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## RESPONDENTS.

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switches that are the subject of this Complaint are identified on *Attachment A* to this Complaint. For each of the VA switches, Kromer made misrepresentations and omissions of material facts to customers through improperly completed Sales Data Sheet ("SDS") forms and Explanation of Investment ("EOI") forms. On the SDS and EOI forms, which were reviewed and signed by customers, Kromer misstated or omitted the remaining surrender periods and the surrender charges for the VA customers held at the prior firm. Kromer also improperly completed the SDSs and EOIs required for these exchanges by failing to explain why switching VAs was more advantageous than continuing to hold the VAs already owned by the customers. On the application forms Kromer also falsely indicated the customers' investment objectives and labeled the transactions as unsolicited, when they were not.

2. Kromer was motivated to make these switches, in large part, so that he could continue to receive compensation for VA contracts held by these customers after he moved his registration to FTS. The VAs his customers had held at his prior employer were proprietary to that firm and could not be transferred to FTS. Only after Kromer learned that fact did he cause his customers to switch their VAs to a VA product that was available through FTS.

3. Due to the large number of unsuitable VA switches that Kromer solicited and effected from March 2005 through April 2005 at FTS, Kromer was awarded a 42-inch plasma television (the top prize in a sales contest) at FTS given to the broker with the most revenue for the two-month period.

4. The 113 VA switches Kromer caused his customers to effect were unsuitable because the costs the customers incurred (the substantial surrender charges, higher administrative fees, and costs of additional riders) along with other disadvantages of the new VA (longer surrender periods, higher initial surrender fees, and higher threshold for withdrawing funds

without penalty) outweighed the benefits the customers received from the exchange. Moreover, these switches were unsuitable because of Kromer's cookie cutter approach, recommending and causing his customers to purchase the same VAs with the same riders, without taking into account the individual differences in age, income, and investment needs of his customers. Accordingly, Kromer violated NASD Rules 2310 and 2110.

5. Based on Kromer's misstatements and omissions of material fact in the documents used to effect the switches, and separately due to the unsuitable nature of the switches, Kromer also failed to observe high standards of commercial honor and just and equitable principles of trade, thus violating NASD Rule 2110.

6. From March 2005 to July 2005, [REDACTED] was Head of the Principal Review Desk ("PRD") at FTS and was responsible for reviewing and, where appropriate, approving the proposed switches of Kromer's customers for suitability. During this period, [REDACTED] personally reviewed and approved 95 VA switches of Kromer's customers despite the misstatements and omissions in the switch forms and numerous red flags revealing that the transactions were unsuitable. These 95 switches that [REDACTED] approved are identified on Attachment A to this Complaint.

7. From March 2005 to July 2005, [REDACTED] was the Chief Compliance Officer at FTS. [REDACTED] supervised and approved the inadequate efforts by FTS to address and rectify Kromer's misstatements and omissions and unsuitable recommendations in connection with switches of VAs.

8. From March 2005 to July 2005, [REDACTED] and [REDACTED] failed to supervise Kromer adequately in his making of unsuitable VA switches, thus violating NASD Rules 3010 and 2110.

9. From 2004 through 2005, [REDACTED] failed to maintain an adequate system of

supervision and follow-up review and to maintain and enforce written procedures reasonably designed to achieve compliance with applicable securities laws and regulations and NASD rules in connection with the sale of VAs, thus violating NASD Rules 3010 and 2110.

#### Respondents

10. Charles W. Kromer Jr. was registered as a General Securities Representative with FTS from January 12, 2005 until May 15, 2006. He worked out of the Springboro, Ohio branch. Immediately prior to his registration with FTS, Kromer was registered as a General Securities Representative and General Securities Sales Supervisor with another member firm from January 24, 1994 until January 12, 2005. Kromer first became registered as a General Securities Representative in October 1982 and was first registered as a General Securities Sales Supervisor in March 1992. Kromer is currently registered as a General Securities Representative and General Securities Sales Supervisor with a member firm.

11. [REDACTED] has been registered as a General Securities Representative, General Securities Principal, Financial and Operations Principal, Municipal Securities Principal, and Registered Options Principal with FTS since February 8, 2005. [REDACTED] was, at all times relevant to this Complaint, the Chief Compliance Officer at FTS. [REDACTED] first became registered as a General Securities Representative and General Securities Principal in 1988 and as a Financial and Operations Principal in 1990.

12. [REDACTED] was first registered as a General Securities Representative in December 1997. In November 2000, [REDACTED] first became registered as a General Securities Sales Supervisor, both for the General and Options modules. [REDACTED] was registered with FTS from December 2002 until May 15, 2007. In March 2003, [REDACTED] became registered as a General Securities Principal. Finally, in June 2005, he became registered as a Registered Options

Principal. ■■■■■ was, at all times relevant to this Complaint, the head of PRD at FTS. After leaving FTS, ■■■■■ was registered with another member firm as a General Securities Representative, General Securities Principal, General Securities Sales Supervisor, and Registered Options Principal from December 2007 until January 31, 2008. ■■■■■ is currently not registered with a member firm, but remains subject to FINRA jurisdiction pursuant to FINRA Bylaws, Article 5, Section 4(a).

#### **Fifth Third Securities, Inc.**

13. Fifth Third Securities, Inc. has been a member firm of FINRA (formerly known as NASD) since 1939. FTS is a wholly owned subsidiary of Fifth Third Bancorp, and has approximately 1,343 active branches and 1,564 registered representatives. It is headquartered in Cincinnati, Ohio. In April 2009, FTS settled a disciplinary matter with FINRA in connection with matters alleged in this Complaint.

#### **Discussion**

##### ***Kromer's Book of Business Prior to Joining FTS Included Many VAs***

14. From 1994 until January 2005, Kromer was registered as a General Securities Representative and General Securities Sales Supervisor at another member firm. There, Kromer was employed as an account executive servicing retail client accounts. VAs were among the products held by Kromer's customers.

15. In January 2005, when Kromer left that other member firm, he was the account executive for at least 74 customers who held VAs in their portfolios.

16. As of January 2005, Kromer's customers at the other member firm had an aggregate of approximately \$60 million invested in mutual funds and annuities. Kromer switched all of the 74 retail customers from VAs that were proprietary to his former employer,

Allstate [Name of Firm] VA2 and Allstate [Name of Firm] VA3 (the "Allstate VAs"), to VAs at FTS.

17. While at his former employer, Kromer received 12b-1 fees, also known as trailing commissions for those sales of VAs to customers who maintained VA contracts from one year to the next. As of January 2005, while still at his former employer, Kromer was earning approximately \$6,000 per month (\$72,000 annually) based on trailing commissions for VAs purchased and held by his customers.

***Kromer Joins FTS and Attempts Unsuccessfully to Transfer Allstate VAs to FTS***

18. On or about January 7, 2005, Kromer left his former employer and began working at FTS. Kromer's change of registration to FTS became effective on or about January 12, 2005, when he became registered at FTS as a General Securities Representative.

19. From January 12, 2005 until April 27, 2006, Kromer was supervised by CAK, an Affiliate Sales Manager ("ASM"), based in Dayton, Ohio. Springboro, Ohio, where Kromer worked, is located approximately 15 miles south of Dayton.

20. Kromer was hired at FTS as a Senior Retail Investment Consultant.

21. At or around the time that Kromer decided to switch his registration to FTS, he intended to transfer VA accounts held by customers at his former firm to FTS through the Automated Customer Account Transfer ("ACAT") procedure. Soon after becoming registered at FTS, Kromer began contacting customers to arrange to have their VAs transferred.

22. On or about February 17, 2005, after Kromer attempted to transfer Allstate VAs to FTS, Kromer was informed that the Allstate VAs could not be transferred to accounts at FTS because they were proprietary to his former firm.

23. Thereafter, in February 2005, Kromer understood that he would not be able to

collect commissions or other trailing compensation for his customers' holdings at his former employer that were not transferred to FTS.

***Kromer Begins Unsuitable Switching of Customer VAs***

24. After determining that Allstate VAs could not be transferred to FTS, and that he would lose the trailing commissions associated with those VAs, Kromer sought to have customers switch out of their Allstate VAs and into VAs offered at FTS.

25. Thereafter, beginning in or about February 2005, Kromer solicited customers who held Allstate VAs at his former employer to switch to the ING GoldenSelect Premium Plus VA ("ING GoldenSelect") that could be purchased and held at FTS.

26. Eventually 74 customers, following Kromer's recommendations, exchanged their Allstate VAs for VAs offered through FTS. Kromer recommended, and each customer purchased, the same VA -- the ING GoldenSelect VA -- with the same riders (the Max 7% Solution death benefit rider and the Minimum Guaranteed Income Benefit rider). The customers, however, ranged in age from 25 to 84 years old, with incomes that ranged from as low as \$25,000 per year up to \$500,000 per year. Of the 74 customers, household net worth ranged from \$100,000 to more than \$2 million and investment portfolios ranged from less than \$50,000 to more than \$500,000.

