

**NASD REGULATION, INC.
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. C06050014**

TO: Department of Enforcement
NASD Regulation, Inc.

RE: First Avantus Securities, Inc.
Member Firm
CRD No. 40418

Brian Edward Smith
General Securities Principal
CRD No. 2287309

Pursuant to Rule 9216 of the National Association of Securities Dealers, Inc. ("NASD") Code of Procedure, First Avantus Securities, Inc., and Brian Edward Smith, ("Respondents") submit this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. *This AWC is submitted on the condition that, if accepted, NASD Regulation, Inc. will not bring any future actions against us alleging violations based on the same factual findings.*

We understand that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD Regulation, Inc.'s Department of Enforcement and National Adjudicatory Council ("NAC"), pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against us; and
3. If accepted:
 - a. this AWC will become part of our permanent disciplinary record and may be considered in any future actions brought by the NASD against us;
 - b. this AWC will be made available through NASD Regulation, Inc.'s public disclosure program in response to public inquiries about our disciplinary record;
 - c. NASD Regulation, Inc. may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and
 - d. We 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 allegation in this AWC or create the impression that the AWC is without factual basis. Nothing in

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*this provision affects our testimonial obligations or right to take
legal positions in litigation in which the NASD is not a party.*

We also understand that our experience in the securities industry and disciplinary history may be factors which will be considered in deciding whether to accept this AWC. That experience and history are as follows:

During all periods mentioned herein, First Avantus Securities, Inc. was a registered broker dealer with the Securities and Exchange Commission and a member of NASD. The firm's registration as a member of NASD remains in effect and for the past five years it has no disciplinary history.

Brian Edward Smith entered the securities industry in October 1992 as a General Securities Representative of a member of NASD. During all periods mentioned herein, he was registered as a General Securities Principal with member firm First Avantus Securities and was the firm's President. Smith is still registered with First Avantus and still serves as the firm's President. He has no disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

We specifically and voluntarily waive the following rights granted under the NASD's Code of Procedure:

- A. *To have a Formal Complaint issued specifying the allegations against us;*
- B. *To be notified of the Formal 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, we specifically and voluntarily waive 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.

We further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of 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.

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II.

ACCEPTANCE AND CONSENT

- A. We hereby accept and consent, without admitting or denying the allegations, and solely for the purposes of this proceeding, to the entry of the following findings by NASD Regulation, Inc.:

During the period from October 2001 through August 2003, Brian Edward Smith was President of member firm First Avantus Securities, Inc. (n/k/a Riverstone Wealth Management, Inc.). As President, Smith was responsible for, among other things, the firm's supervisory procedures and practices.

1. On or about October 1, 2001, a customer of First Avantus, namely [REDACTED] and its President, presented a check to the firm, in the amount of \$2,800,000, and requested that the funds be deposited into its account. The check, which contained the words "Cashier's Check," appeared to have been drawn against a domestic bank account but also indicated that [REDACTED] maintained an office in Grenada, West Indies. As a fully disclosed introducing broker/dealer, First Avantus forwarded the customer's check to First Clearing Corporation, the clearing agent for First Avantus, for deposit and collection in the normal procedure utilized by First Clearing.¹

During the period October 4 - 5, 2001, the customer effected a total of five withdrawals from his account, in the total amount of \$901,654, and wire transferred these funds to third parties. On October 5, 2001, and after the wire transfers had been effected, the customer's \$2,800,000 check was returned because one or more banks refused to pay. The customer never deposited additional funds into his account, and at the end of October 2001, the customer's account maintained an unsecured debit balance of \$835,537.

As a result of the aforementioned wire transfers and the bank's refusal to pay on the customer's \$2,800,000 check, a dispute arose between First Avantus and First Clearing concerning liability for the customer's unsecured debit balance. On or about November 19, 2001, First Avantus entered into a Settlement Agreement with First Clearing, whereby First Clearing agreed to take responsibility for the customer's unsecured debit balance. As part of the Settlement Agreement, the Clearing Agreement was amended such that First Avantus agreed to pay First Clearing \$500,000 in additional clearing fees payable in monthly installments over five years.

¹ First Clearing is the subject of a separate NASD investigation.

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During the period from November 2001 through March 2002, Smith failed to ensure that First Avantus included the \$500,000 settlement amount with First Clearing as a liability of the firm. Moreover, during this period of time, First Avantus engaged in a securities business and because it did not include the entire \$500,000 settlement amount as a liability, its net capital deficiency during this period ranged from \$427,000 to \$473,000.

2. In March 2002, approximately five months after the firm reached an agreement with its clearing firm over the unsecured debit balance involving customer [REDACTED] another unsecured debit occurred in another customer's account. In this regard, during the period March 20 – 25, 2002, a customer of First Avantus purchased 29,700 shares of Reality Interactive stock at a share price of \$7.26, for a total cost of \$217,522. The customer failed to pay for any of the Reality Interactive shares he had purchased. By the end of March 2002, the share price of Reality Interactive had declined to \$3.75, and the customer's account had an unsecured debit balance of \$106,146.

Beginning on April 3, 2002 and continuing through April 17, 2002, First Avantus, acting through Smith, sold all of the customer's shares of Reality Interactive stock at prices ranging from \$0.33 to \$2.30. At the end of April 2002 and continuing through August 2002, the customer's account had an unsecured debit balance of \$205,995. First Avantus, acting through Smith, accounted for approximately \$60,000 of this unsecured debit balance; however, it failed to include the full amount of the unsecured debit balance in the firm's financial books and records.

During the period from about March 2002 through about August 2003, First Avantus, acting through Smith, engaged in a securities business and because it did not include, as liabilities of the firm, (1) the \$500,000 payment to First Clearing, and (2) the \$205,995 customer unsecured debit, its net capital deficiency during this period ranged from \$222,000 to \$557,000.

During the period from about November 2001 through about August 2003, First Avantus also filed inaccurate FOCUS Reports with NASD because such reports significantly overstated the firm's net capital position. Moreover, during this same period, First Avantus failed to give NASD notice of its net capital deficiencies.

Such acts, practices, and conduct constitute separate and distinct violations of SEC Rules 15c3-1, 17a-3, 17a-5 and 17a-11 by Respondent First Avantus Securities, Inc. Respondent Brian Edward Smith violated NASD Conduct Rule 2110.

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- B. We also consent to the imposition, at a maximum, of the following sanctions:

A censure and a monetary fine of \$100,000 against Respondent First Avantus Securities, Inc. of which \$25,000 is joint and several with Respondent Brian Edward Smith. In addition to the fine amounts, a suspension, in any principal capacity, against Respondent Brian Edward Smith for a period of sixty days.

The sanctions imposed herein shall be effective on a date set by the NASD staff.

III.

OTHER MATTERS

- A. We understand that we may attach a Corrective Action Statement to this AWC which is a statement of demonstrable corrective steps taken to prevent future misconduct. We understand that we 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 NASD Regulation, Inc., nor does it reflect the views of NASD Regulation, Inc. or its staff.
- B. We agree to pay any monetary sanctions imposed on us upon notice that this AWC has been accepted and that such payments are due and payable, and have attached an Election of Payment form showing the method by which we propose to pay any fine imposed.
- C. We specifically and voluntarily waive any right to claim that we are unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.
- D. We understand that if we are barred or suspended from association with any NASD member, we become subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, we may not be associated with any NASD member in any principal capacity during the period of the bar or suspension. (See NASD Rule 8310 and IM-8310-1.)

We certify that we have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce us to submit it.

