

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

Department of Enforcement,

Complainant,

v.

Brian Lawrence Stephan.
(CRD No. 4222796)

Respondent.

Disciplinary Proceeding
No. 2014042022401

Hearing Officer – RES

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

INTRODUCTION

Disciplinary Proceeding No. 2014042022401 was filed on August 17, 2018, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Brian Lawrence Stephan submitted an Offer of Settlement (Offer) to Complainant dated April 5, 2019. 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

Respondent has been in the securities industry since August 2000, when he associated with a FINRA member firm and registered as a General Securities Representative. From November 2003 through August 27, 2014, Stephan was associated with LPL Financial LLC ("LPL") and registered as a General Securities Representative. Stephan was also associated with LPL as a General Securities Principal between April 2005 and August 27, 2014. Stephan is currently registered with another FINRA member firm as a General Securities Representative and General Securities Principal.

FINDINGS AND CONCLUSIONS

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

SUMMARY

1. From May 2012 through May 2014 (the "Relevant Period"), Respondent Brian L. Stephan ("Stephan" or "Respondent") recommended and caused the execution of unsuitable investments for TF, an 88-year-old customer. Specifically, Stephan recommended that TF invest in mutual fund Class A shares in twenty different mutual fund families. This recommendation was unsuitable because the customer would have been able to achieve a discount on applicable sales charges by aggregating her mutual fund purchases into fewer fund families. Moreover, on approximately ten occasions, Stephan recommended a mutual fund purchase in an amount that was relatively slightly less than the level required for a discount on sales charges. Stephan's recommendations caused the customer to incur excessive sales charges and Stephan to be paid

more through commissions, and lacked any reasonable basis in violation of NASD Rule 2310 and FINRA Rules 2111 and 2010.

2. During the Relevant Period, Stephan marked 95 transactions in TF's account as "unsolicited" when they were in fact "solicited" transactions. Further, Stephan provided false information on his firm's mutual fund exchange forms, erroneously stating that the exchanges were done because the customer was unhappy with the performance of the original products, and incorrectly marking the exchanges as "unsolicited." This conduct caused his firm to maintain inaccurate books and records. By mismarking transactions and providing false information on his firm's mutual fund exchange forms, Stephan violated FINRA Rules 4511 and 2010.

RESPONDENT AND JURISDICTION

3. Stephan has been in the securities industry since August 2000, when he associated with a FINRA member firm and registered as a General Securities Representative. From November 2003 through August 27, 2014, Stephan was associated with LPL Financial LLC ("LPL") and registered as a General Securities Representative. Stephan was also associated with LPL as a General Securities Principal between April 2005 and August 27, 2014. Stephan is currently registered with another FINRA member firm as a General Securities Representative and General Securities Principal.

FACTUAL BACKGROUND

4. In May 2012, TF opened a brokerage account with Stephan following the death of her sister. Previously, TF and her sister had maintained investment advisory accounts with Stephan.

5. Approximately \$780,000 in assets were transferred into the new brokerage account from the joint investment advisory accounts TF had held with her sister. New account

documentation for this account listed income with capital preservation as the account's primary investment objective.

6. TF, who is now deceased, was 88 years-old in May 2012 and her niece, PJ, was 65 years-old.

7. PJ submitted a power of attorney for TF to LPL and Stephan in May 2012.

8. During the Relevant Period, TF suffered from hearing loss and would not speak on the phone because it was too difficult. Although TF had held investments in stocks and mutual funds for decades, she was not a sophisticated investor and relied on others to handle her investments. As a result, PJ arranged and was present for meetings between Stephan and TF to discuss her finances. PJ made investment decisions on behalf of TF during the Relevant Period, and in making those decisions relied on Stephan's advice, as she was not a sophisticated investor.

I. Unsuitable Investments in Multiple Mutual Fund Families.

A) In May and June 2012, Stephan recommended TF invest in ten different fund families.

9. In a two-week period beginning in May 2012, Stephan recommended TF purchase shares of Class A mutual funds in ten different fund families.

