

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2005001611001**

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA") (f/k/a NASD)

RE: BI Investments, LLC, Respondent
CRD No. 125437

Pursuant to NASD Rule 9216 of FINRA's Code of Procedure, Respondent 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 Respondent alleging violations based upon the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent 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

Respondent, BI Investments, LLC ("BII" or the "firm"), is a broker-dealer headquartered in Glen Allen, Virginia. BII is owned by a regional consortium of community banks and currently has 86 active branches and 130 registered personnel. BII is a full-service broker-dealer offering securities and services including: investment advisement, corporate and government bonds, mutual funds, municipals, variable life insurance, and annuities. BII has been a FINRA member since March 2003.

RELEVANT PRIOR DISCIPLINARY HISTORY

The firm has no relevant disciplinary history.

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OVERVIEW

Between January 1, 2004 and August 31, 2005 (the "relevant period"), BII violated NASD Conduct Rules 3010(a) and (b) and 2110 by failing to establish, maintain and enforce a supervisory system and written procedures relating to its variable annuity business that were reasonably designed to achieve compliance with federal securities laws and regulations and NASD conduct rules. Specifically, the firm failed to distribute its written supervisory procedures manual to its registered representatives. The firm also failed to reasonably ensure that a principal adequately reviewed all variable annuity sales and exchanges for suitability and further failed to adequately enforce its written procedures regarding the proper documentation of variable annuity sales and exchanges by its registered representatives and its principal.

FACTS AND VIOLATIVE CONDUCT

BII Failed to Provide Its Registered Representatives With Copies of Its Written Supervisory Procedures

During the relevant period, BII maintained a Compliance and Written Supervisory Procedures Manual ("WSPs") which provided guidance on how the firm was to supervise all aspects of the firm's business. One provision in the WSPs specifically required that the registered representatives receive, read, understand and acknowledge their receipt of the WSPs via attestation. Notwithstanding this requirement in the WSPs, the firm's Chief Compliance Officer at the time disregarded this provision and failed to distribute the WSPs to the registered representatives.

BII's System For Supervising Its Variable Annuity Business Was Inadequate

NASD Conduct Rule 3010(a) requires each firm to establish and maintain a system, including written procedures, to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and with NASD rules. During the relevant period, BII's supervisory system relating to its variable annuity business was not reasonably designed to achieve compliance with applicable laws, regulations and rules. The firm's system delegated to the Chief Compliance Officer the responsibility for reviewing and approving variable annuity sales, including exchanges, and provided inadequate guidance to him on how to conduct his reviews. In addition, the firm had no exception reports for identifying potentially problematic transactions and exchanges.

BII's WSPs Regarding Variable Annuity Sales and Exchanges Were Inadequate

During the relevant period, BII's WSPs were not reasonably designed to achieve compliance with applicable securities laws and regulations and NASD rules in the area of variable annuities. The WSPs provided inadequate guidance to the firm's registered representatives and principal to determine whether variable annuity sales and exchanges were

suitable. For example, the WSPs contained inadequate guidance on how to consider the following factors when conducting suitability reviews of variability annuity exchanges: 1) an explanation of the benefits of replacing one variable annuity contract with another; 2) customer liquidity; 3) comparison of cost structures between contracts; 4) loss of death benefits; and 5) surrender charges.

The firm also inadequately enforced many of its supervisory procedures relating to the review and approval of its variable annuity sales and exchanges.

BII Inadequately Enforced Its WSPs Regarding Variable Annuity Sales

In determining whether the sale of a variable annuity product was suitable, the firm's WSPs stated that the registered representative and designated principal (Chief Compliance Officer) must be "reasonably certain" that the recommendation to purchase a variable annuity contract is suitable for the customer based upon information disclosed by the customer as to other security holdings, financial situation, need for retirement income, and liquidity needs. Rather than conduct an independent suitability review, the firm's Chief Compliance Officer primarily relied upon the registered representative's determination of suitability.

