

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2020065435403**

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

RE: Fortune Financial Services, Inc. (Respondent)
Member Firm
CRD No. 42150

Pursuant to FINRA Rule 9216, Respondent Fortune Financial Services, Inc. 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 in this AWC.

I.

ACCEPTANCE AND CONSENT

- A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

Fortune has been a FINRA member since 1997. The firm offers various investment products, including deferred variable annuities, to the public and maintains its headquarters in Monaca, Pennsylvania. The firm has approximately 280 registered representatives in more than 200 branch offices.¹

OVERVIEW

From July 2016 through July 2021, Fortune's supervisory system, including its written supervisory procedures, was not reasonably designed to achieve compliance with FINRA suitability requirements regarding the recommendation of variable annuities. The firm also failed to reasonably respond to red flags indicating unsuitable variable annuity recommendations. Based on the foregoing, Fortune violated FINRA Rules 3110, 2330, and 2010.

From September 2017 through November 2020, Fortune failed to reasonably supervise the use of an unapproved email address to transmit securities-related documents to Fortune's customers and failed to retain business-related email communications. Based

¹ For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

on the foregoing, Fortune violated FINRA Rule 3110, Section 17(a) of the Securities Exchange Act of 1934, Exchange Act Rule 17a-4, and FINRA Rules 4511 and 2010.

FACTS AND VIOLATIVE CONDUCT

This AWC resolves two separate investigations: one originating from a call to FINRA's Senior Helpline, and the other from a cause examination.²

Fortune's system for monitoring patterns of inappropriate rates of variable annuity exchanges was unreasonable.

FINRA Rule 3110(a) requires member firms to establish and maintain a system to supervise the activities of associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA Rules. FINRA Rule 3110(b) requires member firms to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable FINRA Rules. The duty to supervise under Rule 3110 also requires member firms to reasonably investigate red flags that suggest misconduct may be occurring and to act upon the results of such investigation.

Variable annuities are complex investments that are commonly marketed and sold to retirees or individuals saving for retirement. Due in part to the complexity of these products, FINRA issued Rule 2330 to require that firms provide more comprehensive and targeted protection to investors who purchase or exchange variable annuities. FINRA Rule 2330(b)(1)(A) requires that firms and their associated persons have a reasonable basis to believe that the transaction is suitable for the customer and that the customer has been informed, in general terms, of the various features of variable annuities. With respect to variable annuity exchanges, FINRA Rule 2330(b)(1)(B) provides that the suitability determination must take into consideration whether, among other things, "the customer would incur a surrender charge."

FINRA Rule 2330(c) requires that a registered principal review variable annuity purchases and exchanges within seven days of receiving a "complete and correct" application package, and to approve the recommended transaction "only if he or she has determined that there is a reasonable basis to believe that the transaction would be suitable" based on the factors identified in FINRA Rule 2330(b).

FINRA Rule 2330(d) requires, among other things, that firms implement surveillance procedures reasonably designed to determine if any of the member's associated persons have inappropriate rates of variable annuity exchanges. Additionally, Rule 2330 Supplementary Material .05 requires that member firms consider whether a customer has had another deferred variable annuity exchange within the preceding 36 months. A

² This AWC resolves two separate matters: FINRA Matter No. 2020065435403, and FINRA Matter No. 201906202501.

violation of FINRA Rules 3110 and 2330 also constitutes a violation of FINRA Rule 2010, which requires member firms and associated persons to “observe high standards of commercial honor and just and equitable principles of trade” in the conduct of their business.

Between July 2016 and July 2021, Fortune’s system for supervising variable annuity exchanges was unreasonable. During this time, the firm used external exception-reporting software to create alerts for potentially problematic variable annuity transactions. Fortune elected which categories and parameters would be flagged in the exception alerts. Fortune’s configuration of these alerts did not flag inappropriate rates of variable annuity exchanges by the firm’s associated persons or identify when customers had previously conducted an exchange within the preceding 36 months. Fortune did not have any other surveillance tools for monitoring variable annuity exchanges other than the exception reporting software. Moreover, the firm’s principals did not monitor for inappropriate rates of variable annuity exchanges when reviewing and approving individual exchange recommendations.

Therefore, Fortune violated FINRA Rules 3110, 2330, and 2010.

Fortune failed to reasonably supervise Representative A’s variable annuity exchange recommendations and failed to investigate and act upon red flags.

