

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2008011703401**

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

RE: Fifth Third Securities, Inc., Respondent
(CRD No. 628)

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REGISTRATION & DISCLOSURE

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Fifth Third Securities, Inc. ("Member") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the Member alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The Member hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

Fifth Third Securities, Inc. ("Member") became registered with the Securities and Exchange Commission on January 1, 1936, and became a member of FINRA on September 11, 1939. The Member continues to be registered in such capacities and conducts a general securities business on a fully disclosed basis.

RELEVANT DISCIPLINARY HISTORY

On May 3, 2005, a Letter of Acceptance, Waiver and Consent submitted by the Member was accepted by FINRA, under which the Member was found to have: failed to submit Forms U5 Uniform Termination Notice for Securities Industry Registration ("Forms U5") within 30 calendar days; failed to file Municipal Securities Regulatory Board ("MSRB") Forms G-36 within one business day after receipt of the official statement from the issuer; and failed to ensure that all MSRB Forms G-36 were timely submitted to the MSRB. The Member was found

to have violated NASD Rules 2110, 3010(b) and MSRB Rule G-36. Pursuant to the settlement, the Member was censured and fined \$79,750.

On March 29, 2007, a Letter of Acceptance, Waiver and Consent submitted by the Member was accepted by FINRA, under which the Member was found to have: failed to timely amend Form U4 Uniform Applications for Securities Industry Registration or Transfer Form ("Form U4") to disclose customer complaints; executed customers transactions in municipal securities that were not reported to the MSRB within 15 minutes of the time of execution, and reported others in error; and failed to timely file forms G-36(OS) with the MSRB. The Member was found to have violated Article V, Section 2 of NASD's By-Laws, NASD Rule 2110 and MSRB Rules G-14 and G-36. Pursuant to the settlement, the Member was censured and fined \$25,000.

OVERVIEW

The Member failed to promptly amend Forms U4 for eight registered representatives, in order to disclose either liens assessed against the registered representatives, bankruptcies filed by the representatives, or an investment-related customer initiated written complaint, in violation of Article V, Section 2 (c) of NASD By-Laws, which was replaced on July 30, 2007, with Article V, Section 2(c) of FINRA By-Laws and NASD Rule 2110. The Member also failed to promptly amend Forms U5 in three instances after it received notice of complaints, seeking over \$5,000 in losses, or a settlement of a customer complaint over \$10,000, in violation of Article V, Section 3 (b) of FINRA By-Laws and NASD Rule 2110. In addition, the Member failed to promptly report statistical and summary information regarding customer complaints against three registered representatives prior to the 15th day of the month following the calendar quarter in which the complaint was received, as required by NASD Rule 3070(c), in violation of NASD Rules 2110 and 3070.

FACTS AND VIOLATIVE CONDUCT

Failure to Promptly Amend Eight Forms U4.

1. During all relevant times, Article V, Section 2 (c) of NASD By-Laws, (which was replaced on July 30, 2007, with Article V, Section 2(c) of FINRA By-Laws) stated that every application for registration filed with FINRA shall be kept current at all times by supplementary amendments, which should be filed with FINRA not later than 30 days after learning of the facts or circumstances giving rise to the amendment.
2. During all relevant times, the Form U4 included question 141(3)(a), which stated that:

(3) Within the past twenty four (24) months, have you been the subject of an *investment-related*, customer-initiated, written complaint, not otherwise reported under question 14I(1) or (2) above, which:

(a) alleged that you were involved in one or more sales practice violations and contained a claim for compensatory damages of \$5,000 or more (if no damage amount is alleged, the complaint must be reported unless the firm has made a good faith determination that the damages from the alleged conduct would be less than \$5,000)

3. During all relevant times, the Form U4 included question 14K(1), which stated that:

Within the past 10 years:

(1) have you made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition?

4. During all relevant times, the Form U4 included question 14M, which stated that:

Do you have any unsatisfied judgments or liens against you?

5. On March 14, 2008, the Member received a written complaint from a trustee of a trust, which maintained an account with the Member, against the Firm and JW, who was a registered representative and sales supervisor of the Member. The complaint letter charged that, among other things, JW and the Member effected an unauthorized trade in the account, and that the trade was not suitable for the account. The complaint sought the rescission of the trade and restoration of the account to a position it would have been in if the trade had not been made. The amount of the compensation that was sought was over \$316,000.
6. Despite receiving the complaint against JW on March 14, 2008, the Member failed to amend JW's Form U4 to disclose the receipt of the complaint until April 15, 2008. The amendment to JW's Form U4 should have been filed on or before April 14, 2008, so the amendment to JW's Form U4 was 1 day late.
7. On March 31, 2006, LC, a registered representative employed by the Member, informed the Firm that she had a lien against her, but the Member failed to amend LC's Form U4 until April 19, 2007, which was

353 days after the date that the filing should have been made, or May 1, 2006.

