

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2017052410201**

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

RE: Lincoln Investment  
CRD No. 519

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, Lincoln Investment (“Respondent,” “Lincoln,” 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 Lincoln alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. Lincoln 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**

Lincoln became a FINRA member in 1969. The Firm, which is based in Fort Washington, Pennsylvania, conducts a general securities business with approximately 1,500 registered representatives and approximately 420 branch offices.

**RELEVANT DISCIPLINARY HISTORY**

Lincoln has no relevant formal disciplinary history with the Securities and Exchange Commission, FINRA, any other self-regulatory organization, or any state securities regulator.

**OVERVIEW**

From August 1, 2015 through September 1, 2017 (the “Relevant Period”), Lincoln failed to implement reasonably-designed surveillance procedures to monitor its registered representatives’ rates of effecting variable annuity exchanges, in violation of FINRA Rules 2330(d), 3110, and 2010.

## **FACTS AND VIOLATIVE CONDUCT**

Variable annuities are contracts between an investor and an issuing company, whereby an issuing company promises to make periodic payments to the investor or a beneficiary designated by the investor. Variable annuities allow customers to choose from an array of contract features. For example, variable annuities may offer various types of optional riders, and can subject investors to a variety of fees or charges, including surrender charges, which investors may owe if they withdraw money from the annuity before a specified period.

In addition to firms' general supervisory obligations set forth in FINRA Rule 3110, FINRA Rule 2330 establishes specific standards for firms' supervision of variable annuities. NASD (FINRA's predecessor) adopted NASD Rule 2821 (FINRA Rule 2330's predecessor) due to concern that variable annuities can cause confusion for customers, particularly when customers exchange one variable annuity for another. Among other such standards, FINRA Rule 2330(d)(1) requires firms to:

implement surveillance procedures to determine if any of the member's 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 ... Rule [2330], other applicable FINRA rules, or the federal securities laws ("inappropriate exchanges").

Lincoln sold a significant amount of variable annuities during the Relevant Period. In 2017, for example, approximately 20 percent of the Firm's revenue came from variable annuity sales. During a routine examination of Lincoln in 2017, FINRA staff determined that Lincoln failed to implement reasonably-designed surveillance procedures to monitor its registered representatives' rates of effecting variable annuity exchanges during the Relevant Period. Specifically, FINRA staff discovered that the Firm only tracked exchanges where Lincoln was the broker of record for the variable annuity that was being exchanged, or so-called "Lincoln-to-Lincoln" exchanges. In so doing, the Firm did not track variable annuity exchanges where Lincoln was not the broker of record for the variable annuity that was being exchanged, or so-called "non-Lincoln-to-Lincoln" exchanges. During the Relevant Period, more than half of the approximately 2,800 variable annuity exchanges effected by the Firm's representatives were "non-Lincoln-to-Lincoln" exchanges and, thus, excluded from the Firm's surveillance report.

After FINRA raised this issue with Lincoln, the Firm corrected its surveillance report to include all variable annuity exchanges.

By virtue of the foregoing, Respondent violated FINRA Rules 2330(d), 3110, and 2010.

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

- A censure; and
- A \$35,000 fine.

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

Lincoln 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

Lincoln 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, Lincoln 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.

Lincoln 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**

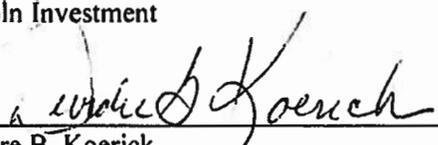
Lincoln understands that:

- 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 the Firm;
- C. If accepted:
  - 1. this AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the Firm;
  - 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. Lincoln 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. Lincoln 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 the Firm'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. Lincoln may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm 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 has been given a full opportunity to ask questions about it; that the Firm understands and acknowledges that FINRA does not represent or advise it, and the Firm cannot rely on FINRA or FINRA staff members for legal advice; that the Firm 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.

Lincoln Investment

09/11/2018  
Date (mm/dd/yyyy)

By:   
Deirdre B. Koerick  
Sr. Vice President, Chief Compliance Officer

Accepted by FINRA:

9.25.2018  
Date

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

  
Jeff Fauci, Director  
FINRA Department of Enforcement  
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