

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2020068071402**

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

RE: Transamerica Capital, Inc. (Respondent)
Member Firm
CRD No. 8217

Pursuant to FINRA Rule 9216, Respondent Transamerica Capital, 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

Transamerica Capital, Inc. (TCI) has been a registered broker-dealer since 1980 and is located in Denver, Colorado. The firm has approximately 400 registered representatives and 27 branches. TCI is the principal underwriter and distributor of variable life insurance and variable annuity products issued by its affiliates, Transamerica Life Insurance Company and Transamerica Financial Insurance Company (Transamerica variable products). TCI enters into selling agreements with other broker-dealers, who, in turn, sell Transamerica variable products to their customers. These broker-dealers and the owners of Transamerica variable products can contact call centers relating to Transamerica variable products and other Transamerica insurance products (Transamerica call centers).

OVERVIEW

From December 2019 to February 2021, TCI failed to register, or timely register, a cumulative total of more than 400 call center workers employed by a third-party vendor (call center personnel) who engaged in securities business on TCI's behalf in capacities that required registration. Therefore, the firm violated FINRA Rules 1210 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a September 24, 2020 Form U5 filing disclosing the termination of an associated but unregistered person of TCI who worked at a Transamerica call center.

FINRA Rule 1210 provides that “[e]ach person engaged in the . . . securities business of a member shall be registered with FINRA as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in Rule 1220, unless exempt from registration pursuant to Rule 1230.”

FINRA Rule 1230 Supplementary Material .01 states that “[t]he function of accepting customer orders is not considered a clerical or ministerial function,” and “[e]ach person associated with a member who accepts customer orders under any circumstances shall be registered in an appropriate registration category pursuant to Rule 1220.” Regulatory Notice 17-30 likewise makes clear that “[b]eginning on October 1, 2018, unregistered persons cannot accept an order from a customer under any circumstances.”¹

FINRA Rule 2010 states that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.” A violation of FINRA Rule 1210 also constitutes a violation of FINRA Rule 2010.

During the period December 2019 to February 2021, a cumulative total of more than 400 call center personnel were not registered, or timely registered, despite their engaging in conduct requiring registration. During this time, TCI used a contracted, third-party vendor to administer the Transamerica call centers to handle calls and requests from Transamerica variable product policy holders who had transaction requests related to securities. These securities transaction requests included customer orders for investment of additional premiums, reallocations of contract value among subaccounts, and withdrawals of contract value.

These call center personnel handling transaction requests related to securities were associated persons of TCI, and thus required to be registered in the category of registration appropriate to his or her functions. Although TCI determined to register certain of the call center personnel prior to the relevant period herein, and had advised FINRA of that fact, the firm failed to register, or timely register, these individuals before they engaged in the conduct requiring registration described above. By February 2021, the firm had made changes to the Transamerica call centers with regard to the handling of policy holder requests relating to Transamerica variable products, had approximately 175 individuals registered with TCI who handled policy holder requests relating to Transamerica variable products, and had established policies, procedures, and systems

¹ See also Regulatory Notice 05-48 (“[A]ny third-party service providers conducting activities or functions that require registration and qualification under [FINRA] rules will generally be considered associated persons of the member and be required to have all necessary registrations and qualifications.”).

prohibiting call center personnel who were not registered from addressing transaction requests involving Transamerica variable products.

Therefore, TCI violated FINRA Rules 1210 and 2010.

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

- a censure; and
- a \$500,000 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 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.

March 8, 2023

Date

David Curry

Transamerica Capital, Inc.
Respondent

Print Name: David Curry

Title: President & CEO

Reviewed by:

Brian L. Rubin

Brian Rubin
Counsel for Respondent
Eversheds Sutherland (US) LLP
700 6th St. NW
Washington, DC 20001

Accepted by FINRA:

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

March 8, 2023

Date

Maya Krugman

Maya Krugman
Senior Counsel
FINRA
Department of Enforcement
200 Liberty Street
New York, NY 10821