

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2009018275501**

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

RE: David James Lownik
Registered Representative
(CRD No. 2039938)

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, David James Lownik, submit 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 me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. I 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 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

David Lownik entered the securities industry in March 1990 as a general securities representative of a FINRA firm. In July 1993, he became registered in the same capacity with Citigroup Global Markets Inc. Since June 2009, he has been registered with Morgan Stanley Smith Barney, successor to Citigroup. Lownik has no disciplinary history.

OVERVIEW

In January and June 2007, David Lownik negligently misrepresented certain material facts to customer LZ in connection with the sale of two variable annuity products, in violation of NASD Rule 2110.

FACTS AND VIOLATIVE CONDUCT

- A. 1. In January 2007, David Lownik negligently represented in writing to customer LZ in a variable annuity replacement disclosure form that the death benefits in a new policy would be higher than those contained in the replaced policy. Given that the death benefits were essentially the same, Lownik's representation was untrue.
2. In June 2007, David Lownik negligently represented again in writing to customer LZ in a variable annuity replacement disclosure form that the death benefits in a new policy would be higher than those contained in the replaced policy. Additionally, Lownik represented that there were no surrender charges in connection with the exchange. Given that the death benefits in the earlier policy were higher than those in the later policy, and given that there was a surrender charge in the amount of \$2,900, both representations were untrue.
3. By making those negligent material misrepresentations, David Lownik violated NASD Rule 2110.
- B. I also consent to the imposition, at a maximum, of the sanctions of a censure and a fine in the amount of \$10,000.

I agree to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. I have submitted an Election of Payment form showing the method by which I propose to pay the fine imposed.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against me;
- B. To be notified of the Formal Complaint and have the opportunity to answer the

allegations in writing;

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

Further, I 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.

I further specifically and voluntarily waive 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

I understand that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to 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 me; and
- C. If accepted:
 - 1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my 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. I 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. I 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 my right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I 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.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have 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 me to submit it.

11/29/11
Date



David James Lownik

Reviewed by:

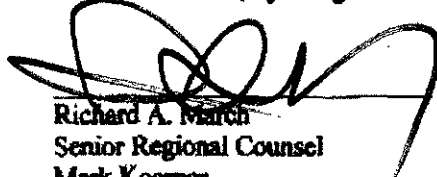


Counsel for Respondent
Brent A. Burns, Esq.

Accepted by FINRA:

12/9/11
Date

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



Richard A. March
Senior Regional Counsel
Mark Koerner
Regional Chief Counsel and AVP
FINRA Department of Enforcement
55 West Monroe Street, Suite 2700
Chicago, Illinois 60603-5052
(312)899-4351