

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2018057530701**

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

RE: SunTrust Investment Services, Inc., Respondent  
FINRA Member Firm  
CRD No. 17499

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent SunTrust Investment Services, Inc. ("SunTrust" 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 Respondent SunTrust alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. Respondent SunTrust 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, headquartered in Atlanta, GA, is a bank-affiliated introducing broker-dealer and has been a FINRA member firm since 1986. SunTrust employs more than 1,400 registered representatives in more than 1,800 branches.

**RELEVANT DISCIPLINARY HISTORY**

Respondent does not have any relevant disciplinary history with the Securities and Exchange Commission, any state securities regulators, FINRA, or any other self-regulatory organization.

**OVERVIEW**

From January 2015 until January 2018 (the "Relevant Period"), SunTrust failed to establish, maintain and enforce a supervisory system, including written supervisory procedures ("WSPs") that were reasonably designed to ensure compliance with FINRA Rule 2111 in relation to solicited sales of non-traditional exchange traded funds ("NT-ETFs") by its registered representatives. These supervisory failures resulted in losses during the Relevant Period of \$584,466.13 in 95 SunTrust customer accounts, which

SunTrust has already voluntarily fully paid in restitution to these customers. As a result, SunTrust violated FINRA Rules 3110(a), 3110(b) and 2010.

### **FACTS AND VIOLATIVE CONDUCT**

FINRA Rule 3110(a) provides that “[e]ach member shall establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.”

FINRA Rule 3110(b)(1) requires that “[e]ach member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.” The reasonable-basis suitability obligation under FINRA Rule 2111 requires

a member or associated person to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least some investors. In general, what constitutes reasonable diligence will vary depending on, among other things, the complexity of and risks associated with the security or investment strategy and the member's or associated person's familiarity with the security or investment strategy. A member's or associated person's reasonable diligence must provide the member or associated person with an understanding of the potential risks and rewards associated with the recommended security or strategy. The lack of such an understanding when recommending a security or strategy violates the suitability rule.<sup>1</sup>

FINRA Rule 2010 requires that member firms and associated persons “observe high standards of commercial honor and just and equitable principles of trade.” A violation of FINRA Rule 3110 also constitutes a violation of FINRA Rule 2010.

#### **Non-Traditional ETFs**

NT-ETFs are designed to return a multiple of an underlying index or benchmark, the inverse of that benchmark, or both, over only the course of one trading session — usually a single day. NT-ETFs typically rebalance their portfolios on a daily basis (also known as the “daily reset”). As a result, due to the effects of compounding of daily returns during the holding period, the performance of NT-ETFs over periods longer than a single trading session “can differ significantly from the performance ... of their underlying index or benchmark during the same period of time.”<sup>2</sup> Because of these risks and the complexity of the products, FINRA has advised broker-dealers that NT-ETFs “are typically not

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<sup>1</sup> FINRA Rule 2111.05(a) (Supplementary Material to Rule 2111).

<sup>2</sup> FINRA Regulatory Notice 09-31, *FINRA Reminds Firms of Sales Practice Obligations Relating to Leveraged and Inverse Exchange-Traded Funds*.

suitable for retail investors who plan to hold them for more than one trading session, particularly in volatile markets.”<sup>3</sup>

FINRA Regulatory Notice 09-31 cautioned member firms about the need to establish a reasonable supervisory system “to ensure that their associated persons comply with all applicable FINRA and SEC rules when recommending any product, including leveraged and inverse ETFs,” and implement written supervisory procedures that, among other things, require that associated persons perform appropriate suitability reviews.<sup>4</sup> That Notice provided specific guidance regarding the risks and suitability concerns associated with NT-ETFs, and the need for a supervisory system to address those issues. The Notice also reminded firms that they must train registered persons about the terms, features and risks of all NT-ETFs that they sell.

