

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2016050194501**

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

RE: SunTrust Robinson Humphrey, Inc., Respondent  
CRD No. 6271

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, SunTrust Robinson Humphrey, Inc. (“SunTrust,” the “Firm” or “Respondent”), 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**

SunTrust has been a member of FINRA since July 19, 1972. The Firm, headquartered in Atlanta, Georgia, engages in a general securities business. It has approximately 1,124 registered representatives and approximately 14 branch offices.

**RELEVANT DISCIPLINARY HISTORY**

The Firm has no relevant disciplinary history.

**OVERVIEW**

Beginning in 1998 and continuing to the present (the “Relevant Period”), the Firm failed to maintain approximately two million electronic records in non-erasable and non-rewritable format, known as WORM format, as required by Section 17(a) of the Exchange Act of 1934 (the “Exchange Act”), Rule 17a-4(f), NASD Rule 3110 and FINRA Rule 4511.<sup>1</sup> WORM stands for “write once, read many,” and is intended to prevent the alteration or destruction of broker-dealer

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<sup>1</sup> NASD Rule 3110 was replaced by FINRA Rule 4511, effective December 5, 2011.

records stored electronically. Additionally, from January 2010 to June 2016, the Firm failed to retain approximately one million text messages sent using Firm-issued devices, in violation of Exchange Act Rule 17a-4(b), NASD Rule 3110 and FINRA Rule 4511.

During the Relevant Period, the Firm also experienced related notice, audit and attestation deficiencies affecting its ability to adequately retain and preserve electronic records, in violation of Exchange Act Rule 17a-4(f), NASD Rule 3110 and FINRA Rule 4511. Finally, the Firm's written supervisory procedures in effect during the Relevant Period failed to describe any supervisory process relating to the Firm's compliance with WORM requirements, in violation of NASD Rule 3010 and FINRA Rule 3110.

### **FACTS AND VIOLATIVE CONDUCT**

Over the past decade, the volume of sensitive financial data stored electronically by broker-dealers has risen exponentially. These broker-dealer electronic records must be complete and accurate, not only to assist FINRA and other regulators in their efforts to protect investors through periodic examinations, but also to ensure member firms can carry out their audit functions. Recent years also have seen increasingly aggressive attempts to hack into electronic data repositories, enhancing the need for firms to keep these records in WORM format.

Section 17(a) of the Exchange Act and Rule 17a-3 thereunder require broker-dealers to make certain records relating to its business, including trade blotters, asset and liability ledgers, order tickets, trade confirmations and other records. Rule 17a-4 specifies the manner and length of time that those records must be maintained.

NASD Rule 3110(a) provides, in part, that each member "shall make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations, and statements of policy promulgated thereunder and...[t]he record keeping format, medium and retention period shall comply with" Rule 17a-4."

FINRA Rule 4511 provides, in part, that each member "shall make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules" ... and all "books and records required to be made pursuant to the FINRA rules shall be preserved in a format and media that complies with" Rule 17a-4.

These requirements are an essential part of the investor protection function because preservation of these records is the "primary means of monitoring compliance with applicable securities laws, including antifraud provisions and financial responsibility standards."<sup>2</sup>

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<sup>2</sup> Commission Guidance to Broker Dealers on the Use of Electronic Storage Media under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a-4(f), SEC Interpretation Release No. 34-44238, 17 C.F.R. Part 241, at p. 3 of 15 (May 1, 2001).

### *1. The Firm Failed to Retain Electronic Records in WORM Format*

When broker-dealers use electronic storage media to retain records, Rule 17a-4(f)(2)(ii) requires the firms to “[p]reserve the records exclusively in a non-rewritable, non-erasable” or WORM format. At different times during the Relevant Period, SunTrust failed to maintain in WORM format approximately two million electronic records. This deficiency affected 27 categories of records spanning most aspects of the Firm’s brokerage business, including order tickets, trade confirmations, trade blotters and other transaction-related records. For example, over a three-year span during the Relevant Period, the Firm failed to maintain in WORM format an estimated 374,085 order tickets and 135,945 trade confirmations. Other vital records the Firm failed to keep in WORM format include the Firm’s purchase and sales blotters, various exception reports, prospectuses, bills payable and receivable and general ledgers.

Based on the foregoing, SunTrust violated Exchange Act Rule 17a-4(f)(2)(ii), NASD Rules 3110 and 2110, and FINRA Rules 4511 and 2010.<sup>3</sup>

### *2. The Firm Failed to Retain Blackberry Communications*

Exchange Act Rule 17a-4(b)(4) requires a broker-dealer to “preserve for a period of not less than three years, the first two years in an easily accessible place ... [o]riginals of all communications received and copies of all communications sent ... by [the broker-dealer] (including inter-office memoranda and communications) relating to its business as such ...” The Firm prohibited employees from using text messages for business purposes. In violation of this policy, certain Firm employees used Firm-issued devices to send business-related text messages. From January 2010 to June 2016, the Firm failed to retain approximately one million text messages sent to-and-from 1,375 Firm-issued devices.

Based on the foregoing, SunTrust violated Exchange Act Rule 17a-4(b)(4), NASD Rules 3110, and FINRA Rules 4511 and 2010.

