

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT

NO. _____

2006005319701

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

RE: Brian A. Zirnheld, Respondent
Limited Representative – Investment Company and Variable Contracts Products
CRD No. 1249810

Pursuant to NASD Rule 9216 of FINRA's Code of Procedure, I submit 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 me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. I hereby accept and consent, 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 August 26, 2003 to December 12, 2007, Zirnheld was registered with FINRA through member firm MetLife Securities, Inc. ("MetLife") as a Limited Representative – Investment Company and Variable Contracts Products (Series 6). Zirnheld is not currently associated with a member firm. He has no relevant disciplinary history.

OVERVIEW

In April 2006, Zirnheld recommended an unsuitable variable annuity to elderly customers MK and RK. Zirnheld knew then that MK had dementia and that RK was exhibiting the early signs of dementia. This conduct violated NASD Conduct Rules 2310 and 2110 and IM-2310-2.

In June 2006, Zirnheld knowingly submitted a false written statement to his employer member firm. This conduct violated NASD Conduct Rule 2110.

FACTS AND VIOLATIVE CONDUCT

- 1) On April 17, 2006 and April 26, 2006, Zirnheld met with husband-and-wife customers MK and RK, who are both in their 80s. Zirnheld knew then that MK had dementia and that RK was exhibiting the early signs of dementia. He also believed that their son held power of attorney over their financial affairs. Nevertheless, during those April 2006 meetings, Zirnheld recommended to MK and RK that they purchase a \$350,000 variable annuity. On April 26, 2006, they agreed to purchase the variable annuity and signed the necessary paperwork. Under the circumstances, Zirnheld did not have reasonable grounds for believing that the recommendation was suitable based upon the customers' investment objectives, financial situation and needs. As a result of this conduct, Zirnheld violated NASD Conduct Rules 2310 and 2110 and IM-2310-2.
- 2) On June 27, 2006, Zirnheld knowingly submitted a false written statement to his employer member firm. In that statement, Zirnheld falsely claimed that, at the time he made the above-mentioned recommendation, he was not aware that both customers suffered from dementia. Zirnheld knew that the firm intended to provide a copy of his statement to FINRA. As a result of this conduct, Zirnheld violated NASD Conduct Rule 2110.

B. I also consent to the imposition of the following sanctions:

- A one-year suspension from association with any member of FINRA in any capacity and a \$10,000 fine.¹

The fine shall be due and payable either immediately upon reassociation with a member firm following the one-year suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

My limited ability to pay has been considered in connection with the monetary sanctions imposed in this matter. I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

¹ Respondent has submitted a sworn financial statement and demonstrated a limited ability to pay. In light of the financial status of Respondent, a fine of \$10,000 has been imposed.

I understand that if I am barred or suspended from associating with any FINRA member, I become subject to a statutory disqualification as that term is defined in Section 3(a) (39) of the Securities Exchange Act of 1934, as amended.

Accordingly, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. (See NASD Rule 8310 and IM-8310-1.)

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

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against me;
- B. To be notified of the Formal 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, I specifically and voluntarily waive any right to claim bias or prejudgment of the General Counsel, 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.

I further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of NASD Rule 9143 or the separation of functions prohibitions of NASD 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

I understand 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 NASD Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and
- C. If accepted:
 - 1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and
 - 4. I 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. I 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 my right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I 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.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have 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 me to submit it.

12/14/07

Date

Brian A. Zirnheld
Brian A. Zirnheld

Reviewed by:

Jonathan D. Schechter
Jonathan D. Schechter, Esq.
Gross Shuman Brizdle & Gilfillan P.C.
465 Main Street - Suite 600
Buffalo, N.Y. 14203-1787
(716) 854-4300

Accepted by FINRA:

1-29-08
Date

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

Noel C. Downey
Noel C. Downey
Senior Regional Attorney
FINRA Department of Enforcement
581 Main Street - Room 710
Woodbridge, NJ 07095
732-596-2042 (telephone)
732-596-3595 (facsimile)

**STATEMENT OF CORRECTIVE ACTION
TO
FINRA LETTER OF ACCEPTANCE
WAIVER & CONSENT NO. _____
BRIAN A. ZIRNHELD**

Since the commencing of the investigation which resulted in the attached AWC, I have taken and will continue to take the following corrective actions:

1. I have taken an online continuing education course on how to work with the elderly.
2. Although I am unsure that I could obtain the designation of Certified Senior Advisor as a result of the AWC, I intend to take classes as a Certified Senior Advisor offered by the Society of Certified Senior Advisors so that I may fully understand the implications and playing field when working with senior citizens. It is through these classes that I intend to learn how seniors feel and think and to really understand the issues they face.

This Corrective Action Statement is submitted by the Respondent. It does not constitute factual or legal findings by FINRA nor does it reflect the views of FINRA or its staff.