***Kromer's Switches were Unsuitable to Customers Due to Surrender Charges for Allstate VAs and Higher Surrender Periods, Higher Penalties, Lower Withdrawals Without Penalty, and Higher Administrative Charges of the New VAs***

27. In recommending to his customers this switch of VAs from Allstate to ING GoldenSelect, and then effecting the 113 transactions, Kromer engaged in unsuitable transactions for those 74 customers because:

- a. The 74 customers paid substantial surrender charges, totaling more than

\$273,000;

- b. By investing in the ING GoldenSelect VA, each customer started a new surrender period that was longer than the surrender period for the Allstate VAs (nine years instead of six), and faced a higher initial penalty (a high of eight percent versus a high of six percent) for early withdrawal;
- c. Customers could withdraw up to 15 percent of the balance of their Allstate VAs without incurring penalties but could only withdraw up to 10 percent under the ING GoldenSelect VA without incurring withdrawal fees; and
- d. The ING GoldenSelect VA imposed higher administrative costs on Kromer's customers than the Allstate VAs.

Kromer's Customers Paid Substantial Surrender Charges As a Result of the Unsuitable Switches. Were Assessed Longer Surrender Periods, and Faced Higher Surrender Penalties

28. The Allstate VAs held by Kromer's customers at the prior firm imposed six-year surrender periods for the initial investments and each subsequent investment; during the surrender periods, the customers could not sell their VAs without incurring surrender charges. Because Kromer's 74 customers who switched from their Allstate VAs to the ING GoldenSelect VA remained subject to surrender charges for selling their Allstate VAs, they paid surrender charges, ranging from approximately four to five percent. In total, Kromer's customers paid more than \$273,000 in surrender charges as a result of Kromer's unsuitable switches, approximately four percent of the amount of money Kromer's customers switched from Allstate VAs to ING GoldenSelect VAs at FTS.

29. The surrender charges under the Allstate VAs were six percent in the first year customers held the VAs and decreased each year the customers held the VAs. Any customers

who remained invested in the Allstate VAs for more than six years could sell their VAs without incurring any surrender fee.

| <u>ALLSTATE [NAME OF FIRM] VA 2 SURRENDER PERIOD/YEARS</u> |   |   |   |   |   |   |   |
|------------------------------------------------------------|---|---|---|---|---|---|---|
| NUMBER OF YEARS CUST. HELD VA                              | 0 | 1 | 2 | 3 | 4 | 5 | 6 |
| CHARGE (%) INCURRED AT TIME OF SURRENDER                   | 6 | 5 | 4 | 3 | 2 | 1 | 0 |

| <u>ALLSTATE [NAME OF FIRM] VA 3 SURRENDER PERIOD/YEARS</u> |   |   |   |   |   |   |   |
|------------------------------------------------------------|---|---|---|---|---|---|---|
| NUMBER OF YEARS CUST. HELD VA                              | 0 | 1 | 2 | 3 | 4 | 5 | 6 |
| CHARGE (%) INCURRED AT TIME OF SURRENDER                   | 6 | 5 | 5 | 4 | 3 | 2 | 0 |

30. In February 2005, Kromer understood that a customer who switched out of one of the Allstate VAs to the ING GoldenSelect VA at FTS would incur a new, longer surrender period for that VA. Under the terms of the ING GoldenSelect VA, the surrender period was nine years. Any customer seeking to withdraw funds from the ING GoldenSelect VA during the first four years of the contract would incur the full surrender charge of eight percent with the surrender charge decreasing each year thereafter:

| <b>ING GOLDENSELECT VA SURRENDER PERIOD/YEARS</b> |          |          |          |          |          |          |          |          |          |          |
|---------------------------------------------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| <b>NUMBER OF YEARS HELD VA</b>                    | <b>0</b> | <b>1</b> | <b>2</b> | <b>3</b> | <b>4</b> | <b>5</b> | <b>6</b> | <b>7</b> | <b>8</b> | <b>9</b> |
| <b>CHARGE INCURRED AT TIME OF SURRENDER</b>       | <b>8</b> | <b>8</b> | <b>8</b> | <b>8</b> | <b>7</b> | <b>6</b> | <b>5</b> | <b>3</b> | <b>1</b> | <b>0</b> |

31. Switching to the ING GoldenSelect therefore did not benefit any of Kromer's customers: each incurred a substantial surrender charge, each switched a VA with a six-year surrender period for one with a nine-year surrender period, and each had a higher surrender charge on the new ING GoldenSelect VA.

Kromer's Customers Could Withdraw Only 10 Percent Without Incurring a Penalty Under the ING GoldenSelect VA – Instead of the 15 Percent Penalty-Free Withdrawals Customers Enjoyed With the Allstate VAs

32. The Allstate VAs that Kromer's customers surrendered to buy the ING GoldenSelect VAs allowed a customer to withdraw up to 15 percent of the balance in the VA without incurring a penalty. The ING GoldenSelect VA that Kromer's customers purchased allowed a customer to withdraw only 10 percent of the balance without a penalty.

33. Selling the Allstate VAs and purchasing the ING GoldenSelect VAs disadvantaged Kromer's clients: the amount of funds that customers could withdraw from their VAs without penalties was reduced by one-third from 15 percent to 10 percent.

Kromer's Customers Paid Higher Administrative Charges

34. The Allstate VAs Kromer's customers surrendered had lower administrative charges (.10%) than the charges imposed by the ING GoldenSelect VA (.15%).

35. By switching customers from the Allstate VAs to the ING GoldenSelect VA,

customers were obligated to pay an annual administrative charge of \$40 for annuities with values less than \$100,000. Customers would not otherwise have paid such an administrative fee if their annuities were not switched. In accordance with the terms of the prospectus for the ING GoldenSelect VA, customers in at least 100 of the transactions would have paid the \$40 charge in at least the first year, based on the amount of customers' initial premiums.

36. Kromer's customers were therefore disadvantaged in switching from the Allstate VAs to the ING GoldenSelect VAs due to the increased administrative charges.

Kromer's Customers Were Saddled With Other Charges

37. The charges that customers incurred with the ING GoldenSelect VAs for certain other features were likewise higher than had they remained in the Allstate VAs. Every customer who switched into the ING GoldenSelect selected the 7% Max Solution death benefit and therefore incurred a Mortality and Expense Risk charge of 1.95% and an Asset-backed Administrative charge of .15% for a total charge of 2.10%. These charges were higher than the total charge of 1.85% customers with Allstate [Name of Firm] VA3 paid who had the enhanced death benefit rider.

38. Every customer who switched in to the ING GoldenSelect VA elected the Minimum Guaranteed Income Benefit Rider and therefore incurred an additional charge of 1.5% for a total charge of 3.60%, which was higher than the total charge of 2.2% in the Allstate [Name of Firm] VA3 policy for the income rider.

***Kromer Made Misrepresentations and Omissions of Material Fact to Customers***

39. In 2005 at FTS, in order to effect a switch from one VA to another VA -- also known as a 1035 exchange -- the firm's procedures required that the following FTS forms be completed accurately and signed by the FTS broker, signed by the customer, and then receive

supervisory approval by PRD:

- a. The Sales Data Sheet ("SDS"); and
- b. The Explanation of Investment form ("EOI").

40. In 2005, in order for Kromer to effect a purchase of the ING GoldenSelect VA as part of a VA switch at FTS, he was required to accurately complete and have the customer sign these forms before forwarding them for approval by PRD:

- a. ING GoldenSelect Deferred Variable Annuity Customer Data Form;
- b. ING Transfer/1035 Exchange Request; and the
- c. ING Notice Regarding Replacement.

41. Between March 2005 and July 2005, for each of the 113 switches, Kromer completed and submitted to FTS a SDS, EOI, ING GoldenSelect Deferred Variable Annuity Customer Data Form, ING Transfer/1035 Exchange Request, and ING Notice Regarding Replacement.

42. For all of the 113 VA contracts that Kromer submitted for his 74 customers, despite individual differences in customer investment experience, investment objectives and ages, Kromer included identical optional riders to the contracts including:

- a. The Death Benefit Option of "Max 7 % Solution", and
- b. The "Minimum Guaranteed Income Benefit (MGIB)."

***Kromer Made Misstatements and Material Omissions When He Filled Out the Fifth Third Sales Data Sheets***

43. Kromer completed an SDS for each of the 113 switch applications he effected on behalf of his customers.

44. In 2005, a completed SDS was required to include, among other things, the

security currently held by the customer, the proposed new security that is the subject of the switch, the penalties or fees the customer would incur for selling the existing security, the credits or income or cash bonuses that the client would receive for the new investment, and the rationale why a switch to the new product was advantageous to the customer.

45. For each of the 113 SDSs, as part of Section 1 entitled "Customer Information," Kromer was responsible for entering accurate information regarding each customer's investment history and investment objectives.

46. Specifically, for each customer, Kromer was required to select a single response box that accurately reflected the individual customer's information on the SDS, to each of the following questions:

- a. When do you plan to make principal withdrawals from this investment?
- b. What best defines your objective for this investment? (emphasis in original)
- c. What is your approach to investing?
- d. How long could you cover monthly living expenses with cash and liquid investments you currently have on hand?
- e. What type of investments have you purchased in the past?