8. On December 15, 2006, LK, a registered representative employed by the Member, informed the Firm that she had filed a bankruptcy petition, but the Member failed to amend LK's Form U4 until April 19, 2007, which was 93 days after the date that the filing should have been made, or January 16, 2007.
9. On September 1, 2006, CO, a registered representative employed by the Member, informed the Firm that he had intended to file a bankruptcy petition, which was filed on September 21, 2006, but the Member failed to amend CO's Form U4 until April 19, 2007, which was 178 days after the date that the filing should have been made, or October 23, 2006.
10. On February 1, 2007, DS, a registered representative employed by the Member, informed the Firm that she had filed a bankruptcy petition, but the Member failed to amend DS's Form U4 until April 19, 2007, which was 45 days after the date that the filing should have been made, or March 5, 2007.
11. On November 21, 2005, MS, a registered representative employed by the Member, informed the Firm that she had filed a bankruptcy petition, but the Member failed to amend MS's Form U4 until May 11, 2007, which was 506 days after the bankruptcy petition date that the filing should have been made, or December 21, 2005.
12. On June 29, 2006, AR, a registered representative employed by the Member, informed the Firm that she had a lien against her, but the Member failed to amend AR's Form U4 until May 25, 2007, which was 298 days after the date that the filing should have been made, or July 31, 2006.
13. On November 9, 2006, MT, a registered representative employed by the Member, informed the Firm that he had filed a bankruptcy petition, but the Member failed to amend MT's Form U4 until November 16, 2007, which was 340 days after the bankruptcy petition date that the filing should have been made, or December 11, 2006.
14. As set forth above, the Member violated Article V, Section 2(c) of NASD and FINRA By-Laws and NASD Conduct Rule 2110 by failing to timely amend LC's, LK's, CO's, DS's, MS's, AR's and MT's Forms U4 to report the liens and bankruptcies.

Failure to Promptly Amend Three Forms U5.

15. During all relevant times, Article V, Section 3(b) of NASD By-Laws (which was replaced on July 30, 2007, with Article V, Section 3(b) of FINRA By-Laws) states that a member shall notify FINRA in the event that the member learns of facts or circumstances causing any information set forth in a Form U5 to become inaccurate or incomplete. This amendment is required to be filed no later than 30 days after the member learns of the facts or circumstances giving rise to the amendment.

16. During all relevant times, the Form U5 included question 7E(1), which stated that:

In connection with events that occurred while the individual was employed by or associated with your firm, was the individual named as a respondent/defendant in an *investment-related*, customer-initiated arbitration or civil litigation which alleged that the individual was involved in one or more sales practice violations and which:

- (a) is still pending, or;
- (b) resulted in an arbitration award or civil judgment against the individual, regardless of amount, or;
- (c) was settled for an amount of \$10,000 or more.

17. During all relevant times, the Form U5 included question 7E(3), which stated that:

In connection with events that occurred while the individual was employed or associated with your firm, was the individual the subject of an *investment-related*, consumer-initiated, written complaint, not otherwise reported under questions 7(E)(1) or 7(E)(2) above, which:

- (a) would be reportable under question 14I(3)(a) on Form U4, if the individual were still employed by your firm, but which has not previously been reported on the individual's Form U4 by your firm.

18. During all relevant times, the Firm U4 included question 14I(3)(a), which stated that:

- (3) Within the past twenty four (24) months, have you been the subject of an *investment-related*, customer-initiated, written complaint, not otherwise reported under question 14I(1) or (2) above, which:

(a) alleged that you were involved in one or more sales practice violations and contained a claim for compensatory damages of \$5,000 or more (if no damage amount is alleged, the complaint must be reported unless the firm has made a good faith determination that the damages from the alleged conduct would be less than \$5,000).

