

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20070109919**

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA") (10/1/07) (P) (A) (4)

RE: SagePoint Financial, Inc., Respondent
CRD No.133763

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, SagePoint Financial, Inc, 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 alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent 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

SagePoint Financial Inc. ("SagePoint"), a direct subsidiary of AIG Advisor Group ("AIG"), is a registered broker-dealer that has been a member of FINRA since 2005. SagePoint, headquartered in Phoenix, Arizona conducts a general securities business and has approximately 1,570 independent registered representatives and registered sales assistants in 953 registered offices nationwide.

Beginning in November 2003, Sentra Securities Corp. ("Sentra"), SagePoint's predecessor broker-dealer, became the designated broker-dealer responsible for enrolling employees of a California County Office of Education into its Deferred Compensation Program's 403(b)/457(b) plan. In September 2005, Sentra merged with two other AIG-affiliated broker-dealers, to create AIG Financial Advisors, Inc. ("AIGFA"), a subsidiary of AIG, itself a subsidiary of the SunAmerica Financial Group. In January 2009, AIGFA changed its name to SagePoint (Sentra, AIGFA and SagePoint are hereinafter referred collectively as the

“Firm”).

RELEVANT DISCIPLINARY HISTORY

SagePoint has no previous relevant disciplinary history

OVERVIEW

Between November 2003 and August 2008 (the “Relevant Period”), approximately 3,925 employees of a California County Office of Education (“CCOE”) were enrolled into the CCOE’s Deferred Compensation Program’s (“DCP”) 403(b)/457(b) plan (hereinafter referred to as the “Plan”). The majority of the Plan’s participants were directly enrolled by the Firm’s registered representatives (“RRs”). As part of the enrollment process, the Firm’s RRs offered the participants detailed asset allocation advice and provided specific investment recommendations. Despite the fact that the Firm’s RRs offered specific investment recommendations to its customers, the Firm’s written supervisory procedures did not require that the brokers enrolling the participants into the Plan record the customers’ investor profile information on a customer account application and did not require that the RRs maintain any customer files relating to the participants’ enrollment into the Plan. As a result, the Firm did not maintain or preserve records that would allow supervisory or other review of the RRs’ recommendations to determine whether they complied with the suitability requirements of NASD Rule 2310.

Therefore, the Firm failed to implement an adequate supervisory system, including written procedures, reasonably designed to comply with NASD Conduct Rules 2310(a) and 3110(a) and Section 17(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) in violation of NASD Conduct Rules 3010 (a) and (b) and 2110. Moreover, the Firm failed to make and keep customer account information in connection with the enrollment process in violation of NASD Conduct Rules 3110(a) and 2110 and Section 17(a) of the Exchange Act, Rule 17a-3 thereunder.

In addition, during the Relevant Period, the Firm permitted registered representative DP to simultaneously work as a full-time CCOE employee in the role of manager of the Plan and as an RR servicing the Plan as well as a supervisor managing other representatives servicing the Plan. However, the Firm did not implement adequate procedures to assess, investigate or inquire whether DP’s employment as manager of the Deferred Compensation Program conflicted with his role as an RR or with the Firm’s securities business. Accordingly, the Firm failed to implement a supervisory system reasonably designed to address any conflicts of interest posed by registered representative DP’s dual roles as

manager of the DCP and registered representative/supervisor at the Firm, in violation of NASD Conduct Rules 3010(a) and 2110.

Moreover, between November 2003 and January 2009, the Firm failed to implement an adequate supervisory system, including written procedures, that was reasonably designed to achieve compliance with the correspondence-review requirements of NASD Conduct Rule 3010(d)(2) and, thus, violated NASD Conduct Rules 3010(a) and (b), 3010(d)(2), 2110 and FINRA Conduct Rule 2010.

Lastly, between April 2005 and January 2010, the Firm permitted DP to utilize an unapproved outside e-mail address to conduct securities-related business. As a result, the Firm did not retain all emails sent by and received by DP at the outside e-mail address. The Firm thus violated Section 17(a) of the Exchange Act, Rules 17a-3 and 17a-4 thereunder, and NASD Conduct Rules 3110, 2110 and FINRA Conduct Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Introduction

Beginning in November 2003, the Firm became the designated broker-dealer responsible for enrolling CCOE employees into the Plan. At the same time, DP, a full-time employee of the CCOE and the manager of the DCP for the County, joined the Firm as an RR. DP remained dually employed by the CCOE and the Firm until his resignation from the Firm in January 2010.

