

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Brett Henderson,
CRD No. 2420629,

Respondent.

Disciplinary Proceeding
No. 2009019513902

Hearing Officer MAD

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: April 10, 2012

INTRODUCTION

Disciplinary Proceeding No. 2009019513902 was filed on December 13, 2011, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Henderson submitted an Offer of Settlement (Offer) to Complainant dated March 13, 2012. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, 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, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of

the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

1. Respondent entered the securities industry in October 1993. Respondent was a registered representative at Great American Advisors, Inc. ("Great American" or the "Firm") from December 2006 until he was permitted to resign on or about November 21, 2007, for failing to follow the Firm's procedures and independent contractor agreement. Prior to his employment at Great American, Respondent had worked at six other FINRA regulated firms.

2. On January 30, 2008, Respondent reentered the securities industry with another FINRA regulated broker dealer until he resigned on December 10, 2009. On December 14, 2009, that firm filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") reporting his resignation. Since his resignation, Respondent has not held another position in the securities industry.

3. Although Respondent is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the effective date of termination of Respondent's registration, namely, December 14, 2009 and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

SUMMARY

4. Between December 2006 and December 2007, Respondent engaged in a pattern of unsuitable variable annuity switch transactions, in which Respondent executed 33 switches involving 32 customers. Respondent executed these transactions without regard to the substantial surrender charges imposed or the extension of the surrender period for his customers. For these switches, Respondent's customers paid approximately \$82,505 in surrender penalties and he received approximately \$84,296 in commissions. Furthermore, Respondent failed to know and understand the variable annuity product that he recommended to his customers and did not adequately investigate other investment options and available riders. Therefore, Respondent did not have a reasonable basis to believe that the variable annuity switch transactions that he recommended and effected for the customers were suitable.

Unsuitable Annuity Switching (NASD Rules 2310 and 2110)

5. NASD Rule 2310(a) provides: "[i]n recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs."

6. Annuity switching involves using the proceeds from the liquidation of one variable annuity to purchase a new variable annuity issued by a different annuity company. The surrender period is the amount of time an investor must wait until he or she can withdraw funds from an annuity without facing a surrender charge or penalty. A surrender charge is a charge levied against an investor for the early withdrawal of funds from an insurance or annuity contract, or for the cancellation of the agreement. When a customer surrenders a variable

annuity prior to the expiration of the agreed upon surrender period, the purchaser of the new variable annuity is subjected to a new, extended surrender period and surrender charges

7. Respondent primarily sold life insurance and fixed and variable annuities from his home office in the suburbs of Salt Lake City, Utah. The Respondent was supervised by KT and VC, Firm supervisors, from an office located in the State of Georgia.

8. In or around December 2006, Respondent spoke with other industry professionals who recommended that he sell the MetLife Investors USA Variable Annuity Series XC variable annuity ("MetLife VA"). Respondent also spoke with SS, a MetLife wholesaler about the MetLife VA.

9. The MetLife VA had 33 investment choices: a fixed investment portfolio that offered a guaranteed interest rate and 32 other investment portfolios which were comprised of both asset allocation portfolios from MetLife Investors, and funds from other mutual fund companies.

10. Customers who bought the MetLife VA had the opportunity to receive up to a six percent cash bonus. Respondent claimed to his customers that the bonus could be used to offset any surrender fees incurred by the sale of variable annuities. However, the MetLife VA prospectus warned customers that expenses associated with the bonus may be higher than the expenses associated for a variable annuity contract without the bonus.

11. The MetLife VA also offered customers six living benefit riders that could be chosen by customers for an annual fee. All insurance riders offered within variable contracts and policies fell into one of two categories: (1) living benefit riders, which generally guarantee some sort of defined payout while the insured or annuitant is still alive; and (2) death benefit riders, which protect against declines in contract values due to market conditions for beneficiaries.

12. The guaranteed minimum income benefit rider (“GMIB Plus Rider”), the only rider that Respondent solicited and bought for his customers, was a living benefit rider that allowed customers to invest their account value in the stock market while guaranteeing minimum fixed annuity payments regardless of market performance. The GMIB Plus Rider provided a six percent guaranteed income benefit which was only available after the contract had been held for at least ten years. Once the contract was annuitized, the owner benefited from minimum income payments for the remainder of his or her life. Those income benefit payments could be higher than the principal investment, depending on market performance and certain other features of the benefit base, but they were guaranteed not to be lower, subject to certain withdrawal consequences.

13. Customers who purchased the GMIB Plus Rider were limited to the purchase of four of the 33 MetLife asset allocation portfolios. Respondent recommended that his customers purchase the MetLife Growth Strategy portfolio, which was one of the four MetLife asset allocation portfolios.