19. MZ was registered with the Member as a General Securities Representative until his registration was terminated on March 23, 2005.
20. On July 26, 2007, the Member received a written complaint by a customer against the Firm and MZ, which among other charges, contained a charge that MZ, while he was employed by the Member, failed to invest her funds in a secure and short term investment as she had requested, and that MZ invested the customer's funds in an unsuitable CMO. The complaint sought compensation of over \$23,000.
21. Despite receiving the complaint against MZ on July 26, 2007, the Member failed to amend MZ's Form U5 to disclose the receipt of the complaint until June 17, 2008. The amendment to MZ's Form U5 should have been filed on or before August 27, 2007, so the amendment to MZ's Form U5 was 295 days late.
22. On July 2, 2007, the Member settled an investment related complaint from its customers against it and MZ for \$15,000.
23. Despite settling the customers' complaint on July 11, 2007, the Member failed to amend MZ's Form U5 to disclose the settlement of the complaint until September 20, 2007. The amendment to MZ's Form U5 should have been filed on or before August 10, 2007, so the amendment to MZ's Form U5 was 41 days late.
24. PS was registered with the Member as an Investment Company and Variable Contracts Products Representative until his registration was terminated on October 25, 2007.
25. On January 14, 2008, the Member received a written complaint by a customer against PS, which charged that securities were purchased for her securities account based on misrepresentations by PS, and that the customer did not desire to have her funds invested in the stock market. The complaint sought compensation of at least \$31,000.
26. Despite receiving the complaint against PS on January 14, 2008, the Member failed to amend PS's Form U5 to disclose the receipt of the complaint until February 14, 2008. The amendment to SK's Form U5

should have been filed on or before February 13, 2008, so the amendment to PS's Form U5 was 1 day late.

27. As set forth above, the Member violated Article V, Section 3(b) of FINRA By-Laws and NASD Conduct Rule 2110 by failing to timely submit an amended Form U5 reporting the investment-related written complaints against MZ, SK and PS.

**Failure to Promptly File Three Reports of Events
Pursuant to NASD Rule 3070(c)**

28. NASD Rule 3070(c) states that:

Each member shall report to the Association statistical and summary information regarding customer complaints in such detail as the Association shall specify by the 15th day of the month following the calendar quarter in which customer complaints are received by the member. For the purposes of this paragraph, "customer" includes any person other than a broker or dealer with whom the member has engaged, or has sought to engage, in securities activities, and "complaint" includes any written grievance by a customer involving the member or person associated with a member.

29. On October 2, 2007, the Member received a complaint from a customer about his withdrawing funds from his Roth IRA based on incorrect information that he received from a registered representative of the Member. The Member was required to report this complaint pursuant to NASD Rule 3070(c) by January 15, 2008, but the Member failed to submit statistical and summary information regarding the customer complaint until January 18, 2008, so the information was filed three days late.
30. On December 27, 2007, the Member received a complaint from a customer about the withdrawal fees he was charged by the mutual fund that was purchased for his account. The Member was required to report this complaint pursuant to NASD Rule 3070(c) by January 15, 2008, but the Member failed to submit statistical and summary information regarding the customer complaint until April 2, 2008, so the information was filed 78 days late.
31. On March 15, 2008, the Member received a complaint from a customer about a required delay in selling their account. The Member was required to report this complaint pursuant to NASD Rule 3070(c) by April 15, 2008, but the Member failed to submit statistical and summary information regarding the customer complaint until May 17, 2008, so the information was filed 32 days late.

32. As set forth above, the Member violated NASD Conduct Rules 2110 and 3070 by failing to timely file with FINRA two Rule 3070 reports on a timely basis.

- B. The Member also consents to the imposition of the sanctions of a censure and a fine of \$25,000.

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

The Member specifically and voluntarily waive any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against it;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the Member 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.

The Member further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

The Member understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against it; and
- C. If accepted:
 - 1. this AWC will become part of the Member's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the Member's disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. The Member 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. The Member may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Member right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

11/30/2009 14:42 FAX 312 899 4800

FINRA

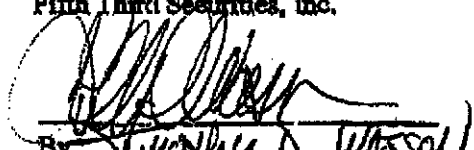
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- D. The Member may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Member understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

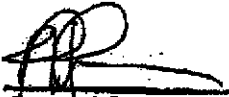
The undersigned, on behalf of the Member, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that the Member has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the Member to submit it.

NOVEMBER 30, 2009
Date

Fifth Third Securities, Inc.


By Timothy A. Wessel
Its Chief Compliance Officer

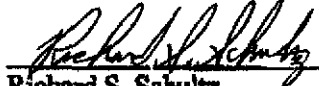
Reviewed by:


Counsel for Respondent

Accepted by FINRA:

1/8/10
Date

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


Richard S. Schultz
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