47. For the question, "When do you plan to make principal withdrawals from this investment?" Kromer marked the box "More than 10 years" for each of the 113 customer SDSs.

48. For the question, "What best defines your objective for this investment?" (emphasis in original), the instructions called for only one of the following to be checked:

- a. Preservation of Capital;
- b. Income;
- c. Tax-advantaged Investment;

- d. Capital Appreciation; or
- e. Aggressive Growth.

49. For every one of the 113 SDSs that Kromer completed, he checked off all five boxes, representing all five potential investment objectives listed on the form.

50. It is inconsistent with investment strategy and therefore inaccurate and misleading for Kromer to have selected all five of the potential investment objectives for this specific investment.

51. For the question "What is your approach to investing?" the instructions called for only one of the following to be checked:

- a. Stable: Willing to accept little or no risk;
- b. Conservative: Willing to accept a low level of risk;
- c. Moderate: Willing to accept a moderate level of risk;
- d. Aggressive: Willing to accept a high level of risk; and
- e. Speculative: Willing to accept the highest level of risk.

52. In providing a response to the question "What is your approach to investing?" for each of the 113 SDSs, Kromer marked both "aggressive" and "moderate."

53. For the question "How long could you cover monthly living expenses with cash and liquid investments you currently have on hand?" Kromer marked the box "12 months or more" for each of the 113 SDSs.

54. For each of the 113 SDSs, as part of Section 3 entitled "Policy Information," Kromer was responsible for entering information regarding "Contract Rates" but failed to enter that information for any of the 113 SDSs.

55. For each of the 113 SDSs, as part of Section 4 entitled "1035

Exchange/Transfer/Rollover questionnaire” Kromer was responsible for entering a “yes” or “no” response to the question: “Will client incur a penalty, as a result of transferring/exchanging the original product?”

56. For each of the 113 SDSs, Kromer marked the “no” box, disclosing, incorrectly, that Allstate was not imposing a surrender charge or penalty on the customer as part of the switch.

57. Kromer’s disclosure on each of the 113 SDSs that there was no penalty was false. In fact, all of the 113 switches effected by Kromer incurred penalties from Allstate when the VAs were switched.

58. For each of the 113 SDSs, as part of Section 4 entitled “1035 Exchange/Transfer/Rollover questionnaire” Kromer was responsible for entering a response to the question “Why is this new product advantageous for the client?” For all but 13 of the 113 SDSs, Kromer entered “(See Attached)” but in fact did not include an attachment to the SDSs as implied by his entry.

59. Despite knowing that his customers faced surrender charges if they sold the Allstate variable annuity in 2005, Kromer failed to disclose the surrender charges on any of the 113 SDSs he completed during the review period, as required.

***Kromer Made Misstatements and Material Omissions When He Filled Out the Fifth Third Explanation of Investment Forms***

60. During the review period, Kromer was required to complete an EOI as a prerequisite for any customer to buy a variable annuity or variable life insurance product.

61. Kromer was responsible for completing the EOI accurately, having the customer review and sign the form, and for signing the form himself.

62. FTS procedures for completing an EOI also required the customer to place his or her initials next to approximately ten (10) paragraphs in the document that disclosed information about the nature of an investment in the specific variable annuity or variable life insurance product.

63. One paragraph of the EOI that required a customer signature was entitled "CONTRACT CHARGES" (all caps in EOI). The paragraph reads as follows:

I understand my policy will be subject to ongoing charges and expenses as described in the prospectus. I further understand that my policy will be subject to a \_\_\_percentage surrender charge in year one, declining to 0% at the end of year \_\_\_.

64. In completing the "CONTRACT CHARGES" paragraph, Kromer was responsible for inserting the correct values for the surrender charge and year the surrender charge reached zero percent.

65. During the review period, in 108 EOIs that Kromer completed for his customers to purchase the ING GoldenSelect VAs, he incorrectly noted a period of ten years, while the correct period according to the prospectus was nine years.

66. The EOI also contained a section entitled "Request to Switch Investment" (bold in original). In that section, Kromer was responsible for identifying the investment that the customer was liquidating to make the current investment. Kromer was also required to disclose:

- How long ago the customer made the investment that was being liquidated;
- The surrender charge or deferred sales charge that the customer will incur upon liquidating that investment;
- Whether the liquidation was solicited or unsolicited; and

- The "reason(s) for the changes, and/or the anticipated benefit(s) to the customer...."

67. Kromer was required to complete the Request to Switch Investment section on the EOIs for each of the 113 switches since customers liquidated investments held at his former employer in order to invest in VAs at FTS.

68. In completing the EOIs for customers, Kromer falsely disclosed to each customer that the customer would incur no surrender charge, when in fact, each customer had to pay a surrender charge. Kromer made that representation by writing in "\$0" (zero dollars) in surrender charge or deferred sales charges on each EOI.

69. Kromer's notation regarding the surrender or deferred sales charge for liquidating the Allstate VAs was inaccurate and misleading to customers who thereafter signed the form, agreeing to switch investments.

70. In completing all but three of the 113 EOIs, Kromer noted that the liquidation was unsolicited. The notation of "unsolicited" on those EOIs was inaccurate and misleading since Kromer had in fact solicited the customers to switch VAs.

71. In completing 100 of the 113 EOIs, Kromer noted as the reason for the changes or anticipated benefit to the customer, "(SEE ATTACHED)" but failed to attach any documents that articulated Kromer's reasons for the change or any anticipated benefit to the customers.

Kromer's notation of "(SEE ATTACHED)" failed to adequately address his obligation to complete that section of the form and provide the required explanation. For each of the 113 switches, Kromer failed to have reasonable grounds for believing that the recommendation was suitable for the customers.

72. In the 13 applications where Kromer did provide an attachment purporting to note

the reason for the changes or anticipated benefit, the explanations failed to address adequately his obligation to complete that section of the form.

***Kromer Received Substantial Compensation for the Switches***

73. Based in significant part on the switches from the Allstate VAs to the ING GoldenSelect VAs, Kromer earned approximately \$200,000 in commissions during the period April 2005 through July 2005.

74. Between March 1, 2005 and April 30, 2005, FTS conducted a sales contest called "Bragging Rights" in which the highest producing broker and his or her manager would each win a 42-inch plasma television. Kromer was aware of the contest while it was running and that the commissions generated from his VA switches counted towards the award. Because of the commissions generated from Kromer's VA switches during this period, Kromer won the award and was provided with the television. [REDACTED] approved issuing the award to Kromer.

***[REDACTED] Approved the Unsuitable Switch Transactions Submitted By Kromer Despite "Red Flags" Contained in the Misstatements and Omissions in the Application Documents***

75. FTS procedure required that all account forms associated with a VA switch be reviewed by PRD. [REDACTED] in his role as head of PRD, personally reviewed and approved 95 (approximately 84 percent) of the 113 switch applications submitted by Kromer (Attachment A to this Complaint identifies the applications reviewed by [REDACTED]). As part of his review and approval process for each switch, [REDACTED] was provided with the SDS, EOI, ING GoldenSelect Deferred Variable Annuity Customer Data Form, ING Transfer/1035 Exchange Request, and the ING Notice Regarding Replacement.

76. Once the SDS was prepared by Kromer and signed by the customer, it was provided to PRD for approval.

77. [REDACTED] signed or initialed 95 of the VA switch applications submitted by Kromer, reflecting his review and approval of the applications.

78. In approving 95 of Kromer's 113 unsuitable VA switches, [REDACTED] failed to respond adequately to the numerous red flags described above. [REDACTED] was also responsible for supervising personnel who approved the remainder of Kromer's unsuitable VA switches and, by not acting to ensure those switches were rejected, [REDACTED] failed to respond adequately to the red flags described above.

79. At the time [REDACTED] approved the VA switches, 100 of the 113 SDSs (including all 95 SDSs specifically reviewed and approved by [REDACTED] failed to include an attached explanation to the question "Why is the new product advantageous for the client" even though the form said "See Attached."

80. At the time [REDACTED] approved the VA switches, 100 of the 113 EOIs (including all 95 EOIs specifically reviewed and approved by [REDACTED] noted "See Attached" as an explanation to the question "The reason(s) for the changes, and/or the anticipated benefit(s) to the customer are:" but failed to include any attachment for that question.

81. [REDACTED] approved the VA switch applications despite the fact that the referenced attachments were not attached to the applications.

***[REDACTED] and [REDACTED] Failed to Make Suitability Determinations After Learning of Inaccuracies and Omissions in SDSs and EOIs Submitted by Kromer***

82. In or about May 2005, [REDACTED] and [REDACTED] became aware that information contained on SDSs and EOIs submitted by Kromer relating to the 113 accounts was incorrect.

