

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2014039194101**

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

RE: MidAmerica Financial Services, Inc. (“MFS”), Respondent  
Registered broker-dealer  
CRD No. 47351

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, MFS 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 MFS alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. MFS 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**

From 1999 until December 2015, MFS was registered with FINRA as an introducing broker-dealer with its headquarters in Joplin, Missouri, and branch offices throughout the United States. The firm conducted a general securities business, including private placements and wholesaling activities. On November 6, 2015, MFS filed a Uniform Request for Withdrawal from Broker-Dealer Registration, and its FINRA registration was canceled on December 2, 2015. FINRA retains jurisdiction over MFS pursuant to Article IV, Section 6 of its By-Laws.

**RELEVANT DISCIPLINARY HISTORY**

MFS has no relevant disciplinary history.

**OVERVIEW**

Between 2010 and 2014, MFS consistently failed to commit sufficient time, attention, and resources to compliance and supervision, even after regulators

brought multiple supervisory failures to the attention of the firm and its management. MFS's failure to create a culture of compliance is evident in the firm's numerous and repeated failures to establish and implement adequate supervisory systems – for, among other things, sales of private offerings, review and retention of electronic correspondence, wholesaling activities, private-securities transactions of registered individuals, sales of variable annuities, receipt of gifts and gratuities, and use of social-media sites – all of which constitute discrete violations of NASD Conduct Rule 3010 and FINRA Rule 2010. In addition, MFS violated FINRA Rules 2330 and 3220, NASD Rule 3040, Section 17(a) of the Securities Exchange Act of 1934, Exchange Act Rule 17a-4, FINRA Rule 4511, and MSRB Rule G-27.

### **FACTS AND VIOLATIVE CONDUCT**

**MFS failed to establish and maintain a supervisory system reasonably designed to ensure due diligence of private offerings.**

Between May 2010 and June 2014, MFS, through its registered representatives, recommended a number of unregistered securities to customers in connection with private-placement offerings made pursuant to Regulation D of the Securities Act of 1933.<sup>1</sup> Before recommending any security to customers, a broker-dealer has a duty to conduct a reasonable investigation in order to ensure, among other things, that the security is not fraudulent, that statements made by the issuer about the security are not false or misleading, and whether the security is suitable for any of the broker-dealer's customers. Because private-placement offerings often involve securities issued by smaller companies of recent origin, they may require more thorough investigation by broker-dealers considering recommending them to customers. A firm that engages in private offerings must have supervisory procedures in place that are reasonably designed to ensure that the firm conducts appropriate suitability analyses and that only qualified customers purchase the securities in Regulation D offerings.

A review of five private offerings that MFS recommended to customers between May 2010 and June 2013 revealed that the firm failed to exercise due diligence in investigating each offering before recommending it to customers. The firm's written supervisory procedures ("WSPs") in effect at the time did not set forth a process for investigating or approving private offerings. MFS did have a due-diligence checklist for use in reviewing private offerings, but for the five offerings at issue, MFS failed to complete the checklists fully. On three of the five checklists, in response to the questions "What are the risks to investors? Are they justified?" the checklist simply referenced the page in the private-placement memorandum that contained the issuer's discussion of risks. MFS made no effort to verify the issuer's claims regarding risks. It did not collect any third-party due-

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<sup>1</sup> Regulation D provides exemptions from the registration requirements of the Securities Act.

diligence materials regarding any of the five offerings at issue and did not make any direct contact with any of the issuers.

FINRA informed MFS of these failures in October 2013. In January 2014, MFS amended its written supervisory procedures. The revised WSPs included due-diligence requirements for private-placement offerings. In particular, they stated that the firm would obtain “all information” on the offering, including;

- The offering document;
- independent third-party due-diligence reports reviewed by the firm;
- documentation of internal reviews conducted by the firm;
- a distribution list for the offering document; and
- a subscriber list.

Between January 2014 and May 2014, MFS participated in at least five private offerings. In doing so, however, MFS did not adhere to its own WSPs. The firm’s due-diligence files showed that the firm did not conduct internal reviews or obtain subscriber lists for three of the offerings. In addition, MFS failed to obtain and review third-party due-diligence reports for two of the five offerings. In none of the offerings did MFS obtain a distribution list for the offering document.

Through this conduct, MFS violated NASD Conduct Rule 3010 and FINRA Rule 2010.

**MFS failed to conduct supervisory review of electronic correspondence and failed to meet retention requirements for electronic correspondence.**

From May 2010 through March 2014, MFS’s supervisory system was not reasonably designed to ensure proper review and retention of its representatives’ electronic correspondence. These failures persisted through multiple Chief Compliance Officers (“CCOs”) and email-surveillance systems.

