

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20090195139**

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

RE: Jan Henderson, Respondent
Former Registered Representative – Currently Unregistered
CRD No. 2401845

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent 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 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

Respondent entered the securities industry in September 1993. Respondent was a registered representative at Great American Advisors, Inc. ("Great American" or the "Firm") from December 2006 until he was terminated from Great American on or about December 20, 2007. Respondent was terminated by Great American for the failure to follow the Firm's procedures and independent contractor agreement. Prior to his employment at Great American, Respondent had worked at five other FINRA regulated firms. On October 16, 2008, Respondent reentered the securities industry with another FINRA regulated broker dealer and was terminated on July 16, 2009 for his failure to meet internal administrative requirements. Since his departure from the FINRA regulated broker dealer in July 2009, Respondent has not held another position in the securities industry.

While Respondent is not currently registered with a FINRA regulated entity, FINRA retains jurisdiction over Respondent pursuant to Article V, Section 4 of the FINRA By-laws as the conduct that serves as the basis for this action commenced prior to his termination from a FINRA

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regulated firm and this action has been filed within two years from the last day he was registered.

RELEVANT DISCIPLINARY HISTORY

Respondent has no prior disciplinary history.

OVERVIEW

Between December 2006 and December 2007, Respondent engaged in a pattern of unsuitable variable annuity switch transactions, in which Respondent executed approximately 214 unsuitable variable annuity switches involving approximately 140 customers. Respondent executed these variable annuity replacement transactions without regard to the substantial surrender charges imposed or the extension of the surrender periods for his customers. Respondent utilized a "one size fits all" investment strategy for the 140 customers which was not suitable for his diverse customer base. Additionally, Respondent failed to know and understand the variable annuity that he recommended to his customers and did not adequately investigate investment options and available riders.

Respondent also failed to correctly complete the variable annuity account paperwork accurately which resulted in 92 of his customers not receiving the promised protection of a rider that he recommended to them at the time of the sale.

FACTS AND VIOLATIVE CONDUCT

Unsuitable Annuity Transactions

NASD Rule 2310, which applies to the sale and switching of variable annuities, requires that a broker's recommendations be consistent with the customer's best interests. A registered representative violates Rule 2310 if he or she lacks reasonable grounds for believing that the recommendation of a particular security or switch is suitable for a customer or fails to obtain information concerning the suitability of the recommendation before executing the transaction. Annuity switching involves using the proceeds from the liquidation of one or more fixed or variable annuities to purchase a new annuity, often times issued by a different annuity/insurance company. Annuity switching can result in the imposition of surrender charges and can subject the purchaser to new, extended surrender periods.

Between December 2006 and December 2007, Respondent, a registered representative with Great American, recommended unsuitable variable annuity transactions by switching customers from their existing fixed and/or variable annuities into a MetLife Investors USA Variable Annuity Series XC variable annuity ("MetLife VA") thereby improperly earning additional commissions at the expense of customers who paid substantial surrender fees.

Respondent employed a "one size fits all" investment strategy for his diverse customer base. Respondent switched customers into the same MetLife VA, guaranteed minimum income benefit rider ("GMIB Plus Rider"), MetLife Growth Strategy underlying fund option and

classified virtually all of his customers as having a risk tolerance as moderate and investment objectives of growth/income. On MetLife VA forms, Respondent justified the switches for virtually all of his customers by using the same rationale that the new MetLife VA provided "better retirement options". Furthermore, all of Respondent's customers certified that they had either lost or destroyed their prior annuity. Respondent's recommendations were not customer specific and were unsuitable for his diverse customer base.

Between December 2006 and December 2007, Respondent switched approximately 140 customers who held approximately 214 fixed or variable annuities to the same variable annuity product – the MetLife VA. For these switches, customers paid approximately \$208,000 in surrender penalties and Respondent received approximately \$380,235 in commissions. Forty-six of the 140 customers who were switched paid surrender fees of over 5 percent. The MetLife VA offered customers a bonus for purchasing the investment and Respondent improperly told his customers that the bonus offered by MetLife would offset any surrender fee charged. Respondent engaged in 138 switches where customers switched one variable annuity product for another and 76 switches where customers switched from a fixed annuity to a variable annuity. The MetLife VA also had a 10 year surrender period with surrender charges that began at eight percent in the first year of the contract and gradually reduced to two percent after the annuity had been held for 9 years.

Respondent also failed to research and understand the salient features of the MetLife VA such as the other investment options (of which there were 34 other investment options) and other riders (of which there were six other living benefit riders) available to his customers and only selected, and only discussed with his customers, the same single investment option and the same single GMIB Plus rider for all customers. In fact, Respondent, before even selling the MetLife VA to any of his customers, had already predetermined that he would sell his customers the same single investment option and the same single GMIB Plus rider, based largely, if not exclusively, on representations made to him by a MetLife wholesaler, without doing any of his own independent research or analysis.

Accordingly, Respondent violated NASD Rules 2310 and 2110 by engaging in unsuitable transactions in customers' accounts.

Inaccurate Books and Records

Respondent marketed the MetLife VA to his customers based on the purported benefits of the GMIB Plus Rider. The GMIB Plus Rider was a living benefit rider that allowed customers to invest their account value in the stock market while assuring a specified guaranteed level of minimum fixed annuity payments regardless of market performance, if the customers elected to annuitize. However, Respondent failed to correctly complete the MetLife VA paperwork which resulted in 92 of his customers not receiving the promised protection of the GMIB Plus Rider at the time of the sale. Respondent and MetLife subsequently worked to reissue the MetLife VA with the GMIB Plus Rider for some of the customers.

Therefore, Respondent violated NASD Rules 3110 and 2110 by causing the Firm's books and records to be inaccurate.

- B. I also consent to the imposition of the following sanctions:

A bar from association with any FINRA member in any capacity.

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

I understand that if I am barred or suspended from associating with any FINRA member, I become subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against me;
- 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, 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.

7/13/11
Date (mm/dd/yyyy)

Jan D. Henderson
Respondent

Reviewed by:

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Accepted by FINRA:

7/14/11
Date

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

R.R. Best
Richard R. Best
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