FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2014039172901

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

RE: Voya Financial Advisors, Inc., Respondent
Member Firm
CRD No. 2882

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Voya Financial Advisors, Inc. ("VFA" 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 the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

A. The Firm 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

Voya Financial Advisors, Inc., formerly ING Financial Partners, Inc., has been registered with FINRA since August 14, 1968. VFA is headquartered in Des Moines, Iowa and is a full-service broker-dealer that sells a wide array of securities products to its customers, including products issued by affiliated and unaffiliated companies. The Firm generated approximately 25% of its annual revenue through the sale of individual variable annuities. As of June 2016, VFA had 2,779 registered persons and 1,485 branch offices.

RELEVANT DISCIPLINARY HISTORY

In 2015, VOYA executed an AWC (No. 2014042939401), in which FINRA imposed a censure, fine of $325,000, and restitution of $41,853.20. FINRA found that the VFA failed to apply volume and sales-charge discounts to transactions in nontraded REITs, business-development companies, and UITs, and failed to

establish and maintain adequate supervisory systems and procedures regarding the same.

OVERVIEW

This case concerns VFA's failure to establish, maintain, and enforce a supervisory system reasonably designed to identify red flags in the sale of multi-share class variable annuities ("VAs"). Between July 2012 and August 2014 (the "Relevant Period"), VFA earned over $198 million, or approximately 25%, of its revenue from the sale of VAs. Approximately $72 million, or 36%, of VFA's VA revenue was earned from the sale of L-share VAs ("L-share contracts"). L-share contracts typically provide a shorter surrender period, of three to four years, than B-share contracts, which typically have a surrender period of 7 years. Insurance companies design L-share contracts so that customers pay a higher fee for the benefit of a shorter surrender period. L-share contracts are designed for investors with short-term time horizons or who want the optionality of being able to surrender the L-share contract sooner than a B-share contract. Pursuant to the terms established by the insurance company manufacturers, 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 "persistency credit."[1]

During the Relevant Period, current VFA customers purchased 1,315 L-share contracts together with one of two Long-Term Income Riders. The first of these riders, frequently known as the Guaranteed Minimum Income Benefit Rider (GMIB), provides for the added benefit of guaranteed income for life. The second, frequently known as the Guaranteed Minimum Withdrawal Benefit Rider (GMWB), provides for the added benefit of guaranteeing a minimum amount the customer will be able to withdraw from the contract over time (the riders are collectively referred to as the "Long-Term Income Riders"). Long-term income riders are designed for investors with long-term time horizons and cost purchasers additional annual fees in exchange for the added benefits. Moreover, because of the potentially incompatible time horizons, L-shares with Long-Term Income Riders may present a red flag that the purchase may not be suitable for a customer's investment objectives and time horizon.

Of the 1,315 L-share contracts with Long-Term Riders VFA sold during the Relevant Period to current customers, approximately 70% of the customers had a long-term investment horizon, which should have been a red flag given the short-term nature of L-shares. VFA, however, had no system to review for VA share classes and no system for identifying potential patterns of unsuitable sales. VFA also failed to provide its registered representatives and principals with adequate training and guidance on suitability considerations for multi-share class VAs.

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

Even though VAs accounted for more than a quarter of the Firm's revenue during the Relevant Period, the Firm failed to establish and maintain an adequate supervisory system and procedures to ensure suitability of its VA sales and VA share class recommendations.

In addition, during the Relevant Period, VFA failed to reasonably supervise VA exchanges. VFA generated a monthly surveillance report, the "2330 Surveillance Report," that was intended to monitor for inappropriate rates of VA exchanges by its registered representatives. VFA, however, failed to establish reasonable parameters for the generation of these reports. As a result, the 2330 Surveillance Report failed to capture the activity of over 90% of the Firm's registered representatives who recommended multiple exchanges per year. Moreover, during 21 months out of the 22 months of the Relevant Period, VFA's principals failed to review the 2330 Surveillance Report.

As a result of the foregoing, VFA violated NASD Rule 3010, FINRA Rules 2330(c), (d) and (e), and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

VFA's Supervisory Failures Relating to Multi-Share Class VA Sales

During the Relevant Period, VFA failed to reasonably supervise its recommendation of multi-share class VAs to its customers. Approximately 25% of VFA's revenue during the Relevant Period was from the sale of VAs. During the Relevant Period, of the Firm's 18,514 new or exchanged VA contracts, 4,688 of those contracts were L-share contracts. Close to half of VFA's revenue from its VA business during the Relevant Period was derived from the sale of L-share contracts or trails from existing contracts.

Despite the significant role that VA sales played in VFA's overall business, the Firm failed to implement a supervisory system and procedures designed to reasonably ensure suitability in its multi-share class VA sales, including L-share contracts. The Firm failed to reasonably supervise VA sales in several key respects: (1) identification and investigation of red flags; (2) establishment and maintenance of reasonable written supervisory procedures and training; and (3) supervision of exchanges.