Between July 2016 and July 2021, Representative A³ engaged in a pattern of recommending that customers exchange variable annuities without considering whether such transactions were suitable in light of the substantial surrender charges that resulted from his recommendations. In total, as part of Representative A’s recommendations, 48 customers who purchased variable annuities and took short-term withdrawals, sometimes less than one year after purchasing the variable annuity, incurred \$612,172.66 in surrender charges.

Fortune supervisors missed red flags on the documents that Representative A submitted for review in connection with his variable annuity exchange recommendations. For instance, Fortune supervisors failed to compare the information on the exchange applications with other sources of information, such as the original applications, the surrender fee schedules, or the customers’ most recent account statements. The firm therefore failed to detect that Representative A had omitted or understated the customers’ actual surrender charges on 136 exchange applications reviewed and approved. Fortune supervisors also failed to analyze whether the purported cost savings of the new share class exceeded the amount of the surrender charges and thereby failed to reasonably determine whether the recommended exchanges were suitable.

Additionally, the firm failed to reasonably act upon information that Representative A had arranged for certain customers to surrender their variable annuities directly with the

³ Representative A passed away in November 2022, prior to the initiation of FINRA disciplinary action for the unsuitable recommendations and misrepresentations described in this AWC.

issuer. In September 2018, one variable annuity issuer notified Fortune that it had terminated its agency relationship with Representative A because it found he had recommended the early liquidation of 23 variable annuity contracts, which resulted in the imposition of \$108,000 in surrender fees. Despite this notification, Fortune did not take reasonable steps to investigate Representative A's recommendation and sale of variable annuities. Instead, over the year following the notification, the firm permitted Representative A to continue to recommend variable annuity exchanges and approved new exchanges to 11 of the same customers. These new exchanges caused the customers to incur additional surrender fees.

Therefore, Fortune violated FINRA Rules 3110, 2330, and 2010.

Fortune failed to reasonably supervise Representative B's use of an external email address and failed to retain business-related email communications sent by Representative B and his staff.

FINRA Rule 3110(b)(4) requires member firms to establish, maintain, and enforce written procedures for, among other things, the review of electronic correspondence relating to its investment banking or securities business, and require that such review be evidenced in writing.

FINRA Rule 4511 requires member firms to "preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules." Section 17 of the Exchange Act and Exchange Act Rule 17a-4 require that member firms preserve, "for a period of not less than three years, the first two years in a readily accessible place," originals of all communications received, and copies of all communications sent by the member relating to its business. Implicit in the requirement to make and preserve books and records is the requirement that information in those books and records be accurate. Emails fall within the purview of Exchange Act 17a-4. Violations of FINRA Rule 4511 and Exchange Act Rule 17a-4 also constitute a violation of FINRA Rule 2010.

From September 2017 through November 2020, Representative B and his support staff, acting at Representative B's direction, used outside email accounts to communicate with firm customers. Using these accounts, Representative B and his support staff forwarded Fortune new account applications, and forms for variable annuity exchanges and withdrawals, and requested that customers sign and return these documents. In many instances, these forms were blank or incomplete, and Representative B would complete the forms after they had already been signed and returned by the customers. Fortune knew that Representative B and his support staff used outside email accounts for business purposes, yet the firm failed to review or preserve these emails.

By failing to reasonably supervise Representative B's use of an outside email account to conduct securities-related business, Fortune violated FINRA Rules 3110 and 2010.

Additionally, by failing to preserve business-related emails, Fortune violated FINRA Rules 4511 and 2010, Section 17(a) of the Exchange Act, and Exchange Act Rule 17a-4.

SANCTIONS CONSIDERATIONS

In determining the appropriate sanctions in this matter, FINRA considered, among other factors, (i) that Fortune has agreed to pay restitution to customers affected by Representative A's unsuitable recommendations; (ii) Fortune's current financial condition; and (iii) that, in lieu of a monetary fine, Fortune will retain an independent consultant to review and revise the firm's supervisory system and procedures.

B. Respondent also consents to the imposition of the following sanctions:

- a censure;
- restitution of \$612,172.66 plus interest in the amount of \$25,183.21;⁴ and
- an undertaking to retain an independent consultant as described below.

Restitution is ordered to be paid to the customers listed on Attachment A to this AWC (Eligible Customers) in the total amount of \$612,172.66, plus interest in the amount of \$25,183.21, from the date of the misconduct through October 31, 2022.

