

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2011028898803**

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

RE: Elmer Wayne Bullis, Respondent
Registered Representative
CRD No. 1718482

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

Elmer Wayne Bullis ("Bullis") entered the securities industry on July 27, 1987, and holds the Series 6, 63, and 65 licenses. Since 1987, he has been associated with eight FINRA member firms, most recently NEXT Financial Group Inc., ("NEXT") starting on June 27, 2006. NEXT terminated Bullis's association by filing a Form U5 on September 22, 2012. Bullis has not since reassociated with another FINRA member firm. FINRA retains jurisdiction over Bullis pursuant to Article V, Section 4(a) of FINRA's By-Laws, which provides for a two-year period of retained jurisdiction over formerly registered persons.

RELEVANT DISCIPLINARY HISTORY

Bullis has no relevant disciplinary history.

OVERVIEW

In January 2010, Bullis met with customers RL and his wife WL. On Bullis's recommendation, RL and WL exchanged five existing variable annuities for two new variable annuities. Bullis, however, failed to accurately complete the annuity application and annuity disclosure forms. As a result, Bullis violated NASD Rule 2821, which requires that a customer in a variable annuity exchange be informed of certain features of the annuities, and FINRA Rule 2010.

During meetings with RL and WL, both before and after the transactions, Bullis used sales literature and correspondence that did not disclose the name of his member firm, that failed to contain a sound basis on which to evaluate the claims, and that contained unwarranted, confusing and inaccurate information. Through these actions, Bullis violated NASD Rule 2210(d)(1)(A), 2210(d)(1)(B), and 2210(d)(2)(C)(i) and FINRA Rule 2010.

On February 27, 2010, RL and WL sent Bullis an email and a letter, complaining that Bullis had not explained the transactions, that the transactions were not in their best interests and caused them a loss of \$156,000, and asking Bullis to make them whole. Bullis willfully failed to report this written complaint to his employing member firm and, consequently, willfully failed to report it on his Form U4 within thirty days of receiving it. Through these actions, Bullis willfully violated Article V, Section 2(c) of FINRA's By-Laws, FINRA Rule 1122, and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Violation of NASD Rule 2821 and FINRA Rule 2010

NASD Rule 2821 establishes sales practice standards for purchases and exchanges of deferred variable annuities. In part, the rule requires the registered representative to inform the customer of certain features and charges associated with the purchase of the variable annuity. Specifically, Rule 2821(b)(1)(A)(i) requires that a registered representative have a reasonable basis to believe that:

. . . the customer has been informed, in general terms, of various features of deferred variable annuities, such as the potential surrender period and surrender charge; potential tax penalty if customers sell or redeem deferred variable annuities before reaching the age of 59 ½; mortality and expense fees; investment advisory fees; potential charges for and features of riders; the insurance and investment components of deferred variable annuities; and market risk.

As Notice to Members 07-53 explains, although the rule does not specify the exact type or form of disclosure that is required, "a registered representative who

merely delivers a prospectus to an investor ordinarily would not have a reasonable basis to believe that the customer has been instructed or educated – ‘informed’ – about the material features of a deferred variable annuity for purposes of the rule.”

In January 2010, Bullis recommended that two of his customers, husband and wife RL and WL, combine their existing annuities into two new deferred variable annuities. RL and WL met with Bullis on January 19, 2010 to complete the applications for these transactions and sign several documents, including annuity applications, transfer forms and disclosure forms.

Three of the documents completed and signed that day were incomplete or inaccurate. Specifically, RL’s annuity application was incomplete in that it failed to include the annuity type, premium payment, optional benefits and transfer information, among other things. RL’s Variable Annuity Disclosure Form (“Disclosure Form”) was incomplete in that it failed to include all of the information on the side-by-side comparison about the existing annuities that were being transferred. WL’s Disclosure Form was incomplete in that it failed to include all of the information required on the side-by-side comparison about the annuities being transferred and the new annuity, and was inaccurate in that it included incorrect information about the new annuity.

As a result of the foregoing conduct, Bullis violated NASD Rule 2821 and FINRA Rule 2010.

