

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2018060548501**

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

RE: VALIC Financial Advisors, Inc. (Respondent)  
Member Firm  
CRD No. 42803

Pursuant to FINRA Rule 9216, Respondent VALIC Financial Advisors, Inc. (VFA) 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 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**

VFA has been a FINRA member firm since June 1997. It currently has approximately 1,700 registered individuals and 182 branch offices. VFA is headquartered in Houston, Texas. The firm engages in several types of business, including acting as a retailer of mutual fund shares, variable life insurance, annuities, and corporate debt securities; acting as a municipal securities broker; and providing investment advisory services. VFA is a subsidiary of The Variable Annuity Life Insurance Company.

**RELEVANT DISCIPLINARY HISTORY**

On November 28, 2016, FINRA accepted AWC No. 2014042360001 in which VFA consented to a censure, a \$1,750,000 fine, and the entry of findings that: (i) from October 2011 through December 2014, VFA failed to establish, maintain and enforce a system reasonably designed to supervise the sale of variable annuity contracts, and (ii) from October 2011 through December 2014, VFA failed to establish, maintain and enforce a system reasonably designed to comply with FINRA Rule 4530.

## **OVERVIEW**

From January 1, 2017 through October 31, 2018, VFA failed to establish a reasonably designed system and written supervisory procedures for the surveillance of rates of VA exchanges and for corrective action in the case of inappropriate exchanges, in violation of FINRA Rules 2330(d), 3110, and 2010. During this time, VFA also failed to establish a reasonably designed system and supervisory procedures for the review of transactions where a registered representative recommended that a customer invest additional funds into an existing VA, in violation of FINRA Rules 3110 and 2010. Finally, VFA failed to timely report statistical and summary information for 174 written customer complaints received by the firm between June 26, 2017 and March 20, 2018, in violation of FINRA Rules 4530(d) and 2010.

## **FACTS AND VIOLATIVE CONDUCT**

This matter originated from FINRA's 2018 cycle exam of VFA.

FINRA Rule 3110(a) requires a member firm to “establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.” FINRA Rule 3110(b) requires a member firm to “establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable FINRA rules.” Under Rule 3110(b), a firm's supervisory procedures must include procedures for the review by a registered principal of all transactions relating to the investment banking or securities business of the member.

Variable annuities are complex products that permit customers to choose among a variety of contract features and options. The predecessor to FINRA Rule 2330 was adopted due to concern that VAs can cause confusion for customers, including when customers exchange one variable annuity for another. FINRA Rule 2330(d)(1) requires a member firm to “implement surveillance procedures to determine if any of the member's associated persons have rates of effecting deferred variable annuity exchanges that raise for review whether such rates of exchanges evidence conduct inconsistent with the applicable provisions of this Rule, other applicable FINRA rules, or the federal securities laws (‘inappropriate exchanges’).”

FINRA Rule 4530(d) requires a member firm to report quarterly statistical and summary information regarding all written customer complaints by the 15th day of each month following the calendar quarter in which the customer complaints are received.

FINRA Rule 2010 requires a FINRA member, in the conduct of its business, to observe high standards of commercial honor and just and equitable principles of trade. A violation of Rules 3110, 2330 or 4530 also violates FINRA Rule 2010.

### **The Firm Failed to Reasonably Monitor Rates of VA Exchanges.**

From January 1, 2017 through October 31, 2018, VFA had over 26,000 VA exchanges. VFA had written procedures stating that the firm would monitor VA transactions for inappropriate rates of VA exchanges, but the surveillance procedures were not reasonably designed. First, the procedures did not detail when or how frequently this review was to be completed. The procedures also failed to provide guidance as to what would be considered a “high rate” of VA replacements. Additionally, the firm failed to establish procedures reasonably designed to implement corrective measures to address inappropriate exchanges and the conduct of associated persons who engage in inappropriate exchanges. Finally, VFA did not maintain an accurate or readily-accessible record of all VA exchange transactions executed by the firm. As a result, when the firm conducted reviews for inappropriate rates of exchange, not all VA exchange transactions were included in those reviews.

Therefore, VFA violated FINRA Rules 2330(d), 3110, and 2010.

### **The Firm Failed to Reasonably Supervise Recommendations Involving the Investment of Additional Funds in an Existing VA.**

From January 1, 2017 through October 31, 2018, VFA’s procedures required principal approval of transactions involving additional premium payments made to an existing VA. That requirement, however, applied only to transactions that involved a “qualified” VA or a premium payment that was funded by a partial or full surrender of an existing VA. The firm did not require principal approval of additional premium payments made to “non-qualified” VAs. As a result, the firm failed to review approximately 400 solicited transactions that involved additional investments into non-qualified VAs.

Therefore, VFA violated FINRA Rules 3110 and 2010.

### **The Firm Failed to Timely Report Customer Complaints.**

VFA failed to timely report statistical and summary information for 174 written customer complaints that the firm received during the period June 26, 2017 to March 20, 2018.

Therefore, VFA violated FINRA Rules 4530(d) and 2010.

## **SANCTIONS CONSIDERATIONS**

In determining the appropriate sanctions, FINRA considered that during FINRA’s investigation, starting in May 2018, VALIC took substantial remedial measures to address the deficiencies described above. The firm hired additional personnel to staff a dedicated customer complaint department, retained independent consultants, and implemented system and procedural enhancements based on the consultants’ recommendations. The firms’ new processes and procedures related to the deficiencies described above were completed by January 2020.

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

- censure and
- a \$350,000 fine.

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 an inability to pay, now or at any time after the execution of this AWC, the monetary sanction imposed in this matter.

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 prejudice 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 testimonial obligations or 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.

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.

January 7, 2021

Date

Michael Brodeur

VALIC Financial Advisors, Inc.  
Respondent

Print Name: Michael Brodeur

Title: President

Accepted by FINRA:

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

January 8, 2021

Date

Mark J. Fernandez

Mark J. Fernandez  
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