In addition, the firm's WSPs stated that the registered representative was responsible for documenting his or her reason for recommending the purchase of a variable annuity contract. The firm inadequately enforced the requirement for this documentation. Further, the firm's WSPs specified that any time a registered representative recommended the purchase of a variable annuity in a tax qualified account, the registered representative and designated principal (Chief Compliance Officer) each were required to provide written statements as to why the transaction was advantageous and suitable for the investor. Again, the firm inadequately enforced its requirements for either of these written statements. The Chief Compliance Officer failed to reasonably ensure that the registered representatives provided a written statement regarding the advantages and suitability of the transaction and that he provided his own written statement, as required.

BII Inadequately Enforced Its WSPs Regarding 1035 Variable Annuity Exchanges

In connection with 1035 Exchanges,¹ the firm's WSPs referenced recommendations contained in Notice to Members 99-35. BII's WSPs stated that "the Designated Principal [Chief

¹ Section 1035 of the United States tax code allows a customer to exchange an existing variable annuity contract for a new annuity contract without paying any tax on the income and investment gains in the customer's current variable annuity account. Such tax-free exchanges, known as 1035 exchanges, can be beneficial to the customer if another annuity has features preferred by the customer, such as larger death benefit, different annuity payout options, or a wider selection of investment choices. The customer may, however, be required to pay surrender charges on the old annuity if he or she is still in the surrender charge period at the time of the exchange. Also, the new annuity may have higher annual fees and charges than the old annuity, which will reduce the customer's returns. Because of these potential costs, lost death benefits, and loss of liquidity, exchanges must be evaluated closely to determine whether the exchange is suitable for the customer.

Compliance Officer] will ensure" that "for exchanges or replacements, an analysis document should be prepared that explains the benefits of the exchange and should be signed by the customer, registered representative, and principal." During the relevant period, BII's Designated Principal failed to require its registered representatives to complete a separate analysis document.

The WSPs required customers to complete and sign a form entitled, "Variable Product Switch Letter" upon switching from one variable annuity product to another. This "switch" form required the registered representative to state the reason for a customer's switch from one variable annuity product to another. The form contained signature lines for both the customer and the representative. The form was to be completed by the registered representative and then forwarded to the designated principal, Chief Compliance Officer, who was to decide whether the stated reason for the switch was valid. The firm failed to adequately enforce its requirement for a "Variable Annuity Switch Letter." As a result, the firm's registered representatives did not adequately document the customers' reasons for variable annuity exchanges.

In sum, BII inadequately enforced its WSPs regarding variable annuity exchanges by: 1) failing to adequately conduct comparisons between old and new contracts to ensure that a customer's position was improved with the new contract; 2) not reasonably ensuring that a separate "analysis document," explaining the benefits of an exchange, was prepared and signed by the representative, principal, and customer; and 3) not reasonably ensuring that a "Variable Product Switch Letter," providing the reason for an exchange, was completed. By inadequately enforcing the above provisions of its WSPs, BII failed to reasonably supervise its variable annuity business during the relevant period.

Conclusion

As a result of the above, the firm violated NASD Conduct Rules 3010(a) and (b) and 2110 by failing to establish, maintain and enforce a supervisory system and written procedures relating to its variable annuity business that were reasonably designed to achieve compliance with applicable federal securities laws and regulations and NASD conduct rules.

B. Respondent consents to the imposition of the following sanctions:

1. A censure;
2. A fine of \$100,000;
 - Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

- Respondent 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.

