

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

DENNIS MARK ADAM MERRITT,
CRD No. 1748115,

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2013036962201

COMPLAINT

The Department of Enforcement alleges:

INTRODUCTION

1. In August and September 2011, Respondent Dennis Mark Adam Merritt (“Merritt”) participated in three private securities transactions in which three of his customers invested a total of \$115,000 in a company called SavvyPhone, LLC (“SavvyPhone”).
2. Merritt did not provide written notice to his firm, Wells Fargo Advisors, LLC (“Wells Fargo”), prior to participating in these private securities transactions.
3. By participating in private securities transactions without providing prior written notice to his firm, Merritt violated NASD Rule 3040¹ and FINRA Rule 2010.
4. SavvyPhone was a speculative investment.
5. Merritt recommended that four of his customers invest in SavvyPhone without having conducted adequate due diligence on SavvyPhone or its executives.

¹ Merritt’s misconduct occurred in August-September 2011, at which time NASD Rule 3040 was in effect. FINRA Rule 3280 replaced NASD Rule 3040 on September 21, 2015.

6. Merritt had no reasonable basis to believe that an investment in SavvyPhone was suitable for any customer.

7. By making recommendations for which he had no reasonable basis, Merritt violated NASD Rule 2310² and FINRA Rule 2010.

8. Merritt falsely represented in a 2012 annual certification to Wells Fargo that he was complying with its policy prohibiting representatives from participating in private securities transactions.

9. By making a false representation in an annual certification, Merritt violated FINRA Rule 2010.

RESPONDENT AND JURISDICTION

10. Merritt entered the securities industry in 1987. From 1987 to the present, he has been registered with 11 different FINRA-member firms.

11. From June 12, 2009 to May 13, 2013, Merritt was registered at Wells Fargo as a General Securities Representative, General Securities Principal, and an Investment Advisor.

12. Merritt is currently registered with another FINRA member where he holds the same registrations.

13. Because Merritt is currently registered with FINRA, he is subject to FINRA's jurisdiction.

² Merritt's misconduct occurred in August and September 2011, at which time NASD Rule 2310 was in effect. FINRA Rule 2111 replaced NASD Rule 2310 on July 9, 2012.

NON-RESPONDENT ENTITIES

14. Wells Fargo, headquartered in St. Louis, Missouri, has been a FINRA-registered broker-dealer since July 1987.

15. SavvyPhone was formed in the State of Delaware on September 9, 2010. It currently does business as SavvyCard and is headquartered in St. Petersburg, Florida. According to sales literature it provided to Merritt, SavvyPhone is engaged in the “mobile and adaptive web services sector” and has developed a “system for building mobile friendly microsites for almost any kind of object -- companies, people, places, products, brands, and events.”

FACTUAL ALLEGATIONS

Merritt Learns of SavvyPhone

16. In 2011, Merritt learned of SavvyPhone from his friend EH, a SavvyPhone computer programmer.

17. Soon thereafter, EH introduced Merritt to SavvyPhone’s Chief Executive Officer, DE, who told Merritt that SavvyPhone was interested in attracting new investors.

18. On August 11, 2011, DE sent an email to Merritt titled “SavvyPhone Investor Documents,” that attached several documents related to SavvyPhone, including its Operating Agreement (the “Operating Agreement”), a Subscription Agreement (the “Subscription Agreement”), a Subscriber Questionnaire (the “Subscriber Questionnaire”), executive biographies, and financial projections covering an unspecified 24-month period.

19. The same day, Merritt met with DE and EH in Merritt’s Wells Fargo office.

20. At the meeting, Merritt received a demonstration of SavvyPhone’s mobile business card.

21. DE also provided Merritt with SavvyPhone brochures at the meeting and asked Merritt to refer anyone interested in investing in SavvyPhone to him.

22. Merritt agreed to do so.

23. By helping SavvyPhone obtain additional investors, Merritt hoped to secure future business from SavvyPhone. In particular, he wanted the Company to select him as the broker for its 401(k) plan.