The firm’s procedure for email review before March 2013 was to forward copies of all electronic correspondence sent or received by the firm’s registered representatives to the Chief Compliance Officer’s company email account. This constituted approximately 400-600 emails a day. The email system was then supposed to search those messages for certain keywords. Any message containing one or more keywords was to be segregated into a “Filter” folder and reviewed by the CCO.

MFS changed its email review procedures beginning in March 2013, when it began using a third-party vendor’s email-surveillance system. The vendor-provided system allowed MFS to take a random sampling of its representatives’ electronic communication and also to search messages for particular terms.

In June 2013, however, when FINRA conducted its examination, MFS could not demonstrate that it had reviewed any emails either since acquiring the vendor-provided system in March of that year or under the prior system. MFS was unable to produce any evidence that the “Filter” folder had ever existed, that emails had been searched by the system for keywords, or that the CCO had reviewed any of the emails that supposedly went into the “Filter” folder. In short, MFS could not provide any documentary evidence that it reviewed any electronic communication sent or received by the firm’s registered representatives between May 2010 and June 2013.

FINRA brought the firm’s attention to this failure, which MFS acknowledged. Nonetheless, in the months that followed, MFS still failed to meet its obligation to review electronic correspondence. The firm’s former CCO, JS, was responsible for, but failed to conduct, email review between June 2013 and November 2013. When JS left the firm in November 2013, SY, the firm’s president, replaced him as interim CCO until March 2014.

After assuming email-review duties, SY made some initial efforts to obtain system access and information about how to review email communications. Nonetheless, SY did not fully understand how to use the system, and rather than seek additional assistance, SY simply chose not to conduct any email review.

The firm also failed to retain all email communications between June 2013 and June 2014. At time frames between February 2013 and June 2014, at least 12 outside e-mail addresses used by MFS representatives were not captured by the firm’s email-surveillance system. Any securities-related correspondence sent or received through these accounts – the volume of which is unknown – was neither reviewed nor retained by MFS.

Through this conduct, MFS violated NASD Conduct Rule 3010, Section 17(a) of the Securities Exchange Act, Exchange Act Rule 17a-4, and FINRA Rules 4511 and 2010.

**MFS failed to conduct required internal inspections.**

Every FINRA broker-dealer is required to conduct regular internal inspections of its business. As part of this requirement, a broker-dealer must inspect each of its branch offices at least once every three years. These inspections must be memorialized in written reports that the broker-dealer keeps on file for a minimum of three years.

MFS created a schedule of branch-office inspections to conduct between July 2013 and June 2014. The schedule called for 54 inspections, but during the relevant time period, 12 of the branch offices closed, leaving a total of 42 required branch inspections. By June 2014, however, MFS had completed only 27 of the 42 inspections. In addition, the majority of the reports from the inspections that did occur as scheduled were inadequate. Entire sections of many reports were left

blank and some reports were not signed either by the representative working in the office or by the individual who conducted the inspection.

Through this conduct, MFS violated NASD Conduct Rule 3010(c) and FINRA Rule 2010.

**MFS's supervision of transactions in deferred variable annuities was inadequate.**

Between May 2010 and June 2013, MFS also failed to establish and maintain a supervisory system reasonably designed to ensure that its representatives obtained relevant suitability information from customers before recommending that the customers purchase deferred variable annuities ("DVAs"). The firm's written supervisory procedures in effect at the time required registered representatives to submit a completed "DVA suitability checklist" to the compliance department for each DVA application. The procedures required the firm's compliance staff to review the DVA suitability checklist, along with the client's new-account form and the product application, for each DVA application. MFS, however, failed to enforce these requirements. Out of a sample of 49 DVA applications submitted to the MFS home office between 2010 and 2013, checklists for 30 were incomplete. Further, the forms did not clearly state what information was required.

The firm's practices involving DVA exchanges were also inadequate. For 14 of 16 such exchanges that occurred between 2010 and 2013, MFS could not demonstrate that it adequately informed the customers about surrender periods, fees, potential tax penalties, riders, market risk, and other salient product features. The firm's WSPs at the time were not reasonably designed to ensure that customers received this information. MFS also failed to establish a process for identifying and addressing inappropriate DVA exchanges.

Through this conduct, MFS violated NASD Conduct Rule 3010 and FINRA Rules 2330 and 2010.

**MFS failed to develop and implement an adequate supervisory control system.**

Until December 1, 2014, NASD Conduct Rule 3012(a)<sup>2</sup> required every FINRA broker-dealer to designate a principal responsible for developing and implementing a system of supervisory controls and procedures that test and verify that the firm's supervisory procedures were reasonably designed to achieve compliance with applicable securities laws and regulations. Rule 3012 required the designative principal or principals to report to senior management no less than annually the results of such testing and verification.

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<sup>2</sup> Effective December 1, 2014, FINRA Rule 3120 superseded NASD Conduct Rule 3012.

