

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2005002262901**

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

RE: Banc One Securities Corp., Respondent
CRD No. 16999

Pursuant to NASD Rule 9216 of FINRA's Code of Procedure, Respondent Banc One Securities Corp. ("BOSC" or "the firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the firm alleging violations based on the same factual findings.

BOSC understands that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by FINRA's Department of Enforcement and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
3. If accepted:
 - a. this AWC will become part of BOSC's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against BOSC;
 - b. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about BOSC's disciplinary record;
 - c. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and
 - d. BOSC 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

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is without factual basis. Nothing in this provision affects BOSC's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

BOSC also understands that its experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history are as follows:

BOSC became an NASD member in 1986. BOSC terminated its membership in July 2006 after merging with J.P. Morgan Securities Inc. BOSC has no relevant disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

BOSC 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 BOSC;
- 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 NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, BOSC 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.

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

II.

ACCEPTANCE AND CONSENT

- A. BOSC 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:

Summary

Between January 1, 2004, and June 30, 2005, BOSC registered representatives made unsuitable recommendations to twenty-three customers to exchange their fixed annuities earning an interest rate of at least 3% into variable annuities ("VAs") where the customers chose to invest 100% of their assets in the fixed-rate portion of the VA earning a maximum of 3%. Because all but one of the twenty-three fixed annuities exchanged were no longer subject to surrender charges, these customers could have withdrawn money from their fixed annuities without a penalty. Each new VA subjected the customer to a six-year contingent deferred sales charge¹ ("CDSC" or "surrender penalty"). Twenty-one of the twenty-three customers were age 70 or over at the time they bought their variable annuities. As described more fully below, these transactions violated NASD Conduct Rules 2310 and 2110.

These twenty-three transactions were approved without an adequate supervisory review. BOSC failed to establish, maintain, and enforce a supervisory system and written supervisory procedures reasonably designed to detect and prevent its registered representatives from making unsuitable annuity exchanges in violation of NASD Conduct Rules 3010(a) and (b) and 2110.

Variable Annuity Sales at BOSC

Among the investment products offered through BOSC was a VA that allowed customers to invest in market-based subaccounts, fixed income, or some combination of the two.² Customers who wanted to invest their funds in the stock market could select one of five asset allocation models, which in turn invested in dozens of the available subaccount options. These VAs also had a fixed income feature ("FIF") which allowed customers to place funds in it that were guaranteed to earn 3% during either a three-year, six-year, or ten-year period.

¹ A CDSC requires the customer to pay a penalty to withdraw more than a predetermined percentage of the funds invested in the VA.

² Market-based subaccounts are funds with distinct investment strategies such as small cap, international equity, or bonds and are similar to mutual funds.

The VA offered to BOSC customers included a six-year CDSC which required the customer to pay a declining sales charge on withdrawals that exceeded certain limitations imposed in the VA contract during the first six years of ownership.³

1. BOSC made unsuitable recommendations to purchase variable annuities in violation of NASD Rules 2310 and 2110.

Between January 1, 2004, and June 30, 2005, BOSC registered representatives made unsuitable recommendations to twenty-three customers to purchase VAs.⁴ Twenty-one of the customers were over 70 years old and nine were older than 80 years of age. In each of these twenty-three transactions, the BOSC representatives recommended that the customer exchange his or her fixed annuity, then paying a minimum of 3%, into a VA where the customer placed 100% of their assets into the FIF portion of the VA which paid a maximum of 3%. At the time of each of these transactions, all but one of the customers' fixed annuities was out of surrender. Each of the newly purchased VAs contained a six-year surrender period requiring the customers to pay a penalty if they withdrew more than the sum of their earnings and ten percent of their principal during the first six years they owned the VA.

With the exception of one customer who surrendered her VA and incurred a surrender charge, and another who died, the twenty-three customers invested their funds exclusively in the FIF for at least 17 months after purchasing the VA between January 1, 2004 and June 30, 2005.⁵ The FIF rate was locked for three or six-years depending on which FIF was selected.