FINRA Regulatory Notice 12-03 also emphasized the need for firms to conduct reasonable basis suitability analysis and training of registered persons when selling complex products such as LIETFs, and stated that firms “should consider developing procedures to monitor how the products performed after the firm approved them.”<sup>5</sup>

SunTrust Failed to Establish, Maintain and Enforce a Reasonably Designed Supervisory System and WSPs Regarding NT-ETFs

During the Relevant Period, SunTrust failed to establish, maintain and enforce a supervisory system or WSPs reasonably designed to achieve compliance with FINRA’s suitability rule as it relates to NT-ETFs, particularly in connection with certain of the unique features and risks associated with NT-ETFs, including the risks associated with holding NT-ETFs for extended periods. Specifically, SunTrust’s WSPs recognized that NT-ETFs “c[ould] be inefficient and problematic long-term investments” and required the positions be monitored by the representative, supervising principal and the Central Supervision Group (CSG). However, SunTrust did not have reasonable procedures or guidance to representatives or supervisors regarding how to determine whether an NT-ETF was suitable for customers given the unique features and risks of those products. The Firm also did not have any systems in place, such as an alert or exception report, to assist in monitoring the holding periods for NT-ETFs. There is also no evidence that anyone at the Firm conducted a customer-specific suitability analysis for NT-ETF positions held for periods longer than one day, nor did the WSPs require such an analysis. Further, although SunTrust required its representatives to complete an online training course prior to recommending transactions involving NT-ETFs, the training did not describe how to monitor ongoing holding periods and the related impact on suitability. As a result, certain SunTrust customers held positions in NT-ETFs for extended periods of time.

During the Relevant Period, SunTrust executed approximately 252 solicited NT-ETF transactions in retail customer accounts totaling over \$2.8 million in principal amount.

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> FINRA Regulatory Notice 12-03, *Heightened Supervision of Complex Products*.

These NT-ETF transactions occurred in 95 customer accounts serviced by 17 Private Financial Advisor representatives.

In September 2016, SunTrust issued a Compliance Bulletin which prohibited solicitation of both buy and sell transactions of NT-ETFs. SunTrust subsequently issued another Compliance Bulletin in November 2016 to clarify its policy, stating that the Firm would accept unsolicited sell orders for NT-ETFs if they were to liquidate an existing position. Although the risk of customers purchasing additional NT-ETF positions and holding them for extended periods no longer existed, as of January 1, 2018, SunTrust still had over 300 existing NT-ETF positions in customer accounts, some of which had significant unrealized losses, which the Firm failed to address.

Approximately 60 of these open NT-ETF positions were solicited, and of those, more than half had lost value. During FINRA's examination, SunTrust voluntarily offered the customers who held solicited positions the opportunity to sell their existing NT-ETF positions and SunTrust would compensate them for any resulting loss. The vast majority of such customers accepted SunTrust's offer. SunTrust reimbursed 30 customers \$445,836.27, which SunTrust paid before FINRA's examination concluded. These customers held their NT-ETF positions for an average of 1,136 days.

In addition, SunTrust also paid restitution to customers who had purchased NT-ETFs on a solicited basis and sold them at a loss prior to January 2018. SunTrust identified these customers and paid additional restitution of \$138,629.86 to 57 customers.<sup>6</sup> These customers held their NT-ETF positions for an average of approximately 90 days.

By virtue of the foregoing, SunTrust violated FINRA Rules 3110(a), 3110(b) and 2010.

### **SANCTIONS CONSIDERATIONS**

In determining the appropriate sanctions in this matter, FINRA considered, among other factors, that SunTrust voluntarily ceased selling NT-ETFs in September 2016 prior to FINRA's routine examination of the firm, and that SunTrust voluntarily paid restitution \$445,836.27 to 30 customers that it identified through its own investigation based on a broad-based methodology prior to the opening of an Enforcement investigation.

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

- A censure;
- A \$50,000 fine; and
- Restitution to the customers listed on Attachment A in the total amount of \$584,466.13.<sup>7</sup>

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<sup>6</sup> Two accounts received restitution in both the first and second group. Some customers had multiple accounts that received restitution.

<sup>7</sup> As noted above, SunTrust paid full restitution.

- Within 60 days of the Notice of Acceptance of this AWC, SunTrust shall certify to FINRA in a submission signed by an officer and registered principal of SunTrust that the Firm has prepaid such restitution in this matter in the amount of \$584,466.13.

Respondent agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are 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 hereafter, the monetary sanctions imposed in this matter.

The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

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 Respondent;
- 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 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 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 Respondent 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 it 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 herein and the prospect of avoiding the issuance of a Complaint, has been made to induce it to submit it.