10. The initial purchases took place on May 21, 2012, and consisted of the following:

Security Symbol	Security Name	Fund Family	Total Purchase	Front-End Load Percentage
MDLVX	Blackrock Large Cap Value Fund	Blackrock	\$75,000	3.98%
NMGIX	Columbia Marsico Growth Fund	Columbia	\$75,000	4.50%
PZFBVX	John Hancock Classic Value Fund	Hancock	\$75,000	4.52%

Security Symbol	Security Name	Fund Family	Total Purchase	Front-End Load Percentage
OARDX	Oppenheimer Rising Dividends Fund	Oppenheimer	\$75,000	4.77%
OALVX	Optimum Large Cap Value Fund	Optimum	\$70,000	5.71%

11. Of the five May 21, 2012 investments, only the Optimum Large Cap Value Fund had a breakpoint at the \$75,000 level. If TF had made a \$75,000 investment in that fund, she would have reduced the front-end load by 1 percent. Instead, Stephan recommended that TF invest \$75,000 in the other four funds in May, and only \$70,000 in the Optimum fund.

12. Stephan recommended, and TF purchased, a second set of mutual fund Class A shares on June 1, 2012, as follows:

Security Symbol	Security Name	Fund Family	Total Purchase	Front-End Load Percentage
ABFAX	American Beacon Balanced Fund	American Beacon	\$85,000	4.71%
RPEAX	Davis Opportunity Fund	Davis	\$80,000	4.73%
DEMAX	Delaware Emerging Markets Fund	Delaware Group	\$45,000	5.75%
NQCAX	Nuveen NWQ Large-Cap Value Fund	Nuveen	\$80,000	4.49%
EKSAX	Wells Fargo Advantage Diversified Income Builder Funds	Wells Fargo	\$70,000	4.80%

13. Some of the funds recommended in May and June 2012, had very similar, if not identical, investment strategies and holdings. For example, four of the mutual funds were large cap value funds (MDLVX, PZFBVX, NQCAX, OALVX). Additionally, the fund companies invested in offered a wide variety of mutual funds within the same fund family. For example, at

the time TF invested in May and June of 2012, Oppenheimer had approximately 97 funds and Blackrock had approximately 61 funds.

14. On June 5, 2012, LPL sent a notice to TF that various changes had been made to her account. Among other things, Stephan changed TF's investment objective from "Income with Capital Preservation" to "Growth and Income."

15. On June 6, 2012, Stephan recommended, and TF purchased, an additional \$15,000 worth of mutual fund Class A shares in TF's Oppenheimer Rising Dividends Fund, for a total of \$90,000 in that fund, and was charged a 4.73 percent sales charge.

16. On June 18, 2012, Stephan added \$10,000 worth of mutual fund Class A shares to TF's Optimum Large Cap Value Fund position, originally purchased on May 31, 2012, for a total of \$80,000 in that fund. This purchase of the Optimum Large Cap Value Fund Class A shares received a discount of one percent off the front-end load for investing over the \$75,000 break-point level (she was charged a 4.72 percent sales charge). The May 21, 2012, purchase of \$70,000 did not receive that discount.

B) In November 2013, Stephan recommended investing in four new fund families.

17. In November 2013, Stephan recommended, and TF purchased, four additional Class A share mutual funds from four different mutual fund families. TF had not previously invested in any of these fund families.

18. On November 18, 2013, the following purchases were made:

Security Symbol	Security Name	Fund Family	Total Purchase	Front-End Load Percentage
PVSAX	Putnam Capital Spectrum	Putnam	\$40,000	5.74%
KNPAX	The Paradigm Fund Advisor Class	Kinetics	\$70,000	4.75%

PAUX	PIMCO All Asset All Authority Fund	PIMCO	\$50,000	4.53%
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19. On November 19 and 20, 2013, Stephan recommended, and TF purchased, Class A mutual fund shares in a Victory mutual fund titled the Diversified Stock Fund (SRVEX), for a total of \$40,000 with a front-end load of 5.75 percent.

C) In February 2014, Stephan recommended investing in four fund families.

