

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20090178409**

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

RE: Fernando Miguel Padilla, Respondent
Former Registered Representative
CRD No. 4924141

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Fernando Miguel Padilla ("Padilla" or "Respondent") 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

Padilla first entered the securities industry in October 2004 as a financial analyst for a firm located in Puerto Rico. He had been working in the professional services division of that firm's bank affiliate since June 2004, and he was registered with that firm until May 2006. In June 2006, Padilla became a registered representative with Financial Network Investment Corporation (the "Firm") and worked at related bank branches (the "Bank") to provide brokerage services.

On May 4, 2009, the Firm filed a Form U-5 ("Uniform Termination Notice for Securities Industry Registration") for Padilla disclosing that he voluntarily terminated his employment on April 27, 2009. The Form U-5 also disclosed that Padilla was the subject of an ongoing investigation by the Firm and reflected that the Firm had suspended him "on [April 6, 2009] after [the] firm determined that there were paperwork discrepancies as to the riders selected in connection with the purchase of a variable annuity."

Padilla is not now registered, and has not been registered, with a FINRA-regulated firm since April 27, 2009. Subsequent to May 4, 2009, however, the Firm has filed amendments to Padilla's Form U-5 that disclose new customer complaints and/or arbitration proceedings not previously disclosed on his Form U-5. The Firm disclosed the most recent customer complaint on a Form U-5 amendment that it filed with FINRA on February 24, 2011, which was within two years of the termination of Padilla's registration. Accordingly, pursuant to Article V, Section 4 of the FINRA Bylaws, Padilla remains subject to FINRA's jurisdiction.

RELEVANT DISCIPLINARY HISTORY

Padilla has no relevant disciplinary history.

OVERVIEW

From June 2007 to July 2008, Padilla made misrepresentations to three customers in connection with the purchase of variable annuities, mutual funds, and/or preferred stock.

The three customers were Bank customers who had been referred to Padilla by Bank personnel. Padilla represented to the customers that the principal they invested in their variable annuities, mutual funds, or preferred stock would be protected and would not be subject to market risk. All of them told him either that they could not afford to lose any of their principal or that they did not want to invest in products that would expose their principal to risk. Two of them were elderly and had no prior investment experience other than with CDs. These two customers did not speak, read, or write English and could not read the disclosure documents that they received. In purchasing the investments, they were relying solely on the misrepresentations made by Padilla.

In addition, the investment recommendations that Padilla made to the three customers were unsuitable. The customers either specifically told Padilla that they did not want to put their money at risk or expressly cautioned him that the money they were investing was all they had and that they could not afford to lose it. Regardless of where each of the respective variable annuities, mutual funds, or preferred stock rested on the risk spectrum, all of these investments bore the risk of market fluctuation and the loss of principal. Based on the investment needs and objectives that these customers expressly conveyed to Padilla, his investment recommendations were not suitable for the customers. Customers AI, HR, and CF lost approximately \$36,000, \$20,000, and \$33,000, respectively.

Accordingly, Padilla made misrepresentations to three customers of his firm in connection with their purchase of variable annuities, mutual funds, and/or preferred stock, in violation of NASD Rule 2110. Moreover, for each of these three customers, Padilla's recommendations to purchase the respective investments were unsuitable, in violation of NASD Rules 2310(a) and 2110.

FACTS AND VIOLATIVE CONDUCT

Customer AI

In July 2008, Bank personnel referred customer AI to Padilla, as the Firm representative assigned to that Bank branch, to discuss his options related to a maturing CD. At that time, AI was 48 years old. AI's new account documents (the "NADs") identify him as self-employed with an annual income between \$50,000 and \$74,999 and a net worth between \$500,000 and \$999,999. When Padilla filled out AI's NADs, he selected "total return" (that combines objectives of "growth" and "income") as AI's investment objective. AI expressed an aversion to risk on an investor profile form.