5/1/2020

Date

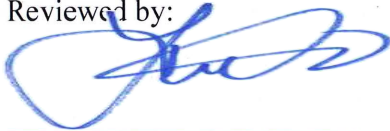
SunTrust Investment Services, Inc.  
Respondent

By: Charles F. McCallum III

Print Name: Charles F. McCallum III

Title: Chief Operating Officer

Reviewed by:



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Accepted by FINRA:

Date 05/18/2020

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



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**Attachment A**

<u>Account Number</u>	<u>Restitution Amount</u>
XXXXXX6872	\$1,168.38
XXXXXX2431	\$5,263.32
XXXXXX3150	\$2,784.20
XXXXXX4291	\$2,130.31
XXXXXX2868	\$279.33
XXXXXX2492	\$361.43
XXXXXX2194/XXXXXX6128	\$853.44
XXXXXX5906	\$424.81
XXXXXX9480	\$3,164.62
XXXXXX6867/XXXXXX6868	\$1,970.95
XXXXXX2638	\$148.82
XXXXXX0913	\$4,212.77
XXXXXX4961	\$201.15
XXXXXX0829	\$1,181.10
XXXXXX9593	\$7,991.07
XXXXXX0276	\$12,831.60
	\$5,443.88
XXXXXX9302/XXXXXX9303	\$220.14
XXXXXX3728	\$266.54
XXXXXX1136	\$14,492.34
XXXXXX7242	\$3,176.99
XXXXXX5206	\$1,502.29
XXXXXX3489	\$317.99
XXXXXX6827	\$1,962.59
XXXXXX2951	\$3,806.85
XXXXXX3267/XXXXXX4334	\$4,939.56
XXXXXX7471	\$715.46
XXXXXX1520/XXXXXX1538	\$19,903.33
XXXXXX3493	\$1,041.45
XXXXXX3335/XXXXXX3336/XXXXXX3343	\$29,780.23
XXXXXX9686	\$2,656.70
XXXXXX7193	\$685.36
XXXXXX8001	\$304.92
XXXXXX1245	\$7,615.49
XXXXXX8703	\$1,788.22
XXXXXX4897	\$4,942.54
XXXXXX4449	\$312.08
XXXXXX6837	\$14,761.38
XXXXXX6079	\$16,799.11
XXXXXX1085	\$4,441.97
XXXXXX3364	\$6,653.93
XXXXXX5800/XXXXXX6726	\$9,592.12
XXXXXX9126	\$521.96
XXXXXX5680	\$1,143.80



XXXXXX3430	\$1,736.11
XXXXXX5983	\$143,267.65
XXXXXX1022	\$33,673.38
XXXXXX9347	\$170.09
XXXXXX1507	\$851.09
XXXXXX2350	\$45,501.42
XXXXXX4212	\$3,587.46
XXXXXX8065	\$2,347.73
XXXXXX1772	\$1,000.76
XXXXXX3063	\$1,530.14
XXXXXX7493	\$5,565.73
XXXXXX9766	\$2,488.20
XXXXXX1046	\$9,723.95
XXXXXX4964	\$2,597.93
XXXXXX4972	\$2,540.83
XXXXXX9180	\$1,361.26
XXXXXX2571	\$6,485.48
XXXXXX4012	\$1,420.74
XXXXXX7749	\$17,974.61
XXXXXX5693	\$734.11
XXXXXX1651	\$883.69
XXXXXX1624	\$9,581.93
	\$320.56
XXXXXX6359	\$1,188.44
XXXXXX4251	\$3,614.63
XXXXXX3315	\$5,776.04
XXXXXX8584	\$718.80
XXXXXX2069	\$409.68
XXXXXX3765	\$1,282.68
XXXXXX8973	\$1,510.74
XXXXXX3501	\$1,062.00
XXXXXX8867	\$1,882.37
XXXXXX2467/XXXXXX2468	\$14,764.28
XXXXXX0726	\$544.75
XXXXXX1837	\$2,332.52
XXXXXX5279	\$17,923.98
XXXXXX9563	\$9,593.98
XXXXXX9394	\$1,255.29
XXXXXX9696	\$690.44
XXXXXX5550	\$7,266.70
XXXXXX8551/XXXXXX8560	\$181.84
XXXXXX0694	\$12,335.87
XXXXXX1477	\$29.74