

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2012033224601**

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

RE: Brent W. Burgesser, Respondent
General Securities Representative
CRD No. 3278147

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Brent W. Burgesser, 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

Burgesser became registered with the securities industry on May 11, 2000, as a General Securities Representative and associated with a member of FINRA. Burgesser during all periods mentioned herein, was associated with member firm Wells Fargo Advisors, LLC ("Wells Fargo" or the "Firm"), and was registered with FINRA under Article V of the By-Laws as a General Securities Representative. Burgesser's employment with Wells Fargo ended on June 12, 2012. Burgesser is currently associated with another FINRA member firm and registered with FINRA under Article V of the By-Laws as a General Securities Representative. Burgesser has no prior disciplinary history.

OVERVIEW

Respondent effected 83 unsuitable mutual fund switches in the accounts of three customers, resulting in more than \$63,700 in customer losses while generating approximately \$109,600 in commissions for himself and the Firm during the period from January 2009 through May 2012 (the "Relevant Period"), in violation of NASD Rules 2310 and IM-2310-2 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

NASD Rule 2310(a) requires that a registered representative "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."

A pattern of mutual fund switching is presumptively unsuitable and therefore presumptively a violation of NASD Rule 2310(a).

Additionally, FINRA Rule 2010 requires that an associated person, in the conduct of his/her business, "shall observe high standards of commercial honor and just and equitable principles of trade."

During the Relevant Period Burgesser effected 83 unsuitable short-term switches of Class A mutual fund transactions in accounts belonging to customers HP, MH, and MG, usually selling the investment after only approximately one and a half to three months, only to buy and sell another mutual fund.

Burgesser also sold shares in a particular mutual fund only to later repurchase shares in the same fund for the same customers. Burgesser did so without having reasonable grounds for believing that such transactions were suitable for these customers in view of the nature, frequency, and size of the recommended transactions and in light of each customer's financial situation, investment objectives, risk tolerance and circumstances.

Additionally, Burgesser only bought and sold Class A mutual funds in these accounts. These shares necessitated that each of the subject customers paid upfront sales charges, known as "front-end loads", for each of these trades. The collective amount of sales charges paid by these three customers was at least \$119,209.

Burgesser did not discuss with these customers the different types of shares available for investment, or the sales charges and operating expenses associated with each shares class and their effect on potential returns. Burgesser also did not disclose cost-saving options that were available.

During the approximately three years that Burgesser engaged in short-term mutual fund switch transactions, customers HP, MH, and MG, collectively incurred approximately \$63,738 in losses due to Burgesser's unsuitable recommendations while generating approximately \$109,602 in commissions from these activities. The Firm repaid the customers in full, and Burgesser later reimbursed the Firm \$100,000 of the amount paid to the three customers.

As a result of the foregoing conduct, Respondent Burgesser violated NASD Rules 2310 and IM-2310-2 and FINRA Rule 2010.

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

A sixty calendar-day suspension from association with any FINRA member in all capacities and a \$5,000 fine.

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 agree to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. I have submitted an Election of Payment form showing the method by which I propose to pay the fine imposed.

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.

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 Chief Legal Officer, 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

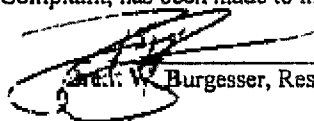
C. If accepted:

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 accordance with FINRA Rule 8313;
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.

7/7/2016
Date (mm/dd/yyyy)


Mark W. Burgess, Respondent

Reviewed by:


Benette L. Zivley, Esq.
Counsel for Respondent
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Accepted by FINRA:

April 25, 2016

Date

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

A handwritten signature in black ink, reading "Laura Leigh Blackston / SBBP". The signature is written in a cursive, flowing style.

Laura Leigh Blackston, Senior Regional Counsel
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