3. An undertaking that Respondent shall:

- a. Retain, within 60 days of the date of Notice of Acceptance of this AWC, an Independent Consultant, not unacceptable to FINRA staff, to conduct a comprehensive review of the adequacy of the firm's policies, systems and procedures (written and otherwise) and training relating to variable annuities;
- b. Exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant;
- c. Cooperate with the Independent Consultant in all respects, including by providing staff support. BII shall place no restrictions on the Independent Consultant's communications with FINRA staff and, upon request, shall make available to FINRA staff any and all communications between the Independent Consultant and the firm and documents reviewed by the Independent Consultant in connection with his or her engagement. Once retained, BII shall not terminate the relationship with the Independent Consultant without the FINRA staff's written approval; BII shall not be in and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client privilege or other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports or documents to FINRA;
- d. At the conclusion of the review, which shall be no more than 120 days after the date of Notice of Acceptance of this AWC, require the Independent Consultant to submit to the firm and FINRA staff a Written Report. The Written Report shall address, at a minimum, (i) the adequacy of the firm's policies, systems, procedures and training relating to variable annuities; (ii) a description of the review performed and the conclusions reached; and (iii) the Independent Consultant's recommendations for modifications and additions to the firm's policies, systems, procedures and training relating to variable annuities; and
- e. Require the Independent Consultant to enter into a written agreement that provides that, for the period of engagement and for

a period of two years from completion of the engagement, the Independent Consultant shall not enter in to any other employment, consultant, attorney-client, auditing or other professional relationship with BII, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any firm with which the Independent Consultant is affiliated in performing his or her duties pursuant to this AWC shall not, without prior written consent of the FINRA staff, enter in to any employment, consultant, attorney-client, auditing or other professional relationship with BII or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

- f. Within 60 days after delivery of the Written Report, BII shall adopt and implement the recommendations of the Independent Consultant or, if it determines that a recommendation is unduly burdensome or impractical, propose an alternative procedure to the Independent Consultant designed to achieve the same objective. The firm shall submit such proposed alternatives in writing simultaneously to the Independent Consultant and the FINRA staff. Within 30 days of receipt of any proposed alternative procedure, the Independent Consultant shall: (i) reasonably evaluate the alternative procedure and determine whether it will achieve the same objective as the Independent Consultant's original recommendation; and (ii) provide the firm with a written decision reflecting his or her determination. The firm will abide by the Independent Consultant's ultimate determination with respect to any proposed alternative procedure and must implement all recommendations deemed appropriate by the Independent Consultant.
- g. Within 30 days after the issuance of the latter of the Independent Consultant's Written Report or written determination regarding alternative procedures (if any), BII shall provide the FINRA staff with a written implementation report, certified by an officer of BII, attesting to, containing documentation of, and setting forth the details of the firm's implementation of the Independent Consultant's recommendations.
- h. Upon written request showing good cause, the FINRA staff may extend any of the procedural dates set forth above.

4. The firm's Chief Compliance Officer shall submit a certification to the FINRA staff that each and every registered representative of the firm has received, reviewed and agreed to comply with the firm's written supervisory procedures.²

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Formal Complaint issued specifying the allegations against it;
- 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 National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives 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.

Respondent further specifically and voluntarily waives any right to claim that a person violated the *ex parte* prohibitions of NASD Rule 9143 or the separation of functions prohibitions of NASD 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.

² FINRA acknowledges that this requirement was satisfied when it received such certification from the firm's current Chief Compliance Officer, dated October 23, 2007.

III.

OTHER MATTERS

Respondent understand 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 NASD Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against respondent; and
- C. If accepted:
 - 1. this AWC will become part of respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against respondent;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about respondent's disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and
 - 4. Respondent 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. Respondent 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 respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent 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.

Respondent certifies that the firm has read and understand 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 respondent to submit it.

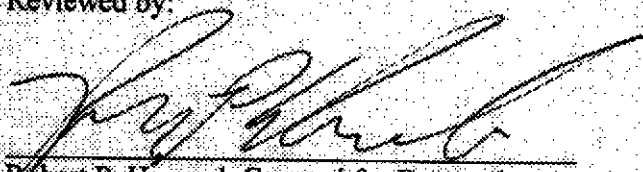
12/11/07

Date



Ronald A. Mentzer
Interim Principal
BI Investments, LLC
Respondent

Reviewed by:



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Tel: 202-659-6707

Accepted by FINRA:

12/31/07

Date

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



Samuel L. Israel
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