

**NASD  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. E062004030201**

**RECEIVED**  
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REGISTRATION & DISCLOSURE

**TO: Department of Enforcement  
NASD**

**RE: First Southwest Company, Respondent  
[CRD No. 316]**

Pursuant to Rule 9216 of NASD Code of Procedure, First Southwest Company submits 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 me 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 finding 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 proceedings in which NASD is not a party.

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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:

First Southwest Company has been a member of NASD since March 25, 1946. During all periods mentioned herein, First Southwest Company was a registered broker-dealer with the United States Securities and Exchange Commission, a member of NASD and of the Municipal Securities Rulemaking Board, which registration and memberships remain currently in effect. First Southwest Company has not been the subject of any recent relevant formal disciplinary actions within the last five years.

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 findings, and solely for the purposes of this proceeding and any other proceeding in which NASD is a party, prior to a hearing and without adjudication of any issue of law or fact, to the entry of the following findings by NASD:

**Summary**

During the period from on or about January 1, 2003, through on or about October 31, 2004, First Southwest Company failed to timely report 5.87% of its municipal securities customer transactions to the Municipal Securities Rulemaking Board ("MSRB"). Additionally, during the period from on or about January 1, 2003, through on or about May 31, 2004, First Southwest Company failed to timely report 14.6% of its municipal securities inter-dealer transactions to the MSRB.

**Background**

Timely and accurate reporting of municipal securities transaction data to the MSRB is vital to investor protection and market integrity because it helps ensure a level playing field for all municipal market participants, including dealers, retail investors, and institutional investors. During the relevant time period, MSRB Rule G-14 required all brokers, dealers and municipal securities dealers (collectively "dealers") to report trades to MSRB by midnight of the trade date and the MSRB published data about all reported municipal securities transactions, including, but not limited to, price and volume information, on the day after the trade date.<sup>1</sup>

If municipal trade data is unavailable or incorrect because trades were not reported in a timely manner or included erroneous data, dealers and investors alike experience harm because they cannot obtain an accurate picture of market activity and prices. Late or inaccurate transaction data may hinder a dealer's ability to price municipal securities accurately for customers and, in turn, interferes with an investor's decision-making process.<sup>2</sup>

<sup>1</sup> Since January 31, 2005, MSRB Rule G-14 requires dealers to report trades to MSRB within 15 minutes after trade execution and MSRB publishes data about all reported municipal securities transactions within minutes after trade execution.

<sup>2</sup> Since 1994, NASD and the MSRB have repeatedly advised dealers of their responsibility to report transactions accurately. See "Enforcement Initiative," *MSRB Reports*, Vol. 14, No. 3 (June 1994) at 35; NASD *Regulatory and Compliance Alert*: "Introducing Firm Responsibility When Reporting Municipal Trades Through Service Bureaus and Clearing Firms" (Winter 2000); NASD *Regulatory and Compliance Alert*: "Municipal Securities Transaction Reporting Compliance Information" (Spring 2001); and NASD *Notice to Members* 03-13: "MSRB Rules G-12 and G-14," jointly issued with the MSRB in March 2003 as MSRB *Notice* 2003-7. The MSRB has also advised dealers of their

Additionally, accurate and timely municipal trade reporting forms the primary audit trail for regulators to conduct surveillance for potentially manipulative practices, as well as detect sales practice violations and other violations of the federal securities laws and MSRB rules.

Pursuant to MSRB Rule G-27, each dealer engaging in municipal securities transactions is obligated to have a supervisory system and procedures in place reasonably designed to achieve compliance with the federal securities laws and MSRB Rules, including G-14. Ultimate responsibility for transaction reporting rests with the dealer that effected the trade. Clearing firms that submit transactions for their correspondent firms also have responsibility for those aspects of the reporting process under their control.<sup>3</sup>

#### Violations by First Southwest Company

1. a. During the period from on or about January 1, 2003, through on or about October 31, 2004, First Southwest Company failed to timely report 5.87% of its municipal securities customer transactions to the MSRB.  
  
b. Additionally, during the period from on or about January 1, 2003 through on or about May 31, 2004, First Southwest Company failed to timely report 14.6% of its municipal securities inter-dealer transactions to the MSRB.

Such acts, practices, and conduct constitute separate and distinct violations of MSRB Rule G-14 by First Southwest Company.

2. During the period from on or about January 1, 2003, through on or about October 31, 2004, First Southwest Company failed to monitor its trade reporting to ensure compliance with MSRB Rule G-14, in violation of MSRB Rule G-27.

