throughout the relevant time period, First Midwest failed to establish and maintain a supervisory system and establish, maintain and enforce written supervisory procedures reasonably designed to review the suitability of equity transactions to detect and prevent excessive trading. Specifically:

- First Midwest did not utilize exception reports to assist in detecting patterns of unsuitable excessive trading. First Midwest's clearing firms made available to it exception reports that identified turnover and commission-to-equity ratio in customer accounts. Nevertheless, the firm did not begin using such reports until January 2010.
- To identify unsuitable excessive trading, First Midwest relied on the daily review of trade blotters as well as turnover ratio reports that were prepared manually and reviewed by the firm's compliance staff on a semi-annual basis. The manually-prepared reports, however, did not address cost-to-equity ratios in accounts. Furthermore, First Midwest's written supervisory procedures provided inadequate guidance on how the reports should be prepared and used.
- First Midwest's written supervisory procedures did not offer specific guidance on how accounts would be reviewed for excessive trading and provide for the supervisory measures that would be implemented to detect and prevent such activity. Additionally, First Midwest's procedures called for a semi-annual review of an "Active Account Report," but the firm did not utilize such a report during the relevant time period.
- Although First Midwest contacted customers whose accounts were subject to active trading by sending them an "Intent to Maintain an Active Account Form," those forms did not provide customers with details such as the amount of commissions paid.

As a result of First Midwest's supervisory deficiencies, the firm failed to identify and prevent DC's excessive trading in certain customer accounts.

By failing to establish and maintain a supervisory system and establish, maintain and enforce written procedures reasonably designed to identify and prevent excessive trading of equities, First Midwest violated NASD Conduct Rules 2110 (for conduct before December 15, 2008) and 3010 and FINRA Rule 2010 (for conduct after December 14, 2008).

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

- a censure and \$75,000 fine.

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 it;
 - 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 the firm has agreed to its provisions voluntarily; and

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 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.

First Midwest Securities, Inc.

4-14-12
Date (mm/dd/yyyy)

By: Kimberly Sparks
Kimberly Sparks
Chief Compliance Officer

Reviewed by:

Brandon Reif, Esq.
Brandon Reif, Esq.
Counsel for Respondent
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Los Angeles, CA 90067
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Accepted by FINRA:

6/14/12
Date

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

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