VFA Failed to Identify and Investigate Red Flags in VA Sales

During the Relevant Period, VFA failed to reasonably supervise the sale of multi-share class VAs by failing to identify and address the frequent red flags involving the sale of short surrender period L-share contracts combined with a Long-Term Income Rider, which have conflicting time horizons. When L-share contracts are accompanied by Long-Term Income Riders, and where, such contracts constituted

a significant number of transactions, VFA should have identified this red flag in its required suitability reviews and conducted a meaningful heightened review of such transactions.

VFA sold VA contracts with the option of various different share classes. The B-share contract is the most common share class sold in the industry and typically has a seven-year surrender period. The L-share contract provides the flexibility of a shorter surrender period and the fees associated with L-share contracts, which are assessed as long as the contract is held, are typically between 35 and 50 basis points higher annually than most B-share contracts.

A Long-Term Income Rider is one of many optional features associated with VA sales and is marketed to customers as a means of providing a guaranteed future income stream. A Long-Term Income Rider typically costs the customer additional annual fees ranging from 1% to 1.5% of the face value of the VA contract. GMIB Riders usually require a holding period of ten years before the customer can access the income stream benefit. GMWB Riders typically require the customer to hold the VA for more than five years to obtain the full benefit of the withdrawal minimum guarantee.

During the Relevant Period, VFA did not identify the sale of an L-share contract combined with a Long-Term Income Rider as a red flag. These were not isolated transactions at the Firm during the Relevant Period. VFA approved 1,315 L-share contracts sold with a Long-Term Income Rider without identifying or investigating the suitability of the potentially incompatible recommendation. Indeed, in approximately 70% of these transactions, the customer purchasing the L-share contract with a Long-Term Income Rider had a long-term investment horizon of over seven years according to information contained on the customer's VA application. This fact was a red flag that a different share class with lower fees may have been more appropriate for the customer's time horizon.

VFA Failed to Supervise VA Sales

Despite the fact that over one-third of the Firm's annual revenues from VAs were generated from L-share contracts, the Firm did not establish, maintain, and enforce a reasonable supervisory system and written supervisory procedures ("WSPs") related to the sale of multi-share class VAs. VFA also failed to provide training to its registered representatives and principals on the sale and supervision of multi-share class VAs. VFA's WSPs and training materials failed to provide registered representatives and principals guidance or suitability considerations for sales of different VA share classes. More specifically, the Firm did not provide training or guidance to its registered representatives on the features of various available share classes, the associated fees and surrender charges, and did not provide them with adequate information to compare share classes to make suitability determinations.

As a result, the registered representatives and principals at the Firm's Principal Review Desk ("PRD"), who were responsible for reviewing VA transactions, failed to adequately consider suitability issues related to share class selection. The registered representatives and principals also failed to identify red flags in VA recommendations, including sales of L-share contracts to customers with no short-term liquidity needs or to customers who indicate a long-term investment horizon. Because of this lack of training and guidance, registered representatives were not provided the tools to present potential purchasers with a side-by-side comparison of the fees and surrender charges or other information detailing the potential impact of the increased fee if the L-share contract was held by the customer for a long term.

In addition, the Firm failed to establish, maintain, and enforce WSPs or provide sufficient guidance or training to its registered representatives and the PRD principals on the sale of Long-Term Income Riders with multi-share class VAs, particularly the combination of L-share contracts with Long-Term Income Riders.

As a result of the foregoing, VFA violated FINRA Rules 2330(c), (d) and (e), FINRA Rule 2010, and NASD Rule 3010.

VFA Failed to Implement an Adequate Supervisory System and Procedures for VA Exchange Transactions

During the Relevant Period, VFA failed to implement a reasonable supervisory systems and procedures to supervise VA exchanges.

The Firm's system to supervise VA exchanges centered on a monthly report called the 2330 Surveillance Report. During the Relevant Period, the Firm failed to conduct a review of the 2330 Surveillance Report for 21 of the 22 months. The thresholds used to generate the report and the procedure for the review of the report were not designed or enforced to reasonably supervise VA exchanges.

The 2330 Surveillance Report identified registered representatives who met the following criteria:

(1) the registered representative effected at least 20 annuity exchanges in a rolling 12-month period; and

(2) the registered representative's total annuity exchanges comprised at least 40% of the representative's total annuity transactions.

Despite the thresholds for inclusion in the report, the Firm did not require review of all identified representatives. The Firm's principals, on a monthly basis, selected only three of the identified registered representatives and conducted a review of these representative's prior 12 months of VA exchange activity.

This review failed to identify certain exchange activity at VFA. Specifically, during the Relevant Period, the Firm executed approximately 11,000 VA exchanges made by approximately 1,914 registered representatives. Of those registered representatives, 949 effected three or more exchanges, of which 591 effected five or more exchanges. The Firm reviewed fewer than 30 registered representatives' exchange activity during the Relevant Period.

As a result of the foregoing, VFA violated FINRA Rule 2330(d) and NASD Rule 3010.