Violation of NASD Rules 2210(d)(1)(A), 2210(d)(1)(B), and 2210(d)(2)(C)(i) and FINRA Rule 2010

NASD Rule 2210(d)(1)(A) & (B) govern the substantive content of advertisements and sales literature. Rule 2210(d)(1)(A) states that “communications with the public shall be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. The communication may not omit any material fact or qualification.” Rule 2210(d)(1)(B) prohibits “any false, exaggerated, unwarranted or misleading statement[s] or claim[s].” Finally, NASD Rule 2210(d)(2)(C)(i) requires that advertisements and sales literature prominently disclose the name of the member.

In February 2010, RL began questioning the transactions recommended by Bullis that occurred in January. On February 23, 2010, Bullis presented RL with a one-page overview of the transactions that had taken place on January 19, 2010. This document purported to contain an overview of the transactions, including the goals of the transactions and a quantification of the guaranteed minimum withdrawal benefit and transfer value of the old and new contracts, the difference in projected annual income, and the difference in cost. This document contained inaccurate information and was confusing and misleading. Bullis later revised it,

but the revisions were also inaccurate. None of these documents disclosed the name of the member firm.

On March 23, Bullis again met with RL and WL and presented a 16 page document that contained analyses and explanations for the different transfers and benefits and costs of the new annuities. Like the earlier overview documents that Bullis used and presented to the customers, this document also contained incomplete and inaccurate information, was confusing and misleading, and did not disclose the name of the member firm.

As a result of the foregoing conduct, Bullis violated NASD Rules 2210(d)(1)(A), 2210(d)(1)(B), and 2210(d)(2)(C)(i) and FINRA Rule 2010.

Violation of Article V, Section 2(c) of FINRA's By-Laws, FINRA Rule 1122, and FINRA Rule 2010

Article V, Section 2(c) of FINRA's By-Laws provides that every application for registration filed with FINRA shall be kept current at all times by supplementary amendments which must be filed within thirty days after learning of the facts or circumstances giving rise to the amendment. FINRA Rule 1122 provides that no member or person associated with a member shall file incomplete or inaccurate information so as to be misleading or fail to correct an inaccurate filing.

On February 27, 2010, RL emailed Bullis. In the email, RL made several complaints, including that the information presented on February 23rd was "creative accounting," that Bullis had churned the RL's and WL's accounts, that certain annuities had never been discussed as part of the consolidation, and that the transactions had resulted in losses to RL and WL of \$156,000. RL closed the email asking Bullis how they would be compensated for these losses and instructing him "not to initiate or perform any new action with our funds unless we specifically instruct you to do so."

Bullis failed to report this complaint to his member firm and willfully failed to update his Form U4 within thirty-days of its receipt.

As a result of the foregoing conduct, Bullis willfully violated Article V, Section 2(c) of FINRA's By-Laws, FINRA Rule 1122, and FINRA Rule 2010.

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

A three-month suspension in all capacities from association with any FINRA member firm and a \$15,000 fine.

The fine shall be due and payable either immediately upon reassociation with a member firm following the three-month 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 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).

I understand that this settlement includes a finding that I willfully omitted to state a material fact on a Form U4, and that under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 and Article III, Section 4 of FINRA's By-Laws, this omission makes me subject to a statutory disqualification with respect to association with a member.

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

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a 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: (i) testimonial obligations; or (ii) 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.

June 7, 2013
Date (mm/dd/yyyy)

Elmer Wayne Bullis
Elmer Wayne Bullis Respondent

Reviewed by:

Fred Knopf
Fred Knopf
Counsel for Respondent
Wilson Elser Moskowitz Edelman & Dicker, LLP
3 Gannett Drive
White Plains, NY 10604-3407
914-872-7217

Accepted by FINRA:

6/27/13
Date

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

Christina Stanland
Christina L. Stanland
Principal Regional Counsel
FINRA Department of Enforcement
12801 North Central Expy., Ste. 1050
Dallas, Texas 75248
Phone (972) 701-8554
Fax (972) 716-7612