Merritt Did Not Adequately Investigate SavvyPhone

24. Merritt performed an inadequate review of the documents DE provided to him on August 11, 2011.

25. The Operating Agreement disclosed that there were three classes of SavvyPhone Units. Merritt participated in the sale of Class A Units. He did not review the Operating Agreement sufficiently to realize that four individuals, including DE, had contributed no capital to SavvyPhone but owned 11,000,000 SavvyPhone Class C Units, which represented all of the Class C Units.

26. As set forth in the Operating Agreement, holders of the Class C Units, in effect, controlled the operations of SavvyPhone since, under the Operating Agreement, they were entitled to elect four of the seven members of SavvyPhone's Board of Managers, which had the authority to manage SavvyPhone's "business, property and affairs."

27. Merritt never reviewed SavvyPhone's financial projections covering an unspecified 24-month period.

28. Merritt did not conduct any research on SavvyPhone's product.

29. Merritt did not obtain information on SavvyPhone's executives.

30. On August 12, 2011, DE emailed Merritt a SavvyPhone “Business Overview and Investment Summary” (the “Investment Summary”) and stated: “We were very encouraged by your interest in SavvyPhone and [EH] and I are looking forward to continuing discussions with you when you are ready.”

31. Merritt did not adequately review the Investment Summary.

32. On page four, the Investment Summary states that subscribers “will receive ‘Class A’ Units as defined by SavvyPhone’s Articles of Incorporation.”

33. Merritt never reviewed SavvyPhone’s Articles of Incorporation and, therefore, never learned what an investor would own after purchasing a SavvyPhone Class A Unit.

34. The Investment Summary stated: “This Investment Summary and associated documents are a small subset of a larger set of documents,” including a business plan, product development specifications, technology and industry research, and marketing and sales strategies, which “can be made available on request.”

35. Merritt never requested, obtained, or reviewed the other SavvyPhone documents referenced in the Investment Summary.

36. Merritt believed SavvyPhone was a speculative investment.

Merritt Recommended SavvyPhone as an Investment Opportunity to Wells Fargo Customers

Customer EB

37. By August 16, 2011, no more than three business days after his meeting with DE, Merritt recommended SavvyPhone as a potential investment to customer EB.

38. Customer EB did not invest in SavvyPhone.

Customer DD

39. In August 2011, Merritt's customer DD was 91 years old.
40. In August 2011, Merritt met with DD at her home and recommended SavvyPhone as an investment opportunity.
41. Based on Merritt's recommendation, DD agreed to invest \$55,000 in SavvyPhone.
42. On August 17, 2011, Merritt sold a mutual fund in one of DD's Wells Fargo brokerage accounts, the account for the DD Revocable Living Trust (the "Trust Account").
43. On Friday, August 19, 2011, \$55,175.74 in proceeds from the mutual fund sale was deposited into the Trust Account.
44. On Monday August 22, 2011, \$55,000 was transferred from the Trust Account to a bank account that DD maintained at Bank A (the "Bank A account") so that there were sufficient funds in the account to purchase the SavvyPhone Class A Units.
45. Merritt returned to DD's house a second time in August 2011 to assist DD in completing the SavvyPhone subscription documents.
46. Merritt filled out virtually all of the information in DD's SavvyPhone subscription documents, including:
- (a) in the Subscription Agreement:
 - i. the number of Class A Units for which DD wanted to subscribe;
 - ii. the cost of those units;
 - iii. the name of the trust through which DD would acquire the Class A Units;
 - iv. the fact that DD was the trustee of the trust;
 - v. DD's social security number;

- vi. DD's address; and
- vii. DD's telephone number.

(b) in the Subscriber Questionnaire:

- i. the name of the trust through which DD would acquire the Class A Units;
- ii. DD's capacity as trustee of the trust ;
- iii. DD's social security number;
- iv. DD's address;
- v. DD's telephone number;
- vi. DD's occupation;
- vii. the state in which DD maintained her primary residence;
- viii. the state in which DD voted;
- ix. the state in which DD filed income tax returns;
- x. the state in which DD maintained a driver's license;
- xi. the number of years DD lived at her primary residence;
- xii. background information on DD's trust, including date of organization,
state of organization and tax identification number;
- xiii. whether DD's trust was actively engaged in the conduct of a trade or
business;
- xiv. whether DD's trust was formed for the purpose of purchasing Class A
Units of SavvyPhone;
- xv. whether there were any suits pending or judgments outstanding against
DD's trust;
- xvi. whether DD's trust had other investments in private offerings; and

xvii. the net worth of DD's trust.