B. The Firm also consents to the imposition of the following sanctions:

1. A censure;

2. a fine in the amount of $2,750,000.00 and;

The Firm agrees to comply with the following undertakings:

3. <u>Customer Payments for L-share VAs with Long-Term Income Riders</u>: Within 90 days of the date this AWC is accepted by FINRA, VFA is ordered to provide payment to Firm customers who purchased from a VFA registered representative L-share contracts with Long-Term Income Riders and no persistency credits from September 30, 2011 through September 30, 2016 and who currently hold those contracts at the Firm (the "Restitution VA Contracts"), according to a Plan not unacceptable to FINRA in an amount that will total not less than $1.8 million.

   a. Within 45 days of the date this AWC is accepted, the Firm shall provide in writing to FINRA the factors and methodology it intends to use to identify the Restitution VA contracts and to calculate the amount due to customers. In the event FINRA objects to the factors, methodology or amount, the Firm will have an opportunity to address FINRA's objections and resubmit the plan within 30 days. FINRA will discuss its objections with VFA. A failure to resubmit to FINRA a plan that is reasonably designed to meet the specific requirements and general purpose of the undertaking will be a violation of the terms of this AWC.

   b. Within 45 days of the date the Firm's factors and methodology is approved by FINRA, the Firm shall provide, in writing, a schedule of all customers identified as eligible for payment. The schedule shall include the details of the qualifying purchases and the total dollar amounts of payment to be provided to each customer.

   c. Payments shall be paid to customers via a check payable to the VA

contract owner and sent to the contract owner's address of record on file with VFA, or to the extent the customer no longer has an account with VFA, to the last known address of record.

d. The check shall be preceded or accompanied by a letter, not unacceptable to FINRA, describing the reason for the payment and providing additional disclosures and information about the difference between L-share and B-share VAs. The letter must make clear the payment is being made pursuant to a settlement with FINRA and as a term of this AWC. The letter also may not request a waiver of, or otherwise limit, any rights the customer has to pursue an action to obtain restitution or other remedies for grievances related to the customer's VA.

e. A registered principal of VFA shall submit satisfactory proof of payment to customers, or of reasonable and documented efforts undertaken to effect such payment, to Penelope Brobst Blackwell, Deputy Regional Chief Counsel, FINRA Department of Enforcement, 12801 N. Central Expressway, Suite 1050, Dallas, Texas 75243 either by letter that identifies VFA and the case number or by email from a work-related account of the registered principal of VFA to EnforcementNotice@FINRA.org. This proof shall be provided to the FINRA staff member listed above no later than 150 days after the acceptance of the AWC.

f. If, for any reason, VFA cannot locate a customer to whom payment is owed after reasonable and documented efforts within 120 days from the date this AWC is accepted, or such additional period provided for under applicable state unclaimed property laws or otherwise agreed to by a FINRA staff member in writing, VFA shall forward any undistributed amount to the appropriate escheat, unclaimed property or abandoned property fund for the state in which the customer is last known to have resided. VFA shall provide satisfactory proof of such action to the FINRA staff member identified above, and in the manner described above, within 14 days of forwarding the undistributed compensation to the appropriate state authority.

g. VFA shall pay all costs and expenses associated with the administration of the payments described herein.

h. The imposition of this compensation order or any other monetary sanction herein, and the timing of such ordered payments, and the acceptance of compensation by the customer shall not preclude customers from pursuing a separate action to obtain restitution or other remedies.

4. Certification Regarding Supervision of Multi-Share Class VAs and Monitoring of Rates of 1035 Exchanges: VFA shall review and revise, as necessary, its systems, policies and procedures (written and otherwise) and training with respect to the areas described within Section I.A of this AWC. Within 60 business days of the date this AWC is accepted, the President of the Firm shall certify in writing to Penelope Brobst Blackwell, Deputy Regional Chief Counsel, at the address listed above, that with respect to the areas described in Section I.A. of this AWC: (i) the Firm has engaged in the review described above; and (ii) as of the date of the certification, the Firm has established and implemented systems and policies and procedures (written or otherwise) that are reasonably designed to achieve compliance with the applicable FINRA and NASD Rules cited herein.

FINRA staff may, in its discretion, upon a showing of good cause and upon written request, extend the dates for compliance with any of the terms of the undertakings.

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

VFA 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 the date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

The Firm 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, the Firm 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.

The Firm 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

VFA 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 it; and

C. If accepted:

1. this AWC will become part of the Firm'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. the Firm 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. The Firm 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 the Firm'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. The Firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm 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 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.

10/10/2016
Date (mm/dd/yyyy)

Thomas Hall
Respondent

VOYA Financial Advisors, Inc.

By: Thomas W. Halloran, President

Reviewed by:

Brian L. Rubin
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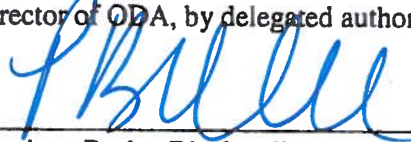
Accepted by FINRA:

Date

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



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