

FINRA

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20100227327-01**

2013 JUN 10 PM 1:38

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

RE: First Southwest Company, Respondent
Broker-Dealer
CRD No. 316

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, First Southwest Company (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 became a FINRA member on March 25, 1946, and its registration remains in effect.

RELEVANT DISCIPLINARY HISTORY

- In August 2010 (NASDAQ AWC 20070110187-01), the firm consented to a censure and a total fine of \$15,000, comprised of \$7,500 for reporting violations to the Order Audit Trail System ("OATS") and \$7,500 for limit order display violations, each of which occurred during the period between April 1, 2007 and June 30, 2007.
- In November 2009 (NASDAQ AWC 20070078135-01), the firm consented to a censure and a total fine of \$12,500, comprised of a \$7,500 fine for limit order display and OATS

violations committed between August 1, 2006 and September 30, 2006, and a \$5,000 fine for OATS violations committed between October 1, 2006 and December 31, 2006.

FACTS AND VIOLATIVE CONDUCT

20100227327 and 20110275378

In connection with FINRA Matter Nos. 20100227327 and 20110275378, the Options Regulation staff of FINRA's Market Regulation Department (the "staff") conducted two reviews of the firm's customers' options positions required to be reported to the Securities Industry Automation Corporation ("SIAC") and the Options Clearing Corporation ("OCC") Large Options Positions Report ("LOPR") during the period between January 1, 2010 and March 31, 2011 (the "LOPR review period") for compliance with options position reporting and determined that:

1. On January 28, 2010, the firm failed to report a LOPR position with the correct effective date.
2. During the LOPR review period, the firm failed to submit 11 reportable positions to the LOPR a total of 129 days.
3. During the LOPR review period, the firm failed to accurately report three accounts to LOPR under common control or acting in-concert that should have been linked for purposes of in-concert reporting, impacting a total of approximately 990 positions held in those accounts.
4. The conduct described in paragraphs one through three above constitutes separate and distinct violations of FINRA Rule 2360(b)(5).
5. During the LOPR review period, the firm failed to establish and maintain a supervisory system, including written supervisory procedures and a separate system of follow-up and review, reasonably designed to achieve compliance with rules governing the reporting of large options positions, in that the firm failed to conduct reasonable supervisory reviews to ensure the accuracy of its LOPR submissions. The conduct described in this paragraph constitutes a violation of NASD Rule 3010 and FINRA Rule 2010.

20120314160

In connection with FINRA Matter No. 20120314160, the OATS Operations Team of FINRA's Department of Market Regulation reviewed the firm's compliance with OATS reporting requirements after the firm had self-reported to the FINRA Help Desk that it had failed to submit to OATS reportable order events ("ROEs") received from one routing firm during the period between August 25, 2011 and March 30, 2012 (the "OATS review period").

6. During the OATS review period, the firm failed to transmit 10,810 ROEs to OATS on a total of 144 business days, representing 10.77% of all ROEs that the firm was required to transmit to OATS during the OATS review period. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450(a).

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

A censure and a total fine of \$27,500 (\$10,000 for the LOPR violations, \$10,000 for the LOPR-related supervisory violations, and \$7,500 for the OATS violations).

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 National Adjudicatory Council ("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 Southwest Company

By: Blake Morris

Name: Blake Morris

Title: Chief Compliance Officer

Reviewed by:
Brian W. Hatcher
Counsel for Respondent

Accepted by FINRA:

6/7/2013
Date

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

Eric Brown
Eric Brown
Chief Counsel
Department of Market Regulation