

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2008013198902**

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

RE: Edward Howard Schrufer, Jr., Respondent
Registered Representative
CRD No. 1072023

Pursuant to FINRA 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

Edward Howard Schrufer, Jr. has worked in the securities industry since 1982. From June 20, 2003 to May 29, 2007, Schrufer was employed as a registered representative at Citicorp Investment Services. From May 29, 2007 until October 2, 2007, Schrufer was employed as a registered representative at CIS's successor, Citigroup Global Markets, Inc. Schrufer is presently employed as a registered representative with another FINRA member firm in San Jose, California.

OVERVIEW

In 2006 and 2007, Schrufer recommended that three retirees take out mortgages to borrow funds against their homes and use the proceeds to invest in securities. Schrufer did not have a reasonable basis for believing that his recommendations were suitable based upon the financial situations and needs disclosed by the customers. Schrufer also knew that his customers would depend upon the uncertain returns from the investments

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he recommended to make their mortgage payments. In addition, Schrufer told the customers that their securities investments would generate enough income to make their new monthly mortgage payments, even though he knew that there was a risk that the returns from the investments he recommended might not be sufficient to pay the mortgages over time. By engaging in this conduct, Schrufer violated NASD Conduct Rules 2310(a) and 2110.

FACTS AND VIOLATIVE CONDUCT

Schrufer violated NASD Conduct Rules 2310(a) and 2110 by making unsuitable recommendations to customers to invest mortgage proceeds

In 2006 and 2007, Schrufer recommended that customers BM, PK, and RB engage in "cash-out" mortgages to invest in securities — *i.e.*, use the accumulated equity in their homes to generate cash to invest. As a result of Schrufer's recommendations, BM, PK, and RB took out mortgages and invested hundreds of thousands of dollars in securities. Schrufer received advisory fees and commissions from these transactions of approximately \$15,300.

Customers BM, PK, and RB disclosed their financial situations to Schrufer on their new account forms and during in-person communications. The customers disclosed that they lacked the funds necessary to purchase the securities Schrufer recommended without liquefying their home equity, and that they had insufficient assets and income to cover the monthly mortgage payments without the returns from the investments Schrufer recommended.

Schrufer told BM, PK, and RB that the investments they would make using the proceeds of their cash-out mortgages would generate enough income to make their monthly mortgage payments, even though Schrufer knew that there was a risk that the investment returns might not be sufficient to pay the mortgages over time.

Customer BM

Schrufer recommended that customer BM invest mortgage proceeds on two separate occasions. On or about March of 2006, Schrufer recommended that BM take out a cash-out mortgage and invest in stocks, mutual funds and a variable annuity. Shortly thereafter, BM followed Schrufer's recommendation and took out a \$360,000 cash-out mortgage to invest. Approximately one year later, Schrufer recommended that BM take additional money out of her home to invest. BM again followed Schrufer's recommendation, took out a \$584,500 cash-out mortgage, and invested the proceeds in various securities.

The March 2006 Recommendation to BM

Customer BM was a 62 year old benefits specialist on the verge of retirement. BM had approached Schrufer about paying off a home equity loan with a balance of approximately \$67,739.65. Schrufer recommended that BM take out a mortgage, pay off the home equity loan, and invest the remaining proceeds in securities. Schrufer told BM

that income from the investments he recommended would exceed the payments on her home.

BM's Account Opening Application stated that her risk tolerance was moderate, and her investment goals were liquidity, income, and tax deferral. Her annual income was listed as \$35,000. Excluding the mortgage refinance proceeds, BM's liquid assets totaled \$167,000.

On or about March 2006, BM closed on a \$360,000 cash-out mortgage with an interest rate of 6.5% that would reset after ten years. Her initial monthly payment was \$1,950. BM's new monthly mortgage payment of \$1,950 represented 66.9 % of the income listed on her Account Opening Application.

After paying off BM's home equity loan, closing costs, and fees, the remaining balance of approximately \$289,062.03 was available to invest. In April 2006, BM invested \$274,844.81 in individual stocks, annuities and mutual funds recommended by Schrufer.

The April 2007 Recommendation to BM

On or about April 13, 2007, BM told Schrufer she was planning to retire. Schrufer recommended that BM take out a larger mortgage and invest the proceeds in securities. When BM told Schrufer that she did not have sufficient income to make the larger mortgage payments, Schrufer told her that the investments he recommended would generate sufficient income to make the payments.

When BM retired on April 13, 2007, her income, which she derived from social security and a small annuity, dropped to less than \$20,000 per year.

On or about April, 2007, BM closed on an approximately \$584,500 cash out 7/1 interest only adjustable rate mortgage with Washington Mutual. The mortgage carried an initial interest rate of 5.975% and a monthly payment of \$2,910.32. After paying off her existing mortgage, closing costs, and fees, BM invested the proceeds from the mortgage along with \$40,000 from other investments she had liquidated. In June and July of 2007, BM invested \$252,129.80 in ETFs, ishares, closed-end funds, and equities recommended by Schrufer.

Customer RB

RB was a 70 year old retired school food service worker. On or about January, 2006, RB went to the Citibank branch in San Bruno to discuss paying down an existing home equity loan with a balance of approximately \$90,696 by selling some of her existing investments. RB was referred to a Citi mortgage specialist. Schrufer joined RB's discussions with the mortgage specialist and recommended that RB take out a cash-out mortgage of \$340,696, pay off her home equity loan, and invest the remainder in securities. Schrufer told RB that the returns from her investments would be sufficient to cover the monthly mortgage payments and would ultimately pay off the balance of the mortgage loan.

