

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

V.

JEFFREY B. PIERCE
(CRD No. 3190666),

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2007010902501

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From in or about November 2006 through in or about September 2007, Jeffrey B. Pierce (Pierce), circumvented the procedures of his then member firm, IFMG Securities, Inc. (IFMG), in order to conceal seven unsuitable annuity "replacement transactions," a transaction where an annuity (variable or fixed) is sold and the proceeds are used in whole or in part to purchase another variable annuity. In each of the replacement transactions, the customer sold a fixed or variable annuity at Pierce's recommendation and/or with his knowledge to purchase another variable annuity that Pierce recommended. Pierce effected all of the sales and purchases separately, on different dates within a week or two of each other, rather than as a replacements as

SUMMARY

required by IFMG's procedures, thereby concealing the nature of the transactions from his firm.

2. IFMG's procedures further required financial advisors to identify annuity replacements on firm documents and to complete a form that disclosed to customers the surrender charges, if any, associated with the transaction, as well as the potential tax consequences associated with the replacement. Pierce circumvented this procedure. Specifically, he failed to disclose on the IFMG transaction documents that another annuity was a source of funds for the new annuity purchase. Rather, he falsely listed other sources such as "Checking" and "Property Sale," as the sole funding source for the new variable annuity.
3. Pierce's actions allowed him to reap the benefit of a new commission without the same level of supervisory scrutiny that would have been associated with the review of replacement/exchange transactions. Each of the new variable annuity investments was reviewed by an IFMG supervisor who was unaware that the purchase was part of a replacement.
4. The replacement transactions were unsuitable. The seven customers, each of whom was in his/her sixties and seventies, were harmed through surrender charges and/or avoidable tax consequences. In six of the replacement transactions, Pierce sold non-qualified annuities and failed to utilize the tax-free exchange available under Section 1035 of the Internal Revenue Code (1035 exchange), and therefore caused a tax liability for the customer. IFMG's procedures required that financial advisors utilize 1035 exchanges for such transactions.

5. Furthermore, Pierce fraudulently concealed the adverse consequences of these replacement transactions from the customers by failing to disclose to them that they would incur tax liability and/or surrender charges through the sales of the annuities.
6. IFMG uncovered these transactions through an internal review of Pierce's annuity business. Pierce provided false information to IFMG during its investigation, misrepresenting that certain of the replacement customers had not incurred any adverse tax consequences through their annuity sales.
7. This conduct violated NASD Conduct Rules 2110, 2120, 2310, 3110 and IM-2310-2, and willfully violated Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder.

RESPONDENT AND JURISDICTION

8. On March 11, 1990, Pierce first became registered with FINRA as an Investment Company and Variable Products Representative. From October 2000 through May 2008, Pierce was registered in that capacity through former firm IFMG. In November 2007, IFMG was acquired by another firm. Pierce worked in various bank branch offices in the Boston area.
9. On May 15, 2008, IFMG filed a Form U5 for Pierce stating that: "Mr. Pierce was permitted to resign after review of certain annuity transactions found that he failed to follow firm policy with respect to the processing of annuity contracts." Pierce is presently registered with another FINRA member.

FIRST CAUSE OF ACTION

CONCEALING ANNUITY SWITCHES
(NASD CONDUCT RULE 2110)

10. The Department realleges and incorporates by reference paragraphs 1-9 above.
11. From in or about November 2006 through in or about September 2007, Pierce circumvented IFMG's procedures in connection with the following seven annuity replacement transactions (hereafter collectively referred to as the Replacement Transactions):

Customer	Product Surrendered	Surrender Date	Amount	Purchase Date For New Variable Annuity	Amount
CC Age 66	Sun Life Variable annuity	11/14/06	\$78,875.32	11/22/06	\$94,262.89
AP Age 70	Sun Life Variable annuity	1/22/07	\$28,367.15	1/26/07	\$55,032.32
PB Age 74	Sun Life Fixed annuity	2/7/07	\$57,143.90	2/12/07	\$50,000.00
VG Age 63	Sun Life Variable annuity	2/20/07	\$36,802.90	3/1/07	\$33,802.90
CY Age 69	Sun Life Fixed annuity	3/14/07	\$12,284.22	3/20/07	\$10,000.00
LC Age 72	Sun Life Fixed annuity	7/17/07	\$60,423.03	8/2/07	\$50,000.00
ML Age 74	Sun Life Fixed annuity	8/27/07	\$21,984.06	9/24/07	\$21,984.06