83. Specifically, on or before May 19, 2005, [REDACTED] and [REDACTED] were each aware that:

- a. The SDSs prepared for customers liquidating their Allstate VAs and using proceeds from those sales to open accounts at FTS to purchase ING GoldenSelect VAs contained several inaccuracies regarding the penalties for transferring or exchanging VAs.
  - b. There was a surrender fee incurred for each of the Allstate VAs surrendered to facilitate the switches. Kromer did not disclose the surrender charge to customers at the time of the sale of the Allstate VAs and purchase of ING GoldenSelect VA, as required on both the SDS and the EOI. In fact, Kromer told customers that there were no surrender charges.
  - c. Kromer failed to provide in writing on many of the applications, a response to the question "Why is this new product advantageous for the client?" as required on the SDS.
  - d. Kromer failed to provide in writing on many of the applications, a description of "the reason(s) for the changes, and/or the anticipated benefits(s) to the customer ..." as required on the EOI.
84. After becoming aware of the inaccurate information and omissions contained in the SDSs and EOIs submitted by Kromer for the 113 accounts, [REDACTED] and [REDACTED]
- a. Failed to review the VA switches with the accurate information to determine whether the switches were suitable for the customers;
  - b. Took no steps to reverse the transactions that had been effected based on misstatements and material omissions to customers and suitability determinations that were approved based on those misstatements and omissions;
  - c. Took no steps to stop the processing of additional switches submitted by Kromer

that contained similar misstatements and omissions of material facts in the applications. In fact, at least 23 VA switches were effected between May 20 and July 27, 2005 for Kromer's customers, after [REDACTED] and [REDACTED] became aware of the deficiencies in the VA switch applications. [REDACTED] approved nine of those switches.

**[REDACTED] and [REDACTED] Response Was Insufficient to Correct Deficiencies in SDSs and EOIs Submitted by Kromer: [REDACTED] and [REDACTED] Failed to Supervise Kromer Sufficiently to Correct Deficiencies in SDSs and EOIs Submitted by Kromer**

85. After becoming aware of the inaccurate information and omissions contained in the SDSs and EOIs submitted by Kromer for the 113 accounts, neither [REDACTED] nor [REDACTED] required that all of the deficiencies be corrected on the firm's books and records and that customers be presented with forms that were completely accurate.

86. The EOIs were never corrected to accurately reflect that the switches were solicited by Kromer.

87. The SDSs were never corrected to accurately reflect each individual customer's investment objective.

88. The SDSs were never corrected to accurately reflect each individual customer's investments that had been purchased in the previous year.

89. The SDSs were never corrected to accurately reflect that the customers were incurring penalties for surrendering their Allstate VAs.

90. The SDSs were never corrected to accurately reflect the actual penalties to be incurred by the customers.

91. The SDSs were never corrected to accurately reflect why the new product was advantageous for the customers.

92. After becoming aware of the inaccurate information and omissions contained in the SDSs and EOIs submitted by Kromer for the 113 accounts, neither [REDACTED] nor [REDACTED] reviewed the transactions or reasonably delegated others to review the transactions to determine whether the switches were suitable transactions based on the accurate surrender charges paid.

93. After becoming aware of the inaccuracies in the application, [REDACTED] and [REDACTED] directed that only ten of Kromer's 74 customers be contacted regarding the misstatements and omissions in VA switch application materials. The contact was limited to the asking of three questions and did not adequately correct the misstatements and omissions of material facts made by Kromer. Nor did the questions adequately allow [REDACTED] or [REDACTED] to determine the suitability of the switches for the customers.

94. At no time did [REDACTED] or [REDACTED] take any action to reverse the transactions Kromer had already effected nor did they act to prevent Kromer from completing additional unsuitable switches.

***Brewer Failed to Adequately Address Failings Regarding Sales of VAs Noted in Internal Audit Reports***

95. In 2004, and again in 2005, Fifth Third Bank's Audit Division prepared Audit Division Reports. These reports were based on internal audits of the supervisory structure and general sales practices related to the sale of variable annuities by FTS.

96. The Internal Audit Reports addressing the supervisory structure and sales of VAs drafted or issued between May 2004 and May 2005 provided overall ratings of "Needs Improvement."

97. As early as May 2004, in an internal audit draft, the Audit Division identified needs for improvement based on findings, including:

- a. "There is no assessment being performed, documented or reported which identifies patterns of questionable transaction activity in variable annuity sales;" and
- b. "WSPs do not include a clear, documented exception policy regarding variable annuity sales."

98. In a February 16, 2005 report issued by the firm's Audit Division, it noted that its objectives were to "identify, document, and evaluate the supervisory structure, related risks, and internal controls related to the sale of VAs to FTS customers." To that end, the Audit Division evaluated the effectiveness of the FTS PRD with respect to VA suitability reviews. The Audit Division concluded, among other things, that:

PRD Policies and Procedures fail to define the process for documenting and reporting questionable transaction activity to FTS Management. Red flags identified through Principal reviews are not receiving appropriate attention and follow-up in order to ensure an effective supervisory system; and [t]he supervisory system established for variable annuity sales does not include a clear and consistent exception policy.

99. In a May 2, 2005 report issued by the firm's Audit Division, it noted that its objectives were to "identify, document, and evaluate the supervisory structure, related risks, and internal controls related to the sale of VAs to FTS customers." To that end, the Audit Division evaluated the effectiveness of the FTS PRD with respect to VA suitability reviews. The Audit Division concluded that "Red flags identified through Principal reviews are not receiving appropriate attention and follow-up in order to ensure an effective supervisory system; and the supervisory system established for VA sales does not include a clear and consistent suitability

standard or exception policy.”

100. [REDACTED] was responsible for replying to the audit reports and implementing adequate systems and procedures relating to the supervision of VA sales at FTS. Although made aware of these issues cited by the Audit Division, [REDACTED] failed to take adequate steps to correct the identified failings in the VA sales review process.

#### **FIRST CAUSE OF ACTION**

##### **Respondent Kromer Engaged in Unsuitable Variable Annuity Transactions**

##### **Violation of NASD Rules 2310 and 2110**

101. The Department repeats and realleges paragraphs 1 through 100 above.

102. In recommending to a customer the purchase, sale or switch of any security, a broker must have reasonable grounds for believing that the recommendation is suitable for the customer upon the basis of the facts, if any, disclosed by the customer as to his other security holdings and as to his financial situation and needs.

103. Between March 2005 and July 2005, Kromer effected 113 switches of variable annuities for 74 customers that were unsuitable based on the facts known to Kromer regarding customers' financial status and needs. These transactions were unsuitable because the costs of the transactions outweighed any benefit to the customers and because Kromer's uniform approach, recommending and effecting the purchase of the same VA with the same riders, disregarded substantial differences in his customers' ages, incomes, and investment strategies.

104. Based on the foregoing, Kromer failed to comply with his obligations to make suitable recommendations to customers in accordance with NASD Rule 2310 when he recommended that they switch from the Allstate VAs to ING GoldenSelect VAs.

105. By reason of the foregoing, Kromer violated NASD Rules 2310 and 2110.

## **SECOND CAUSE OF ACTION**

### **Respondent Kromer Made Misstatements and Omissions of Material Fact to Customers**

#### **Violation of NASD Rule 2110**

106. The Department repeats and realleges paragraphs 1 through 105 above.

107. NASD Rule 2110 imposes an independent duty on registered representatives to observe "high standards of commercial honor and just and equitable principles of trade." This obligation includes but is not limited to refraining from making misstatements and omissions of material facts to customers.

108. From February 2005 to July 2005, Kromer made misrepresentations and omissions of material facts to customers who owned Allstate VAs to induce them to switch to a VA that could be held at FTS. The switches would allow Kromer to continue to receive compensation from the investment of those customer assets. At the time Kromer made these representations and omissions of material facts, he knew or should have known the representations were false. As described above, these material misrepresentations and omissions focused on the surrender charges or penalties customers faced for selling their VAs at Allstate during the surrender charge period, the customers' investment objectives and history, and the advantages of switching the VA products.

109. By virtue of his misrepresentations and omissions as described above, Kromer violated NASD Rule 2110.

**THIRD CAUSE OF ACTION**

**Respondents [REDACTED] and [REDACTED] Failed to Adequately Supervise Kromer's  
Variable Annuity Sales Activities**

**Violation of NASD Rules 3010 and 2110**

110. The Department repeats and realleges paragraphs 1 through 109 above.

111. From January 2005 through July 2005, [REDACTED] was responsible for supervising the activities of FTS's PRD. PRD was responsible for reviewing and, only when appropriate, approving proposed VA switches of VA contracts, among other things. As head of PRD, [REDACTED] had responsibility to establish and maintain an adequate supervisory system and to maintain and enforce written procedures reasonably designed to achieve compliance with applicable securities laws and regulations and NASD rules for conduct at PRD.

112. In connection with his responsibilities at PRD, [REDACTED] personally reviewed and approved 95 of the 113 switch applications that Kromer filed to switch the VAs from Allstate to ING GoldenSelect. [REDACTED] was also responsible for supervising the review of the balance of the applications from Kromer that PRD reviewed.