47. DD signed and initialed the subscription documents and gave them back to Merritt.

48. On August 23, 2011, DD wrote a \$55,000 check from her Bank A account payable to SavvyPhone.

49. Merritt sent the subscription documents and the \$55,000 check to DE.

50. DE accepted DD's subscription documents on August 23, 2011, and DD's Trust Account acquired 220,000 Class A Units of SavvyPhone.

Customers JA and MA

51. In August 2011, Merritt's customers JA and MA, husband and wife, were 70 and 68 years old, respectively.

52. In August 2011, Merritt met with JA and MA in his Wells Fargo office and recommended they invest in SavvyPhone.

53. JA and MA agreed to invest \$10,000 in SavvyPhone.

54. Merritt assisted JA and MA in completing their SavvyPhone subscription documents, including by completing:

(a) in the Subscription Agreement:

- i. the number of Class A Units for which JA and MA wanted to subscribe;
- ii. the cost of those units;
- iii. the names of the subscribers, JA and MA;
- iv. a social security number;
- v. JA and MA's street address;
- vi. JA and MA's email address; and

vii. JA and MA's telephone number.

(b) in the Subscriber Questionnaire:

- i. the names of the subscribers, JA and MA;
- ii. JA and MA's social security numbers;
- iii. the manner in which title was to be held;
- iv. JA and MA's address;
- v. JA and MA's birth dates;
- vi. the state in which JA and MA maintained their primary residence;
- vii. the state in which JA and MA filed income tax returns;
- viii. the state in which JA and MA maintained drivers' licenses;
- ix. the number of years JA and MA had lived at their primary residence;
- x. JA and MA's level of education; and
- xi. JA and MA's principal business activities.

55. JA and MA signed and initialed the subscription documents.

56. On August 24, 2011, a \$10,000 check was issued from JA and MA's Wells Fargo brokerage account and deposited into a bank account they maintained.

57. On August 25, 2011, DE accepted the completed subscription documents and JA and MA acquired 40,000 Class A Units of SavvyPhone.

Customer LR

58. In August 2011, Merritt's customer LR was 60 years old.

59. In August 2011, during a telephone conversation, Merritt recommended that LR invest in SavvyPhone.

60. Soon thereafter, Merritt arranged for and attended a meeting between LR and DE to discuss investing in SavvyPhone.

61. The meeting occurred in Merritt's Wells Fargo office and LR received SavvyPhone investor documentation at the meeting.

62. During the meeting, Merritt said that the investment's value could increase by 50% to 100% and falsely stated that he personally had invested in SavvyPhone.

63. LR did not complete subscription documents at the meeting in Merritt's office.

64. Merritt telephoned LR several times after the meeting to inquire about the subscription documents.

65. In September 2011, Merritt arranged for a second meeting between LR and DE.

66. On September 16, 2011, LR, DE, and Merritt met a second time in Merritt's office.

67. Merritt prepared a withdrawal slip, dated September 16, 2011 and signed by LR, to withdraw \$50,000 from a savings account that LR maintained at Wells Fargo Bank.

68. The \$50,000 was transferred to a checking account that LR maintained at Wells Fargo Bank.

69. Merritt obtained a \$50,000 cashier's check, drawn on LR's Wells Fargo Bank checking account, which was dated September 16, 2011 and made payable to SavvyPhone.

70. At the September 16, 2011 meeting, LR gave the \$50,000 cashier's check and the subscription documents to DE.

71. The same day, DE accepted the subscription documents and LR acquired 200,000 Class A Units of SavvyPhone.

Merritt Concealed his Participation in the Sale of SavvyPhone Class A Units

72. Merritt never provided Wells Fargo with written notice of his participation in SavvyPhone transactions.

73. Wells Fargo prohibited registered representatives from participating in private securities transactions.

74. Wells Fargo required each of its registered representatives annually to attest that, among other things, the representative was aware of and abiding by Wells Fargo's policy regarding private securities transactions.

