

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2011030400501**

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

RE: Alan J. Becker, Respondent
CRD No. 4870553

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Alan J. Becker ("Respondent" or "Becker") 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 and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

From September 2005 until August 2011, Becker was employed by New York Life Securities LLC (the "Firm"), a FINRA regulated broker-dealer, where he was registered as an Investment Company Products/Variable Contracts Representative (Series 6). On or about August 5, 2011, Becker voluntarily resigned from the Firm. Shortly thereafter, Becker became registered as an Investment Company Products/Variable Contracts Representative with MML Investors Services, LLC ("MML"), another FINRA-regulated broker-dealer. On May 30, 2012, Becker was permitted to resign from MML "in connection with [a] pattern of reportable customer complaints". Since his resignation, Becker has not been employed in the securities industry in any capacity.

During the period from October 19, 2011 through April 15, 2014, the Firm filed a series of amended Uniform Termination Notices of Securities Industry

Registration (“amended Forms U5”) reporting numerous customer complaints about Becker. Although Becker has not been associated with another FINRA regulated broker-dealer since May 30, 2011, pursuant to Article V, Section 4 of FINRA’s By-Laws, Becker remains subject to FINRA’s jurisdiction until April 14, 2016, based on the filing of an amended Form U5, dated April 15, 2014.

RELEVANT DISCIPLINARY HISTORY

Becker has no prior relevant disciplinary history in the securities industry.

OVERVIEW

From February 2007 through February 2011 (the “Relevant Period”), Becker, either independently or working in conjunction with another registered representative, made unsuitable recommendations to six customers in connection with the sales of variable universal life policies (“VULs”). Becker, either independently or working in conjunction with another registered representative, also made misstatements, and failed to adequately disclose information regarding VULs to these same six customers and two additional investors. For four of these customers, Becker recorded false information on VUL policy applications regarding their net worth, or signed applications containing false information regarding their net worth, thereby causing his Firm to create and maintain inaccurate books and records. In 2011 Becker also effected an unauthorized trade of a VUL for an additional customer.

FACTS AND VIOLATIVE CONDUCT

During the period from September 2005 through August 2011, Becker worked in the Firm’s Bedford, New Hampshire branch office (the “Bedford Office”). Becker’s business included recommending and selling variable annuities and VULs, among other things.

One feature of a VUL policy is that the owner can allocate a portion of his premium payments to a separate sub-account in order to accumulate cash value through investments. Monthly charges, including a cost of insurance charge and administrative fees, are deducted from the policy’s cash value. The cash value of the policy may increase or decrease based on the performance of the sub-account investments. The VUL policy terminates (lapses) if at any time the net cash surrender value is insufficient to pay the monthly deductions. When the Policy terminates, the cash value is worthless.

Customer MW

In or about December 2008, Becker, along with another registered representative from the Bedford Office, sold Customer MW a VUL with a face value of \$2

million. At the time, Customer MW was a 51-year-old nurse with three dependents: two children and a spouse on long-term disability. MW's annual income was approximately \$90,000. Becker previously sold an immediate annuity to MW's husband, in part, to fund the payment of the premiums for this VUL. Both Customer MW and her husband had limited investment experience.

On or about December 2, 2008, Becker asked MW to sign her Policy Application with incomplete entries for her income and net worth. After MW signed the Policy Application, inaccurate information was recorded for her household net worth. Although at the time MW's household liquid net worth was approximately \$250,000, it was improperly recorded as \$850,000. Becker subsequently signed MW's Policy Application after this inaccurate entry was added.

Becker and the other registered representative sold Customer MW a VUL with a face amount higher than what she wanted at the time. Becker and the other representative recommended to MW that it was good to start with a policy having a higher face value, and then adjust the face value downward later. This statement was inaccurate and misleading since Becker and the other registered representative failed to disclose that a decrease in the face amount would result in a surrender charge applicable to the amount of the decreased face amount.