12. In each of the Replacement Transactions, the customer sold a fixed or variable annuity at Pierce's recommendation and/or with his knowledge and purchased another variable annuity that Pierce had recommended.
13. Each of the customers for the Replacement Transactions paid surrender charges and/or incurred tax liability based on his/her annuity sale.
14. Pierce effected all of the sales and purchases separately, on different dates within a week or two of each other, rather than as a replacements as required by IFMG's procedures, thereby concealing the nature of these transactions from his firm.
15. IFMG required that financial advisors complete an "Annuity Reporting Sheet" (Reporting Sheet) in connection with annuity investments that classified the purchase in one of four ways, as an "Application," "Carrier Application," "Transfer/Rollover," or "1035 Exchange." The firm further required the advisor to identify the source of funds for the purchase of the new annuity from a list of sixteen possible choices, one of which was "Annuities."
16. If the representative selected "Annuities" as a source of funds for the variable annuity investment, IFMG mandated that the financial advisor submit an IFMG Replacement Switch Form (Switch Form). The Switch Form provided customers with important information regarding the surrender charges (if applicable) and other costs associated with the sale of the existing annuity investment.
17. The Switch Form also provided customers with other important disclosures. For example, it warned them that "in the case of a variable annuity to variable annuity replacement," that they had the option of transferring among sub-accounts in their

existing variable annuity "at no additional charge." The Switch Form also warned clients that the sale of their current investment may result in "either a taxable gain or loss with possible adverse tax consequences."

18. For each of the seven Replacement Transactions, Pierce failed to identify "Annuities" as a source of funds for the variable annuity investment on the IFMG Annuity Reporting Sheet. Instead, Pierce falsely listed other sources of funds, such as "Checking" and "Property Sale," as the sole funding source for the new annuity.
19. IFMG's procedures also required that financial advisors utilize 1035 exchanges for annuity replacements involving taxable events (i.e., transactions involving non-qualified annuities). In this regard, the IFMG Reporting Sheet directed that advisors identify purchases involving 1035 exchanges, and complete state-mandated exchange forms in connection with such transactions.
20. As alleged below, six of the seven Replacement Transactions should have been processed as 1035 exchanges in accordance with IFMG's procedures to ensure that the customer did not incur tax liability. Again, Pierce circumvented this requirement by processing the annuity sale and purchases separately.
21. On the application for the replacement variable annuity, Pierce also failed to identify the new purchase as a "replacement," which would have required him to complete and return with the application a "state replacement form." Again, Pierce circumvented this requirement by processing the annuity sale and purchase separately.

22. Pierce's actions allowed him to reap the benefit of a new commission without the same level of supervisory scrutiny that would have been associated with the review of replacement/exchange transactions. Each of the new variable annuity investments was reviewed by an IFMG supervisor who was unaware that the purchase was part of a replacement.
23. By avoiding the use of the IFMG Switch Form and other similar state-required disclosure documents (for 1035 exchanges), Pierce was further able to conceal from the customers the surrender charges and possible tax consequences associated with the sale transactions.
24. By circumventing firm procedures and requirements in order to conceal the annuity replacements, Pierce violated NASD Conduct Rule 2110.

SECOND CAUSE OF ACTION

Falsification of Records (NASD Conduct Rules 3110 and 2110)

25. The Department realleges and incorporates by reference paragraphs 1-24 above.
26. From in or about November 2006 through in or about September 2007, Pierce provided false information on the IFMG Reporting Sheets used in connection with the Replacement Transactions.
27. Specifically, Pierce failed to identify on the Reporting Sheets that another annuity was a source of funds for the replacement variable annuity. Instead, Pierce falsely listed the following sources of funds as the sole funding source for the new annuity.

- Customer CC – "Property Sale"
- Customer AP – "Checking"
- Customer PB – "Checking"

- Customer VG - "CD's"
- Customer CY - "Checking"
- Customer LC - "Inheritance"
- Customer ML - "Death Claim"

28. In fact, each of the Replacement Transactions was funded in whole, or in substantial part, by the sale of another annuity

29. By providing false information on the IFMG Reporting Sheets, Pierce violated NASD Conduct Rules 2110 and 3110.

THIRD CAUSE OF ACTION

FRAUDULENT OMISSIONS

(WILLFUL VIOLATIONS OF SECTION 10(B) OF THE EXCHANGE ACT AND RULE 10B-5 THEREUNDER, AND VIOLATIONS OF NASD CONDUCT RULES 2120 AND 2110 AND IM-2310-2)

30. The Department realleges and incorporates by reference paragraphs 1-29 above.

31. On or about January 22, 2007, Pierce failed to disclose to customer AP the following material facts in connection with her replacement transaction: she would incur tax liability by surrendering her annuity; she would incur a surrender charge by selling her annuity; and she could avoid tax liability by utilizing a 1035 exchange.