When AI discussed his investment objectives with Padilla, he expressly told Padilla that he did not want this money to have anything to do with the stock market. Padilla assured him that he would not recommend an investment in which the performance was subject to market fluctuation. Nevertheless, he recommended that AI purchase the AXA Equitable Accumulator Elite variable annuity, a tax-deferred annuity contract that sought to provide for the accumulation of retirement savings and income. Padilla told AI that he was guaranteed to receive his full principal at the end of the contract term.

Based on Padilla's recommendation and his representation, AI purchased \$180,000 of the AXA variable annuity. His investment provided that he would receive 6.5 percent in income annually. AI's annuity had a four-year surrender period, with a penalty schedule if he redeemed his investment early.

Like other variable annuities, the AXA variable annuity generally did not guarantee protection of principal. It did offer a rider, however, that could be selected to ensure that a customer's principal would be fully protected. The terms of AI's annuity contract, which Padilla selected, did not include the principal protection rider.

After AI purchased the annuity, in September and October of 2008, he called Padilla to ask about his decreasing account balance. Padilla assured him on both occasions that his investment would not be affected by market turbulence. By March 2009, approximately nine months after AI's purchase, his \$180,000 investment was worth \$138,094.

Customer HR

Customer HR visited the Bank in June 2007 to discuss her options for a maturing CD. At the time, HR was a 71-year-old retiree with no prior investment experience, other than her experience with CDs. According to her NADs, HR had an annual income of less than \$29,999 and had a net worth of \$75,000 to \$99,000. Her annual income was derived from social security and a modest pension. Other than the assets at the Firm, HR did not have money elsewhere during the relevant period. When Padilla filled out her NADs, he selected "total return" as HR's investment objective.

When HR met with Padilla, she told him that she had a serious medical issue and faced a rising cost of living and that she needed the \$54,000 that she invested for her retirement. She specifically told him that she could not afford to risk the money being invested. Nevertheless, Padilla recommended that HR purchase the following three ING mutual funds:

- ING Greater China Fund – This non-diversified fund seeks long-term capital appreciation by investing in equity securities, derivatives, initial public offerings, and illiquid, restricted securities of companies located in the Greater China region.
- ING Global Equity Dividend Fund – This fund seeks growth of capital by investing in a portfolio of equity securities of dividend-paying companies, including issuers in countries with emerging securities markets.
- ING Global Real Estate Fund – This non-diversified fund seeks to provide investors with high total return by investing in equity securities, initial public offerings, real estate investment trusts, and Rule 144A securities of companies engaged in the real estate industry.

Based on Padilla's recommendation and his representations, HR invested \$30,000 in these three mutual funds. By February 2008, HR suffered unrealized losses of \$3,500, which was more than 10 percent of her investments. At that time, Padilla further recommended that HR purchase \$24,000 of preferred stock of Popular, Inc. ("Popular"), a financial services company. On Padilla's recommendation, HR allowed him to purchase Popular on her behalf.

In connection with her investments, Padilla represented to HR that she would receive 7 percent in interest income annually and that she "would not lose one penny." HR reads very little English. During her meeting with Padilla, he did not explain any of the NADs and mutual fund disclosure documents that he gave her to sign. By April 2009, of the \$54,000 that HR invested, approximately \$26,000 (almost 50 percent of each of the respective investments) remained.

Customer CF

In January 2008, customer CF visited the Bank to discuss her options with respect to a maturing CD. At the time, CF was an 85-year-old retiree and a widow. She had no prior investment experience other than her experience in CDs. According to her NADs, she had an annual income between \$30,000 and \$49,999 and a net worth between \$250,000 and 499,999. Padilla selected "total return" as CF's investment objective when he filled out her NADs.

When CF met with Padilla, he recommended that she purchase The Best of America Achiever Annuity, a tax-deferred variable annuity contract offered by Nationwide Life Insurance Company. The Nationwide variable annuity sought to provide long-term savings and retirement needs.