### *3. The Firm Failed to Provide 90-day Notice to its Designated Examining Authority Prior to Using Electronic Storage Media*

Exchange Act Rule 17a-4(f)(2)(i) requires a broker-dealer to notify its designated examining authority at least 90 days prior to employing electronic storage media. The Firm failed to provide the required 90-day notice to its designated examining authority (FINRA), prior to retaining a vendor to provide electronic storage.

Based on the foregoing, SunTrust violated Exchange Act Rule 17a-4(f)(2)(i), NASD Rules 3110 and 2110, and FINRA Rules 4511 and 2010.

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<sup>3</sup> FINRA Rule 2010 replaced NASD Rule 2110, effective December 15, 2008.

*4. The Firm Failed to Implement an Audit System Regarding the Inputting of Records in Electronic Storage Media*

Exchange Act Rule 17a-4(f)(3)(v) requires a broker-dealer to “have in place an audit system providing for accountability regarding inputting of records required to be maintained and preserved pursuant to Rules 17a-3 and 17a-4 to electronic storage media and inputting of any changes made to every original and duplicate record maintained and preserved thereby.” During the Relevant Period, the Firm did not have an audit system as required by Rule 17a-4(f)(3) for those records it failed to maintain in WORM format.

Based on the foregoing, SunTrust violated Exchange Act Rule 17a-4(f)(3)(v), NASD Rules 3110 and 2110, and FINRA Rules 4511 and 2010.

*5. The Firm Failed to Obtain an Attestation from its Third-Party Vendor*

Exchange Act Rule 17a-4(f)(3)(vii) requires a broker-dealer using electronic storage media to retain a third-party vendor “who has access to and the ability to download information from the [broker-dealer’s] electronic storage media” to any acceptable medium and to obtain an undertaking from the vendor that it will provide these records to the SEC, FINRA or any other regulatory authority in the event the Firm is unable to provide the records. During the Relevant Period, the Firm failed to obtain an attestation from its third-party vendor that it will supply electronically stored records to regulatory authorities in the event the Firm is unable to provide the electronically stored records.

Based on the foregoing, SunTrust violated Exchange Act Rule 17a-4(f)(3)(vii), NASD Rules 3110 and 2110, and FINRA Rules 4511 and 2010.

*6. The Firm’s Supervisory System was not Reasonably Designed*

NASD Rule 3010(b) and FINRA Rule 3110(b) both require member firms to establish, maintain and enforce written procedures to supervise the types of business in which it engages that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.<sup>4</sup>

During the Relevant Period, SunTrust failed to establish, maintain and enforce written supervisory procedures reasonably designed to achieve compliance with Rule 17a-4(f) WORM requirements. The Firm’s written supervisory procedures in effect during the Relevant Period failed to have adequate supervisory processes concerning the retention of electronic records in WORM format.

Based on the foregoing, SunTrust violated NASD Rules 3010(b) and 2110, and FINRA Rules 3110(b) and 2010.

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<sup>4</sup> FINRA Rule 3110 replaced NASD Rule 3010, effective December 1, 2014.

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

1. Censure; and
2. Fine in the amount of \$1.5 million.

Respondent also consents to the following undertaking:

3. Review of Policies and Procedures:
  - a. Within 60 days of Notice of Acceptance of this AWC, the Chief Compliance Officer of the Firm shall submit to FINRA a written plan of how the Firm will undertake to conduct a comprehensive review of the adequacy of the relevant policies and procedures (written and otherwise), including a description of remedial measures leading to full compliance, relating to the conduct addressed in this AWC.
  - b. FINRA will review the plan submitted by the Firm. In the event FINRA objects to the plan, the Firm shall address FINRA's objections and resubmit the plan within 30 days of being notified of FINRA's objections.
  - c. If the Firm's proposed plan is not unacceptable to FINRA, the Firm shall promptly implement its comprehensive review.
  - d. At the conclusion of the Firm's comprehensive review, which shall be no more than 180 days after the Notice of Acceptance of the AWC, the Firm's Chief Compliance Officer shall certify in writing to FINRA that the Firm has adopted and implemented policies and procedures reasonably designed to ensure compliance with the federal securities laws and FINRA rules addressed in this AWC.
  - e. Upon written request showing good cause, FINRA staff may extend any of the procedural dates set forth above.

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 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**

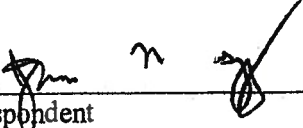
Respondent understands that:

- 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 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 accordance with FINRA Rule 8313;
  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 Respondent 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 Respondent to submit it.

12/9/16  
Date (mm/dd/yyyy)

  
Respondent  
SunTrust Robinson Humphrey, Inc.

By: John Gregory  
President & CEO STRH, Inc.

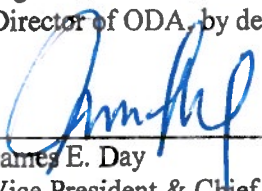
Reviewed by:

  
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Suite 700  
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Phone: 202-383-0124

Accepted by FINRA:

12/2/16  
Date

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

  
James E. Day  
Vice President & Chief Counsel  
FINRA Department of Enforcement  
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