32. On or about February 7, 2007, Pierce failed to disclose to customer PB the following material facts in connection with her replacement transaction: she would incur tax liability by surrendering her annuity; and she could avoid tax liability by utilizing a 1035 exchange.

33. On or about July 17, 2007, Pierce failed to disclose to customer LC the following material facts in connection with her replacement transaction: she would incur tax liability by surrendering her annuity; and she could avoid tax liability by utilizing a 1035 exchange.
34. On or about August 27, 2007, Pierce failed to disclose to customer ML the following material facts in connection with her replacement transaction: she would incur tax liability by surrendering her annuity; she would incur a surrender charge by selling her annuity; and she could avoid tax liability by utilizing a 1035 exchange.
35. As part of the course of conduct described in paragraphs 31-34 above, Pierce, in connection with the purchase or sale of securities, directly or indirectly, by the use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of any national securities exchange, knowingly or recklessly: employed devices, schemes or artifices to defraud; made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person; or effected transactions in, or induced the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.
36. By omitting material facts in selling securities to customers, Pierce willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and violated NASD Conduct Rules 2110 and 2120 and IM-2310-2.

FOURTH CAUSE OF ACTION
Unsuitable Recommendations
(NASD Conduct Rules 2110 and 2310 and IM-2310-2)

37. The Department realleges and incorporates by reference paragraphs 1-36 above.
38. On or about November 14, 2006, Pierce recommended that CC surrender her Sun Life variable annuity in the amount of \$78,875.32. On or about November 22, 2006, Pierce recommended that CC purchase an ING variable annuity in the amount of \$94,262.89, using proceeds from the sale of her Sun Life variable annuity to fund part of the transaction.
39. Pierce recommended and effected this replacement transaction in CC's account without having reasonable grounds for believing that such transaction was suitable for her in view of the transaction costs and tax liability incurred, and in light of the customer's financial situation, investment objectives and needs. Specifically, Pierce failed to process this replacement transaction as a 1035 exchange, resulting in a taxable gain of \$20,008.13 for CC. Moreover, the customer incurred a surrender charge of approximately \$3,532 through the sale of the Sun Life variable annuity.
40. On or about January 22, 2007, Pierce recommended that AP surrender her Sun Life variable annuity in the amount of \$28,367.15. On or about January 26, 2007, Pierce recommended that AP purchase a Jackson Life variable annuity in the amount of \$55,032.32, using proceeds from the sale of her Sun Life variable annuity to fund part of the transaction.

41. Pierce recommended and effected this replacement transaction in AP's account without having reasonable grounds for believing that such transaction was suitable for her in view of the transaction costs and tax liability incurred, and in light of the customer's financial situation, investment objectives and needs. Specifically, Pierce failed to process this replacement transaction as a 1035 exchange, resulting in a taxable gain of \$4,367 for AP. Moreover, the customer incurred a surrender charge of approximately \$1,798.45 through the sale of the Sun Life variable annuity.
42. On or about February 7, 2007, Pierce recommended that PB surrender her Sun Life fixed annuity in the amount of \$57,143.90. On or about February 12, 2007, Pierce recommended that PB purchase an ING variable annuity in the amount of \$50,000 using proceeds from the sale of her Sun Life fixed annuity.
43. Pierce recommended and effected this replacement transaction in PB's account without having reasonable grounds for believing that such transaction was suitable for her in view of the tax liability incurred, and in light of the customer's financial situation, investment objectives and needs. Specifically, Pierce failed to process this replacement transaction as a 1035 exchange resulting in a taxable gain of \$1,423.99 for PB.
44. On or about February 20, 2007, Pierce recommended that VG surrender her Sun Life variable annuity in the amount of \$36,802.90. On or about March 1, 2007, Pierce recommended that VG purchase an ING variable annuity in the amount of \$33,802.90 using proceeds from the sale of her Sun Life variable annuity.