In his dual positions, DP recommended that CCOE employees invest in the Plan and, as an RR with the Firm, enrolled participants into the Plan. Between June 2004 and February 2007, DP was a Firm manager and supervised the RRs who were Financial Advisors for the DCP and listed as such on the CCOE website. During the period from March 2005 through February 2007, DP was designated the sole representative of record for the Plan's accounts opened and held at NWF, the contracted third party provider of the DCP's investment platform

NWF paid 12b-1 trailers to the Firm for enrolling participants into the DCP's Plan and relied upon the Firm to disburse the commissions to its RRs. Because DP was the sole representative of record for the Plan accounts held at the Firm, all of the commissions earned from enrolling participants into the Plan were initially paid to DP. Between March 2005 and February 2007, the Firm paid DP all of the commissions the RRs earned from enrolling CCOE employees into the Plan and relied upon DP to pay the RRs who had earned the commissions. In order to disburse the commissions to the RRs, DP turned over the commissions to BCI, an unregistered domestic corporation, which paid out the commissions to the Firm's RRs.

In August 2008, the Firm ceased being the broker-dealer for the DCP. On January 29, 2010, DP resigned from the Firm. DP, however, continues to be employed by the CCOE as manager of the DCP.

- i. The Firm violated NASD Conduct Rules 3110(a) and 2110 and Section 17a-3 of the Exchange Act (Books and Records) by failing to make and keep current the customer account information detailed in Exchange Act Rule 17a-3(a)(17)(i)(A).

Between 2003 and August 2008, RRs at the Firm enrolled employees of the CCOE into the Plan. The Firm informed RRs servicing the Plan that they could provide detailed asset allocation advice as part of the process for enrolling new participants into the Plan.

As part of the Firm's enrollment of the participants into the Plan, RRs servicing the DCP provided detailed asset allocation advice to CCOE employees who they enrolled in the Plan, including recommending specific financial products. The recommendations of the RRs were specifically tailored to the participant's needs, thereby going beyond general educational information about the mutual funds offered.

However, the RRs did not complete a client account application or any other document which recorded information about the participant's financial situation and needs, as required by FINRA and SEC rules and as contained in the client account application usually used by the Firm.

Instead, during this period, the only business records that were maintained by the Firm in connection with the enrollment of the CCOE employees into the Plan were the CCOE enrollment form and a salary reduction agreement denoting the payments made to fund the investments (the "Enrollment Documents").

The Enrollment Documents did not contain the participants' tax identification number, employment status, annual income, net worth, and the account's investment objectives. Moreover, this information was also not recorded or maintained by the Firm in any other documents.

SEC Rule 17a-3(a)(17)(i)(A) requires that:

Every member...and every broker or dealer... shall make and keep current the following books and records relating to its business:..

(17) For each account with a natural person as a customer or owner:

(i)(A) An account record including the customer's or owner's

name, tax identification number, address, telephone number, date of birth, employment status (including occupation and whether the customer is an associated person of a member, broker or dealer), annual income, net worth (excluding value of primary residence), and the account's investment objectives...

NASD Conduct Rule 3110(a) requires, among other things, that firms make and preserve books and records as prescribed by SEC Rule 17a-3.

Based on the foregoing, the Firm violated NASD Conduct Rules 3110(a) and 2110 and Section 17(a) of the Exchange Act, Rule 17a-3 thereunder.

- ii. The Firm, failed to implement a supervisory system, including written procedures, reasonably designed to ensure compliance with NASD Conduct Rules 2310(a) and 3110(a) and Exchange Act Rule 17a-3 in violation of NASD Conduct Rules 3010 (a) and (b) and 2110;

NASD Conduct Rule 2310(a) provides that:

[i]n recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.

NASD Conduct Rule 3110(a) requires that “[e]ach member shall make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations and statements of policy promulgated thereunder and with the Rules of this Association and as prescribed by SEC Rule 17a-3...”

NASD Conduct Rule 3010 subsections (a) and (b) require each member firm to establish and maintain a system, including written procedures, to supervise the activities of its employees that is reasonably designed to achieve compliance with the federal securities laws and NASD rules.

Between 2003 and August 2008, the Firm failed to implement adequate written supervisory procedures (“WSPs”) tailored to its business. The Firm’s WSPs did not require that RRs record customers’ investor profile information or information about a customer’s financial situation and needs on any Firm document or record when enrolling participants into the Plan. And, as noted above, no such records were maintained by the Firm.

Because the RRs servicing the Plan provided specific investment recommendations to the participants when they enrolled them in the Plan, the RRs were making investment recommendations to which the suitability requirements of NASD Conduct Rule 2310 applied. However, because the Firm did not maintain investor profile information or information regarding the participants' financial situation and needs, supervisors and others at the Firm were unable to review the RRs' recommendations to determine whether they complied with the suitability requirements of NASD Conduct Rule 2310.