113. Despite evidencing a review of 95 applications and being responsible for the review of the balance of the applications, [REDACTED] failed to adequately exercise his responsibility to review the applications to ensure that:

- (a) the information required to be included on the forms to determine suitability was entered accurately and in its entirety; and
- (b) transactions were suitable for FTS customers.

114. [REDACTED] and [REDACTED] had the responsibility and authority to supervise Kromer's activities. [REDACTED] directly approved the majority of Kromer's unsuitable transactions and

supervised personnel who approved the remainder. [REDACTED] became involved in the review of Kromer's unsuitable transactions and was responsible for the inadequate remedial steps taken with respect to those transactions.

115. Even after learning of the misstatements and omissions that Kromer made to customers and included in switch application forms, [REDACTED] and [REDACTED] failed to have the applications reviewed to determine whether the switches were suitable for customers. Nor did [REDACTED] or [REDACTED] ensure that the firm's books and records contained accurate information regarding the surrender fees paid by Kromer's customers in connection with the switches.

116. At no time did either [REDACTED] or [REDACTED] take steps to reverse the unsuitable transactions Kromer had already completed (and [REDACTED] had approved) nor did they act to prevent Kromer from completing further unsuitable transactions.

117. By reason of the foregoing, Respondents [REDACTED] and [REDACTED] failed to adequately supervise the VA sales activities of Kromer in violation of NASD Rules 3010 and 2110.

#### **FOURTH CAUSE OF ACTION**

##### **Respondent [REDACTED] Failed to Establish, Maintain and Enforce an Adequate Supervisory System and Written Supervisory Procedures in Connection with the Sale of Variable Annuity Sales**

##### **Violation of NASD Rules 3010 and 2110**

118. The Department repeats and realleges paragraphs 1 through 117 above.

119. In 2004 and 2005, [REDACTED] was aware that the firm's Audit Division had determined that there were deficiencies in the manner PRD conducted its reviews of sales of VAs but failed to timely and adequately address those deficiencies.

120. From March 2005 through July 2005, [REDACTED] was aware that Kromer had engaged

in misrepresentations and omissions of material facts in soliciting customers to switch VAs from Allstate VAs held at Kromer's former employer to ING GoldenSelect VAs held at FTS.

121. Despite knowing of Kromer's misrepresentations and omissions of material facts, █████ failed to maintain a supervisory system reasonably designed to correct the wrongful conduct and address Kromer's violative conduct.

122. █████ failed to establish and maintain an adequate supervisory system and to maintain and enforce written procedures reasonably designed to achieve compliance with applicable securities laws and regulations and NASD rules.

123. Among other things, the supervisory system and written supervisory procedures in effect during the relevant period failed to adequately address:

- a. Ensuring that SDSs and EOIs were completely and accurately completed to allow for a meaningful supervisory review for suitability; and
- b. Reasonable methods for evaluating when a recommended VA switch is a suitable recommendation for the customer.

124. By virtue of this conduct, Brewer violated NASD Rules 2110 and 3010(a) and (b).

#### **RELIEF REQUESTED**

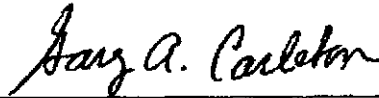
WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed.
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that the Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest.

- C. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

DATED: January 20, 2010



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**ATTACHMENT A  
KROMER, [REDACTED] AND [REDACTED] COMPLAINT**

|    | Customer Initials | AGE   | Original VA              | Date of Original Purchase | Surrender Date of Original Purchase | Allstate Surrender Charge | Original VA Value at Surrender | ING Contract Date | ING Initial Premium | PRD Approval | Attachment to EOI and SDS |
|----|-------------------|-------|--------------------------|---------------------------|-------------------------------------|---------------------------|--------------------------------|-------------------|---------------------|--------------|---------------------------|
| 1  | MB                | 46.61 | Allstate VA3             | 7/16/2002                 | 7/16/2008                           | \$ 728.79                 | \$ 21,109.18                   | 5/24/2005         | \$ 21,109.18        | [REDACTED]   | N                         |
| 2  | BB                | 46.59 | Allstate VA3             | 4/9/2002                  | 4/9/2008                            | \$ 530.66                 | \$ 13,595.64                   | 4/4/2005          | \$ 13,595.64        | [REDACTED]   | N                         |
| 3  | DB                | 60.79 | Allstate VA3             | 1/24/2003                 | 1/24/2009                           | \$ 1,146.59               | \$ 35,682.17                   | 4/12/2005         | \$ 3,172.03         | BLANK        | N                         |
| 4  | RB                | 71.59 | Allstate VA3             | 5/29/2002                 | 5/29/2008                           | \$ 836.55                 | \$ 19,769.60                   | 4/4/2005          | \$ 19,769.60        | [REDACTED]   | N                         |
| 5  | DXB               | 66.60 | Allstate VA3             | 8/12/2002                 | 8/12/2008                           | \$ 1,310.06               | \$ 40,441.52                   | 4/4/2005          | \$ 40,441.52        | [REDACTED]   | N                         |
| 6  | TB                | 33.53 | Allstate VA3             | 8/9/2002                  | 8/9/2008                            | \$ 2,418.39               | \$ 59,294.81                   | 5/24/2005         | \$ 59,294.81        | [REDACTED]   | N                         |
| 7  | RB                | 64.98 | Allstate VA3             | 10/18/2001                | 10/18/2007                          | \$ 2,515.08               | \$ 67,970.52                   | 5/31/2005         | \$ 67,970.52        | E            | Y                         |
| 8  | RB                | 64.98 | Allstate VA3             | 10/18/2001                | 10/18/2007                          | \$ 5,046.04               | \$ 142,304.58                  | 5/31/2005         | \$ 142,304.58       | E            | Y                         |
| 9  | DOB               | 64.88 | Allstate VA3             | 10/18/2001                | 10/18/2007                          | \$ 4,328.07               | \$ 121,535.13                  | 5/31/2005         | \$ 40,617.46        | J            | Y                         |
| 10 | DBN               | 40.19 | Allstate<br>Stanley 2 VA | 5/19/2003                 | 5/19/2009                           | \$ 1,440.98               | \$ 28,358.94                   | 4/12/2005         | \$ 28,358.94        | [REDACTED]   | N                         |
| 11 | KB                | 57.24 | Allstate<br>Stanley 2 VA | 11/14/2003                | 11/14/2009                          | \$ 1,107.34               | \$ 17,326.38                   | 5/24/2005         | \$ 17,326.38        | [REDACTED]   | N                         |
| 12 | EC                | 60.88 | Allstate VA3             | 7/1/2002                  | 7/1/2008                            | \$ 851.77                 | \$ 23,469.01                   | 6/30/2005         | \$ 23,469.01        | J            | Y                         |
| 13 | LC                | 56.59 | Allstate VA3             | 7/1/2002                  | 7/1/2008                            | \$ 2,029.85               | \$ 60,410.40                   | 5/31/2005         | \$ 60,410.40        | J            | Y                         |
| 14 | LC                | 56.67 | Allstate VA3             | 7/1/2002                  | 7/1/2008                            | \$ 851.43                 | \$ 23,411.16                   | 6/30/2005         | \$ 3,165.22         | J            | Y                         |
| 15 | DC                | 53.93 | Allstate VA3             | 4/22/2002                 | 4/22/2008                           | \$ 3,988.38               | \$ 132,161.10                  | 6/22/2005         | \$ 14,889.92        | E            | Y                         |
| 16 | DC                | 53.99 | Allstate VA3             | 4/22/2002                 | 4/22/2008                           | \$ 2,800.04               | \$ 92,700.77                   | 6/22/2005         | \$ 14,889.93        | E            | Y                         |

