

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013035064901**

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

**RE: First American Securities, Inc., Respondent
FINRA Member Firm
CRD No. 35841**

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

I. ACCEPTANCE AND CONSENT

- A. First American 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 American became a FINRA member on December 15, 1994 and is headquartered in Orrville, Ohio. First American engages in a general securities business. First American employs approximately 22 registered representatives at six branch offices.

First American does not have any disciplinary history.

OVERVIEW

First American failed to establish and maintain a supervisory system, including written policies and procedures, regarding the sale of leveraged, inverse and inverse leveraged exchange-traded funds (collectively, "Non-Traditional ETFs") that was reasonably designed to achieve compliance with applicable securities laws and regulations, thereby violating NASD Rule 3010 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Non-Traditional ETFs are designed to return a multiple of an underlying index or benchmark, the inverse of that benchmark, or both, over only the course of one trading session – usually a single day. As a result, the performance of Non-Traditional ETFs over periods of time longer than a single trading session “can differ significantly from the performance . . . of their underlying index or benchmark during the same period of time.” *FINRA Regulatory Notice 09-31*. Because of these risks and the inherent complexity of the products, FINRA advised broker-dealers and their representatives in 2009 that Non-Traditional ETFs “are typically not suitable for retail investors who plan to hold them for more than one trading session, particularly in volatile markets.” *Id.*

First American allowed its representatives to recommend and sell Non-Traditional ETFs to customers from June 16, 2011 through December 31, 2012 without reasonably supervising this activity. First American’s written supervisory procedures did not address the sale or supervision of Non-Traditional ETFs. First American also did not provide any training for its representatives related to Non-Traditional ETFs. In addition, First American did not use or make available to its supervisory personnel any reports or other tools to monitor either the length of time that customers held open positions in Non-Traditional ETFs or any losses occurring those positions.

Through this conduct, First American failed to establish and maintain a supervisory system, including written policies and procedures, regarding the sale of Non-Traditional ETFs that was reasonably designed to achieve compliance with applicable securities laws and regulations, thereby violating NASD Rule 3010 and FINRA Rule 2010.

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

- 1. A censure, and;**
- 2. A fine of \$10,000.**

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

First American 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 American 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 American;**
- 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 American 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 American 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 American 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 American; and**
- C. If accepted:**
 - 1. this AWC will become part of First American's permanent disciplinary record**

and may be considered in any future actions brought by FINRA or any other regulator against First American;

2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about First American'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 American 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 American 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 American'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. First American may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. First American 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 American, certifies that a person duly authorized to act on First American's 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 American 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 American to submit it.

11-3-14
Date

FIRST AMERICAN SECURITIES, INC.

By: 7622
Thomas E. Brunner, Jr.
Chief Executive Officer

Reviewed by:



Alan M. Wolper, Esq.
Counsel for First American Securities, Inc.
Ulmer Berne, LLP
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Chicago, IL 60661-4587
312-658-6564

Accepted by FINRA:

12-8-14

Date

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

 on behalf of

James M. Stephens
Senior Regional Counsel
FINRA Department of Enforcement
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Kansas City, Missouri 64105
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