

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

Department of Enforcement,

Complainant,

v.

Brent Lott CRD No. (1559744),

Respondent.

Disciplinary Proceeding
No. 2013038124102

Hearing Officer: MJD

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: April 9, 2018

INTRODUCTION

Disciplinary Proceeding No. 2013038124102 was filed on January 25, 2018, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Brent Lott submitted an Offer of Settlement (Offer) to Complainant dated March 29, 2018. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, 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, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of

the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Lott entered the securities industry in August 1986, and in October 1986 he became registered with FINRA as an Investment Company Products/Variable Contracts Representative (IR). In July 1995, Lott received his Series 7 registration as a General Securities Representative (GS). Between 1986 and April 2006, Lott was registered with FINRA through an association with three member firms. In April 2006, Lott became registered with FINRA through an association with LPL as a GS. In December 2006, while associated with LPL, Lott became registered as a General Securities Principal (GP).

On November 13, 2013, LPL filed a Uniform Termination Notice for Securities Industry Registration (Form U5), disclosing that on October 14, 2013, Lott had been discharged after allegations that he "submitted equity indexed annuity applications without meeting or discussing with clients, and [was in] violation of the Firm's document signature policy." Subsequently, Lott became registered on October 28, 2013 through an association with another FINRA member firm as a GS and GP. On November 1, 2017, Lott became registered through an association with Cetera Advisor Networks LLC where he remains associated as a GS and a GP.

Under Article V of FINRA's By-Laws, FINRA possesses jurisdiction over Lott because he is currently associated with a FINRA member firm and the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member firm.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

SUMMARY

1. From March 2013 through October 2013 (the “Relevant Period”), Respondent Brent Lott, a registered representative with LPL Financial LLC (“LPL” or the “Firm”), knowingly and substantially aided and abetted another individual, Steven Heinz, in engaging in the recommendation and sale of securities at a time when (i) Heinz was not registered with FINRA and not associated with any FINRA member firm, and (ii) Heinz was not registered with the state of Utah where both Heinz and the customers resided.

2. During March 2013, for three investors who were not yet LPL customers, Heinz submitted to an Insurance Company (“IC”) requests to exchange variable annuities for fixed indexed annuities issued by IC. IC rejected Heinz’s request because he was not registered with FINRA at the time, which was necessary under Utah law to sell or make a recommendation to terminate a variable annuity contract.

3. At Heinz’s request, Lott agreed to serve as the registered representative of record for the annuity exchanges and to split with Heinz the commissions paid by IC, even though Lott knew that Heinz was not registered. Instead of directly paying Heinz his share of the commissions, Lott paid Heinz’s wife, in an effort to conceal his activity.

4. From March 2013 to October 2013, Lott repeatedly facilitated Heinz’s efforts to continue acting as a securities broker, despite Heinz’s unregistered status, by effecting 26 exchanges of variable annuities and seven sales of mutual funds that Heinz recommended to thirteen customers to fund purchases of 33 IC fixed indexed annuities (collectively, the “Relevant

Transactions”). By engaging in this conduct, Lott aided and abetted Heinz’s violation of Section 15(a)(1) of the Securities Exchange Act of 1934 and thereby violated FINRA Rule 2010.

5. Additionally, in order to effect the transactions, Lott falsely certified to LPL on ten LPL suitability forms for nine different customers that he had discussed the benefits and costs of the transactions with the customers identified on the forms. Lott thereby violated FINRA Rule 4511 and 2010 by causing his member firm to maintain false books and records in violation of Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-4 promulgated thereunder.

6. Finally, Lott made false statements on forms he submitted to IC. For nine customers, he submitted 24 forms containing false certifications that he had discussed the appropriateness of the annuity replacement with the customers. On three forms for three different customers, Lott falsely represented that he had met in person with the customer when he had not. Further, on five forms for five different customers that Lott had not met or spoken with, Lott misrepresented that he had known the customer for at least one or two months. By virtue of the conduct, Lott violated FINRA Rule 2010.