**ATTACHMENT A**  
**KROMER, [REDACTED] AND [REDACTED] COMPLAINT**

| Customer Initials | AGE | Original VA        | Date of Original Purchase | Surrender Date of Original Purchase | Allstate Surrender Charge | Original VA Value at Surrender | ING Contract Date | ING Initial Premium | PRD Approval | Attachment to EOJ and SDS |
|-------------------|-----|--------------------|---------------------------|-------------------------------------|---------------------------|--------------------------------|-------------------|---------------------|--------------|---------------------------|
| 17                | DC  | 53.91 Allstate VA3 | 4/22/2002                 | 4/22/2008                           | \$ 2,800.04               | \$ 89,988.84                   | 5/24/2005         | \$ 89,988.84        | E            | Y                         |
| 18                | IC  | 66.40 Allstate VA3 | 3/5/2003                  | 3/5/2009                            | \$ 180.00                 | \$ 3,025.87                    | 4/13/2005         | \$ 5,025.87         |              | N                         |
| 19                | IC  | 66.39 Allstate VA3 | 3/17/2003                 | 3/17/2009                           | \$ 3,979.38               | \$ 124,804.55                  | 4/11/2005         | \$ 64,718.99        |              | N                         |
| 20                | TC  | 53.89 Allstate VA3 | 6/26/2002                 | 6/26/2008                           | \$ 697.34                 | \$ 16,863.04                   | 5/25/2005         | \$ 16,863.04        |              | N                         |
| 21                | DD  | 66.68 Stanley 2 VA | 7/30/2003                 | 7/30/2009                           | \$ 2,423.79               | \$ 43,106.70                   | 4/5/2005          | \$ 32,842.36        |              | N                         |
| 22                | ID  | 68.56 Stanley 2 VA | 6/20/2003                 | 6/20/2009                           | \$ 1,604.51               | \$ 27,413.87                   | 4/11/2005         | \$ 27,413.87        |              | N                         |
| 23                | ID  | 68.55 Stanley 2 VA | 6/20/2003                 | 6/20/2009                           | \$ 521.22                 | \$ 8,619.46                    | 4/6/2005          | \$ 8,619.46         |              | N                         |
| 24                | IE  | 60.65 Allstate VA3 | 7/9/2002                  | 7/9/2008                            | \$ 2,394.99               | \$ 46,105.25                   | 4/25/2005         | \$ 46,105.25        |              | N                         |
| 25                | WE  | 64.73 Allstate VA3 | 6/4/2002                  | 6/4/2008                            | \$ 2,445.29               | \$ 61,919.48                   | 4/11/2005         | \$ 61,919.48        |              | N                         |
| 26                | JOE | 63.54 Allstate VA3 | 6/4/2002                  | 6/4/2008                            | \$ 3,619.99               | \$ 94,549.50                   | 4/14/2005         | \$ 95,549.50        |              | N                         |
| 27                | DF  | 34.75 Stanley 2 VA | 7/28/2003                 | 7/28/2009                           | \$ 1,651.53               | \$ 26,968.55                   | 4/18/2005         | \$ 26,968.55        |              | N                         |
| 28                | DF  | 34.82 Stanley 2 VA | 7/30/2003                 | 7/30/2009                           | \$ 796.62                 | \$ 12,741.74                   | 4/28/2005         | \$ 12,741.74        |              | N                         |
| 29                | JP  | 62.51 Allstate VA3 | 8/13/2002                 | 8/13/2008                           | \$ 751.71                 | \$ 23,037.40                   | 4/18/2005         | \$ 23,037.40        |              | N                         |
| 30                | JP  | 62.54 Allstate VA3 | 8/29/2002                 | 8/29/2008                           | \$ 477.94                 | \$ 11,005.96                   | 4/21/2005         | \$ 11,005.96        |              | N                         |
| 31                | CF  | 44.09 Allstate VA3 | 4/15/2003                 | 4/15/2009                           | \$ 246.01                 | \$ 5,884.34                    | 4/15/2005         | \$ 3,000.00 BLANK   |              | N                         |
| 32                | IG  | 60.67 Allstate VA3 | 3/11/2002                 | 3/11/2008                           | \$ 2,328.95               | \$ 59,979.89                   | 4/18/2005         | \$ 59,979.89        |              | N                         |

**ATTACHMENT A  
KROMER, [REDACTED] AND [REDACTED] COMPLAINT**

|    | Customer Initials | AGE   | Original VA           | Date of Original Purchase | Surrender Date of Original Purchase | Allstate Surrender Charge | Original VA Value at Surrender | ING Contract Date | ING Initial Premium | PRD Approval | Attachment to EOI and SDS |
|----|-------------------|-------|-----------------------|---------------------------|-------------------------------------|---------------------------|--------------------------------|-------------------|---------------------|--------------|---------------------------|
| 33 | JOG               | 26.71 | Allstate Stanley 2 VA | 12/30/2003                | 12/30/2009                          | \$ 610.05                 | \$ 9,669.56                    | 4/21/2005         | \$ 9,669.56         | [REDACTED]   | N                         |
| 34 | JAG               | 56.08 | Allstate VA3          | 8/28/2003                 | 8/28/2009                           | \$ 3,884.20               | \$ 65,987.31                   | 6/20/2005         | \$ 65,987.31        | [REDACTED]   | N                         |
| 35 | JAG               | 55.96 | Allstate VA3          | 7/17/2002                 | 7/17/2008                           | \$ 617.23                 | \$ 15,651.86                   | 5/9/2005          | \$ 15,651.86        | [REDACTED]   | N                         |
| 36 | QO                | 62.70 | Allstate VA3          | 3/31/2003                 | 3/31/2009                           | \$ 2,225.98               | \$ 72,178.25                   | 4/4/2005          | \$ 72,178.25        | [REDACTED]   | N                         |
| 37 | DG                | 62.88 | Allstate VA3          | 1/29/2003                 | 1/29/2009                           | \$ 3,762.37               | \$ 122,244.37                  | 4/4/2005          | \$ 122,244.37       | [REDACTED]   | N                         |
| 38 | DG                | 62.88 | Allstate VA3          | 1/29/2003                 | 1/29/2009                           | \$ 3,758.09               | \$ 121,815.13                  | 4/4/2005          | \$ 121,815.00       | [REDACTED]   | N                         |
| 39 | DG                | 62.89 | Allstate VA3          | 1/29/2003                 | 1/29/2009                           | \$ 3,758.10               | \$ 123,552.71                  | 4/5/2005          | \$ 123,552.71       | [REDACTED]   | N                         |
| 40 | MH                | 73.06 | Allstate VA3          | 4/17/2003                 | 4/17/2009                           | \$ 1,837.32               | \$ 54,060.20                   | 4/18/2005         | \$ 54,060.20        | [REDACTED]   | N                         |
| 41 | SH                | 61.23 | Allstate Stanley 2 VA | 8/19/2003                 | 8/19/2009                           | \$ 6,354.44               | \$ 108,250.22                  | 4/5/2005          | \$ 108,250.22       | [REDACTED]   | N                         |
| 42 | SH                | 61.23 | Allstate Stanley 2 VA | 8/19/2003                 | 8/19/2009                           | \$ 6,354.44               | \$ 103,987.47                  | 4/4/2005          | \$ 51,213.06        | [REDACTED]   | N                         |
| 43 | SH                | 61.23 | Allstate Stanley 2 VA | 7/21/2003                 | 7/21/2009                           | \$ 6,384.94               | \$ 102,133.16                  | 4/4/2005          | \$ 55,860.32        | [REDACTED]   | N                         |
| 44 | MH                | 69.22 | Allstate VA3          | 4/23/2003                 | 4/23/2009                           | \$ 689.44                 | \$ 20,387.16                   | 4/14/2005         | \$ 20,387.16        | [REDACTED]   | N                         |
| 45 | JH                | 37.88 | Allstate Stanley 2 VA | 6/12/2003                 | 6/12/2009                           | \$ 590.50                 | \$ 11,364.10                   | 7/1/2005          | \$ 11,364.10        | [REDACTED]   | N                         |
| 46 | JH                | 37.68 | Allstate Stanley 2 VA | 6/5/2003                  | 6/5/2009                            | \$ 639.40                 | \$ 9,621.94                    | 4/18/2005         | \$ 9,621.94         | [REDACTED]   | N                         |
| 47 | GH                | 66.83 | Allstate Stanley 2 VA | 10/15/2003                | 10/15/2009                          | \$ 6,196.02               | \$ 105,994.12                  | 4/5/2005          | \$ 54,163.20        | [REDACTED]   | N                         |
| 48 | GH                | 66.83 | Allstate VA3          | 2/14/2003                 | 2/14/2009                           | \$ 1,370.03               | \$ 47,789.19                   | 4/11/2005         | \$ 47,789.19        | [REDACTED]   | N                         |