45. Pierce recommended and effected this replacement transaction in VG's account without having reasonable grounds for believing that such transaction was suitable for her in view of the transaction costs incurred, and in light of the customer's financial situation, investment objectives and needs. Specifically, this customer incurred a surrender charge of \$2,349.12 through the sale of the Sun Life variable annuity.
46. On or about March 14, 2007, Pierce recommended that CY surrender his Sun Life fixed annuity in the amount of \$12,284.22. On or about March 20, 2007, Pierce recommended that CY purchase an ING variable annuity in the amount of \$10,000 using proceeds from the sale of his Sun Life fixed annuity.
47. Pierce recommended and effected this replacement transaction in CY's account without having reasonable grounds for believing that such transaction was suitable for him in view of the tax liability incurred, and in light of the customer's financial situation, investment objectives and needs. Specifically, Pierce failed to process this replacement transaction as a 1035 exchange, resulting in a taxable gain of \$2,290.97 for CY.
48. On or about July 17, 2007, LC surrendered her Sun Life fixed annuity in the amount of \$60,423. On or about August 2, 2007, Pierce recommended that LC purchase an ING variable annuity in the amount of \$50,000 using proceeds from the sale of her Sun Life fixed annuity.
49. Pierce recommended and effected this replacement transaction in LC's account without having reasonable grounds for believing that such transaction was suitable for her in view of the tax liability costs incurred, and in light of the customer's financial situation, investment objectives and needs. Specifically, Pierce failed to process this

replacement transaction as a 1035 exchange, resulting in a taxable gain of \$429.78 for LC.

50. On or about August 27, 2007, Pierce recommended that ML surrender her Sun Life fixed annuity in the amount of \$21,984.06. On or about September 24, 2007, Pierce recommended that ML purchase an ING variable annuity in the amount of \$21,984.06 using proceeds from the sale of her Sun Life fixed annuity.
51. Pierce recommended and effected this replacement transaction in ML's account without having reasonable grounds for believing that such transaction was suitable for her in view of the transaction costs and tax liability incurred, and in light of the customer's financial situation, investment objectives and needs. Specifically, Pierce failed to process this replacement transaction as a 1035 exchange, resulting in a taxable gain of \$2,407.77 for ML. Moreover, the customer incurred a surrender charge of approximately \$667.28 through the sale of the Sun Life fixed annuity.
52. By making unsuitable recommendations, Pierce violated NASD Conduct Rules 2310 and 2110 and IM-2310-2.

FIFTH CAUSE OF ACTION
Misrepresentations to Firm
(NASD Conduct Rule 2110)

53. The Department realleges and incorporates by reference paragraphs 1-52 above.
54. IFMG began an internal review of Pierce's annuity business in October 2007. The firm reviewed certain fixed and variable annuity transactions that Pierce effected between October 2006 and October 2007 and identified several replacement

transactions, including those charged herein, in which it appeared that Pierce had failed to process the transactions consistent with firm procedures.

55. As part of its internal review, IFMG requested that Pierce answer a questionnaire containing 12 specific questions about each of the replacement transactions. One of the questions asked: "Did the client incur any adverse tax consequences by surrendering the contract?"
56. In or about January 2008, Pierce submitted a questionnaire response to IFMG for customer CC that falsely answered "no" to the question whether the customer had incurred any adverse tax consequences as a result of the surrender. In fact, CC suffered a tax gain of \$20,008.13 as a result of selling her Sun Life variable annuity.
57. In or about January 2008, Pierce submitted a questionnaire response to IFMG for customer AP that falsely answered "no" to the question whether the customer had incurred any adverse tax consequences as a result of the surrender. In fact, AP suffered a tax gain of \$4,367.15 as a result of selling her Sun Life variable annuity.
58. In or about January 2008, Pierce submitted a questionnaire response for customer PB that falsely answered "no" to the question whether the customer had incurred any adverse tax consequences as a result of the surrender. In fact, PB suffered a tax gain of \$1,432.99 as a result of selling her Sun Life fixed annuity.
59. In or about January 2008, Pierce submitted a questionnaire response for customer CY that falsely answered "no" to the question whether the customer had incurred any adverse tax consequences as a result of the surrender. In fact, CY suffered a tax gain of \$2,290.97 as a result of selling her Sun Life variable annuity.

60. In or about January 2008, Pierce submitted a questionnaire response for customer LC that falsely answered "no" to the question whether the customer had incurred any adverse tax consequences as a result of the surrender. In fact, LC suffered a tax gain of \$429.78 as a result of selling her Sun Life fixed annuity.
61. In or about January 2008, Pierce submitted a questionnaire response for customer ML that falsely answered "no" to the question whether the customer had incurred any adverse tax consequences as a result of the surrender. In fact, ML suffered a tax gain of \$2,407.77 as a result of selling her Sun Life fixed annuity.
62. By making misrepresentations to his firm, Pierce violated NASD Conduct Rule 2110.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- B. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and
- C. make specific findings that Respondent willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

FINRA DEPARTMENT OF ENFORCEMENT

Dated: May 28, 2010



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