An Account Opening Application, executed by RB on February 24, 2006 and by Schrufer on May 1 and 2, 2006, stated that her risk tolerance was moderate and that her investment

goals were income, tax deferral, liquidity and growth. Her annual income was listed at \$28,000 per year and her liquid net assets as \$190,000.

On or about March, 2006, RB closed on a \$360,696.00 cash-out mortgage with an initial interest rate of 6.75% and an initial monthly interest-only payment of \$1,916.42 that would increase after ten years. RB's new monthly mortgage payment of \$1,916.42 per month represented 82% of the income she listed on the Account Opening Application she executed on February 24, 2006.

After paying closing costs and fees, paying off her home equity loan, and allocating approximately \$10,000 for home renovations, \$236,860.07 was available to invest. In May of 2006, RB invested \$233,651.73 in mutual funds and individual equities recommended by Schrufer.

Customer PK

PK was a 65 year old retired grocery store meat clerk. PK was referred to Schrufer on or about February of 2007 while she was visiting the San Bruno branch of CitiBank to discuss cashing out a \$2,500 CD to pay a tax bill. She explained to Schrufer that she was short on cash and needed money to pay her taxes. Schrufer recommended that PK take out a mortgage and invest the proceeds in securities. Schrufer told PK that he would set up three accounts for her that would generate sufficient income from securities investments to cover her mortgage payments. Schrufer told PK that she would not have to pay any mortgage expenses out of her own pocket, and that after one year her investments would generate additional disposable income that she could withdraw.

PK's net worth was approximately \$50,000 and her monthly income was approximately \$1,674. Her risk tolerance was moderate.

After documents supporting a \$500,000 mortgage loan were prepared, PK complained that the amount was too high. Schrufer convinced PK that the \$500,000 mortgage was appropriate because Schrufer's proposed investments in securities would generate sufficient income to pay the monthly mortgage bill.

On or about March 13, 2007, PK closed on a \$500,000 mortgage with an initial interest rate of 6.125% and a monthly, interest-only payment of \$2,552.08 that would reset after seven years. PK's new interest-only monthly mortgage payment of \$2,552.08 represented 95.2% of the monthly income she received from her pension and social security.

The \$500,000 in equity that PK removed from her home, less closing costs, settlement charges, and fees, was now available to invest. Between March 21 and April 30, 2007, PK invested \$470,095.39 in UITs, individual equities, and variable annuities recommended by Schrufer.

Schrufer's Recommendations Were Unsuitable and He Made Misleading Statements to Customers

Schrufer's recommendations that BM, PK, and RB borrow money against their homes to invest in securities were made without reasonable grounds for believing that the

recommendations were suitable based upon the financial situations and needs disclosed by the customers. Each customer had insufficient assets and income to make the additional mortgage payments without the uncertain income from their investments. Moreover, Schrufer's statements to the customers that the investments would generate sufficient income to make the additional mortgage payments were misleading. He knew there was a risk that the investments might not generate enough income to make the additional payments. Accordingly, Schrufer violated NASD Conduct Rule 2310(a) and 2110.

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

1. A suspension from association with any FINRA member in any capacity for a period of one year.
2. A fine of \$15,300 representing disgorgement of commissions and fees earned, payable upon notice that this AWC has been accepted and that such payment(s) are due and payable.
3. An additional fine of \$15,300, which 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

I agree to pay the disgorgement amount of \$15,300 upon notice that this AWC has been accepted and that such payment(s) are due and payable. I have submitted an Election of Payment form showing the method by which I propose to pay the fine imposed.

The additional fine amount of \$15,300 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.

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.

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 Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. 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 FINRA Rules 8310 and 8311).

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive 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, 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 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

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 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 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 FINRA Rule 8313; 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.

Date 12/22/2010


Respondent

Reviewed by:

Jahan P. Raissi
Counsel for Respondent
Shartsis Friese LLP
One Maritime Plaza, Eighteenth Floor
San Francisco, CA, 94111
415-421-6500

File 415-421-2922

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;
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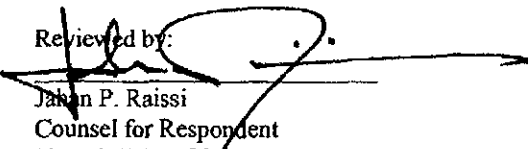
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I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any 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.

Date

Respondent

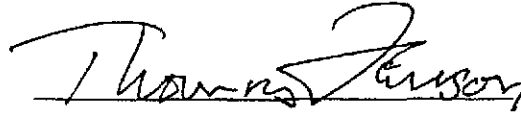
Reviewed by:


Jahan P. Raissi
Counsel for Respondent
Shartsis Friese LLP
One Maritime Plaza, Eighteenth Floor
San Francisco, CA, 94111
415-421-6500

Accepted by FINRA:

1/21/11
Date

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

A handwritten signature in black ink, appearing to read "Thomas B. Lawson", written over a horizontal line.

Thomas B. Lawson
Vice President and Chief Counsel
Department of Enforcement
FINRA
1801 K Street, NW, Suite 800
Washington, DC 20006
Telephone: (202) 974-2862
Fax: (202) 721-6597