**ATTACHMENT A  
KROMER, [REDACTED] AND [REDACTED] COMPLAINT**

|    | Customer Initials | AGE   | Original VA           | Date of Original Purchase | Surrender Date of Original Purchase | Allstate Surrender Charge | Original VA Value at Surrender | ING Contract Date | ING Initial Premium | PRD Approval | Attachment to EOI and SDS |
|----|-------------------|-------|-----------------------|---------------------------|-------------------------------------|---------------------------|--------------------------------|-------------------|---------------------|--------------|---------------------------|
| 49 | AH                | 25.79 | Allstate Stanley 2 VA | 5/5/2003                  | 5/5/2009                            | \$ 181.11                 | \$ 2,961.56                    | 4/11/2005         | \$ 2,961.56         | [REDACTED]   | N                         |
| 50 | KH                | 62.61 | Allstate Stanley 2 VA | 5/19/2003                 | 5/19/2009                           | \$ 7,909.66               | \$ 110,570.99                  | 4/22/2005         | \$ 110,570.99       | [REDACTED]   | N                         |
| 51 | KH                | 62.61 | Allstate Stanley 2 VA | 7/15/2002                 | 7/15/2008                           | \$ 845.62                 | \$ 21,163.54                   | 4/22/2005         | \$ 21,163.54        | [REDACTED]   | N                         |
| 52 | KH                | 62.61 | Allstate Stanley 2 VA | 5/19/2003                 | 5/19/2009                           | \$ 5,655.64               | \$ 85,807.88                   | 4/22/2005         | \$ 85,807.88        | [REDACTED]   | N                         |
| 53 | HH                | 56.48 | Allstate VA3          | 7/29/2002                 | 7/29/2008                           | \$ 424.60                 | \$ 11,093.63                   | 4/21/2005         | \$ 11,093.63        | [REDACTED]   | N                         |
| 54 | PJ                | 70.79 | Allstate VA3          | 9/13/2002                 | 9/13/2008                           | \$ 3,959.76               | \$ 130,771.52                  | 4/4/2005          | \$ 62,026.02        | [REDACTED]   | N                         |
| 55 | PJ                | 70.79 | Allstate VA3          | 2/21/2002                 | 2/21/2008                           | \$ 4,816.96               | \$ 154,659.46                  | 4/4/2005          | \$ 154,659.46       | [REDACTED]   | N                         |
| 56 | PI                | 70.79 | Allstate VA3          | 9/13/2002                 | 9/13/2008                           | \$ 3,959.76               | \$ 119,294.16                  | 4/4/2005          | \$ 59,193.76        | [REDACTED]   | N                         |
| 57 | PI                | 70.81 | Allstate VA3          | 9/13/2002                 | 9/13/2008                           | \$ 3,959.76               | \$ 132,063.42                  | 4/11/2005         | \$ 132,063.42       | [REDACTED]   | N                         |
| 58 | PI                | 70.79 | Allstate VA3          | 9/12/2002                 | 9/12/2008                           | \$ 4,906.48               | \$ 157,588.06                  | 4/4/2005          | \$ 157,588.06       | BLANK        | N                         |
| 59 | DM                | 51.67 | Allstate Stanley 2 VA | 8/22/2003                 | 8/22/2009                           | \$ 2,175.55               | \$ 37,059.86                   | 4/12/2005         | \$ 37,059.86        | [REDACTED]   | N                         |
| 60 | JM                | 69.59 | Allstate VA3          | 9/10/2001                 | 9/10/2007                           | \$ 4,531.67               | \$ 144,570.81                  | 4/4/2005          | \$ 144,570.81       | [REDACTED]   | N                         |
| 61 | JM                | 69.59 | Allstate VA3          | 7/23/1996 and 3/15/2002   | 7/23/2002 and 3/15/2008             | \$ 4,421.53               | \$ 152,735.49                  | 4/4/2005          | \$ 91,419.58        | [REDACTED]   | N                         |
| 62 | JM                | 69.59 | Allstate VA3          | 9/28/2001                 | 9/28/2007                           | \$ 3,988.88               | \$ 124,474.29                  | 4/4/2005          | \$ 124,474.29       | [REDACTED]   | N                         |
| 63 | SM                | 63.92 | Allstate Stanley 2 VA | 5/22/2003                 | 5/22/2009                           | \$ 502.77                 | \$ 8,665.06                    | 4/22/2005         | \$ 8,665.06         | [REDACTED]   | N                         |
| 64 | RM                | 65.95 | Allstate VA3          | 4/17/2003 and 4/22/2003   | 4/17/2009 and 4/22/2009             | \$ 2,461.79               | \$ 77,073.94                   | 4/18/2005         | \$ 77,073.94        | [REDACTED]   | N                         |

**ATTACHMENT A  
KROMER, [REDACTED] AND [REDACTED] COMPLAINT**

|    | Customer Initials | AGE   | Original VA           | Date of Original Purchase | Surrender Date of Original Purchase | Allstate Surrender Charge | Original VA Value at Surrender | ING Contract Date | ING Initial Premium | PRD Approval | Attachment to EOI and SDS |
|----|-------------------|-------|-----------------------|---------------------------|-------------------------------------|---------------------------|--------------------------------|-------------------|---------------------|--------------|---------------------------|
| 65 | BMJ               | 70.42 | Allstate VA3          | 8/22/2002                 | 8/22/2008                           | \$ 476.14                 | \$ 13,144.03                   | 4/4/2005          | \$ 13,144.03        | [REDACTED]   | N                         |
| 66 | CM                | 37.06 | Allstate VA3          | 3/26/2002                 | 3/26/2008                           | \$ 327.34                 | \$ 6,342.16                    | 4/18/2005         | \$ 6,342.16         | [REDACTED]   | N                         |
| 67 | BN                | 70.90 | Allstate Stanley 2 VA | 7/15/2003                 | 7/15/2009                           | \$ 289.59                 | \$ 4,312.65                    | 4/18/2005         | \$ 4,312.65         | BLANK        | N                         |
| 68 | BN                | 70.90 | Allstate Stanley 2 VA | 7/10/2003                 | 7/10/2009                           | \$ 6,344.32               | \$ 96,255.91                   | 4/18/2005         | \$ 96,255.91        | [REDACTED]   | N                         |
| 69 | DN                | 39.57 | Allstate Stanley 2 VA | 6/2/2003                  | 6/2/2009                            | \$ 3,908.12               | \$ 28,338.94                   | 4/12/2005         | \$ 69,170.88        | [REDACTED]   | N                         |
| 70 | GP                | 73.20 | Allstate VA3          | 8/24/2001                 | 8/24/2007                           | \$ 1,027.30               | \$ 29,100.15                   | 4/11/2005         |                     | [REDACTED]   | N                         |
| 71 | GP                | 73.21 | Allstate VA3          | 5/22/2003                 | 5/22/2009                           | \$ 4,797.88               | \$ 85,215.85                   | 4/14/2006         | \$ 85,215.85        | [REDACTED]   | N                         |
| 72 | GP                | 73.20 | Allstate VA3          | 7/12/2002                 | 7/12/2008                           | \$ 2,215.02               | \$ 62,371.71                   | 4/11/2005         | \$ 62,371.71        | [REDACTED]   | N                         |
| 73 | GP                | 73.21 | Allstate VA3          | 8/23/2001                 | 8/23/2007                           | \$ 1,375.48               | \$ 40,211.07                   | 4/14/2005         | \$ 40,211.07        | [REDACTED]   | N                         |
| 74 | RP                | 41.01 | Allstate VA3          | 2/25/2003                 | 2/25/2009                           | \$ 4,814.67               | \$ 165,506.69                  | 6/5/2005          | \$ 165,506.69       | [REDACTED]   | N                         |
| 75 | WP                | 66.61 | Allstate VA3          | 1/14/2003 and 4/17/2003   | 1/14/2009 and 4/17/2009             | \$ 5,037.71               | \$ 154,601.16                  | 4/18/2005         | \$ 154,601.16       | [REDACTED]   | N                         |
| 76 | MR                | 70.43 | Allstate VA3          | 9/20/2001                 | 9/20/2007                           | \$ 4,272.57               | \$ 138,399.47                  | 5/11/2005         | \$ 138,399.47       | [REDACTED]   | N                         |
| 77 | MR                | 70.43 | Allstate VA3          | 9/21/2001                 | 9/21/2007                           | \$ 4,272.00               | \$ 142,462.54                  | 5/11/2005         | \$ 142,462.54       | [REDACTED]   | N                         |
| 78 | MR                | 70.44 | Allstate VA3          | 9/21/2001                 | 9/21/2007                           | \$ 4,273.24               | \$ 143,531.70                  | 5/13/2005         | \$ 145,531.70       | [REDACTED]   | N                         |
| 79 | MCR               | 63.70 | Allstate Stanley 2 VA | 9/15/2003                 | 9/15/2009                           | \$ 5,403.04               | \$ 88,647.87                   | 4/4/2005          | \$ 88,647.87        | [REDACTED]   | N                         |
| 80 | MCR               | 63.70 | Allstate Stanley 2 VA | 2/21/2003 and 9/15/2003   | 2/21/2009 and 9/15/2009             | \$ 3,970.19               | \$ 95,550.69                   | 4/4/2005          | \$ 50,975.34        | [REDACTED]   | N                         |