Each of these twenty-three recommendations was unsuitable, given the customers' age, investment objectives, financial situation, and needs, in violation of NASD Conduct Rules 2310 and 2110. Among the unsuitable transactions were the following:

- In April 2005, customer LB (age 80) exchanged his fixed annuity, which was past its surrender period, for a VA upon the recommendation of his BOSC registered representative. LB invested 100% of the \$80,000 in assets from his fixed annuity in the FIF, where it earned the same 3% rate of return as his fixed annuity. LB's VA carried a six-year surrender period. Five months after purchasing the VA, LB withdrew \$5,000 from it and he withdrew another \$4,000 six months later. In August 2006, sixteen months after buying the VA, LB liquidated it and incurred a \$4,628 surrender fee.
- In October 2004, customer KW (age 84) exchanged her fixed annuity, which was past its surrender period, for a VA upon the recommendation of her BOSC registered representative. KW invested 100% of the \$79,000 in

³ The CDSC on the variable annuities, by year, was 7%, 7%, 6%, 5%, 3%, and 1%. This means that the customer would have to pay 7% of the amount invested in the VA in the first two years to close the VA or take out more than a set percentage of funds from the VA, 6% in the third year, and so on.

⁴ A list of the twenty-three transactions is included at Attachment A.

⁵ Eight of the customers moved their funds into a third FIF option, a ten-year FIF that paid a slightly higher rate than 3%. It also featured a six-year surrender period.

assets from her fixed annuity in the FIF, where it earned the same 3% rate of return as her fixed annuity. KW's VA carried a six-year surrender period.

2. BOSC failed to establish, maintain, and enforce a supervisory system and written supervisory procedures reasonably designed to detect and prevent unsuitable 1035 annuity exchanges, in violation of NASD Conduct Rules 3010(a) and (b) and 2110.

A 1035 annuity exchange occurs when a customer, pursuant to IRS Section 1035, makes a tax-free exchange of one annuity for another, or exchanges an annuity into a qualified account that provides tax advantages such as an IRA or 401(k). Under BOSC's system and procedures, all 1035 exchanges were captured on an exception report. These transactions were reviewed by principals who worked at the firm's centralized Principal Review Desk ("PRD").

In the twenty-three fixed annuity to VA exchanges, the firm's principals were aware of the customers' circumstances and the details concerning the exchanged fixed annuity and the new VA. However, the principals did not adequately review the suitability of these investors exchanging their fixed annuities notwithstanding the following factors: the customers were over age 70; the fixed annuities were out of surrender; they were exchanged for VAs with a six-year surrender period; and the customer allocated the entire proceeds of the fixed annuities to the FIF of the VA that paid, at most, the same interest rate as the exchanged fixed annuity. Because the firm's principals did not adequately consider these factors they approved the twenty-three unsuitable variable annuity exchange transactions. As a result, BOSC violated NASD Conduct Rule 3010(a).

BOSC's system and written supervisory procedures were also deficient with regard to VA to VA exchanges. The system and procedures did not require PRD principals to obtain or consider certain critical information regarding a surrendered VA when conducting the suitability review of a VA exchange. BOSC principals also did not compare the costs and benefits of features of the new and exchanged product. As a result of these inadequacies in BOSC's system and procedures, VA to VA exchanges in certain cases were not adequately reviewed for suitability and, thus, BOSC violated NASD Rules 3010(a) and (b) and 2110.

B. BOSC also consents to the imposition, at a maximum, of the following sanctions:

1. a censure;
2. a fine of \$225,000;
3. the reimbursement of charges incurred, if any, before the effective date of this AWC by any of the twenty-three customers listed on Attachment A who (i) paid a CDSC when exchanging their fixed annuity in the VA, or (ii) paid a CDSC when exiting their VA. Interest on these surrender charges shall be paid at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2),

from the date the surrender charges were incurred until the date the restitution is paid.

