

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2006003762801

TO: Department of Enforcement
NASD

RE: First Citizens Financial Plus, Inc.
Member Firm
CRD No. 18591

James Thomas Hopper
General Securities Principal
CRD No. 2181853

Pursuant to Rule 9216 of the National Association of Securities Dealers, Inc. ("NASD") Code of Procedure, First Citizens Financial Plus, Inc., and James Thomas Hopper, ("Respondents") submit 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, NASD, Inc. will not bring any future actions against us alleging violations based on the same factual findings.

We understand that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Enforcement and National Adjudicatory Council ("NAC"), 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 us; and
3. If accepted:
 - a. this AWC will become part of our permanent disciplinary record and may be considered in any future actions brought by the NASD against us;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about our disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and

Letter of Acceptance, Waiver and Consent
2006003762801/First Citizens Financial Plus, Inc.
and James Thomas Hopper

- d. We may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects our testimonial obligations or right to take legal positions in litigation in which the NASD is not a party.

We also understand that our experience in the securities industry and disciplinary history may be factors which will be considered in deciding whether to accept this AWC. That experience and history are as follows:

During all periods mentioned herein, First Citizens Financial Plus, Inc. was a registered broker dealer with the Securities and Exchange Commission and a member of NASD. The firm's registration and membership remain in effect. In the past ten years, the firm has not been the subject of any disciplinary actions.

James Thomas Hopper entered the securities industry in November 1991 as a General Securities Representative with member firm Powell & Satterfield, Inc. He voluntarily left Powell & Satterfield in December 1992, and thereafter registered with member firm Merrill Lynch, Pierce, Fenner & Smith Incorporated as a GSR. In July 1995, he voluntarily left Merrill Lynch and registered with member firm First Citizens Financial Plus, Inc. as, among other things, a General Securities Principal. He is still registered with First Financial and is the firm's President. He has no disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

We specifically and voluntarily waive the following rights granted under the NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against us;
- 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

Letter of Acceptance, Waiver and Consent
2006003762801/First Citizens Financial Plus, Inc.
and James Thomas Hopper

- 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, we specifically and voluntarily waive 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.

We further specifically and voluntarily waive 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. We hereby accept and consent, without admitting or denying the findings, and solely for the purposes of this proceeding, and any other proceeding brought by or on behalf of NASD, or to which NASD 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 NASD:

During the period from May 2005 through November 2005, First Citizens Financial Plus, Inc., acting through James Thomas Hopper, the firm's President, issued seven pieces of sales literature to the firm's customers. The sales literature comprised the following: an invitation to a seminar, two form letters with attachments, and four newsletters.

1. The seminar invitation, which was mailed to 289 customers, concerned variable annuities and should have been pre-filed with NASD's Advertising Department ten days prior to first use; however, the firm, acting through Hopper, failed to pre-file this piece of sales literature. The seminar invitation failed to disclose that the seminar concerned variable annuities and it also failed to disclose the name of the firm. Additionally, the seminar invitation contained the phrase "GUARANTEED INCOME FOR LIFE"; however, it failed to balance this phrase with information concerning the limitations and costs of such guarantee.

Letter of Acceptance, Waiver and Consent
2006003762801/First Citizens Financial Plus, Inc.
and James Thomas Hopper

The foregoing acts, practices and conduct by First Citizens Financial Plus, Inc., and James Thomas Hopper, constitute separate and distinct violations of NASD Conduct Rules 2110, 2210(c)(2), 2210(d)(1)(A), and 2210(d)(2)(C).

2. The two form letters, which were mailed to 131 firm customers, contained information about variable annuities and should have been pre-filed with NASD's Advertising Department ten days prior to first use; however, the firm, acting through Hopper, failed to pre-file the form letters. Additionally, both form letters contained rate sheets which contained information about certain types of investments such as, certificates of deposits, corporate bonds, REITs, closed-end investment companies and variable annuities. The rate sheets also compared the aforementioned investments against each other; however, the comparison between the investments was based on yield alone and the rate sheets did not disclose the material differences between the investments described therein.