A registered principal on behalf of Respondent shall submit satisfactory proof of payment of restitution and interest (separately specifying the date and amount of each paid to each Eligible Customer) or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted by email to EnforcementNotice@FINRA.org from a work-related account of the registered principal of Respondent. The email must identify Respondent and the case number and include a copy of the check, money order, or other method of payment. This proof shall be provided by email to EnforcementNotice@FINRA.org no later than 120 days after the date of the notice of acceptance of the AWC.

The restitution amount plus interest to be paid to each Eligible Customer shall be treated by the Respondent as the Eligible Customer's property for purposes of state escheatment, unclaimed property, abandoned property, and similar laws. If after reasonable and documented efforts undertaken to effect restitution Respondent is unable to pay all Eligible Customers within 120 days after the date of the notice of acceptance of the AWC, Respondent shall submit to FINRA in the manner described above a list of the unpaid Eligible Customers and a description of Respondent's plan, not unacceptable to FINRA, to comply with the applicable escheatment, unclaimed property, abandoned property, or similar laws for each such Eligible Customer.

⁴ In consideration of the General Principles Applicable to all Sanctions Determinations contained in the *Sanction Guidelines*, FINRA agreed to assess interest on the restitution owed at a rate below that set forth in Section 6621(a)(2) of the Internal Revenue Code, after it considered, among other things, the firm's revenues and financial resources, as well as its agreement to pay full restitution (with partial interest) to the affected customers.

Respondent specifically and voluntarily waives any right to claim an inability to pay, now or at any time after the execution of this AWC, the monetary sanction imposed in this matter.

The imposition of a restitution order in this AWC, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

Restitution payments to customers shall be preceded or accompanied by a letter, not unacceptable to FINRA, describing the reason for the payment and the fact that the payment is being made pursuant to a settlement with FINRA and as a term of this AWC.

1. Respondent has undertaken to do the following:
 - a. Retain at its own expense and within 60 days of the date of the notice of acceptance of this AWC an independent consultant not unacceptable to FINRA to conduct a comprehensive review of the adequacy of Respondent's compliance with applicable federal securities laws and FINRA Rules, concerning:
 - a. Supervision of variable annuity sales and exchanges;
 - b. Surveillance for inappropriate rates of variable annuity exchanges; and
 - c. Supervision and retention of electronic business-related communications with firm customers, including through unapproved means of communication.
 - b. Ensure that the independent consultant, any firm with which the independent consultant is affiliated or of which he or she is a member, and any person engaged to assist the independent consultant in performance of his or her duties, shall not have provided consulting, legal, auditing, or other professional services to, or had any affiliation with, Respondent during the two years prior to the date of the notice of acceptance of this AWC.
 - c. Cooperate with the independent consultant in all respects, including providing the independent consultant with access to Respondent's files, books, records, and personnel, as reasonably requested for the above-mentioned review. Respondent shall require the independent consultant to report to FINRA on its activities as FINRA may request and shall place no restrictions on the independent consultant's communications with FINRA. Further, upon request, Respondent shall make available to FINRA any and all communications between the independent consultant and the

Respondent and documents examined by the independent consultant in connection with this review.

- d. Refrain from terminating the relationship with the independent consultant without FINRA's written approval. Respondent shall not be in and shall not have an attorney-client relationship with the independent consultant and shall not seek to invoke the attorney-client privilege or other doctrine or privilege to prevent the independent consultant from transmitting any information, reports, or documents to FINRA.
- e. Require the independent consultant to submit an initial written report to Respondent and FINRA at the conclusion of the independent consultant's review, which shall be no more than 120 days after the date of the notice of acceptance of this AWC. The initial report shall, at a minimum,
 - (i) provide a description of the review performed and the conclusions reached; (ii) evaluate and address the adequacy of Respondent's supervision of variable annuity exchanges, and patterns of customer exchanges, and supervision of electronic communications (iii) make recommendations as may be needed regarding how Respondent should modify or supplement its processes, controls, policies, systems, procedures, and training to manage its regulatory and other risks in relation to supervision of variable annuity sales and exchanges, and supervision of electronic communications; and
 - (i) Within forty-five days after delivery of the initial report, Respondent shall adopt and implement the recommendations of the independent consultant or, if Respondent considers a recommendation to be, in whole or in part, unduly burdensome or impractical, propose an alternative procedure to the independent consultant designed to achieve the same objective. Respondent shall submit such proposed alternative procedures in writing simultaneously to the independent consultant and FINRA.
 - (ii) Respondent shall require the independent consultant to (A) reasonably evaluate the alternative procedures and determine whether it will achieve the same objective as the independent consultant's original recommendation and (B) provide Respondent and FINRA with a written report reflecting its evaluation and determination within thirty days of submission of any Respondent's proposed alternative procedures. In the event the independent consultant and Respondent are unable to agree, Respondent must abide by the independent consultant's ultimate determination with respect to any proposed alternative procedure and must adopt and implement all recommendations deemed appropriate by the independent consultant.