14. The MetLife VA also had a nine year surrender period with surrender charges that began at 8% in the first year of the contract and gradually reduced to 2% after the annuity had been held for 8 years.

15. Whenever a customer made an annuity switch, the Firm required customers to complete several forms prepared by Great American and MetLife which outlined the costs associated with selling their variable annuity and purchasing the MetLife VA.

ONE SIZE FITS ALL WHOLESALE ANNUITY SWITCHING

16. Between December 2006 and December 2007, Respondent switched 32 customers who held 33 non-MetLife VAs to the MetLife VA.

17. Respondent employed a “one size fits all” investment strategy for his diverse customer base. Respondent switched all 32 customers into the same MetLife VA, with the same GMIB Plus Rider, and with the same MetLife Growth Strategy portfolio.

18. On Firm New Account Applications under the “request to switch/replace investments” section, which required the Respondent to articulate a reason for the variable annuity switch transaction, Respondent justified the switches for virtually all of his customers by using the same conclusory rationale that the new MetLife VA provided better features. On the New Account Application forms, Respondent did not fully describe how the MetLife VA provided customers with better features.

19. Respondent switched customers between the ages of 39 and 67 out of an existing annuity into the MetLife VA. Respondent recommended the MetLife VA to both retired and working people. Approximately fifty percent of Respondent’s customers had a net worth of less than \$500,000. Approximately 85 percent of Respondent’s customers had income of less than \$125,000.

20. Respondent listed on Firm New Account Application forms in the account suitability section that all but a few of the customers had an aggressive risk tolerance and their investment objectives were long term growth. Respondent placed all of his customers into the same MetLife proprietary investment, the MetLife Growth Strategy portfolio. All of Respondent’s customers purchased the GMIB Plus rider at his recommendation.

21. Firm customers were asked to send in a copy of the documents regarding the variable annuity they were going to sell in order to purchase the MetLife VA through Respondent. On MetLife Assignment and Transfer/Direct Rollover request forms, all of

Respondent's customers stated that they had either lost or destroyed the paperwork for the annuity they were going to sell.

22. For the variable annuity switches described above, Respondent's customers paid significant surrender penalties. Out of the 33 annuity switches recommended by Henderson, 17 annuities switches (52%) resulted in customers paying surrender fees of over 5 percent.

23. As a result of these unsuitable variable annuity switches, Respondent received approximately \$84,296 in commissions. The MetLife VA provided a six percent sales commission and the Respondent had a 90 percent payout from Great American. Respondent elected an upfront commission and did not opt to receive trailers on the purchase of the MetLife VA.

24. Customers paid approximately \$82,505 in surrender fees that were charged for the 33 annuities that were switched by the Respondent.

25. As a result of the foregoing conduct, which involved Respondent employing a 'one size fits all' strategy to a diverse group of customers without determining whether the variable annuity switch was suitable for each customer, Respondent violated NASD Rules 2310 and 2110.

Reasonable Basis Suitability
(NASD Rules 2310 and 2110)

26. Despite the fact that the existing annuities being replaced with the MetLife VA were, in large part, originally sold by Respondent during the preceding five years, he concluded that the MetLife VA was the best product for his customer. Respondent did no independent research or analysis into the salient and diverse features of the MetLife VA, or the different aspects and risks of the new product before recommending the MetLife VA.

27. Respondent did not fully read the MetLife VA prospectus. Other than reviewing performance, he took no steps to educate himself as to the differing investment options and risks of those investment options. Instead, Respondent relied primarily on the advice of a MetLife wholesaler, and in virtually every case, only discussed one proprietary MetLife asset allocation portfolio with his clients, as evidenced by all of the 32 customers purchasing the exact same MetLife VA with the same rider and investment allocations.

28. Respondent never considered selecting any of the other investment options as he had already predetermined that the MetLife Growth Strategy portfolio was the fund he liked, without bothering to ascertain or consider the individual financial conditions of his diverse customer base.

29. When soliciting his customers to replace their pre-existing annuities with the MetLife VA, Respondent only described and sold the product with the GMIB Plus rider. Despite the fact that the MetLife VA had five other living benefit riders and three death benefit riders, Respondent described this one rider that he recommended and ultimately sold to his clients.

30. Respondent, before ever meeting with or discussing the MetLife VA with any of his customers and without taking into account the diversity in his customer base or the particulars of his customers' individual financial conditions, had already predetermined that the GMIB Plus rider was the only rider he wanted to sell. Respondent did little to no research and analysis into the differences among the nine different rider options. Respondent did not read about any of the rider options in the prospectus.

31. As a result of the foregoing conduct, which involved Respondent making recommendations and effecting variable annuity switches without reasonable basis to believe that the switches were suitable, Respondent violated NASD Rules 2310 and 2110.