75. Merritt completed an "Associate Annual Attestations" on July 6, 2012, in which he falsely affirmed that he was complying with Wells Fargo's private securities transactions policy.

FIRST CAUSE OF ACTION

Participating in Private Securities Transactions

(NASD Rule 3040)

76. The allegations in paragraphs 1 through 75, above, are re-alleged and incorporated herein.

77. NASD Rule 3040 provided that "prior to participating in any private securities transaction, an associated person shall provide written notice to the member with which he is associated describing in detail the proposed transaction and the person's proposed role therein and stating whether he has received or may receive selling compensation in connection with the transaction"

78. Under Rule 3040, a private securities transaction was “any securities transaction outside the regular course or scope of an associated person’s employment with a member,” regardless of the representative’s receipt of compensation.

79. The SavvyPhone Class A Units were securities.

80. In August and September 2011, Merritt participated in three private securities transactions whereby DD, JA and MA, and LR purchased a total of \$115,000 of SavvyPhone’s Class A Units.

81. Merritt participated in the SavvyPhone transactions by, among other things:

- (a) identifying SavvyPhone as a potential investment to DD, JA and MA, and LR
- (b) recommending SavvyPhone to DD, JA and MA, and LR;
- (c) selling mutual fund shares from DD’s Trust Account to pay for DD’s purchase of SavvyPhone Class A Units;
- (d) assisting DD and JA and MA to complete subscription documents;
- (e) sending DD’s completed subscription documents to DE;
- (f) arranging and attending meetings in Merritt’s office between DE and LR to discuss SavvyPhone; and
- (g) procuring a cashiers’ check for LR to use in purchasing SavvyPhone Class A Units.

82. Merritt did not provide prior written notice to Wells Fargo about any of the three SavvyPhone transactions.

83. By virtue of the above conduct, Merritt violated NASD Rule 3040 and FINRA Rule 2010.

SECOND CAUSE OF ACTION

Recommending Unsuitable Securities

(NASD Rule 2310)

84. The allegations in paragraphs 1 through 83, above, are re-alleged and incorporated herein.

85. When recommending the purchase, sale, or exchange of any security to a customer, NASD Rule 2310 required 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.”

86. Merritt recommended that four customers, EB, DD, JA and MA, and LR, invest in SavvyPhone.

87. At the time he recommended that EB, DD, JA and MA, and LR purchase SavvyPhone Class A Units, Merritt had not conducted an adequate investigation upon which to make a determination that SavvyPhone was a suitable investment for any investor.

88. Merritt did not have a reasonable basis to recommend SavvyPhone to any customer.

89. As a result of the foregoing, Merritt violated NASD Rule 2310 and FINRA Rule 2010.

THIRD CAUSE OF ACTION

Providing False Information to Wells Fargo (FINRA Rule 2010)

90. The allegations in paragraphs 1 through 89, above, are re-alleged and incorporated herein.

91. FINRA Rule 2010 requires a “member, in the conduct of its business, [to] observe high standards of commercial honor and just and equitable principles of trade.” It is a violation of FINRA Rule 2010 for registered persons to make false representations to their employing member firm.

92. Merritt represented to Wells Fargo in an annual attestation dated July 6, 2012, that he was complying with Wells Fargo’s policy regarding private securities transactions.

93. Merritt’s representations were false.

94. Accordingly, Merritt violated FINRA Rule 2010.

RELIEF REQUESTED

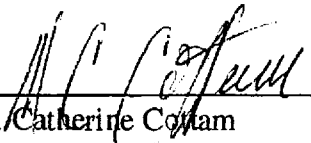
WHEREFORE, the Department of Enforcement respectfully requests that the Hearing Panel:

- (a) make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- (b) order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed, including that Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;

- (c) order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA Department of Enforcement

Date: March 29, 2016



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