

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013035051401**

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

RE: Fifth Third Securities, Inc.
CRD No. 628

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Fifth Third Securities, Inc. ("Fifth Third" or the "Firm") 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 Fifth Third alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A.** Fifth Third 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

Fifth Third has been a member of FINRA since 1939 and conducts a general securities business. It has more than 1,300 registered representatives operating out of more than 1,100 branch offices throughout the United States. As of December 31, 2017, the Firm had annual revenues of approximately \$219.3 million, including approximately \$4.5 million in revenue from the Firm's variable annuity ("VA") sales.

RELEVANT DISCIPLINARY HISTORY

On April 15, 2009, Fifth Third executed AWC No. 2005002244101 (the "2009 AWC"), in which FINRA found that from January 2004 to December 2006, Fifth Third effected 250 unsuitable VA exchange transactions in violation of NASD Rule 2310. FINRA also found that the Firm failed to maintain adequate systems and procedures to supervise VA sales in violation of NASD Rule 3010. Without admitting or denying the findings, Fifth Third consented to a censure, a \$1.75 million fine, an undertaking to pay restitution to affected customers, and an undertaking to engage an independent consultant ("IC") to perform a comprehensive review of, among other things, the Firm's supervision of VA transactions. The Firm also agreed to timely implement the independent consultant's recommended changes and to certify to FINRA that it had done so.

OVERVIEW

Variable annuities are complex investments commonly marketed and sold to retirees or people saving for retirement. Exchanging one VA with another (a “VA Exchange”) involves a comparison of the various complex features of each investment. Accordingly, FINRA rules require that an associated person, prior to recommending a VA Exchange, have a reasonable basis to believe that a VA Exchange transaction is suitable for the particular customer, taking into consideration, among other things, whether the customer would incur a surrender charge or other fees or charges, be subject to a new surrender period, or lose existing benefits. In addition, FINRA rules require that a registered principal review the recommended transaction and approve it only after determining that there is a reasonable basis to believe that the VA Exchange is suitable. FINRA rules further require a member to have written supervisory procedures reasonably designed to achieve compliance with these requirements and to develop training policies or programs reasonably designed to ensure compliance with the rules pertaining to variable annuities and VA Exchanges.

In Fifth Third’s 2009 AWC, FINRA found the Firm effected 250 unsuitable VA Exchanges and had inadequate systems and procedures governing its VA Exchange business. Pursuant to that AWC, the Firm agreed to comply with certain undertakings to remediate customer harm and improve Fifth Third’s supervision of its VA business. The Firm, however, violated the terms of the AWC by not complying with a specific undertaking required by the AWC. For over four years, the Firm failed to implement the IC’s recommendation that it develop certain procedures to monitor VA Exchanges by individual registered representatives.¹

After the Firm’s 2009 AWC, Fifth Third VA Exchange business continued to suffer from certain deficiencies. From 2013 through 2015 (the “Relevant Period”), Fifth Third made negligent misstatements and omissions of material fact to customers about the costs and benefits of VA Exchanges,² failed to have a reasonable basis to recommend and approve those exchanges for the majority of the sample VA Exchanges reviewed by FINRA, and failed to reasonably supervise VA Exchanges.

Fifth Third, through its registered representatives, made material misstatements and omissions in approximately 77% of a sample set of 250 VA Exchanges randomly selected and reviewed by FINRA from among the 1,431 VA Exchanges completed during the Relevant Period (the “Sample Set”). Misstatements and omissions about the cost or benefits of the VA Exchange made the exchange appear more beneficial to the customer. The Firm also failed to implement a supervisory structure reasonably designed to ensure that its registered representatives obtained and assessed accurate information about the customer’s existing and proposed VAs prior to effecting the exchanges. In addition, registered representatives did not receive reasonable training on how to conduct a comparative analysis of material features of the existing and proposed VAs during the

¹ This recommendation paralleled the Firm’s existing obligation under NASD Rule 2821(d) (now FINRA Rule 2330(d)) to monitor individual registered representatives’ rates of VA Exchanges.

