

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2012034037602**

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

RE: FSC Securities Corporation, Respondent  
FINRA Member Firm  
BD No. 7461

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

**I.**

**ACCEPTANCE AND CONSENT**

- A. FSC 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**

FSC has been a member of FINRA since August 1977, and is an introducing broker-dealer headquartered in Atlanta, Georgia. FSC conducts a general securities business employing an independent contractor model. FSC has over 1,000 registered representatives and over 600 branch offices located nationwide. FSC does not have a relevant disciplinary history.

**OVERVIEW**

From March 2009 until April 2010 ("Relevant Period"), J.Z., a registered representative associated with FSC sold memberships in PFG, LLC (the "PFG fund"), an investment fund created by A.P., a former FSC representative. In connection with his sale of the PFG fund memberships, J.Z. submitted to FSC Letters of Authorization ("LOA") signed by each of fifteen (15) FSC customers, which authorized in aggregate approximately \$1.6 million to be transferred from their FSC brokerage accounts to a bank account controlled by the PFG fund. FSC failed to establish, maintain and enforce a supervisory system that was reasonably designed to review and monitor third-party check requests from customer accounts, in violation of NASD Conduct Rules 3010(a), 3010(b), 3012(a)(1) and 3012(a)(2)(B)(i) and FINRA Rule 2010.

## FACTS AND VIOLATIVE CONDUCT

### **Background**

A.P. worked in a FSC Office of Supervisory Jurisdiction ("OSJ") located in McDonough, Georgia. A.P. voluntarily left FSC in January 2008, and has not been associated with another FINRA member firm or registered with FINRA since January 2008. A.P. created the PFG fund in February 2008. The PFG fund was purportedly a private investment fund seeking "positive total returns with low volatility" through various investments, including equity securities traded in U.S. markets. A.P. was the managing member of PFGAM, LLC ("PFGAM"). PFGAM was registered as an investment advisor with the state of Georgia until August 2010, when it became registered with the U.S. Securities and Exchange Commission ("SEC"). In March 2011, PFGAM changed its name to MAM, LLC ("MAM"). PFGAM was the manager of the PFG fund and its office was listed at the same address as J.Z.'s FSC OSJ office.

J.Z. was first registered with FINRA in 2000, and was registered as both a general securities representative and principal. In March 2007, J.Z. became associated with FSC. J.Z. worked in the same FSC OSJ office as A.P. and when A.P. left FSC, J.Z. became the OSJ principal and some of A.P.'s accounts were assigned to J.Z. A.P. recruited J.Z., without informing or seeking the approval of FSC, to recommend the PFG fund to his FSC customers and agreed to pay J.Z. a percentage of the fees A.P. was receiving for managing customer funds through the PFG fund. J.Z. voluntarily left FSC in June 2010 and became employed with PFGAM and later MAM. In or about February 2012, A.P. sold MAM to J.Z. J.Z. remained with MAM until December 2012.

### **FSC Failed to Establish, Maintain and Enforce a Reasonable Supervisory System and Supervisory Control Procedures**

NASD Conduct Rule 3010(a) required member firms to "establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable [FINRA] Rules."

NASD Conduct Rule 3010(b) required member firms to "establish, maintain and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of [FINRA]."

NASD Conduct Rule 3012 became effective on January 31, 2005. NASD Conduct Rule 3012 required member firms to, among other things, establish, maintain, and enforce a system of supervisory control policies and procedures which address a variety of issues. NASD Conduct Rule 3012(a)(1) required that each FINRA member firm designate and identify to FINRA one or more principals responsible for establishing, maintaining, and enforcing a system of supervisory control policies and procedures that test and verify that the member's supervisory procedures are reasonably designed, to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules, with respect to the activities of the member and its associated persons. Rule 3012(a)(1) further required that FINRA member firms create or amend supervisory procedures where needed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. NASD Conduct Rule 3012(a)(2)(B)(i) required member firms to establish and maintain written supervisory control policies reasonably designed to review and monitor all transmittals of funds or securities from the accounts of customers to third-party accounts.

At various times during the Relevant Period, without FSC's knowledge or approval, J.Z. sold memberships in the PFG fund. The PFG fund was not an approved product for sale by FSC representatives and FSC did not therefore supervise J.Z.'s sales of the PFG fund memberships. In connection with his sale of the PFG fund memberships, J.Z. submitted 23 LOAs to FSC each signed by one of 15 FSC customers, authorizing in aggregate the issuance of approximately \$1.6 million third-party checks made payable from FSC customer brokerage accounts to a bank account controlled by the PFG fund.

The PFG fund ultimately lost millions of dollars through speculative trading and other investments. To cover up the losses, A.P. created false account statements that fraudulently reflected fictitious assets and investment returns. A.P. made these false account statements available to the PFG fund investors through its website. The PFG fund collapsed in June 2012 when A.P. disappeared and was presumed dead. The FSC customers who invested in the PFG fund suffered significant losses.

During the Relevant Period, FSC failed to establish and maintain a supervisory system, including written supervisory procedures ("WSPs") that were reasonably designed to ensure compliance with applicable securities laws and regulations, as well as FINRA and NASD rules including monitoring of third-party distributions from customer accounts.

In particular, FSC failed to establish and maintain reasonable supervisory controls and procedures to monitor customer accounts to identify and review for patterns involving multiple transmittals of funds from customer's accounts to the same third-party payee. FSC's required annual testing of its supervisory controls and reports was not fully documented or verified and failed to detect any issues with its review of third-party check requests. FSC's procedures allowed for a decentralized manual review of third-party check requests. FSC failed to develop and utilize any exception reports to bolster its decentralized manual review of LOAs. Consequently, FSC's supervisory system was too limited to detect J.Z.'s misconduct, which involved, among other things, a pattern of checks issued from customer accounts to the same third-party payee.

As a result, FSC failed to conduct reasonable supervision of third-party check requests coming from a single branch office and approved the transmittal of approximately \$1.6 million of customer funds to the PFG fund.

Based on the foregoing conduct, FSC violated NASD Conduct Rules 3010(a), 3010(b), 3012(a)(1) and 3012(a)(2)(B)(i), and FINRA Rule 2010.

B. FSC also consents to the imposition of the following sanctions:

- A censure; and
- A \$200,000 fine.

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

FSC specifically and voluntarily waives any right to claim that they are 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

FSC specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against FSC;
- 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, FSC specifically and voluntarily waives any right to claim bias or prejudice of the Chief Legal Officer, 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.

FSC 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

FSC 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 FSC; and
- C. If accepted:
  - 1. This AWC will become part of FSC's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against FSC;
  - 2. This AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
  - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and

4. FSC 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. FSC 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 FSC'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. FSC may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. FSC 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 FSC, 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 FSC 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 FSC to submit it.

FSC Securities Corporation

3/6/17

Date



By: NOAH D SORKIN  
GENERAL COUNSEL

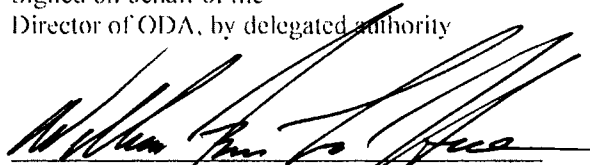
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Accepted by FINRA:

4/12/2017  
Date

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



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