Such acts, practices, and conduct constitute separate and distinct violations of MSRB Rule G-27 by First Southwest Company.

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responsibility to ascertain the market value of municipal securities they trade so their customers receive prices that are reasonably related to the market value of the securities (see MSRB Notice 2004-3: "Review of Dealer Pricing Responsibilities," January 26, 2004).

<sup>3</sup> Information regarding each dealer's compliance with MSRB Rule G-14 and how it is performing in relation to other reporting dealers is available for review through the MSRB's Dealer Feedback System, which allows dealers to self-monitor their trade reporting performance, including, but not limited to, the accuracy of information reported concerning transactions the dealer submitted through a clearing firm or service bureau and/or transactions the dealer submitted for other dealers, and take appropriate steps to ensure compliance with the requirements of MSRB Rule G-14.

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

A censure and a monetary fine in the amount of \$110,000 to be assessed against First Southwest Company.

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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 as noted above 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.

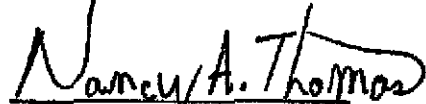
July 18, 2004  
Date

First Southwest Company

By: Hill A. Feimberg  
Hill A. Feimberg - CEO  
[Name and Title]

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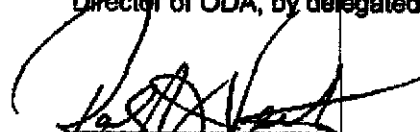
Reviewed by:

  
Counsel for Respondent

Accepted by NASD:

July 26, 2007  
Date

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



Ralph J. Vath, Regional Counsel  
NASD, District No. 5  
1100 Poydras Street, Suite 850  
New Orleans, Louisiana 70163-0802  
Phone: 504/522-6527  
FAX: 504/522-4077

**NASD District Director**

Keith E. Hinrichs  
NASD, District No. 5  
1100 Poydras Street, Suite 850  
New Orleans, Louisiana 70163-0802

Attachment: Election of Payment Form

## **CORRECTIVE ACTION STATEMENT**

First Southwest Company ("FSC") believes its reputation is based on the professionalism and high standards of the firm and its employees. As such, FSC continuously strives to implement standards and internal controls for the firm, its employees and business lines which are reasonably designed to detect and prevent any violations of regulatory requirements. FSC's efforts to adhere to the Municipal Trade Reporting regulations as referenced in MSRB Rule G-14 and G-27 are outlined below.

In June of 2005, the firm established a group of senior level department heads who meet periodically to discuss regulatory issues relating to trade reporting. The group consists of representatives from Operations, Compliance, Capital Markets, Information Technology and Clearing. The group meets at least monthly to review the firm's trade reporting statistics. In addition to the review of trade reporting statistics, the group discusses emerging trends in the trade reporting arena.

Since the inception of the amended rule, FSC has devoted substantial resources to its compliance by, among other things, hiring a dedicated trade reporting specialist. This specialist's job functions include, but are not limited to, the following:

- Ensuring that all eligible municipal trades effected by FSC are reported accurately and timely to the MSRB;
- Monitoring the on-going reporting of trades to the MSRB on a real-time consistent basis and identifying and isolating questionable and unsatisfactory transactions. FSC regularly reviews its reporting performance on the MSRB's Dealer Feedback System and is aware of its compliance statistics;
- Retrieving and analyzing RTRS data, create and distribute reports to user groups and management, and monitoring and repairing trades reported to RTRS web;
- Reporting Step-Out trades; and
- Providing information updates and a general resource to FSC and FSC correspondents with regard to MSRB Rule G-14.

In addition to the Firm's investment in personnel, a substantial amount of resources have been invested in technological upgrades to existing systems. These systems are periodically monitored to ensure efficiency. FSC staff has contacted representatives of the MSRB and our back office reporting system on numerous occasions to discuss the needed enhancements and operation of various systems and other factors that impact FSC's trade reporting.

As described above, FSC has worked diligently to remedy issues related to municipal trade reporting. FSC understands that timely and accurate reporting of municipal securities transaction data to the MSRB is vital to investor protection and market integrity.

**THIS CORRECTIVE ACTION STATEMENT IS SUBMITTED BY FIRST SOUTHWEST COMPANY. IT DOES NOT CONSTITUTE FACTUAL OR LEGAL FINDINGS BY NASD, NOR DOES IT REFLECT THE VIEWS OF NASD OR ITS STAFF.**