

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**

**Release No. 77300/ March 7, 2016**

**ADMINISTRATIVE PROCEEDING**

**File No. 3-17154**

**In the Matter of**

**FIRST SOUTHWEST COMPANY, LLC**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTIONS 15(b), 15B(c)(2)  
AND 21C OF THE SECURITIES  
EXCHANGE ACT OF 1934, MAKING  
FINDINGS, AND IMPOSING REMEDIAL  
SANCTIONS AND A CEASE-AND-DESIST  
ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b), 15B(c)(2) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against First Southwest Company, LLC (“First Southwest” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b), 15B(c)(2) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

**III.**

On the basis of this Order and Respondent’s Offer, the Commission finds<sup>1</sup> that:

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<sup>1</sup> The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

A. SUMMARY

1. These proceedings arise out of violations by First Southwest, a broker-dealer and municipal securities dealer, of the fair dealing and financial advisory agreement rules of the Municipal Securities Rulemaking Board (“MSRB”) in connection with financial advisory services rendered by First Southwest to its municipal client, the Rhode Island Economic Development Corporation (“RIEDC”) (now known as the Rhode Island Commerce Corporation), relating to a private placement offering of municipal securities on October 22, 2010 (the “2010 bond issuance”).

2. From March 2010 to November 2010, First Southwest rendered financial advisory services to the RIEDC in connection with the 2010 bond issuance. First Southwest’s relationship with the RIEDC for the 2010 bond issuance, however, was not memorialized by a written agreement listing the specific services or tasks that First Southwest would provide in connection with the 2010 bond issuance until seven months into the financial advisory relationship.

3. By rendering financial advisory services to the RIEDC for seven months without a written financial advisory agreement, First Southwest violated MSRB Rule G-17, MSRB G-23(c) and Section 15B(c)(1) of the Exchange Act.

B. RESPONDENT

4. First Southwest Company, LLC is a limited liability company headquartered in Dallas, Texas. First Southwest is a registered broker-dealer and municipal advisor. First Southwest is also a municipal securities dealer and municipal securities broker as defined in Sections 3(a)(30) and 3(a)(31) of the Exchange Act.

C. FACTS

5. On November 2, 2010, the RIEDC sold \$75 million of taxable revenue bonds to investors in a private placement. First Southwest acted as financial adviser to the RIEDC in connection with the bonds. The proceeds of the offering were used to make a loan to 38 Studios LLC (“38 Studios”), a conduit borrower and start-up online gaming company, so that it could relocate to the State of Rhode Island and complete Project Copernicus, a new online game that 38 Studios was creating. The financing was intended to spur economic development and job creation in Rhode Island, with the bond payments to be funded from 38 Studios’ anticipated repayment of the loan from the RIEDC. Pursuant to the terms of the offering, in the event of a default by 38 Studios, the State of Rhode Island agreed to repay the bonds from general tax revenues, subject to annual appropriation.

6. First Southwest began providing financial advisory services to the RIEDC in connection with the offering in March 2010. These services included: (a) attending meetings concerning the bond issuance; (b) providing quantitative analysis to the RIEDC with respect to projected debt service schedules, budget proposals and structure alternatives; (c) providing

advice with respect to market conditions and structure; (d) assisting with the preparation and printing of the preliminary and final offering documents; (e) reviewing documents; (f) drafting rating agency and investor presentations; and (g) reviewing and analyzing the bond pricing process. The RIEDC paid \$120,000 in advisory service fees to First Southwest in connection with the offering.

7. Between March 2010 and October 2010, First Southwest did not have a written agreement with the RIEDC setting forth the basis of the compensation it would receive or describing the services it would render in connection with the 2010 bond issuance. As such, no written agreement set forth the scope of the services to be provided by First Southwest.<sup>2</sup>

8. In connection with work on the 2010 bond issuance, First Southwest did not review certain internal financial projections prepared by 38 Studios. First Southwest maintains that it was not obligated to analyze 38 Studios' ability to repay the loan to the RIEDC.

