

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20100216392**

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

RE: First Southwest Company, Respondent
Member Firm
CRD No. 316

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

I.

ACCEPTANCE AND CONSENT

- A. First Southwest 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 FINRA membership of First Southwest was approved on March 25, 1946. The firm has 23 branch offices and approximately 223 registered persons. The firm participates in a variety of investment businesses including introducing retail broker-dealer activities and providing to other broker-dealers clearing services.

OVERVIEW

In March 2009, First Southwest violated FINRA Rule 2010 and Securities Exchange Act of 1934 ("Exchange Act") Rules 15c3-3 and 17a-5 by improperly computing its customer reserve formula and filing an inaccurate Financial and Operational Combined Uniform Single Report ("FOCUS report") and violated FINRA Rule 2010 and Exchange Act Rules 15c3-1 and 15c3-3 by improperly computing its net capital and customer reserve formulas.

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FACTS AND VIOLATIVE CONDUCT

FINRA Rule 2010 and Exchange Act Rules 15c3-3 and 17a-5

Exchange Act Rule 15c3-3 is designed to ensure protection of customer funds by ~~requiring a separate bank account to be maintained for customer funds. Broker-~~dealers must maintain with a bank a separate account entitled "Special Reserve Bank Account for the Exclusive Benefit of Customers," (the "Reserve Bank Account") into which they must deposit cash and/or qualified securities in amounts computed in accordance with a specified formula. Under the Rule, broker-dealers are required to utilize this formula to make a weekly computation of the amount to be deposited into the Reserve Bank Account and to make requisite deposits on a timely basis. Exhibit A to Exchange Act Rule 15c3-3 sets forth a formula for determination of reserve requirement of brokers and dealers. As of March 31, 2009, the customer reserve formula computation for First Southwest disclosed adjustments and a hindsight deficiency of \$3,525,683. The hindsight deficiency resulted, in part, when First Southwest inaccurately computed items in its customer reserve formula including, overstating its debits by \$4,712,534 as a result of two customer accounts with debit balances, collateralized by control stocks with limited markets, which should have been treated as unsecured; and, understating its credits by \$644,222 by failing to have a process in place to research the unallocated report and include a corresponding credit to the customer reserve formula computation, a repeat violation from the 2008 exam, among other items.

Exchange Act Rule 17a-5 requires that broker-dealers file periodic FOCUS reports of the broker-dealer's financial status. First Southwest failed to comply with Exchange Act Rule 17a-5 in that the FOCUS report filed as of March 31, 2009 was inaccurate with respect to its customer reserve formula computation. As a result, First Southwest violated FINRA Rule 2010 and Exchange Act Rules 15c3-3 and 17a-5 by improperly computing its customer reserve formula and filing an inaccurate FOCUS report.

FINRA Rule 2010 and Exchange Act Rules 15c3-1 and 15c3-3

Exchange Act Rule 15c3-1 is designed to ensure liquidity in the event that a broker-dealer encounters financial difficulty. It requires a broker-dealer to have sufficient assets that are readily convertible to cash to cover its indebtedness to customers and other broker-dealers. Rule 15c3-1 sets forth various categories of required net capital depending on the type of securities business conducted by a broker-dealer. In addition, broker-dealers are required to maintain a certain level of net capital relative to their aggregate indebtedness. A review of two customer accounts, as of March 31, 2009, disclosed that the margin debits in these accounts, \$4,285,198 and \$427,336 respectively, were collateralized by control stocks. As a result, the debit balances were deemed to be unsecured and should have been excluded from First Southwest's customer reserve formula and treated

as non-allowable assets. First Southwest overstated its customer reserve formula debits and its net capital by \$4,712,534, as of March 31, 2009. As a result, the Firm violated FINRA Rule 2010 and Exchange Act Rules 15c3-1 and 15c3-3 by improperly computing its net capital and customer reserve formulas.

~~B. First Southwest also consents to the imposition of the following sanctions:~~

A censure and a monetary fine of \$35,000.

First Southwest agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. First Southwest has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

First Southwest 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

First Southwest specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against First Southwest,;
- 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, First Southwest 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.

First Southwest 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

First Southwest 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 First Southwest; and
- C. If accepted:
 - 1. this AWC will become part of First Southwest's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against First Southwest;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about First Southwest'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. First Southwest 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. First Southwest 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 First Southwest's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. First Southwest may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. First Southwest 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 Southwest 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 Southwest 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 First Southwest to submit it.

First Southwest Company

11-19-10

Date

Neil G. Feinberg
Respondent
First Southwest Company

By: Neil Feinberg

Title: Chairman + CEO

Accepted by FINRA:

12-6-10

Date

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

Suzanne Elovic

Suzanne Elovic, Chief Counsel
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