BACKGROUND

7. Steven Heinz entered the securities industry in 1993 and held the Series 6 and 63 licenses. Most recently, Heinz was registered with FINRA as an Investment Company Products/Variable Contracts Representative (IR) through an association with a former FINRA member firm, until he voluntarily terminated his association with that firm on October 24, 2012. During the Relevant Period, Heinz was not registered with FINRA through an association with any member firm.

8. In or around March 2013, Heinz recommended to three individuals (RJ, MJ and DC) that they surrender variable annuity contracts they held with an insurance company, Company

A, and use the proceeds to purchase fixed indexed annuities with IC in a 1035 exchange, a type of transaction that allows individuals to transfer funds from an existing life insurance or annuity contract into a new contract without paying tax on investment gains on the original contract. For these three individuals, Heinz completed and submitted to IC applications to attempt to effect the exchanges. On March 13, 2013, IC rejected the applications because Heinz was not licensed to sell variable annuities and therefore was prohibited under Utah law from selling or recommending the replacement or exchange of a variable annuity.

Lott Knowingly Facilitated Heinz's Efforts to Continue Working as a Securities Broker

9. During March 2013, after IC had rejected Heinz's attempts to effect the variable annuity exchanges, an IC wholesaler referred Heinz to Lott. Lott had never met Heinz before being introduced by the wholesaler. Lott was registered with FINRA through his association with LPL and therefore possessed the registrations necessary under Utah law to effect the exchanges Heinz was recommending.

10. At Heinz's request, Lott agreed to effect the exchanges for Heinz's three customers whose applications IC had already rejected, as well for additional customers for whom Heinz had or would recommend exchanges. Lott made this agreement even though he knew that Heinz was not registered with FINRA.

11. Lott further agreed to split the commissions that Lott would receive from the IC annuities, by retaining 60% for himself and paying 40% to Heinz. Lott agreed to make checks payable to Heinz's wife, rather than sending any monies to Heinz directly, in an effort to conceal his activity.

12. Lott did not notify or seek prior approval from LPL of his agreement with Heinz. LPL never provided approval.

13. At all times during the Relevant Period, Lott was aware that Heinz was not registered with FINRA and thus was not permitted to engage in the securities business.

14. From March 2013 to October 2013, Lott repeatedly facilitated Heinz's efforts to continue acting as a securities broker despite Heinz's unregistered status. Specifically, Lott opened new accounts at LPL for each of Heinz's thirteen customers (DC, JC, MH, RH, RJ, MJ, RG, RR, SR, WF, VF, KP and PW, collectively "the Customers")) and claimed to be the broker of record for each of their accounts. In addition, for these customers, Lott effected a total of 26 exchanges of variable annuities and seven sales of mutual funds that Heinz had recommended. Lott did so in order to fund the Customers' purchases of 33 IC fixed indexed annuities that Heinz had recommended.

15. Lott and Heinz made use of the mail and/or other instrumentalities of interstate commerce in connection with this conduct.

16. Four of the Customers (JC, RJ, KP, PW) paid surrender fees totaling \$15,987 in connection with terminating their variable annuity contracts.

Lott's Submitted False Documentation to LPL and IC

17. For each of Heinz's customers, Lott opened accounts at LPL by completing and submitting to LPL a form titled "Fixed / Registered Fixed Annuity Suitability Profile Form" ("LPL Suitability Form"). On ten of these LPL Suitability Forms, for nine customers (JC, DC, RG, MH, RH, RJ, MJ, PW and KP), Lott made a false certification by signing his name under a "Financial Advisor / Agent Acknowledgement" that stated:

I represent that my client has been advised of all material facts regarding this transaction. I have discussed the benefits and costs with the client and considered all of the factors indicated on this form including, but not limited to, whether the transaction will result in any surrender charges, the commencement of a new surrender period, and the potential loss of existing benefits... After considering

these and other factors, I determine that the transaction is suitable to meet the client's stated needs.

18. Contrary to Lott's certification, Lott had not discussed the variable annuity exchanges or mutual fund sales with those customers prior to the transactions.