- a. BOSC shall provide satisfactory proof of payment or of reasonable and documented efforts undertaken to effect such payment to the FINRA staff no later than 60 days from the effective date of this AWC.
 - b. if for any reason BOSC cannot locate any customers after reasonable and documented efforts within such period, or any such additional period agreed to by the staff, BOSC shall forward any undistributed payment and interest to the appropriate escheat, unclaimed property, or abandoned property fund for the state or country in which the customer is last known to have resided.
4. BOSC further shall undertake to rebate to each of the twenty-three customers, upon their request, any and all surrender charges they may incur in connection with the sale or exchange of any of the VAs identified in Attachment A between the effective date of this AWC and the end of the applicable surrender period of their VAs. In order to effectuate this undertaking, BOSC shall:
 - a. Within 60 days of the acceptance of the AWC, provide written notice to each current holder of the variable annuities identified in Attachment A of this AWC, explaining his or her right to receive indemnification for all surrender charges pursuant to this AWC and how to exercise that right. The written notice shall be acceptable to FINRA;
 - b. Provide the customers with a toll-free number to call in order to receive assistance with the surrender process while the surrender charges continue to apply. BOSC shall ensure that calls to the toll-free number will be answered by customer service personnel trained to assist the customers identified in Attachment A with the process of surrendering their variable annuities at no charge. BOSC shall maintain the toll-free number until the last applicable surrender charge applies and shall monitor the process to ensure that the applicable customers are permitted to surrender their variable annuities at no charge;
 - c. Provide a standard surrender form to the customers with instructions for filling it out and a cover letter explaining that no surrender charges will be assessed on the contract; and
 - d. Notify the carrier of the customer's request to surrender the product, once the customer has elected such an option, in order to allow the carrier to effectuate the surrender and notify BOSC as soon as the surrender has

been completed. BOSC will reimburse the customer promptly, but no more than 30 days following notification by the carrier of the cost of the surrender charge.

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

III.

OTHER MATTERS

- A. BOSC understands that it may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. BOSC 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.
- B. BOSC agrees to pay any monetary sanctions imposed on it upon notice that this AWC has been accepted and that such payments are due and payable. BOSC has attached an Election of Payment form showing the method by which it proposes to pay any fine imposed.

BOSC specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

BOSC certifies that it has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce it to submit it.

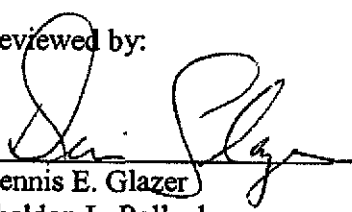
10/1/07
Date

Respondent

For Banc One Securities Corporation

By: 
Deanna Bannister

Reviewed by:



Dennis E. Glazer

Sheldon L. Pollock

Davis Polk & Wardwell

Counsel for Respondent

450 Lexington Ave.

New York, N.Y. 10017

212-450-4900

Accepted by FINRA:

12/27/07
Date

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



Samuel Israel, Chief Counsel
FINRA Department of Enforcement

Attachment A

	<u>Contract Owner (Initials)</u>	<u>Contract Number</u>	<u>Contract Date</u>	<u>Surrender Charge</u>
1.	HH		6/10/2004	
2.	HJ Trust Dated 7/23/1993		6/1/2004	
3.	EP		4/25/2005	
4.	MB		3/18/2004	\$1,864
5.	GJ		1/24/2005	
6.	LB		4/5/2005	\$4,628
7.	HP		6/7/2004	
8.	JH		6/22/2004	
9.	CD		5/21/2004	
10.	EN		3/8/2005	
11.	KM		7/20/2004	
12.	KS		8/2/2004	
13.	ES		7/26/2004	
14.	IA		9/20/2004	
15.	KW		10/7/2004	
16.	SM		10/18/2004	
17.	LS		10/14/2004	
18.	AN		12/6/2004	
19.	EC		12/3/2004	
20.	GP		11/19/2004	
21.	JB		1/22/2004	
22.	RC		12/20/2004	
23.	BN		12/28/2004	