(iii) Within thirty days after the issuance of the later of the independent consultant's initial report or any written report regarding proposed alternative procedures, Respondent shall provide the independent consultant and FINRA with a written implementation report, certified by an officer of Respondent, attesting to, containing documentation of, and setting forth the details of Respondent's implementation of the independent consultant's recommendations. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. FINRA may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence.

f. Require the independent consultant to enter into a written agreement that, for the duration of the engagement and for a period of two years from the completion of the engagement, the independent consultant shall not enter into any other employment, consultant, attorney-client, auditing, or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any firm with which the independent consultant is affiliated or of which it is a member, and any person engaged to assist the independent consultant in the performance of its duties pursuant to this AWC, shall not, without FINRA's prior written consent, enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Respondent or any of Respondent's present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

2. Upon written request showing good cause, FINRA may extend any of the procedural dates set forth above.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

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 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 its acceptance or rejection.

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 Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
 - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
 - 3. FINRA may make a public announcement concerning this agreement and its subject matter 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 right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.

- 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.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's 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 Respondent has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

February 10, 2023

Date

Gregory J. Bentley

For, Fortune Financial Services, Inc.

Respondent

Name: Gregory J. Bentley

Title: Chief Executive Officer

Reviewed by:

Robert Herskovits

Mr. Robert Herskovits
Counsel for Respondent
Herskovits PLLC
305 Broadway, 7th Floor
New York, NY 10007

Accepted by FINRA:

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

February 10, 2023

Date

Kathryn S. Gostinger

Kathryn S. Gostinger

Senior Counsel

FINRA - Department of Enforcement

55 W. Monroe St., 27th Floor

Chicago, IL 60603

EXHIBIT A

Customer 1	\$ 1,068.65
Customer 2	\$ 3,446.42
Customer 3	\$ 25,860.03
Customer 4	\$ 17,290.13
Customer 5	\$ 4,921.65
Customer 6	\$ 25,512.53
Customer 7	\$ 19,212.99
Customer 8	\$ 205.02
Customer 9	\$ 1,181.39
Customer 10	\$ 14,860.00
Customer 11	\$ 1,334.69
Customer 12	\$ 903.48
Customer 13	\$ 1,448.66
Customer 14	\$ 1,924.35
Customer 15	\$ 5,218.87
Customer 16	\$ 2,697.97
Customer 17	\$ 4,527.94
Customer 18	\$ 14,726.30
Customer 19	\$ 26,387.86
Customer 20	\$ 7,827.49
Customer 21	\$ 6,566.23
Customer 22	\$ 11,815.46
Customer 23	\$ 10,752.44
Customer 24	\$ 46,407.33
Customer 25	\$ 5,311.23
Customer 26	\$ 9,086.29
Customer 27	\$ 17,737.42
Customer 28	\$ 7,496.17
Customer 29	\$ 34,871.37
Customer 30	\$ 3,028.60
Customer 31	\$ 2,574.87
Customer 32	\$ 92,233.43
Customer 33	\$ 22,526.19
Customer 34	\$ 2,776.88
Customer 35	\$ 13,729.86
Customer 36	\$ 2,484.39
Customer 37	\$ 2,568.88
Customer 38	\$ 6,470.96

EXHIBIT A

Customer 39	\$ 19,377.51
Customer 40	\$ 1,974.63
Customer 41	\$ 5,156.91
Customer 42	\$ 610.66
Customer 43	\$ 659.99
Customer 44	\$ 6,735.74
Customer 45	\$ 50,805.54
Customer 46	\$ 44,683.56
Customer 47	\$ 27,458.06
Customer 48	\$ 878.86