19. In addition, for each IC annuity exchange, Lott submitted to IC two forms: (1) an IC Index Choice Individual Fixed Indexed Annuity Application ("IC Application"); and (2) an IC Suitability Form ("IC Suitability Form").

20. On 24 IC Applications for nine customers (JC, DC, RG, MH, RH, RJ, MJ, PW and KP), Lott made a false certification by signing his name under a certification that stated, in relevant part:

I hereby certify that I have used only [IC's] approved sales material in connection with this sale and that copies of all sales materials used were left with the applicant... I further certify that I have discussed the appropriateness of replacement and followed [IC's] written replacement guidelines. I have explained to the owner(s) how the annuity will meet their insurable needs and financial objectives. I certify that I have reviewed this application and have determined that its proposed purchase is suitable as required under law, based in part on information provided by the owner, as applicable, including age, income, net worth and tax status, and any existing investments and insurance program. I further certify that I have also considered the owner's liquidity needs, risk tolerance, and investment time horizon; that I have followed suitability guidelines in both the recommendation of this annuity and the choice of allocation options, and that this application is subject to review for suitability. I further certify that I have truly and accurately recorded on the application the information provided to me by the applicant... I certify that a product disclosure ("Contract Summary"), and if applicable, a Buyers' Guide to Fixed Deferred Annuities were presented to and left with the applicant prior to applying for this contract...

21. Contrary to Lott's certification, Lott had not discussed or explained the transactions with those customers prior to the variable annuity exchanges or mutual fund sales.

22. Additionally, on three IC Suitability Forms for three customers (RG, KP and PW), Lott made a false certification by checking a box and signing his name under a statement that stated "I met in person with all owners and reviewed identification documents. To the best of my

knowledge, the documents accurately reflect the identity of the Owner(s).” Lott had not met in person with these three customers prior to submitting the forms to IC.

23. Further, on five IC Suitability Forms, Lott falsely represented that he had known customers DC, RJ, MJ for one month and customers RH and MH for two months. Contrary to Lott’s misrepresentation, Lott did not even know these customers’ names until March 2013, less than one month before making the attestation. Further, he had not met or spoken with the customers at the time he stated that he knew them.

24. Using these false forms, Lott effected the exchange of Company A variable annuities for IC fixed indexed annuities, or the sale of mutual funds, to fund the purchase of the IC fixed indexed annuities for the Customers.

Lott’s Scheme Ends After the SEC Charges Heinz With Operating a Ponzi Scheme

25. On August 8, 2013, the SEC filed a complaint in federal court charging Heinz with operating a \$4 million Ponzi scheme. The SEC alleged that Heinz used investor funds for personal expenses and to pay principal and interest payments to earlier investors, including at least three of the customers for whom Lott effected a Relevant Transaction. On May 21, 2014, Heinz was barred in the SEC action from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent or nationally recognized ratings organization.

26. On June 24, 2014, in connection with FINRA Matter No. 2013038124101, Heinz consented to a bar from association with any FINRA member in any capacity and consented to findings that he violated FINRA Rule 8210 by failing to appear at an on-the-record examination.

27. On September 5, 2013, LPL received a written complaint from customer RJ, who asserted that he was a victim of Heinz’s Ponzi scheme. In addition, RJ complained that Lott did

not meet or speak with him or his wife until after the SEC charged Heinz for running a Ponzi scheme, which occurred after Lott effected Relevant Transactions for RJ and his wife.

28. Upon receipt of the complaint, LPL commenced an investigation and subsequently terminated Lott's association with the Firm.

29. Before the SEC charged Heinz in August 2013, Lott expected to be paid \$287,000 in commissions in connection with the Relevant Transactions. Before Lott received these commissions, Lott paid Heinz, through Heinz's wife, his agreed-upon share of the anticipated commissions totaling \$114,633, nearly 40% of the amount that Lott had expected to receive. After the SEC charged Heinz in August 2013, however, three customers (RJ, MJ and DC) exercised their "free look" options to cancel the IC annuity purchases that Heinz had recommended and that Lott had effected. Therefore, LPL ultimately paid Lott \$104,940 in commissions in connection with effecting the Relevant Transactions.

