

NASD
OFFICE OF HEARING OFFICERS

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| DEPARTMENT OF ENFORCEMENT, | : | |
| | : | |
| Complainant, | : | |
| | : | |
| v. | : | Disciplinary Proceeding |
| | : | No. CAF040002 |
| WADDELL & REED, INC. (BD #866), | : | |
| ROBERT HECHLER (CRD #800216), | : | |
| ROBERT WILLIAMS (CRD #468213), and | : | Hearing Officer -- AP |
| | : | |
| Respondents. | : | |

**ORDER ACCEPTING OFFERS OF SETTLEMENT
BY RESPONDENTS WADDELL & REED, INC.,
ROBERT HECHLER, AND ROBERT WILLIAMS**

INTRODUCTION

Disciplinary Proceeding No. CAF040002 was filed on January 14, 2004, by the Department of Enforcement of NASD ("Complainant"). Respondents Waddell & Reed, Inc., Robert Hechler, and Robert Williams submitted Offers of Settlement ("Offers") to Complainant on April 28, 2005. Pursuant to Code of Procedure Rule 9270(e), the Complainant and the National Adjudicatory Council ("NAC") Review Subcommittee or the Office of Disciplinary Affairs ("ODA") have accepted the uncontested Offers. Accordingly, this Order now is issued pursuant to Code of Procedure Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondents have consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondents' permanent disciplinary records and may be considered in any future actions brought by NASD.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made consistent with allegations of the Complaint, which is attached hereto and incorporated herein by reference.

Based on the foregoing, as described in the Complaint, Respondent Waddell & Reed violated NASD Conduct Rules 2110, 2310, 3010, and 3110; Section 17(a)(1) of the Securities Exchange Act of 1934 and Rule 17a-3(a)(6) thereunder; Respondent Robert Hechler violated NASD Conduct Rule 2110; and Respondent Robert Williams violated NASD Conduct Rules 2110 and 3010.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondents from any

future misconduct, and represent a proper discharge by NASD of its regulatory responsibility under the Securities Exchange Act of 1934.¹

SANCTIONS

It is ordered that the following remedial sanctions be, and hereby are, imposed:

Waddell & Reed, Inc.:

1. A censure.
2. A fine of \$5 million paid to NASD within thirty days of the entry of this Order.
3. Establishment by Waddell & Reed of a fund in the amount of \$11 million, which fund shall be used to compensate customers as follows:²
 - (a) payment of all surrender charges paid by such customers to United Investors Life Insurance Company for the exchange of Advantage II variable annuities to Nationwide variable annuities during the period January 2001 through August 2002; and

¹ In assessing this fine, NASD has taken into account Waddell & Reed's agreement to pay an additional \$2 million to state regulatory agencies in connection with the conduct underlying this matter. Waddell & Reed has also agreed to establish the fund described herein in connection with its settlement agreement with those agencies.

² All payments shall be reduced by any amount previously repaid to the customer, as demonstrated by Waddell & Reed to the consultant and the Department of Enforcement. In order to demonstrate that any such payment has been made, Waddell & Reed shall provide proof of payment, and any supporting documentation, to the consultant, with copies provided to the Department of Enforcement.

(b) payment to each customer who exchanged an Advantage II variable annuity for a Select variable annuity, who could have purchased a Select Plus variable annuity, in the amount of 2% of the value of the customer's Select annuity at the time of purchase.³

4. Waddell & Reed shall, at its own expense, retain an independent consultant not unacceptable to NASD to implement the distribution. Waddell & Reed shall cooperate fully with the consultant and shall not place restrictions on the consultant's communications with NASD staff. For a period of two years following the date of the conclusion of the independent consultant's work as described herein, neither Waddell & Reed, nor any of its principals, agents, officers, directors or employees acting in their capacities as such, may employ or otherwise hire the independent consultant in any capacity. Any firm with which the independent consultant is affiliated or of which he or she is a member, and any person or firm engaged to assist the consultant in the performance of his or her duties shall not, without prior written consent of Department of Enforcement staff, enter into any employment, consulting or other professional relationship with Waddell & Reed, or any of its directors, officers, employees, or agents in their capacity as such for the period of the engagement and for a period of two years thereafter.

³ However, in the case of customers whose annuities have been terminated, through death, lapsation, or otherwise, the payment shall not exceed 25 basis points for each year that the policy was in effect.

5. Within thirty days of the entry of this Order, Waddell & Reed shall provide the consultant and the Department of Enforcement with a proposed schedule of payments, setting out the customers to be compensated and the amount of compensation, and offsets for previous payments. If Waddell & Reed and the consultant are unable to agree as to any disputed payment amount, the determination of the consultant will be final.
6. Payments to customers pursuant to this section shall be paid by check and made no later than six months after the entry of this Order. Waddell & Reed and the consultant shall provide a final report of all payments to the Department of Enforcement, along with supporting documentation, including copies of checks or other evidence of payment. Money due to any customer who cannot be located shall be remitted to the escheat fund of the state of the customer's last known residence. After the consultant certifies that all compensation obligations have been fulfilled, the remaining amount in the fund, if any, shall be returned to Waddell & Reed.
7. Nothing in this Order shall preclude any customer from pursuing any other remedy to which the customer may be entitled.

Robert Hechler:

1. A six-month suspension from association with any NASD member in any capacity.
2. A fine of \$150,000.

Robert Williams:

1. A six-month suspension from association with any NASD member in a principal capacity.
2. A fine of \$150,000.

The sanctions imposed herein shall be effective on a date set by NASD staff.

SO ORDERED.

Dated: April 29, 2005

NASD

By: 

James S. Shorris
Senior Vice President
Department of Enforcement
on behalf of the Director of ODA, pursuant
to delegated authority