CF reads very little English. In explaining the investment to her, Padilla represented to CF that, at the end of the annuity contract, she would receive back the total amount of her principal

invested, plus any increase in the value of her principal. He also represented to her that her investment would be for a three-year term.

Based on Padilla's recommendation and his representations, CF invested \$110,000 in the Nationwide variable annuity. Her investment guaranteed that she would receive 7 percent in income annually. CF's annuity contract included a four-year surrender period, with a penalty schedule if she redeemed her investment early. Like other variable annuities, the Nationwide variable annuity did not guarantee principal protection.

Padilla selected the Nationwide Allocation Architect Capital Appreciation Model for CF's annuity assets. The prospectus described this allocation model as "[d]esigned for contract owners that are willing to accept more short-term price fluctuations in exchange for potential long-term returns." By the end of December 2008, CF's \$110,000 annuity investment was worth approximately \$74,177.

Material Misrepresentations

NASD Rule 2110 states that "[a] member, in the conduct of [his] business, shall observe high standards of commercial honor and just and equitable principles of trade." Making material misrepresentations to customers is not consistent with just and equitable principles of trade and is a violation of NASD Rule 2110. Padilla made material misrepresentations to AI, HR, and CF regarding the investment products that they purchased on his recommendation.

AI told Padilla that he did not want to put his money in investments that were subject to the risk of market volatility. Padilla misrepresented the AXA variable annuity to him, telling him that his money would not be subject to risk and that his principal would be fully guaranteed. The annuity required the money invested to be placed into sub-funds that maintained their own investment portfolios, which did subject his principal to market risk. Thus, AI's investment bore more risk than AI wanted and Padilla represented it would involve. Based on what AI expressly told Padilla that he wanted for his money, Padilla's misrepresentations to him were material.

HR specifically told Padilla that she had a serious medical issue and that she could not afford to risk the money being invested. When he recommended the ING mutual funds and the preferred shares of Popular to HR, Padilla misrepresented her investments, assuring her that she could not lose any money. In fact, the nature of the investments (i.e., mutual funds and preferred stock) did subject her principal to market volatility. HR's investments bore more risk than she wanted and Padilla represented it would involve. In light of her investment objectives and needs, which she conveyed to him, Padilla's misrepresentations to her were material.

CF, who previously held her money in CDs, wanted her money to be safe. In recommending the Nationwide variable annuity, Padilla misrepresented the investment, telling her that it was for a three-year term and that at the end of that term she would receive back the full principal that she invested. In fact, her annuity required her assets to be placed into sub-funds that maintained their own investment portfolios, which did subject her principal to market risk. CF's investment bore

more risk than she wanted and Padilla represented it would involve. In addition, Padilla told CF that the term of her investment was three years when, in fact, it was four years. Based on CF's desire not to put her principal at risk, Padilla's misrepresentations to her were material.

Accordingly, Padilla violated NASD Rule 2110 when he made material misrepresentations to three customers in connection with the investment products that he recommended to them.

Unsuitable Investment Recommendations

NASD Rule 2310(a) states 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." Brokers violate the rule if they make recommendations to customers without having a reasonable basis for believing that the recommendations are suitable for the customers. Padilla did not have a reasonable basis for believing that the investments he recommended to AI, HR, and CF were suitable for them.

AI had his \$180,000 in a CD prior to purchasing the AXA variable annuity. Although AI had some prior investment experience with stocks, bonds, and mutual funds, he did not want to invest his CD money in products that exposed his principal to market risk. AI conveyed this to Padilla when they met. Furthermore, financial profile documents that Padilla completed on AI's behalf reflect that AI was concerned about risk to his money. These documents also indicate that AI wanted his principal protected.