Based on the foregoing, Respondent violated NASD Rules 2310 and 2110 for unsuitable variable annuity switching.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be suspended for eleven months from association with any FINRA member; and pay a fine of \$95,000, which includes restitution of \$82,505 payable to customers identified in Attachment A.

The fine, which includes restitution, shall be due and payable either immediately upon reassociation with a member firm following the eleven month suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier. Respondent is ordered to pay restitution to the customers listed on Attachment A hereto in the total amount of \$82,505, plus interest 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 of the purchase of the MetLife VA as listed on Attachment A, until the date of payment. Restitution amounts ordered, pursuant to this disciplinary action, are due and payable immediately upon reassociation with a member firm following the suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier. The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies. If for

any reason Respondent cannot locate any customer identified in Attachment A after reasonable and documented efforts within such period, or such additional period agreed to by the staff, Respondent shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property, or abandoned property fund for the state in which the customer is last known to have resided.

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

SO ORDERED.

FINRA

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

A handwritten signature in black ink, appearing to read 'R. Best', is written over a horizontal line.

Richard Best
Chief Counsel
FINRA Department of Enforcement
One World Financial Center
200 Liberty Street, 11th Floor
New York, NY 10281
(646) 315-7308 (p) and (202) 689-3424 (f)
richard.best@finra.org