Accordingly, the Firm's supervisory system violated NASD Conduct Rules 3010 (a) and (b) and 2110 because it was not reasonably designed to ensure that the recommendations of the RRs as to the DCP Plan were made in accordance with the suitability requirements of NASD Conduct Rule 2310. The Firm also violated NASD Conduct Rules 3010 (a) and (b) and 2110 because its procedures did not require that the Firm establish and maintain customer investment and other information, as described in the preceding section, when recommending investments in the Plan, in violation of NASD Conduct Rule 3110(a) and Section 17(a) of the Exchange Act, Rule 17a-3 thereunder.

- iii. The Firm failed to implement a supervisory system reasonably designed to address the conflicts of interest posed by DP's dual roles as manager of the DCP and RR and supervisor at the Firm in violation of NASD Conduct Rules 3010(a) and 2110;

Between November 2003 and August 2008, the Firm failed to assess or inquire into whether DP's outside business activity as manager of the CCOE's DCP conflicted with the Firm's securities business.

- a. The Firm failed to assess the conflict of interest arising from DP's outside business activity.

On October 31, 2003, the Firm approved DP's outside business activity without assessing whether DP's outside business activity conflicted with the Firm's securities business, despite the fact that the outside business activity questionnaire ("OBAQ"), filled out by DP and submitted to the Firm, explicitly stated that DP's outside business activity as manager of the DCP required him to work full-time.

Moreover, instead of assessing whether DP's outside business activity conflicted with the Firm's securities business, DP's supervisor advised DP to record inaccurate entries on his OBAQ so that DP's dual status as a full-time employee and manager of the CCOE'S DCP and RR at the Firm would pass any review and thereby not jeopardize DP's ability to conduct his outside business activity as manager of the CCOE's DCP.

Indeed, the form which approved DP's application to conduct his outside business activity as manager of the DCP inaccurately stated that DP only intended to spend

30% of his time conducting the activity. In fact, as the OBAQ filled out by DP stated, his role as manager of the DCP was a full-time job.

Thus, the Firm's outside business activity approval form was inconsistent with and contradicted the entries entered by DP in the OBAQ that he had submitted to the Firm.

Moreover, despite DP's full-time job as an employee of the CCOE and manager of the DCP, the Firm placed additional supervisory responsibilities upon DP again without fully assessing whether his full-time job as manager of the DCP might impede his ability to properly manage the securities accounts of his clients or effectively undertake the additional supervisory responsibilities assigned to him.

b. The Firm ignored red flags indicating that the outside business activity interfered with DP's ability to supervise RRs at the Firm

The Firm ignored red flags, including complaints from DP, that DP's full-time job at the CCOE interfered with his ability to effectively supervise the Firm's RRs.

For example, DP's OBAQ for 2005-2006 reiterated that DP was spending "76-100%" of his time at his outside business activity. The 2005-2006 OBAQ was flagged for review for a possible conflict of interest, but the Firm nonetheless continued to approve DP's outside business, without additional review.

In another instance, the Firm's annual branch audits for 2005 and 2006 contained multiple supervisory deficiencies evincing that DP was not spending sufficient time supervising the RRs within his supervisory jurisdiction.

In 2006, DP expressed concerns to the Firm stating that he was unable to effectively handle his dual roles as supervisor and full-time manager of the DCP. Despite these complaints from DP, the Firm failed to relieve him of his supervisory responsibilities until 2007.

c. The Firm failed to assess the conflict of interest arising from the Firm paying DP commissions earned from enrolling participants into the Plan.

Between November 2003 and August 2008, the Firm failed to conduct any type of meaningful review to analyze DP's position at the DCP to determine whether it was a conflict of interest for DP to accept compensation for enrolling participants into the Plan and what types of disclosures, if any, should be made to participants regarding DP's dual roles.

During the Relevant Period, section 25112 of the California Education code prohibited "personnel... acting on behalf of a...county office of education from receiving consideration from a vendor in exchange for the promotion of a particular vendor or vendor's products." Despite this law, in March 2005, the

Firm made DP the Representative of Record for the Plan's securities accounts and, in that role, the Firm paid DP a commissions check representing all of the commissions earned by brokers for enrolling participants into the Plan, including those enrolled by DP.

The Firm never instructed DP that he could not accept commissions emanating from the DCP's Plan and never implemented any supervisory procedures to ensure that DP was not receiving compensation as a result of the Firm's 403(b)/457(b) plan business.