FIRST CAUSE OF ACTION
Aiding and Abetting Violations of the Registration Requirements of
Section 15(a)(1) of the Securities Exchange Act of 1934
(FINRA Rule 2010)

30. During the Relevant Period, Heinz engaged in a primary violation of the federal securities laws – specifically, Section 15(a)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78o(a)(1) – by making use of the mails or any means or instrumentality of interstate commerce to effect transactions in, or to induce or attempt to induce the sale of, securities despite the fact that he was not an associated person of a broker or dealer, as defined by Section 3(a)(18) of the Exchange Act, or otherwise permitted to engage in the securities business pursuant to Section 15(b) of the Exchange Act.

31. During the Relevant Period, and despite not being an associated person of a broker or dealer, Heinz recommended that three customers exchange variable annuities or sell mutual funds to fund the purchase of IC annuities, and he completed forms that he submitted to IC to effect those transactions. After IC rejected the securities transactions submitted by Heinz because he was not registered with a broker or dealer, Lott agreed with Heinz to serve as the registered representative of record at LPL for thirteen of Heinz's customers. Heinz continued to make recommendations and cause variable annuity exchanges or mutual fund sales for these customers. Lott and Heinz made use of the mail and/or other instrumentalities of interstate commerce in connection with the securities transactions.

32. Through LPL, Lott knowingly and substantially assisted Heinz's violation of the federal securities laws by facilitating the Relevant Transactions, all of which were recommended, brokered, or arranged by Heinz, and by sharing a substantial portion of the commissions for the Relevant Transactions. Heinz could not have engaged in securities transactions without proper registration during the Relevant Period without Lott's substantial assistance.

33. As a result of the foregoing conduct, Lott aided and abetted Heinz's primary violation of Section 15(a)(1) of the Exchange Act and thereby failed to observe high standards of commercial honor and just and equitable principals of trade in violation of FINRA Rule 2010.

SECOND CAUSE OF ACTION
Causing the Firm to Maintain Inaccurate Books and Records
(FINRA Rules 4511 and 2010)

34. FINRA Rule 4511(a) requires member firms to "make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules." Exchange Act Rule 17a-4(b)(4) requires a firm to preserve inter-office memoranda and

communications relating to its business as such. A violation of FINRA Rule 4511 constitutes a violation of FINRA Rule 2010.

35. Lott submitted ten LPL suitability forms to LPL for nine customers on which he made false representations.

36. Lott made these false statements and submitted these false documents in order to conceal Heinz's role in the Relevant Transactions.

37. Based upon the foregoing conduct, Lott violated FINRA Rules 4511 and 2010.

**THIRD CAUSE OF ACTION
Falsifying Documents in Connection with a Securities Transaction
(FINRA Rule 2010)**

38. During the Relevant Period, Lott submitted 24 IC Applications for nine customers in which Lott made false representations.

39. During the Relevant Period, Lott submitted eight IC Suitability Forms for eight customers in which Lott made false representations.

40. Lott made these false statements and submitted these false documents in order to conceal Heinz's role in the Relevant Transactions.

41. Based upon the foregoing conduct, Lott violated FINRA Rule 2010.

Based on the foregoing, Respondent aided and abetted Heinz's primary violation of Section 15(a)(1) of the Exchange Act in violation of FINRA Rule 2010; caused his Firm to maintain inaccurate books and records in violation of FINRA Rules 4511 and 2010; and falsified documents in connection with a securities transaction in violation of FINRA Rule 2010.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future

misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be:

- Suspended from association with any FINRA member in any capacity for four months; and
- Fined \$20,000.

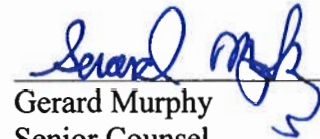
The fine shall be due and payable either immediately upon re-association with a member firm following the four month suspension, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

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

SO ORDERED.

FINRA

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



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