

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015043387001**

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

RE: Hornor, Townsend & Kent, Inc. (BD No. 4031)
Respondent

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Hornor, Townsend & Kent, Inc. ("HTK" 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 HTK alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. HTK 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

HTK has been a member of FINRA since June 1969. HTK is headquartered in Horsham, Pennsylvania, and has approximately 1,160 registered personnel and 280 registered branch offices.

RELEVANT DISCIPLINARY HISTORY

HTK has no relevant formal disciplinary history.

OVERVIEW

From April 2013 to June 2015 (the "Relevant Period"), HTK failed to reasonably supervise representatives' sale of multi-share class variable annuities ("VAs"), and failed to provide training to its representatives and principals on the sale and supervision of multi-share class VAs. Based on the foregoing, HTK violated NASD Rule 3010(a) and (b) and FINRA Rules 2330(d) and (e), 3110(a) and (b) and 2010.

Also, during the Relevant Period, HTK failed to adequately supervise representatives' private securities transactions. Based on the foregoing, HTK violated NASD Rules 3010(a) and (b) and 3040 and FINRA Rules 3110(a) and (b) and 2010.

FACTS AND VIOLATIVE CONDUCT

A. Failure to Supervise VA Share Class Recommendations

During the Relevant Period, HTK sold at least 15,815 VA contracts to its customers. Approximately 7,398 (46.7%) of these were L-share contracts. As described below, the Firm failed to implement a supervisory system and procedures reasonably designed to ensure the suitability of multi-share class VA sales, including L-share contracts.

HTK sold VA contracts with the option of different share classes, including B-share contracts and L-share contracts. B-share contracts are the most common share class sold in the industry and typically have a seven-year surrender period. L-share contracts provide a shorter surrender period of three to four years. Insurance companies design L-share contracts so that customers pay a higher fee in exchange for the increased liquidity provided by the shorter surrender period. The fees associated with an L-share contract are typically between 35 and 50 basis points higher annually than most B-share contracts.

L-share contracts are designed for investors who want the option to surrender the L-share contract sooner than a B-share contract. Pursuant to the terms established by the insurance company issuers, if a purchaser chooses not to surrender an L-share contract during the surrender period, the purchaser continues to pay a higher annual fee for the life of the contract, unless the contract provides for a "persistence credit."¹

During the Relevant Period, HTK failed to implement an adequate supervisory system and written supervisory procedures ("WSPs") related to the sales of multi-share class VAs. The Firm's WSPs failed to provide registered representatives and principals guidance and suitability considerations for sales of different VA share classes. The Firm did not provide training to registered representatives on the features of the various share classes and the associated fees and surrender charges, and did not provide them with adequate information to compare share classes to make suitability determinations. In addition, HTK failed to establish,

¹ Some L-share contracts have a specific provision called a "persistence credit," which reduces the annual fees so that the contract is comparable to a B-share contract after the product is held for a certain period of time, generally seven to ten years.

maintain, and enforce WSPs or provide sufficient guidance or training to registered representatives and principals regarding the sale of long-term income riders with multi-share class VAs, particularly the combination of L-share contracts with long-term income riders.

Based on the foregoing, HTK violated NASD Rule 3010(a) and (b) and FINRA Rules 2330(d) and (e), 3110(a) and (b) and 2010.¹

B. Failure to Supervise Private Securities Transactions

NASD Rule 3040(c) provides that if an associated person “has received or may receive selling compensation” in connection with a private securities transaction, and the member firm approves the transaction, then the member firm must supervise the transaction and include it on its own books and records “as if the transaction were executed on behalf of the member.” The Rule defines a private securities transaction as “any securities transaction outside the regular course or scope of an associated person’s employment with a member.”

As explained in NASD Notice to Members 94-44, these requirements apply “to all investment advisory activities conducted by [individuals dually registered as registered representatives and registered investment advisors] that result in the purchase or sale of securities by the associated person’s advisory clients, with the exception of their activities on behalf of the member.”

During the Relevant Period, HTK failed to adequately supervise the private securities transactions of its representatives who were dually registered as investment advisors with third-party advisory firms. The Firm’s WSPs did not address the supervision of transactions that representatives executed through third-party investment advisors. As a result, the Firm did not adequately supervise these activities.

Based on the foregoing, HTK violated NASD Rules 3010(a) and (b) and 3040, and FINRA Rules 3110(a) and (b) and 2010.

B. HTK consents to the imposition of the following sanctions:

- censure; and
- a fine of \$275,000.

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

¹ The Firm violated NASD Rule 3010 for the conduct before December 1, 2104 and FINRA Rule 3110 for the conduct on or after December 1, 2014.

HTK has specifically and voluntarily waived any right to claim an inability to pay 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.

I.

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 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, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, 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 Respondent; and
- C. If accepted:
1. this AWC will become part of the Respondent'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 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 they 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 understand all of the provisions of this AWC and has been given a full opportunity to ask questions about it: that the Firm 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.

Hornor, Townsend & Kent Inc.

10/31/2017
Date (mm/dd/yyyy)

By: Michelle A. Barry
Michelle A. Barry, President & CEO

Reviewed by:

Leonard J. Amoroso 10-31-17
Leonard J. Amoroso, Esq.
Counsel for Respondent
Murphy & McGonigle, PC
1185 Avenue of the Americas
New York, NY 10036
Tel: 212.880.3622
Email: Leonard.Amoroso@mmlawus.com

Accepted by FINRA:

November 14, 2017
Date

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

David F. Newman
David F. Newman
Senior Regional Counsel
FINRA Department of Enforcement
1601 Market Street, Suite 2700
Philadelphia, PA 19103
Tel: (215) 209-7028
Fax: (215) 209-7022
E-Mail: david.newman@finra.org