On November 30, 2013, SY completed and signed the firm's 3012 testing report. At the time, SY was both the firm's president and Chief Compliance Officer. The report stated, among other things, that the firm had completed every required branch inspection for the year. In addition, the report stated that, for all reviews conducted during the period, the firm received and maintained a written report that was provided to the firm's president and/or senior management.

As noted above, however, the firm had not conducted 15 of its scheduled branch-office inspections. The statements in the 3012 testing report regarding branch inspections were, therefore, false. Through this conduct, MFS violated NASD Conduct Rule 3012(a)(1) and FINRA Rule 2010.

**MFS lacked a supervisory system regarding its wholesaling activities and failed to maintain a record of gifts or gratuities given by registered individuals in relation to the firm's wholesaling activities.**

MFS began conducting wholesaling activities in September 2010. By 2013, wholesaling accounted for approximately 50% of the firm's total revenue, with a total of 43 registered individuals, all of whom were independent contractors, working through three wholesaling groups. Each of the wholesaling groups entered into three-party agreements with MFS and a fund family whose products the firm sought to distribute.

Before March 2014, MFS had no supervisory system or procedures, written or otherwise, regarding its and its representatives' wholesaling activities. This constituted a violation of NASD Conduct Rule 3010, which requires every FINRA broker-dealer to "establish, maintain, and enforce written procedures to supervise the types of business in which it engages . . ."

In addition, MFS failed to maintain a record of gifts or gratuities given by its registered representatives who participated in wholesaling activities. Wholesalers simply did not provide their expenses to MFS, although one registered individual involved in wholesaling activities disclosed to FINRA that he had spent nearly \$800 for client meals and approximately \$250 for "entertainment" between January 2013 and March 2014. This practice violated the firm's written supervisory procedures, which stated that a record of gifts, gratuities, or entertainment expenses of \$100 or more would be maintained.

Through this conduct, MFS violated NASD Conduct Rule 3010 and FINRA Rules 3220 and 2010.

**MFS's supervision of the private securities transactions of associated persons was inadequate.**

Between June 2013 and June 2014, two registered representatives of MFS conducted private securities transactions through registered investment advisors ("RIAs"). One of the individuals had 216 investment-advisory accounts with over

\$54 million in assets under management; the other had 580 customer accounts and over \$153 million in assets under management.

Although the two registered individuals had disclosed their outside activities to MFS and received firm approval of them, MFS did not receive customer account statements for the two representatives' RIA customers. Thus, MFS also did not record the representative's private securities transactions on its books and records or "supervise the person's participation in the transaction as if the transaction were executed on behalf of the member," as it was required to do.

Through this conduct, MFS violated NASD Conduct Rule 3040 and FINRA Rule 2010.

**MFS's supervision of social-media usage by registered individuals was inadequate.**

Between June 2013 and June 2014, MFS failed to establish an adequate supervisory system to monitor representatives' use of social media sites and failed to conduct independent verification of representatives' use of social media sites.

As of June 2014, the firm's procedures at that time required representatives to complete social-media training before using social media in relation to their securities business. At that time, however, at least seven MFS representatives were using social media accounts in connection with their securities business, despite not having completed the required social-media training. The firm had no mechanism for determining whether its representatives were using social media for securities-business purposes.

Through this conduct, MFS violated NASD Conduct Rule 3010 and FINRA Rule 2010.

**MFS failed to have a municipal-securities principal review and approve transactions in municipal securities.**

Between March 2011 and June 2013, MFS processed approximately 50 municipal-bond transactions. Although the firm employed one municipal-securities principal, that person's office was not registered as an office of municipal supervisory jurisdiction. All of the municipal transactions that occurred at MFS during the relevant time period were reviewed and approved by home-office principals, none of whom were municipal-securities principals.

Through this conduct, MFS violated MSRB Rule G-27.

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

- Censure

- A fine in the amount of \$150,000 (of which \$10,000 is attributable to the violation of MSRB Rule G-27)

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

MFS 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.

Sanctions imposed herein shall be effective on a date set by FINRA staff.

## **II.**

### **WAIVER OF PROCEDURAL RIGHTS**

MFS 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, MFS 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.

MFS 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**

MFS 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 MFS’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. MFS 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. MFS 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 either MFS’s testimonial obligations or its right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. MFS may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. MFS 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 MFS, certifies that a person duly authorized to act on the firm's behalf has read and understood all of the provisions of this AWC and have been given a full opportunity to ask questions about it; 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.

January 30, 2016  
Date (mm/dd/yyyy)

[Signature]  
Respondent  
MidAmerica Financial Services, Inc.

By: Daniel E. Egan  
Secretary

Reviewed by:

\_\_\_\_\_  
Attorney Name  
Counsel for Respondent  
Firm Name  
Address  
City/State/Zip  
Phone Number

Accepted by FINRA:

2/5/16  
Date

Signed on behalf of the  
Director of ODA, by delegated authority  
[Signature]  
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