Unaware of any possible surrender fees, Customer MW decreased the face value of her VUL from \$2 million to \$750,000 in or about September 2011. She was assessed a surrender fee of \$5,830.10 for this policy change. Customer MW's planned premium was \$3,759 each quarter, or \$15,036 annually. Customer MW's planned premium was approximately 16% of her annual gross income. This VUL was unsuitable since the premiums MW needed to pay to prevent her policy from lapsing were higher than she could afford given her financial situation.

Customer JT

In 2007, JT was a 48-year-old, married nurse with two children and an annual income of approximately \$250,000. His wife, LT, was also a nurse earning an annual income of approximately \$38,000. Their household net worth, excluding their home, was approximately \$750,000. At the time, JT and LT had two children in high school.

In February 2007, based on the recommendation of Becker and another registered representative from the Bedford Office, JT purchased a VUL with a \$1 million face amount. JT later increased the face amount to \$2 million at the recommendation of Becker and another registered representative. Becker and another registered representative told JT that he could reduce the face amount later at any time. However, Becker failed to disclose that reduction of the face amount would trigger a surrender charge. On or about September 8, 2010, JT reduced the face amount of his VUL from \$2 million to \$1 million, thereby triggering a surrender charge of \$19,557.90. In addition, Becker failed to disclose that the mortality and expense fee for JT's VUL would increase over time.

On or about November 29, 2006, Becker made false entries on JT's VUL application by inaccurately recording JT's net worth as \$2 million, when his household net worth was actually about \$750,000.

Customer LT

In April 2008, based on a recommendation from Becker, LT purchased a VUL with a \$2 million face amount. This VUL was issued on June 12, 2008, and was a replacement policy for a whole life policy she previously owned. LT's quarterly planned premiums were \$2,000.

Becker told LT that the VUL would fund itself because the investments in the VUL subaccounts would earn enough to pay the VUL premiums. At the time, however, Becker failed to disclose that if these investments performed poorly, LT would have to increase her premium payments to prevent the policy from lapsing.

In or around September 2009, LT's policy was in danger of lapse. Because she could not afford to increase her premium payments, she decreased the face value of her VUL from \$2 million to \$1 million.

On or about April 9, 2008, Becker asked LT to sign her Policy Application with incomplete entries for her income and net worth. After LT placed her signature on the Policy Application, inaccurate information was recorded for her household net worth by entering \$2.5 million on her Policy Application. Becker signed the Policy Application after this inaccurate entry was made.

Customers KR and CPR

KR and CPR are a married couple who met Becker and another registered representative in the Bedford Office in approximately 2008. KR and CPR were 46 and 44 years old, respectively. At the time their children were 11 and 13 years old. KR and CPR were both employed in a family-owned funeral home earning a combined income of approximately \$100,000. Their household liquid net worth was approximately \$75,000. Although KR and CPR had an ownership interest in the funeral home, CPR's mother was the primary owner.

In May 2008, Becker, with another registered representative in the Bedford Office, recommended and sold a VUL to each KR and CPR. Becker and the other representative told them that they could fund their VUL premiums by using the investment profits from a variable annuity each previously purchased. This statement was inaccurate and misleading since Becker failed to disclose that if the VUL sub-accounts performed poorly, payment of the planned premiums might be insufficient to prevent the net cash surrender value from declining to the point where the VUL was in danger of lapse.

The combined annual planned premiums for KR's and CPR's VULs totaled approximately \$24,000. The VULs that Becker recommended to KR and CPR were unsuitable since the premiums they needed to pay to prevent their policies

from lapsing were higher than they could afford given their financial situation and needs, including saving for college for their two children.

Customer DM

Prior to March 2008, DM was introduced to Becker through another New York Life Insurance agent. In March 2009, Becker recommended and sold DM a VA with a face amount of \$45,000. At the time, DM was a 38-year-old, married carpenter with his own home improvement business, three dependents, an annual income of approximately \$100,000 and a liquid net worth of approximately \$100,000. DM paid the initial premium amount of \$45,000 by rolling over the proceeds of an IRA he owned and using the proceeds to purchase the VA.