Based on the foregoing, the Firm failed to implement an adequate supervisory system reasonably designed to address, analyze or review any conflicts of interests posed by DP's dual roles as manager of the DCP and RR and supervisor at the Firm. DP's dual roles, and the conflicts presented by those roles, could have resulted in violations of FINRA rules or the federal securities laws relating to, among other things, sales activity or supervisory activity by DP, or to disclosures to participants or others concerning those roles. By failing to implement a supervisory system reasonably designed to address, analyze or review those conflicts of interests, the Firm violated NASD Conduct Rules 3010(a) and 2110.

- iv. The Firm, between November 2003 and January 2009, failed to implement a supervisory system, including written procedures, that was reasonably designed to achieve compliance with the correspondence-review requirements of NASD Conduct Rule 3010(d)(2), in violation of NASD Conduct Rules 3010(a) and (b), 3010(d)(2), 2110 and FINRA Conduct Rule 2010.¹

Between November 2003 and January 2009, the Firm's written supervisory procedures mandated principal review of all incoming and outgoing securities-related e-mail communications of RRs. Until the Firm's automated e-mail system was implemented, the Firm relied upon their RRs to forward their own incoming and outgoing emails to a designated principal for review.

Until the Firm implemented its automated e-mail system, however, it did not have an adequate system in place to determine if RRs were in fact forwarding their e-mails as required. The Firm, instead, relied upon annual branch audits and sporadic spot-checks of RRs' computers to enforce compliance with the e-mail forwarding requirement. As described below, neither the branch audits nor the sporadic spot checks provided a reliable means to timely detect if e-mails had actually been forwarded.

Annual branch audits were not an effective means to ensure that RRs were submitting all e-mails for review. These audits did not provide for timely detection of email-forwarding deficiencies because they were conducted on an

¹ Respondent violated FINRA Rule 2010 for all violative conduct engaged in between December 15, 2008 through January 2009.

annual basis. Furthermore, in the event that an email-forwarding deficiency was identified through a branch audit, the Firm's WSPs did not require a search or review of archived emails to determine if the offending RR had failed to forward additional emails.

The Firm permitted, but did not require, supervisors to conduct spot-checks of the RRs' computers as a means to monitor if e-mails were being forwarded as required. However, this was not an effective means to determine if a representative had forwarded all required e-mails because RRs could easily delete emails from their assigned computers without detection.

Because of the deficiencies described above, the Firm's email-review system did not provide an effective means to identify emails that may have contained evidence of customer complaints, misconduct by RRs, or other issues of supervisory importance.

NASD Conduct Rule 3010(d)(2) requires firms to develop written procedures for the review of incoming and outgoing written (i.e., non-electronic) and electronic correspondence with the public relating to its investment banking or securities business.

By failing to implement an adequate supervisory system, including written procedures, that was reasonably designed to achieve compliance with the correspondence-review requirements of NASD Conduct Rule 3010(d)(2), Respondents violated NASD Conduct Rules 3010(a) and (b), 3010(d)(2), 2110 and FINRA Conduct Rule 2010.

- v. The Firm, by allowing DP to use his CCOE e-mail address to communicate about firm business, failed to maintain records of electronic communications as required by Section 17(a), Rule 17a-3 and 17a-4, and NASD Conduct Rules 3110, 2110 and FINRA Conduct Rule 2010.

Between April 2005 and January 2010, DP utilized an unapproved outside e-mail address from his CCOE employment to conduct securities-related business. As a result, the Firm was not maintaining or retaining emails sent and received by DP at that address.

The Firm was aware of DP's use of his outside business address to conduct securities related business as DP e-mailed his supervisors and even the Firm's then Chief Compliance Officer from his outside CCOE e-mail address.

By failing to prevent DP from using an outside email address to conduct securities related business, the Firm failed to maintain or retain records of electronic communications as required by Section 17(a) of the Exchange Act, Rules 17a-3 and 17a-4 thereunder, and NASD Conduct Rules 3110, 2110 and FINRA Conduct Rule 2010.

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

A censure and a fine in the amount of \$300,000.

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

Respondent specifically and voluntarily waives any right to claim that Respondent is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

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 me;
- 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 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.

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 me; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Respondent;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondent's disciplinary record;
 - 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 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 Respondent 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 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 the Firm 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.

11/16/2011
Date:

May R. Quinn
Respondent
SagePoint Financial Inc.

Reviewed by:

J. C. Thau
Jonathan C. Thau, Esq.
Counsel for Respondent
Luboja & Thau, LLP
10 East 40th Street
New York, New York 10016

Accepted by FINRA:

12/16/11
Date (D. e)

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

Thomas B. Lawson
Thomas B. Lawson
Chief Counsel
FINRA Department of Enforcement
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Washington, DC 20006