

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. C07050013-AWC

TO: Department of Enforcement
NASD

RE: FSC Securities Corporation, Respondent
Member
CRD No. 7461

Pursuant to Rule 9216 of NASD Code of Procedure, we 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 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's Department of Enforcement and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs ("ODA"), 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 NASD or any other regulator against us;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about our disciplinary record;
 - c. NASD 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 this provision affects our testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

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

FSC Securities Corporation became an NASD member in August 1977. The firm conducts a general securities business and has approximately 1650 registered representatives operating from about 850 branch offices. The firm has no relevant disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

We specifically and voluntarily waive the following rights granted under 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.

II.

ACCEPTANCE AND CONSENT

- A. We hereby accept and consent, without admitting or denying the allegations or findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD 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 NASD:
1. During the period from August 2001 through September 2003, FSC Securities Corporation:
 - a. failed to report 3 disclosable events on Forms U-4 and reported 3 other events late, in violation of NASD Rules IM-1000-1 and 2110;
 - b. failed to report 8 disclosable events on Forms U-5 and reported 13 other events late, in violation of NASD Rules IM-1000-1 and 2110;
 - c. failed to report 10 events pursuant to Rule 3070(b) and 15 events pursuant to Rule 3070(c) in violation of NASD Rules 3070 and 2110.
 2. During the period from March 2001 through September 2003, FSC Securities Corporation entered into seven settlement agreements with customers that contained confidentiality clauses that failed to expressly allow customers or other persons to respond, without restriction or condition, to any inquiry about the settlement or its underlying facts and circumstances by any securities regulator, including the NASD, in violation of NASD Rule 2110.
 3. During the period from April 2002 to September 2003, FSC Securities Corporation failed to develop and implement an anti-money laundering ("AML") program that was reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, *et. seq.*), and the implementing regulations promulgated thereunder by the Department of Treasury in violation of NASD Conduct Rules 3011 and 2110. Specifically, among other ways, the firm's AML program was deficient in the following respects:

The firm failed to have adequate procedures that: were approved in writing by senior management; that adequately addressed review of wire transfers (including obtaining information about the transmitter and recipient of funds); that identified what persons would ensure that a report of matched names from OFAC was generated and delivered to compliance and the actions to be taken regarding any names on the report and the time-frame and evidence of the review; that addressed *independent testing of the program and training of personnel* and the evidence of such training; that addressed keeping confidential FINCEN information requests, including the identity of the person responsible for complying with the requests and guarding its confidentiality; that addressed supervision of customer identification and verification, and that adequately addressed supervision of suspicious activity and filing SARs, including the conduct and evidence of the review.

The firm failed to have adequate internal controls to ensure that the firm complied with its procedures regarding foreign bank accounts, private banking issues, and cash transactions with respect to filing CTRs, or the controls to detect and prevent the receipt of cash.

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

A censure, and a fine of \$40,000. The sanctions imposed herein shall be effective on a date set by NASD staff.

III.

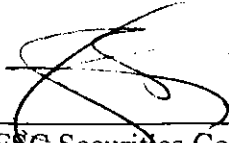
OTHER MATTERS

- A. We understand that we may attach a Corrective Action Statement to this AWC that 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, nor does it reflect the views of NASD 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.

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.

2/3/05
Date



FSC Securities Corporation

By: JOSEPH B. GRUBER
[Print name and title]

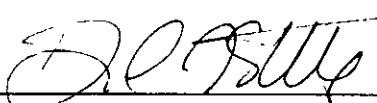
Reviewed by:



Counsel for Respondent
Ethan H. Cohen
Schiff Hardin LLP

Accepted by NASD:

3/1/05
Date



Daniel J. Stefek, District Director
Atlanta District Office

This Corrective Action Statement is submitted by FSC Securities Corporation. It does not constitute factual or legal findings by NASD, nor does it reflect the view of NASD or its staff.

To: Department of Enforcement
NASD

From: FSC Securities Corporation, Member
CRD No. 7461

FSC Securities Corporation ("FSC") submits this Statement of Corrective Action in support of the attached Letter of Acceptance, Waiver and Consent ("AWC"). This Statement outlines the demonstrable steps taken to address the matters that resulted in the issuance of the AWC.

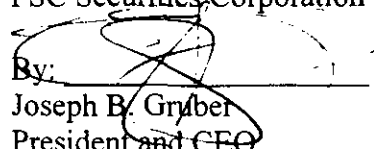
The NASD staff notified FSC of the matters set forth in the AWC in connection with NASD's recent audit of FSC that concluded in 2004. FSC cooperated fully with NASD in its audit and this investigation at all times. FSC is, as it has always been, wholly committed to undertaking and fulfilling its regulatory and compliance obligations, including the continued enhancement of its systems and processes relating not only to the timely and accurate filing of disclosable events on Forms U-4 and U-5 and pursuant to Rule 3070(b) and (c) but also to the appropriateness of confidentiality clauses appearing in settlement agreements with its customers and the development and implementation of an anti-money laundering ("AML") program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act.

FSC has updated and is continuing to update the disclosable events it understands to have been identified in NASD's audit in connection with Forms U-4 and U-5 and under Rule 3070(b) and (c). To the extent that customers have not already been informed, as suggested by and in accordance with NASD NtM 95-87, FSC is also in the process of preparing separate letters to be delivered to those remaining customers identified to have entered into settlement agreements with FSC containing overly restrictive confidentiality clauses. Since September 2003, FSC has revised its AML procedures to become fully compliant and continues to follow its current AML procedures and program designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act.

In addition to these immediate corrective measures, FSC has emphasized its internal compliance and legal roles to ensure the timely and accurate filing of disclosable events. FSC has also implemented an internal policy to have all settlement agreements with customers reviewed either by in-house or outside counsel prior to execution in order to ensure that such agreements do not contain overly restrictive confidentiality clauses.

FSC believes that the corrective action outlined above demonstrates the efforts by FSC to prevent future occurrences of the matters noted in the AWC. FSC appreciates the opportunity to present this Statement of Corrective Action and requests that it be considered in determining whether the AWC should be accepted.

FSC Securities Corporation

By: 

Joseph B. Gryber
President and CEO

February 3, 2005.