Shortly thereafter, in June 2009, Becker and another Firm registered representative recommended and sold a VUL to DM with a \$1 million face value. The quarterly planned premium for this VUL was \$1,200 (or \$4,800 per year). DM relied completely on Becker's expertise as he did not fully understand these variable contract products. DM followed Becker's recommendation to use funds from his VA to fund the VUL.

Based on Becker's recommendation, DM funded his purchase of the VUL by surrendering the VA he had recently purchased, thereby triggering a surrender charge of \$477.89. At the time Becker failed to disclose to DM that DM would incur a surrender charge and tax liability in connection with his VUL purchase. Moreover, Becker's recommendation for DM to purchase the VUL was unsuitable as the VUL had a surrender period of seven years, and DM required liquidity for his small business.

Customer RG

RG was introduced to Becker through a co-worker in 2007. At the time RG was a 50-year-old, married security guard, with a one-year-old son, earning an annual income of approximately \$50,000. RG's wife was unemployed at the time. Both had no previous investment experience. In September 2007, Becker sold a VA to RG by recommending that he roll over his 401(k) account to the Firm and use the proceeds to purchase a VA in a qualified IRA account. At the time, RG's 401(k) was worth approximately \$100,000.

Shortly thereafter, in December 2007, RG told Becker that he wanted to invest his money in something that would fund his son's college expenses. At the time, RG's household net worth (exclusive of residence) was no more than \$200,000. Becker asked RG to sign his Policy Application with a blank entry for net worth. Becker later recorded RG's household net worth (exclusive of residence) with the inaccurate entry of \$500,000.

Becker told RG that a 529 plan would not be a good vehicle for this because, if his son did not attend college, all the money in the 529 plan account would "go to the government." Instead, Becker urged RG to purchase a VUL with a face value

of \$500,000, although at the time RG was not seeking insurance coverage. Becker told RG that he could use funds from his VA to pay the VUL premiums, without disclosing that by doing so, RG would incur tax liability. In addition, Becker told RG that, if the funds in his VA were depleted, he could use funds from the VUL subaccount investments to pay the VUL premiums. Becker, however, failed to disclose that this would not be possible if the net cash surrender value of the VUL policy was insufficient to cover the monthly deductions, and that, under such circumstances, the VUL would lapse.

The scheduled premiums for RG's VUL were \$8,667 per year. RG's annual income was only about \$50,000. The VUL Becker recommended and sold to RG was unsuitable for him as Becker lacked reasonable grounds for believing that RG could afford his premiums based on his financial situation, including his income and need to save for his son's college education.

Customer SS

SS purchased a term life insurance policy from ABC Life Insurance Company in 2008 when he was a 46-year-old, married technician, with an annual income of about \$55,000. His wife was employed by a pharmacy, earning approximately \$38,000 per year. They had two children. SS was an unsophisticated customer with limited investment experience.

In March 2009, Becker recommended and sold to SS a VUL with a face value of \$400,000 as a replacement policy for his term life insurance. In February 2011, Becker and another registered representative in the Bedford Office, recommended that SS increase the face value of his prior VUL from \$400,000 to \$1 million without reasonable grounds for believing that SS could afford the increased premiums. After SS agreed to increase the face value on his VUL, his planned premiums were \$18,000 per year. This was approximately 32% of his annual gross income. The VUL recommended to SS was unsuitable since the premiums he needed to pay to prevent his policy from lapsing were higher than he could afford given his financial situation and needs, including his need to support two children.

In addition, Becker and the other registered representative failed to disclose that if the VUL sub-accounts performed poorly, payment of planned premiums might be insufficient to prevent the net cash surrender value from declining to the point where the VUL was in danger of lapse.

Unsuitable VUL Recommendations

NASD Conduct Rule 2310(a) states that "in 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."