**ATTACHMENT A  
KROMER, [REDACTED] AND [REDACTED] COMPLAINT**

|    | Customer Initials | AGE   | Original VA          | Date of Original Purchase | Surrender Date of Original Purchase | Allstate Surrender Charge | Original VA Value at Surrender | ING Contract Date | ING Initial Premium | PRD Approval | Attachment to EOJ and SDS |
|----|-------------------|-------|----------------------|---------------------------|-------------------------------------|---------------------------|--------------------------------|-------------------|---------------------|--------------|---------------------------|
| 81 | MCR               | 63.70 | Allstate VA3         | 2/21/2003                 | 2/21/2009                           | \$ 2,554.58               | \$ 96,894.48                   | 4/4/2005          | \$ 96,894.48        | [REDACTED]   | N                         |
| 82 | PR                | 66.70 | Allstate VA3         | 2/18/2003                 | 2/18/2009                           | \$ 661.12                 | \$ 21,550.01                   | 4/4/2005          | \$ 21,550.01        | [REDACTED]   | N                         |
| 83 | PR                | 66.51 | Allstate VA3         | 8/23/2002                 | 8/23/2008                           | \$ 1,727.62               | \$ 52,888.54                   | 6/2/2005          | \$ 52,888.54        | E            | Y                         |
| 84 | LS                | 65.86 | Allstate VA3         | 1/24/2002                 | 1/24/2008                           | \$ 1,019.75               | \$ 27,088.36                   | 4/22/2005         | \$ 40,055.92        | [REDACTED]   | N                         |
| 85 | LS                | 65.85 | Allstate VA3         | 1/23/2002                 | 1/23/2008                           | \$ 2,173.58               | \$ 56,286.96                   | 4/21/2005         | \$ 19,193.99        | [REDACTED]   | N                         |
| 86 | JS                | 68.66 | Allstate VA3         | 1/24/2002                 | 1/24/2008                           | \$ 4,412.94               | \$ 131,538.66                  | 4/18/2005         | \$ 131,538.66       | [REDACTED]   | N                         |
| 87 | JS                | 68.66 | Allstate VA3         | 1/23/2002                 | 1/23/2008                           | \$ 2,180.32               | \$ 57,927.39                   | 4/18/2005         | \$ 39,709.36        | [REDACTED]   | N                         |
| 88 | JAS               | 54.49 | Allstate VA3         | 4/4/2003                  | 4/4/2009                            | \$ 1,785.18               | \$ 64,231.46                   | 7/27/2005         | \$ 64,231.46        | E            | Y                         |
| 89 | JCS               | 36.15 | Allstate VA3         | 1/24/2002                 | 1/24/2008                           | \$ 308.31                 | \$ 5,225.80                    | 4/14/2005         | \$ 5,225.80         | [REDACTED]   | N                         |
| 90 | JES               | 35.08 | Allstate VA3         | 3/11/2003                 | 3/11/2009                           | \$ 622.12                 | \$ 21,261.30                   | 4/18/2005         | \$ 21,261.30        | [REDACTED]   | N                         |
| 91 | AS                | 73.72 | Allstate VA3         | 12/9/2002                 | 12/9/2008                           | \$ 930.42                 | \$ 29,018.85                   | 5/17/2005         | \$ 29,018.85        | [REDACTED]   | N                         |
| 92 | ALS               | 67.05 | Allstate Sunley 2 VA | 9/8/2003                  | 9/8/2009                            | \$ 5,975.34               | \$ 98,874.24                   | 5/20/2005         | \$ 98,874.24        | BLANK        | N                         |
| 93 | ALS               | 67.05 | Allstate VA3         | 9/20/2001                 | 9/20/2007                           | \$ 1,218.71               | \$ 36,852.26                   | 5/20/2005         | \$ 36,852.26        | E            | Y                         |
| 94 | ALS               | 67.05 | Allstate Sunley 2 VA | 9/18/2001 and 9/8/2003    | 9/18/2007 and 9/8/2009              | \$ 4,942.93               | \$ 120,176.27                  | 5/20/2005         | \$ 120,176.27       | E            | Y                         |
| 95 | SB                | 84.64 | Allstate Sunley 2 VA | 8/10/2004                 | 8/10/2010                           | \$ 5,140.53               | \$ 75,228.85                   | 4/18/2005         | \$ 75,228.85        | [REDACTED]   | N                         |
| 96 | DS                | 54.68 | Allstate VA3         | 7/11/2002                 | 7/11/2008                           | \$ 828.55                 | \$ 23,016.75                   | 5/17/2005         | \$ 23,016.75        | [REDACTED]   | N                         |

**KROMER, [REDACTED] AND [REDACTED] COMPLAINT**

| Customer Initials | AGE   | Original VA           | Date of Original Purchase | Surrender Date of Original Purchase | Allstate Surrender Charge | Original VA Value at Surrender | ING Contract Date | ING Initial Premium | PRD Approval | Attachment to EOI and SDS |
|-------------------|-------|-----------------------|---------------------------|-------------------------------------|---------------------------|--------------------------------|-------------------|---------------------|--------------|---------------------------|
| 97 ET             | 25.80 | Allstate Stanley 2 VA | 5/8/2003                  | 5/8/2009                            | \$ 95.26                  | \$ 1,555.56                    | 5/17/2005         | \$ 1,555.56         |              | N                         |
| 98 PT             | 60.65 | Allstate Stanley 2 VA | 12/8/2003 and 12/16/2003  | 12/8/2009 and 12/16/2009            | \$ 3,004.05               | \$ 43,242.81                   | 4/4/2005          | \$ 43,242.81        |              | N                         |
| 99 PT             | 60.65 | Allstate Stanley 2 VA | 5/7/2003                  | 5/7/2009                            | \$ 909.87                 | \$ 12,703.21                   | 4/4/2005          | \$ 12,703.31        |              | N                         |
| 100 EDT           | 65.34 | Allstate Stanley 2 VA | 5/8/2003                  | 5/8/2009                            | \$ 387.22                 | \$ 5,967.48                    | 4/11/2005         | \$ 5,967.48         |              | N                         |
| 101 EDT           | 65.37 | Allstate Stanley 2 VA | 5/7/2003                  | 5/7/2009                            | \$ 1,035.21               | \$ 17,525.24                   | 4/4/2005          | \$ 17,525.24        |              | N                         |
| 102 PHT           | 57.85 | Allstate Stanley 2 VA | 12/16/2003                | 12/16/2009                          | \$ 5,278.92               | \$ 75,825.09                   | 4/11/2005         | \$ 75,825.09        |              | N                         |
| 103 DW            | 60.12 | Allstate Stanley 2 VA | 12/23/2003                | 12/23/2009                          | \$ 949.57                 | \$ 16,011.76                   | 4/6/2005          | \$ 9,931.75         |              | N                         |
| 104 LW            | 58.75 | Allstate Stanley 2 VA | 12/23/2003                | 12/23/2009                          | \$ 447.05                 | \$ 6,809.71                    | 4/6/2005          | \$ 9,032.47         |              | N                         |
| 105 LYW           | 69.47 | Allstate VA3          | 3/19/2003                 | 3/19/2009                           | \$ 205.00                 | \$ 5,401.47                    | 4/21/2005         | \$ 5,401.47         |              | N                         |
| 106 KW            | 46.93 | Allstate Stanley 2 VA | 9/22/2003                 | 9/22/2009                           | \$ 4,781.50               | \$ 77,491.05                   | 5/10/2005         | \$ 77,491.05        |              | N                         |
| 107 KW            | 46.93 | Allstate Stanley 2 VA | 9/22/2003                 | 9/22/2009                           | \$ 561.80                 | \$ 8,495.18                    | 5/10/2005         | \$ 8,495.18         |              | N                         |
| 108 RW            | 57.96 | Allstate Stanley 2 VA | 9/29/2003                 | 9/29/2009                           | \$ 645.53                 | \$ 10,923.19                   | 4/18/2005         | \$ 10,923.19        |              | N                         |
| 109 RW            | 58.05 | Allstate Stanley 2 VA | 9/22/2003                 | 9/22/2009                           | \$ 602.20                 | \$ 9,164.19                    | 5/24/2005         | \$ 9,164.19         |              | N                         |
| 110 CW            | 55.84 | Allstate VA3          | 1/23/2002                 | 1/23/2008                           | \$ 1,828.77               | \$ 46,875.71                   | 4/11/2005         | \$ 31,727.15        |              | N                         |
| 111 LAW           | 41.95 | Allstate Stanley 2 VA | 6/25/2003                 | 6/25/2009                           | \$ 145.28                 | \$ 2,073.28                    | 4/18/2005         | \$ 2,073.28         |              | N                         |
| 112 JW            | 44.74 | Allstate Stanley 2 VA | 6/25/2003                 | 6/25/2009                           | \$ 156.21                 | \$ 2,275.02                    | 4/18/2005         | \$ 2,275.05         |              | N                         |

**ATTACHMENT A**  
**KROMER, [REDACTED] AND [REDACTED] COMPLAINT**

|     | Customer Initials | AGE   | Original VA | Date of Original Purchase | Surrender Date of Original Purchase | Alleged Surrender Charge | Original VA Value at Surrender | ING Contract Date | ING Initial Premium | PRD Approval | Attachments to EOI and SDS |
|-----|-------------------|-------|-------------|---------------------------|-------------------------------------|--------------------------|--------------------------------|-------------------|---------------------|--------------|----------------------------|
| 113 | SZ                | 45.58 | Alleged VA3 | 5/22/2002                 | 5/22/2006                           | \$ 255.80                | \$ 5,619.89                    | 5/27/2005         | \$ 5,619.89         | [REDACTED]   | N                          |
|     |                   |       |             |                           |                                     | TOTAL:                   |                                |                   |                     | TOTAL        | TOTAL E-MAILS ATTACHED: 19 |
|     |                   |       |             |                           |                                     | \$273,181.17             |                                |                   |                     | 95           |                            |
|     |                   |       |             |                           |                                     |                          |                                |                   |                     | TOTAL E:     |                            |
|     |                   |       |             |                           |                                     |                          |                                |                   |                     | TOTAL: 4     |                            |
|     |                   |       |             |                           |                                     |                          |                                |                   |                     | TOTAL        |                            |
|     |                   |       |             |                           |                                     |                          |                                |                   |                     | BLANKS: 5    |                            |