² The transactions subject to this AWC are those in which a customer surrendered an existing VA product and replaced it with another VA product sold by a Fifth Third registered representative.

Relevant Period. As a result, the Firm's principals approved at least 92% of VA Exchanges submitted to them for review, even though paperwork for many of the approved exchanges contained at least one misstatement or omission of material fact.

As a result of the foregoing, Fifth Third violated FINRA Rule 2010 (just and equitable principles of trade – for failing to comply with a prior AWC and for negligent misstatements and omissions); FINRA Rules 2330(b) and (c) and 2010 (VA suitability); and NASD Rules 2821(d) and 2110, and FINRA Rules 2330(d) and (e) and 2010 (supervision and training regarding VA Exchanges).³

FACTS AND VIOLATIVE CONDUCT

1. Fifth Third Failed to Comply with the Terms of the 2009 AWC

A respondent's fulfillment of its obligations pursuant to a disciplinary settlement with FINRA is vital to FINRA's mission to protect investors and promote market integrity. In particular, when FINRA finds that a firm does not have supervisory systems and procedures reasonably designed to ensure the firm complies with FINRA Rules or federal securities laws, the AWC will often include an undertaking for the firm to hire an IC to review the firm's supervisory systems and procedures and recommend enhancements if necessary.⁴ A firm is then required to implement the IC recommendations, providing FINRA and investors assurance that the firm has remedied the supervisory deficiency and has implemented reasonable supervisory systems and procedures. A firm that fails to comply with a FINRA disciplinary sanction, including undertakings required by an AWC, engages in conduct inconsistent with just and equitable principles of trade, thereby violating FINRA Rule 2010.

In its 2009 AWC with Fifth Third, FINRA fined the Firm \$1.75 million for significant deficiencies in connection with the Firm's VA business. Pursuant to that AWC, the Firm agreed to engage an IC to evaluate the Firm's written supervisory procedures ("WSPs") relating to VA transactions and other areas, and to implement the IC's recommendations contained in the IC's report (the "IC Report"). The Firm further agreed to provide to FINRA a report certifying the implementation of those recommendations.

The Firm engaged an IC and received the IC Report on October 15, 2009. Although the IC Report concluded that the Firm had taken significant steps to address issues identified in the AWC, the IC Report included six specific recommendations that the Firm was required to implement to correct deficiencies in its supervisory processes and procedures. Among these, the IC recommended that the Firm develop additional supervisory surveillance procedures to monitor VA Exchanges on a registered representative basis.

The Firm had until March 2010, to implement the IC's recommendations with respect to enhanced surveillance procedures. The Firm, however, did not fully implement the recommendation to develop additional supervisory surveillance procedures to monitor

³ FINRA Rule 2010 superseded NASD Rule 2110, effective December 15, 2008, and FINRA Rule 2330 superseded NASD Rule 2821 effective February 8, 2010.

⁴ FINRA Sanctions Guidelines (Apr. 2017 ed.), General Principle No.3.

VA Exchanges on a registered representative basis, until September 30, 2014 – over four years after it was required to do so.

By virtue of the foregoing conduct, the Firm violated FINRA Rule 2010.

2. Fifth Third's VA Exchange Business From 2013 to 2015

During the Relevant Period, Fifth Third sold at least \$165.7 million worth of VAs through 1,431 VA Exchanges to customers whose average age was approximately 60. These VA Exchanges generated at least \$8.29 million in gross dealer commissions for the Firm. Fifth Third required its registered representatives to complete a Firm-generated VA Exchange form, as well as other paperwork, when recommending a VA Exchange. The VA Exchange form included a comparative chart and other information to provide investors with certain details about the material costs and benefits of the existing and proposed VAs. The VA Exchange form also included free form questions requiring the registered representative to explain the reasons for the recommendation and to specify other investments considered. The Firm required both the registered representative and the customer to sign this form and other paperwork. A principal at the Firm's Principal Review Desk ("PRD") then reviewed the completed paperwork to determine whether or not to approve the transaction.