FINRA Rule 2010 and NASD 2110 require that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”¹

Becker violated NASD Rules 2310 and 2110 and IM 2310-2(b)(5) by making certain recommendations during the period from December 2007 until December 15, 2008 to Customers MW, KR, CPR and RG that were unsuitable based on their financial situation and needs, including their limited income and net worth relative to the scheduled premiums, and KR’s and CPR’s need to save for college educations, as described above. Becker violated NASD Rules 2310, FINRA Rule 2010 and IM 2310-2(b)(5) when he recommended the purchase of a VUL to DM in June 2009, and an increase in the face value of SS’s VUL in February 2011. These recommendations were unsuitable for DM and SS based on their financial situation and needs, including DM’s need for liquidity for his business and SS’s limited income and need to support two children, as described above.

Inaccurate Representations and Failure to Disclose Risks and Fees

In connection with sales of VULs, Becker made inaccurate statements and failed to make disclosures regarding: the risk of withdrawing funds from VULs; the risk of policy lapse; the increase in mortality and expense fees over time; and the existence of surrender charges to Customers MW, KR, CPR, JT, LT, and RG during the period from February 2007 until December 15, 2008, in violation of NASD Rule 2110, as described above. Becker also violated FINRA Rule 2010 by failing to disclose a material fact in connection to his sale of a VUL to Customer DM in June 2009, and his February 2011 recommendation to increase the face value of the VUL owned by Customer SS.

Unauthorized Trade

In or about February 2011, Becker, and another registered representative in the Bedford Office, recommended that Customer DS purchase a NYLIAC Variable Universal Life Accumulator, with a face amount of \$2 million. DS never agreed to the purchase of this VUL. Instead, DS informed Becker that he wanted time to research the comparative benefits of investing in IRAs instead.

On or about May 25, 2011, despite the fact that Becker knew that DS had not agreed to purchase a VUL, Becker and another registered representative in the Bedford Office, effected a surrender of a variable annuity that DS already owned, and used the proceeds to purchase a VUL on his behalf with a face value of \$1,500,000.

Based on the foregoing, Becker violated FINRA Rule 2010 and NASD IM 2310-2 for both the purchase of a VUL for DS and the surrender of his variable annuity.

¹ On December 15, 2008, FINRA Rule 2010 superseded NASD Rule 2110, however, the relevant text of the rule remained the same.

Causing the Creation of Inaccurate Books and Records

NASD Rule 3110(a) requires member firms to “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 the Securities Exchange Act of 1934, Rule 17a-3.” In turn, Exchange Act Rule 17a-3(a)(17) requires member firms to make and keep for each account with a natural person as a customer, the customer's name, tax identification number, address, telephone number, date of birth, employment status, annual income, net worth, and investment objectives.

During the Relevant Period, the Firm required its registered representatives to record the customers' net worth on their VUL applications, based on information obtained from their customers. During the period from February 2007 through April 2008, Becker made false entries, or signed applications with false entries made by another registered representative, on Firm VUL policy applications for Customers MW, LT, JT and RG by inflating their net worths.

Based on the foregoing, Becker violated NASD Rules 3110(a) and 2110 in that he caused his Firm to create and maintain inaccurate books and records, in violation of Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-3 promulgated thereunder.

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

1. A suspension in all capacities for a period of 18 months, and
2. A fine of \$46,045, which includes the disgorgement of commissions received of \$36,045.

The fine shall be due and payable either immediately upon reassociation with a member firm following the 18 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(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).

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.

7/23/14
Date

Alan J. Becker
Alan J. Becker

Reviewed by:



Steven N. Fuller, Esq.
Counsel for Respondent
Allen/Fuller
40 Stark Street
Manchester, NH 03101
(t) 603-666-9966 (f) 603-668-7750

Accepted by FINRA:

8/7/14
Date

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



Richard Chin
Chief Counsel
FINRA Department of Enforcement
One World Financial Center, 11th floor
200 Liberty Street
New York, NY 10281
(t) 646-315-7322 (f) 202-689-3415