Transaction #	Customer	Trade Date as reported by CNA	Investment Amount as reported by CNA	Contribution Amount as reported by CNA	Product Placeholder as reported by CNA	Replacing Product	Policy #	Investment Option	Fiber Option	Guaranteed Fee % as reported by CNA	Calculated Guarantee Fee % based on Gross reported Fee % and Investment Amt
1	J.BES.	6/3/2007	\$29,178.90	\$1,738.14	GENWORTH	MetLife Series XC	xxxxxx0391	100% - MetLife Growth Strategy	GMIB+	2.2%	\$941.94
2	W.BET.	1/3/2007	\$57,535.21	\$3,423.34	JACKSON NATIONAL PERSPECTIVE II	MetLife Series XC	xxxxxx0645	100% - MetLife Growth Strategy	GMIB+	6.3%	\$4,776.42
3	J.BUC.	11/28/2007	\$12,160.88	\$722.97	ZURICH PREFERRED PLUS	MetLife Series XC	xxxxxx0508	100% - MetLife Growth Strategy	GMIB+	5.8%	\$880.44
4	J.BUR.	11/29/2007	\$59,196.23	\$3,522.16	ING	MetLife Series XC	xxxxxx0582	100% - MetLife Growth Strategy	GMIB+	3.1%	\$1,835.08
5	G.CAN.	4/16/2007	\$20,712.65	\$1,232.41	GENWORTH	MetLife Series XC	xxxxxx3086	100% - MetLife Growth Strategy	GMIB+	4.5%	\$932.07
6	J.CAN.	4/17/2007	\$30,681.15	\$1,837.43	GENWORTH	MetLife Series XC	xxxxxx3082	100% - MetLife Growth Strategy	GMIB+	4.8%	\$1,482.30
7	J.CAN.	5/15/2007	\$8,991.00	\$529.01	GENWORTH	MetLife Series XC	xxxxxx3074	100% - MetLife Growth Strategy	GMIB+	4.4%	\$391.20
8	Y.COR.	12/28/2006	\$70,474.62	\$4,193.24	JACKSON NATIONAL PERSPECTIVE II	MetLife Series XC	xxxxxx1660	100% - MetLife Growth Strategy	GMIB+	7.8%	\$5,587.49
9	J.CO.	3/20/2007	\$23,103.84	\$1,374.66	ING	MetLife Series XC	xxxxxx8985	100% - MetLife Growth Strategy	GMIB+	3.5%	\$808.63
10	K.DEC.	1/29/2007	\$8,416.24	\$500.89	GENWORTH	MetLife Series XC	xxxxxx5748	100% - MetLife Growth Strategy	GMB+	0.0%	\$0.00
11	J.FRA.	9/27/2007	\$19,888.84	\$1,171.49	ING	MetLife Series XC	xxxxxx2622	100% - MetLife Growth Strategy	GMIB+	0.0%	\$0.00
12	S.GAL.	9/25/2007	\$89,000.00	\$4,105.50	UTAH RETIREMENT SYSTEMS	MetLife Series XC	xxxxxx7396	100% - MetLife Growth Strategy	GMIB+	0.0%	\$0.00
13	G.GIL.	12/28/2006	\$125,235.75	\$7,451.53	JACKSON NATIONAL PERSPECTIVE E	MetLife Series XC	xxxxxx1698	100% - MetLife Growth Strategy	GMB+	13.9%	\$17,407.77
14	M.GOB.	4/17/2007	\$13,253.55	\$788.59	GENWORTH	MetLife Series XC	xxxxxx3090	100% - MetLife Growth Strategy	GMIB+	3.1%	\$410.88
15	L.HUN.	5/23/2007	\$21,107.06	\$1,255.67	ING GOLDEN SELECT	MetLife Series XC	xxxxxx2912	100% - MetLife Growth Strategy	GMIB+	6.8%	\$1,435.28
16	J.KEL.	8/21/2007	\$9,430.60	\$561.12	JACKSON NATIONAL PERSPECTIVE II	MetLife Series XC	xxxxxx9983	100% - MetLife Growth Strategy	GMIB+	4.0%	\$377.22
17	B.KNI.	12/28/2006	\$59,056.80	\$3,514.00	JACKSON NATIONAL PERSPECTIVE II	MetLife Series XC	xxxxxx8344	100% - MetLife Growth Strategy	GMB+	6.9%	\$4,075.06
18	K.LAM.	12/14/2006	\$64,476.05	\$3,836.44	ING GOLDEN SELECT	MetLife Series XC	xxxxxx7116	100% - MetLife Growth Strategy	GMIB+	6.2%	\$3,997.64
19	S.LOV.	3/19/2007	\$29,393.43	\$1,748.91	JACKSON NATIONAL PERSPECTIVE E	MetLife Series XC	xxxxxx9001	100% - MetLife Growth Strategy	GMIB+	6.3%	\$2,439.65
20	K.MAC.	7/20/2007	\$22,407.33	\$1,333.23	GENWORTH	MetLife Series XC	xxxxxx1396	100% - MetLife Growth Strategy	GMIB+	0.0%	\$0.00
21	N.MAR.	6/9/2007	\$75,283.19	\$4,479.35	JACKSON NATIONAL PERSPECTIVE II	MetLife Series XC	xxxxxx2814	100% - MetLife Growth Strategy	GMIB+	5.0%	\$3,784.16
22	M.MCG.	2/12/2007	\$15,526.41	\$923.82	JACKSON NATIONAL PERSPECTIVE II	MetLife Series XC	xxxxxx4095	100% - MetLife Growth Strategy	GMIB+	6.7%	\$1,040.27
23	R.MIL.	6/29/2007	\$10,022.47	\$596.33	ING	MetLife Series XC	xxxxxx7871	100% - MetLife Growth Strategy	GMIB+	0.0%	\$0.00
24	M.OVE.	3/14/2007	\$74,677.95	\$4,443.34	JOHN HANCOCK VENTURE III	MetLife Series XC	xxxxxx6049	100% - MetLife Growth Strategy	GMIB+	0.0%	\$0.00
25	B.PET.	12/21/2006	\$64,307.06	\$3,016.26	ING GOLDEN SELECT	MetLife Series XC	xxxxxx1676	100% - MetLife Growth Strategy	GMIB+	6.4%	\$5,395.85
26	S.PET.	2/16/2007	\$13,313.01	\$792.12	JACKSON NATIONAL PERSPECTIVE II	MetLife Series XC	xxxxxx7205	100% - MetLife Growth Strategy	GMIB+	6.3%	\$1,104.96
27	G.PET.	12/21/2006	\$89,232.02	\$5,309.30	ING GOLDEN SELECT	MetLife Series XC	xxxxxx1652	100% - MetLife Growth Strategy	GMIB+	5.8%	\$4,996.99
28	F.ROL.	2/7/2007	\$103,743.59	\$6,172.74	JACKSON NATIONAL PERSPECTIVE II	MetLife Series XC	xxxxxx2305	100% - MetLife Growth Strategy	GMIB+	6.8%	\$7,054.58
29	D.SPI.	4/10/2007	\$9,194.76	\$547.09	METLIFE	MetLife Series XC	xxxxxx6793	100% - MetLife Growth Strategy	GMIB+	0.0%	\$0.00
30	P.TAY.	1/30/2007	\$31,436.41	\$1,870.59	ING GOLDEN SELECT	MetLife Series XC	xxxxxx0169	100% - MetLife Growth Strategy	GMIB+	6.5%	\$2,043.50
31	F.TUR.	12/21/2006	\$74,297.63	\$4,420.71	ING GOLDEN SELECT	MetLife Series XC	xxxxxx0650	100% - MetLife Growth Strategy	GMIB+	7.1%	\$5,275.13
32	J.VIG.	12/28/2006	\$66,769.06	\$4,091.76	JACKSON NATIONAL PERSPECTIVE II	MetLife Series XC	xxxxxx0813	100% - MetLife Growth Strategy	GMIB+	5.8%	\$3,851.07
33	M.WAT.	4/25/2007	\$13,345.16	\$794.04	GENWORTH	MetLife Series XC	xxxxxx0632	100% - MetLife Growth Strategy	GMIB+	5.4%	\$720.84

Attachment A
Bret Henderson 2009019513902