With regard to the CD information, there was no disclosure in the rate sheets as to whether the quoted rates of return were annual percentage yields, and there was also no disclosure regarding the minimum balance needed to obtain the CD rate listed, the period of time such rate was being offered, withdrawal penalties, and the possible loss of principal upon a sale prior to maturity.

With regard to the corporate bond information, all of the corporate bonds listed in the rate sheets were below investment grade; however, there was no disclosure in the rate sheets about the speculative nature of such bonds or their credit risk.

With regard to the variable annuity information, there was no disclosure in the rate sheets about the fees, surrender charges, or withdrawal penalties associated with this type of investment and no disclosure about annuity guarantees.

With regard to the REIT information, there was no disclosure in the rate sheets about the risks associated with owning a REIT.

The rate sheets did not disclose any information about tax considerations for any of the investments discussed therein.

One of the form letters contained the phrase "Did You Know..." and thereafter contained the following statement:

"If your tax bracket when you retire is higher than your current tax bracket, you are better off with a Roth."

Letter of Acceptance, Waiver and Consent
2006003762801/First Citizens Financial Plus, Inc.
and James Thomas Hopper

While there may have been a reasonable basis for the above statement, the form letter should have contained the basis for the statement or warned that the statement was an opinion and that the reader should consult with a tax expert.

The foregoing acts, practices and conduct by First Citizens Financial Plus, Inc., and James Thomas Hopper, constitute separate and distinct violations of NASD Conduct Rules 2110, 2210(c)(2), 2210(d)(1)(A), and 2210(d)(2)(B).

3. Each of the four newsletters was mailed to 131 firm customers. Because each newsletter discussed registered investment companies, they should have been pre-filed with NASD's Advertising Department ten days prior to first use; however, the firm, acting through Hopper, failed to pre-file the newsletters. The October 2004 newsletter contained the following statement:

"The upside potential is whatever the stock market does, which historically has averaged 13% over the past ten years."

The aforementioned statement was promissory and it was also misleading because it cited market performance over a favorable ten year period.

The May 2005 newsletter contained the following statement:

"Bonds paying over 7%!!! Give me a call for offers and availability."

The newsletter failed to contain the basis for the quoted yield and also failed to disclose the risks of the investment in order to balance the emphasis on the 7% yield.

The foregoing acts, practices and conduct by First Citizens Financial Plus, Inc., and James Thomas Hopper, constitute separate and distinct violations of NASD Conduct Rules 2110, 2210(c)(2), 2210(d)(1)(A), and 2210(d)(1)(B).

- B. We also consent to the imposition, at a maximum, of the following sanctions:

A censure, and a joint and several monetary fine of \$10,000 against Respondents First Citizens Financial Plus, Inc. and James Thomas Hopper.

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

Letter of Acceptance, Waiver and Consent
2006003762801 First Citizens Financial Plus, Inc.
and James Thomas Hopper

III.

OTHER MATTERS

- A. We understand that we may attach a Corrective Action Statement to this AWC which is a statement of demonstrable corrective steps taken to prevent future misconduct. We understand that we 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 NASD, nor does it reflect the views of NASD, Inc. or its staff.
- B. We agree to pay any monetary sanctions imposed on us upon notice that this AWC has been accepted and that such payments are due and payable, and have attached an Election of Payment form showing the method by which we propose to pay any fine imposed.
- C. We specifically and voluntarily waive any right to claim that we are unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

We certify that we have read and understand all of the provisions of this AWC and have 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 us to submit it.

4-2-07
Date

First Citizens Financial Plus, Inc.

By: 

Name: J. Thomas Hopper

Title: President

4-2-07
Date


James Thomas Hopper.

Letter of Acceptance, Waiver and Consent
2006003762801/First Citizens Financial Plus, Inc.
and James Thomas Hopper

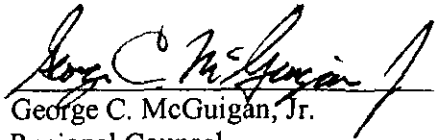
Reviewed by:

Counsel for Respondents

Accepted by NASD:

5/3/2007
Date

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


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