3. Fifth Third Negligently Made Misstatements and Omissions of Material Fact in Connection With VA Exchanges

During the Relevant Period, Fifth Third, through its registered representatives, negligently misstated and omitted material facts concerning the costs and benefits associated with customers' VAs in the relevant VA Exchange paperwork. Approximately 77% of the Sample Set included at least one material misstatement or omission about the costs or benefits of the VAs at issue. The inaccurate information made the proposed VA Exchanges appear more beneficial to customers than was the case.

The misstatements and omissions contained in the Sample Set of the Firm's VA Exchange form related to the costs and benefits of the proposed exchanges, each of which artificially caused the proposed transaction to seem more advantageous to the customer. For example, some forms overstated the total fees of the existing VA or misstated fees associated with various riders. Other forms failed to disclose that the existing VA had an accrued living benefit value, or understated the living benefit value, which the customer would forfeit upon executing the proposed exchange. In other examples, some forms represented that a proposed VA had a living benefit rider even though the proposed VA did not, in fact, include a living benefit rider.

By virtue of the foregoing conduct, the Firm violated FINRA Rule 2010.

4. Fifth Third Failed to Have a Reasonable Basis to Recommend or Approve VA Exchanges

FINRA Rule 2330 establishes standards regarding purchases and exchanges of VAs. In particular, FINRA Rule 2330(b)(1)(A) requires that a member and a registered representative recommending a VA transaction have a reasonable basis to conclude the proposed transaction is suitable. FINRA Rule 2330(b)(1)(B) requires that, in connection

with a VA Exchange, the registered representative take into consideration the impact of the VA exchange, and whether the customer would incur surrender charges, be subject to the commencement of a new surrender period, lose existing benefits (e.g., living benefits, death benefits), or be subject to increased fees or charges (e.g., rider fees) associated with the VA Exchange. FINRA Rule 2330(c) requires a registered principal to review each VA transaction and approve such transactions only if the principal has determined that there is “a reasonable basis to believe that the transaction would be suitable” based on the factors delineated in Rule 2330(b).

To satisfy these requirements, registered representatives and principals must have product-specific knowledge when recommending and reviewing VA transactions. “[A] firm and its brokers cannot adequately determine the suitability of a transaction without knowing the material features of the VA in question.”⁵ Without assessing accurate and complete information about the material features of the specific VAs at issue, a registered representative cannot have a reasonable basis to make a recommendation, nor can a principal have a reasonable basis to approve the transaction.

As detailed above, in the majority of transactions in the Sample Set, Fifth Third registered representatives did not consider and compare accurate information about the costs and benefits of VA Exchanges, but rather completed and submitted VA Exchange forms with material misstatements and omissions related to the costs and benefits of the VA Exchanges. Without assessing accurate information regarding material features of the proposed and existing VA contracts on the forms, registered representatives were not able to fully conduct the suitability determination required under FINRA Rule 2330(b) or to reasonably conclude that the transaction was suitable.

Similarly, the Firm’s principals on the PRD had the responsibility to review each VA Exchange for suitability. The PRD principals, however, based their review on the inaccurate and incomplete VA Exchange forms provided by the Firm’s registered representatives. During the Relevant Period, PRD failed to detect or correct a large number of inaccurate VA Exchange forms and approved VA Exchanges as suitable despite those misstatements and omissions.

By virtue of the foregoing conduct, Fifth Third violated FINRA Rules 2330(b) and (c), and 2010.

5. Fifth Third Failed to Reasonably Supervise VA Exchanges

a. Fifth Third Failed to Implement Surveillance Procedures to Monitor Registered Representatives’ Rates of VA Exchanges

FINRA Rule 2330(d) (formerly NASD Rule 2821(d)) requires that member firms implement surveillance procedures to determine if “associated persons have rates of effecting deferred variable annuity exchanges that raise for review whether such rates of exchanges evidence conduct inconsistent with the applicable provisions of this Rule, other applicable FINRA rules, or the federal securities laws....” From May 5, 2008, the

⁵ Regulatory Notice 07-53, “Deferred Variable Annuities” at 2 (Nov. 2007).

effective date of NASD Rule 2821(d), through September 30, 2014, the Firm failed to implement certain surveillance procedures to monitor registered representatives' rates of VA Exchanges.