Nevertheless, Padilla recommended that AI purchase the AXA annuity, which required invested funds to be placed in sub-funds that had their own investment portfolios and subjected AI's principal to market risk. Although Padilla chose the AXA Conservative-Plus allocation portfolio for AI, rather than one of the more aggressive allocation portfolios, the investment still was exposed to market risk. Thus, it bore more risk than AI wanted. In addition, the AXA annuity included an optional rider that guaranteed the protection of principal. Padilla, however, did not select that option on the annuity contract that he submitted for AI. As a result, the investment that Padilla recommended was directly contrary to AI's stated investment objectives. Padilla did not have a reasonable basis for believing that the AXA variable annuity was suitable for AI.

HR was a 71-year-old retiree. Her income came from social security and a modest pension and was less than \$30,000 a year. Her net worth, which included her assets at the Firm, was close to \$75,000. In addition, HR was not an experienced investor who understood the features of mutual funds or preferred shares. She had no prior investment experience, other than with CDs. HR was a Bank customer that Bank personnel referred to Padilla because she had a CD that was about to mature. More importantly, she had a serious medical issue and faced the rising cost of living. HR had no tolerance for risk and wanted a safe investment with no risk to her principal.

Yet, Padilla recommended that HR invest \$54,000 (more than two-thirds of her net worth) in three mutual funds and preferred shares of a financial services company. The mutual funds that

he suggested feature the following risks: (i) two are non-diversified; (ii) two are concentrated in one geographical region or business sector; and (iii) all may invest in illiquid and restricted securities. Moreover, he recommended that HR invest half of her money in preferred shares of a single issuer. Padilla's recommendations were not consistent with HR's financial needs or stated investment objectives. He made these recommendations to HR despite her explanation that she could not risk losing her principal. As such, Padilla did not have a reasonable basis for believing that the ING mutual funds or the Popular preferred shares were suitable for HR.

CF was an 85-year-old retiree. Her annual income was less than \$50,000, and her net worth was less than \$500,000. She was not an experienced investor who understood variable annuities. In fact, she had no prior investment experience other than CDs. Like HR, CF was a Bank customer, referred to Padilla by Bank personnel because she visited the Bank regarding a maturing CD. She was not looking to invest in products where she could lose her principal. As a result of Padilla's misrepresentations, CF believed that her principal would be returned in full.

Nevertheless, Padilla recommended that she invest \$110,000, or approximately 25 percent of her net worth, in a variable annuity that did not guarantee protection of her principal from market fluctuation. Furthermore, for her annuity assets, Padilla selected the Architect Capital Appreciation model, which on the scale of allocation models fell between moderate and aggressive. In fact, the prospectus described her allocation model as "[d]esigned for contract owners that are willing to accept more short-term price fluctuations in exchange for potential long-term returns." Padilla's recommendation was consistent with neither CF's stated objectives nor the financial needs or investment horizon of an 85-year-old retiree. As such, Padilla did not have a reasonable basis for believing that the Nationwide variable annuity was suitable for CF.

Padilla recommended investments that were directly contrary to the stated investment objectives of AI, HR, and CF. In the cases of HR and CF, his recommendations also were inconsistent with their financial needs. Accordingly, Padilla violated NASD Rules 2310(a) and 2110 when he recommended the respective investments to these three customers.

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

A one-year suspension from association in all capacities with any FINRA member and a \$20,000 fine.

Respondent understands that if he is barred or suspended from associating with any FINRA member, he becomes 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, Respondent 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).

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.

Respondent specifically and voluntarily waives any right to claim that he is unable to pay, now or at any time hereafter, the monetary sanction 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 him;
- 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 him; and
- C. If accepted:
 - 1. this AWC will become part of his permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against him;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about his 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 he 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.

Respondent certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that he 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 him to submit it.

8/28/2012
Date

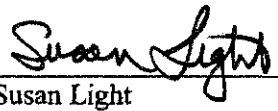


Fernando Miguel Padilla
Respondent

Accepted by FINRA:

9/7/12
Date

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



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