9. In November 2010, 38 Studios received approximately \$50 million in loan proceeds from the RIEDC. These loan proceeds were not sufficient for 38 Studios to continue its operations. 38 Studios thus became insolvent, defaulted on its loan to the RIEDC, and ultimately filed for bankruptcy in June 2012.

10. Section 15B(c)(1) of the Exchange Act prohibits a broker, dealer, or municipal securities dealer from using the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security in contravention of any rule of the MSRB. As a municipal securities dealer, First Southwest is subject to Section 15B(c)(1) of the Exchange Act and MSRB rules.

11. MSRB Rule G-23(c) requires each financial advisory relationship to be evidenced by a writing entered into prior to, upon or promptly after the inception of the financial advisory relationship, which sets forth, among other things, the basis of any compensation for the financial advisory services to be rendered. A financial advisory relationship exists when a broker, dealer, or municipal securities dealer renders financial advisory or consultant services to an issuer with respect to the issuance of municipal securities. MSRB Rule G-23(b). The provisions of Rule G-23 are designed to assure that financial advisory agreements are in writing, and that the basis of compensation to the advisor is clearly disclosed to the governmental unit. See Exchange Act Release No. 13987 (Sept. 22, 1977). MSRB Rule G-23 applies to broker, dealers, and municipal securities dealers who render financial advisory services to an issuer, including states or local governments and their agencies, as well as municipal corporations. See MSRB Rule G-23 Interpretive Notices (May 23, 1983).

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<sup>2</sup> Between at least 2002 and 2010, First Southwest had a written contract with the State of Rhode Island to provide certain financial advisory services to the State. The RIEDC was not covered by this contract.

12. During the time period of First Southwest's conduct, MSRB Rule G-17 provided that, "[i]n the conduct of its municipal securities activities, each broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice." MSRB Rule G-17 applies to a municipal securities dealer acting as a financial advisor. See Wheat, First Securities, Inc. f/k/a First Union Capital Markets Corp. and Teresa L. Cawley, Exchange Act Release No. 48378 (August 20, 2003).

D. VIOLATIONS

13. As a result of the conduct described above, First Southwest willfully<sup>3</sup> violated MSRB Rule G-17 and MSRB Rule G-23(c).

14. As a result of First Southwest's willful violations of MSRB Rule G-17 and MSRB Rule G-23(c), First Southwest willfully violated Section 15B(c)(1) of the Exchange Act.

**IV.**

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Sections 15(b), 15B(c)(2) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent First Southwest shall cease and desist from committing or causing any violations and any future violations of Section 15B(c)(1) of the Exchange Act, MSRB Rule G-17 and MSRB Rule G-23(c).

B. Respondent First Southwest is censured.

C. Respondent First Southwest shall, within ten (10) days of the entry of this Order, pay disgorgement of \$120,000 and prejudgment interest of \$22,400 to the Securities and Exchange Commission. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, transfer them to the general fund of the United States Treasury, subject to Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment must be made in one of the following ways:

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<sup>3</sup> A willful violation of the securities laws means "that the person charged with the duty knows what he is doing." Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." Id. (quoting Gearhart & Otis, Inc. v. SEC, 348 F.2d 798, 803 (D.C. Cir. 1965)).

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying First Southwest Company, LLC as the Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 23<sup>rd</sup> Floor, Boston, MA 02110.

D. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$50,000 to the Securities and Exchange Commission, of which \$25,000 shall be transferred to the Municipal Securities Rulemaking Board in accordance with Section 15B(c)(9)(A) of the Exchange Act. The Commission may distribute the remaining \$25,000 of civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended. The Commission will hold the remaining \$25,000 paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
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HQ Bldg., Room 181, AMZ-341  
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Payments by check or money order must be accompanied by a cover letter identifying First Southwest Company, LLC as the Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 23<sup>rd</sup> Floor, Boston, MA 02110.

By the Commission.

Brent J. Fields  
Secretary