By virtue of the foregoing conduct, the Firm violated NASD Rules 2821(d) and 2110 and FINRA Rules 2330(d) and 2010.

b. Fifth Third Failed to Implement WSPs and Training Relating to VA Exchanges Reasonably Designed to Ensure Compliance with Applicable FINRA Rules

FINRA Rule 2330(d) requires member firms to establish and maintain specific written supervisory procedures relating to VA transactions reasonably designed to achieve compliance with the standards set forth in Rule 2330. FINRA Rule 2330(e) requires that firms implement training policies or programs reasonably designed to ensure compliance with FINRA Rule 2330.

During the Relevant Period, as evidenced by the material errors in 77% of the Sample Set, the Firm failed to implement reasonable supervisory systems, WSPs, or training required by Rule 2330. In particular, the Firm did not reasonably ensure that registered representatives obtained and assessed accurate information regarding costs and benefits on VA Exchange forms, and that registered representatives did not recommend, and principals did not approve, VA Exchanges absent a reasonable basis to conclude that each transaction was suitable.

For example, the Firm did not provide reasonable training to registered representatives on how to complete the Firm's VA Exchange form. Likewise, the Firm did not provide reasonable training to principals about how to conduct their review of VA Exchanges. Neither registered representatives nor principals were clearly instructed on how to verify VA product information on exchange forms, or on how to use that product information to conduct a meaningful comparison for customers or to conduct a principal review, respectively. Moreover, the Firm did not implement WSPs reasonably designed to ensure that VA Exchange forms were accurate and complete. Because of these failures, the Firm provided customers with materially inaccurate or incomplete information in approximately 77% of the exchange forms in the Sample Set.

The Firm also failed to implement WSPs or training reasonably designed to ensure that registered representatives and principals had a reasonable basis to recommend and approve VA Exchanges. As described above, in the transactions reviewed by FINRA, both registered representatives and principals often relied on materially inaccurate or incomplete information in connection with VA Exchanges. As a result, registered representatives and principals consistently failed to have a reasonable basis to recommend or approve VA Exchanges.

By virtue of the foregoing conduct, Fifth Third violated FINRA Rules 2330(d) and (e) and 2010.

B. Fifth Third also consents to the imposition of the following sanctions:



1. Censure;
2. A fine of \$4,000,000;⁶ and,
3. The Firm agrees to comply with the following undertakings:
 - a. Restitution to Customers:
 1. Within 90 days of the Notice of Acceptance of this AWC, Fifth Third is ordered to pay restitution totaling approximately \$2 million to customers who executed one or more VA Exchange during the Relevant Period. These restitution payments shall be made to the customers, and in the amounts, specified in a written plan of restitution not unacceptable to FINRA staff.
 2. Within 30 days of the date this AWC is accepted, the Firm shall provide, in writing, a written plan of restitution that shall include a description and explanation of the factors and methodology it intends to use to identify and compensate customers. In the event FINRA staff objects, FINRA staff will discuss its objections with Fifth Third and the Firm will have an opportunity to address FINRA's objections and resubmit the plan within 30 days. A failure to resubmit to FINRA staff a plan that is reasonably designed to meet the specific requirements and general purpose of the undertaking will be a violation of the terms of this AWC.
 3. Within 30 days of the date FINRA staff indicates that it has no objection to the Firm's methodology, the Firm shall provide, in writing, a schedule of all customers identified as eligible for restitution. The schedule shall include details of the qualifying purchases and total dollar amounts of restitution provided to each customer.
 4. Restitution payments to customers shall be preceded or accompanied by a letter, not unacceptable to FINRA staff, describing the reason for the payment. The letter must make clear that the payment is being made pursuant to a settlement with FINRA and as a term of this AWC. The letter may also not request a waiver of, or otherwise limit, any rights the customer has to pursue an action to obtain additional monetary compensation or other remedies for grievances related to the customer's VA.
 5. A registered principal on behalf of Fifth Third shall submit satisfactory proof of payment of restitution or of reasonable and

⁶ In determining the fine in this matter, FINRA considered, among other factors, the Firm's recidivism, the harm to customers from the Firm's violations, the breadth and extended duration of the violations, and the Firm's failure to comply with a prior regulatory action.

documented efforts undertaken to effect restitution. Such proof shall be submitted to James E. Day, Vice President and Chief Counsel, either by letter that identifies Fifth Third and the case number or by e-mail from a work-related account of the registered principal of Fifth Third to EnforcementNotice@FINRA.org. This proof shall be provided to the FINRA staff member listed above no later than 120 days after acceptance of the AWC.

