

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2010021133001**

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

RE: Financial West Group, Respondent
Member Firm
CRD No. 16668

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Financial West Group (FWG or the Firm) 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 Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent 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

FWG has been a FINRA member since March 21, 1986 and its registration remains effective. FWG's main office is in Westlake Village, California. The Firm has approximately 116 registered branch offices and employs 290 registered representatives. FWG is a full-service brokerage firm.

RELEVANT DISCIPLINARY HISTORY

The Firm has the following relevant formal disciplinary history:

- In March 2009, without admitting or denying the findings, through an AWC, FWG agreed to entry of findings that the Breakpoint Self-Assessment Follow-up Review conducted for the Firm found that the FWG was required to provide written notification, on or before January 15, 2004, to customers who purchased

mutual fund Class A shares stating that the firm experienced a problem delivering breakpoint discounts and as a result, the customer may be entitled to a refund. FWG, however, did not provide timely notices to customers who had made automated purchases (i.e., through their brokerage accounts rather than by direct application to an investment company) of their mutual fund shares but closed their account prior to December 2003. This conduct resulted in violations of NASD Conduct Rule 2110. FWG was fined \$5,000.00 (AWC No. 20050013313-01).

OVERVIEW

In connection with some variable annuity transactions, between March 2009 and May 2010, FWG did not provide accurate disclosures to customers concerning certain fees and charges. FWG also failed to have adequate written supervisory procedures to ensure that the customers received accurate disclosures about these fees and charges, and did not adequately enforce its written supervisory procedures for reviewing email.

FACTS AND VIOLATIVE CONDUCT

A. Failure to Provide Accurate Disclosures Regarding Variable Annuity Products

1. Between March 1, 2009 and May 31, 2010, the Firm used disclosure forms referred to as the Variable Annuity Disclosure and Investment Form, Request to Switch Investments Form and the Product Comparison Worksheet (collectively referred to as Forms) to inform customers of various features of deferred variable annuities, such as: the potential surrender period and surrender charge; potential tax penalty if customers sell or redeem deferred variable annuities before reaching the age of 59½; mortality and expense fees; potential charges for and features of riders; investment options; death benefits; annuity payment options; and certain risks associated with the product. However, during the relevant time period, the Firm did not provide accurate disclosures to customers in 28 out of 93 (30%) of the variable annuity transactions and exchanges reviewed by the staff. The Forms provided to certain customers to support the Firm's disclosures and suitability recommendations contained, among others, the following inaccuracies when compared to the disclosures in the variable annuity prospectuses:

- Discrepancies between the amount of mortality and expense fees;

- Inconsistencies between the surrender schedule, surrender charges and related withdrawal charges; and
 - Incorrect amounts reflected as the total rider and/or benefit fees.
2. By engaging in the conduct described above, FWG violated NASD Rule 2821 and FINRA Rule 2010 for conduct prior to February 8, 2010, and FINRA Rules 2330 and 2010 for conduct occurring on or after February 8, 2010.

B. Supervisory Violations

Conduct Rule 3010(b) requires a member to “establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of [NASD and FINRA].”

Deficient Written Supervisory Procedures for Variable Annuity Transactions

3. Between March 1, 2009 and May 31, 2010, the Firm failed to have adequate written supervisory procedures in place to verify that the Firm, by and through its registered representatives, made accurate disclosures of certain fees and charges in connection with variable annuity transactions. Specifically, the Firm’s written supervisory procedures required the Firm’s designated principal and the Firm’s designated supervisor to review the customer application, Variable Contract Disclosure form, and Switch form (if necessary) and client new account form to determine that the paperwork was in good order, and the variable contract was a suitable investment for the client. However, the Firm’s written supervisory procedures failed to require that the Firm review the Forms in connection with variable annuity transactions to ensure that the Forms accurately disclosed to customers certain fees and charges consistent with the respective variable annuity prospectus.
4. By failing to establish, maintain and enforce written supervisory procedures reasonably designed to achieve compliance with applicable rules and regulations to ensure that the accurate disclosures were made to customers in connection with variable annuity transactions, FWG violated NASD Rules 3010(b) and FINRA Rule 2010.

Failure to Enforce Written Supervisory Procedures related to Firm Email

5. NASD Rule 3010(d)(2) requires firms to develop written procedures for the review of incoming and outgoing (i.e. non-electronic) and electronic correspondence with the public relating to the investment banking or securities business of such member.
 6. Between March 1, 2009 and February 28, 2010 (Relevant Period), the Firm utilized Seccas as its electronic storage media vendor. The Firm provided Seccas with certain "key words" as search parameters to flag emails to assist the Firm in conducting its email review. Point values or scores were then assigned to each "key word" whereby an overall score was assessed automatically by the Seccas system on emails containing the "keyword(s)." In addition, the Seccas system automatically noted when each email was reviewed, and by whom, as documentation of the supervisory review.
 7. During the Relevant Period, the Firm's procedures mandated that at least weekly, depending on branch activity, that all emails with a Seccas score of 50 and above must be reviewed by an OSJ Branch Manager or designated principal, unless the email was obvious SPAM, a newsletter or a large legal document such as a prospectus. However, during the Relevant Period, the Firm did not comply with its existing policies and procedures for review of email. For example, during the Relevant Period, the Firm did not review 277,879 out of 342, 866 emails with a Seccas score of at least 50. Consequently, the Firm failed to implement and enforce its written supervisory procedures for reviewing email.
 8. By failing to enforce its written supervisory procedures that were reasonably designed to achieve compliance with the electronic correspondence requirements of NASD Rule 3010(d)(2), the Firm violated NASD Conduct Rules 3010(b), 3010(d)(2) and FINRA Rule 2010.
- B. Respondent also consents to the imposition of the following sanctions:
1. A censure; and
 2. A fine in the amount of \$35,000.00;

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

Respondent specifically and voluntarily waives any right to claim that it is 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

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

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

Respondent 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

Respondent 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 the Firm; and
- C. If accepted:
 - 1. this AWC will become part of Respondent’s permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the Firm;
 - 2. this AWC will be made available through FINRA’s public disclosure program in response to public inquiries about Respondent’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. Respondent 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. Respondent 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 Respondent’s: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent 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 Firm, 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 it 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 Firm to submit it.

Financial West Group
Respondent

5-31-13

Date (mm/dd/yyyy)

Ellen Shearin

By: Ellen K. Shearin, President

Reviewed by:

[Signature]

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Accepted by FINRA:

07/31/2013

Date

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

Jill L. Jablonow

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Statement of Corrective Action

Financial West Group, No. 2010021133001

Subsequent to the staff's review and evaluation of these issues, the Firm has instituted additional procedures to ensure future compliance with the Firm's written policies. The majority of the accounts with errors were processed by the Firm's Director of Insurance. Following the FINRA findings, each variable annuity transaction in the Forms is reviewed by a compliance officer tasked with responsibility for comparing the Forms with the features and terms set forth in the prospectus, as well as a Series 24 supervisor/licensed principal. Registered Representatives are also now prohibited from relying upon oral information provided to them from the annuity company or its agents for any disclosures on the Forms.

This Corrective Action Statement is submitted by the Respondent. It does not constitute factual or legal findings by FINRA, nor does it reflect the view of FINRA, or its staff.