6. If, for any reason, Fifth Third cannot locate a customer to whom restitution is owed after reasonable and documented efforts within 120 days of the Notice of Acceptance of this AWC, or such additional period provided for under applicable state unclaimed property laws or otherwise agreed to by FINRA staff in writing, Fifth Third shall forward any undistributed restitution amount to the appropriate escheat, unclaimed property or abandoned property fund for the state in which the customer is last known to have resided. Fifth Third shall provide satisfactory proof of such action to the FINRA staff member identified above and in the manner described above, within 14 days of forwarding the undistributed restitution to the appropriate state authority.
 7. Fifth Third shall pay all costs and expenses associated with the administration of the restitution payments described herein.
 8. The imposition of this restitution order or any other monetary sanction herein, the timing of such payments, and the acceptance of restitution by the customer, shall not preclude any customer from pursuing a separate action to obtain additional monetary compensation or other remedies.
- b. Certification Regarding Supervision of VA Exchanges: Fifth Third shall review and revise, as necessary, the Firm's systems, policies and procedures (written and otherwise) and training with respect to VA Exchanges described within Section I.A of this AWC. Within 90 business days of the date this AWC is accepted, the President of the Firm shall certify in writing to James E. Day, Vice President and Chief Counsel, at the address listed above that, with respect to the areas described in Section I.A. of this AWC, (i) the Firm has engaged in the review described above; and (ii) as of the date of the certification, the Firm has established and implemented systems and policies and procedures (written or otherwise) that are reasonably designed to achieve compliance with the applicable FINRA and NASD rules cited herein.

FINRA staff may, in its discretion, upon a showing of good cause and upon written request, extend the dates for compliance with any of the terms of these undertakings.

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

Fifth Third specifically and voluntarily waives any right to claim that it is 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

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

- A. To have a Complaint issued specifying the allegations against it;
- 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, Fifth Third specifically and voluntarily waives any right to claim bias or prejudgment 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.

Fifth Third 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

Fifth Third 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 Fifth Third; and
- C. If accepted:

1. this AWC will become part of Fifth Third's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
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. Fifth Third 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. Fifth Third 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 Fifth Third'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. Fifth Third may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Fifth Third 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 the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that it 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 the Firm to submit it.

Date 4/24/2018

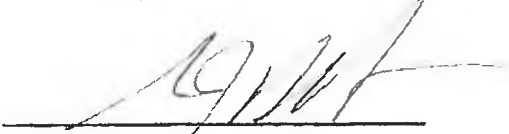
Howard Hammond

Respondent
Fifth Third Securities, Inc.

By: Howard Hammond

Title: President/CEO Fifth Third Securities

Reviewed by:

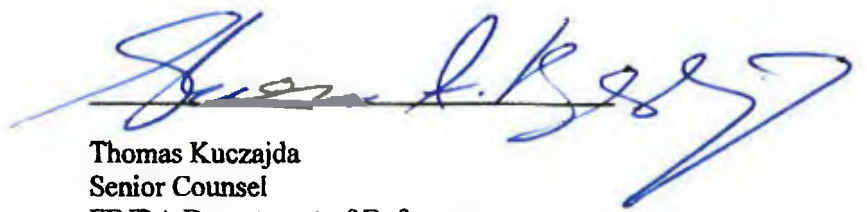


Gerald J. Russello
Counsel for Respondent
Sidley Austin LLP
787 Seventh Avenue
New York, NY 10019
(212) 839-5716

Accepted by FINRA:

Date 5/8/18

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



Thomas Kuczajda
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FINRA Department of Enforcement
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