20. In February 2014, Stephan recommended, and TF purchased, four additional Class A share mutual funds from four different mutual fund families. TF did not hold positions in any of these four fund families.¹

21. On February 19, 2014, the following purchases were made:

Security Symbol	Security Name	Fund Family	Total Purchase	Front-End Load Percentage
OHEAX	Orinda Skyview Multi-Manager Hedged Equity Fund	Orinda	\$90,000	4.50%
NLSAX	Neuberger Berman Long Short Fund	Neuberger	\$95,000	4.73%
EPSPX	MainStay Epoch Global Equity Yield Fund	MainStay	\$70,000	4.50%
DEMAX	Delaware Emerging Markets Fund	Delaware Group	\$45,000	5.76%

22. Three of these purchases were in an amount that was just below the breakpoint required to achieve a discount. Specifically, the Orinda and Neuberger funds provided an additional one-percent discount on the front-end load for investments between \$100,000 and \$249,999 in Class A shares. The Delaware Emerging Markets Fund provided an additional one-

¹ Stephan previously recommended and effected a purchase for TF in the Delaware Emerging Markets Fund, but that purchase was fully liquidated on September 7, 2012.

percent discount on the front-end load for investments in Class A shares between \$50,000 and \$99,999.

D) In May 2014, Stephan recommended investing in three new fund families.

23. On May 1, 2014, TF sold her condominium and deposited the proceeds — \$126,057.79 — in her brokerage account.

24. Shortly thereafter, Stephan recommended, and TF purchased, three additional Class A share mutual funds from three different mutual fund families. TF had not previously invested in any of these fund families.

25. On May 5, 2014, the following purchases were made:

Security Symbol	Security Name	Fund Family	Total Purchase	Front-End Load Percentage
GHTAX	Good Harbor Tactical Equity Income Fund	Good Harbor	\$45,000	5.01%
MGOAX	Munder Mid-Cap Core Growth Fund	Munder	\$45,000	5.25%
POCAX	Pacific Life Portfolio Optimization Moderate Fund	Pacific Life	\$45,000	5.52%

26. Each of these three funds provided a break-point discount for investing a minimum of \$50,000.

E. Stephan's recommendations resulted in increased costs to TF.

27. As alleged above, during the Relevant Period, Stephan recommended, and TF purchased, investments in twenty different mutual fund families, some of which were also sold during the Relevant Period. Moreover, ten of the twenty investments were in an amount that was only \$5,000 or \$10,000 below an available breakpoint. At the end of May 2014, TF held investments in twelve different mutual fund families with a total value of \$678,227.40.

28. For the Class A share mutual fund transactions described above, between May 2012 and May 2014, TF paid over \$60,000 in commissions. By recommending that TF divide her investments across 20 different fund families, often in amounts just below the breakpoint needed for a discount, Stephan caused TF to pay significantly higher commissions than she would have if she had aggregated her mutual fund holdings in fewer fund families. As a result, Stephan received more in commissions from the transactions. Had TF invested in larger amounts across fewer fund families, she could have benefitted from sales charge discounts and reduced her costs by approximately \$30,000.

II. Mismarking Transactions and Inaccurate Switch Forms.

29. Both TF and PJ were unsophisticated investors who relied on professionals to handle TF's investments. All transactions in TF's brokerage account were unsolicited.

30. During the Relevant Period, Stephan falsely marked solicited transactions as "unsolicited." Specifically, between May 2012 and May 2014, 35 mutual fund transactions were recommended by Stephan but marked as "unsolicited." Moreover, between October 2012 and May 2014, 60 transactions in common stock were recommended to TF by Stephan but marked as "unsolicited."

31. In addition, on or about November 22, 2013, Stephan falsified four LPL "Investment Switch/Exchange Disclosure" forms. Specifically, he falsely attested on the LPL forms that TF had requested the transactions because she was unhappy with the performance of the original products. He also marked on the forms that the switches were unsolicited. In fact, Stephan had recommended each of these four exchanges, and the customer did not complain about the performance of the original products.

32. Stephan also falsified four other LPL “Investment Switch/Exchange Disclosure” forms, on or about February 21, 2014. He again falsely attested on the LPL forms TF had requested the transactions because she was unhappy with the performance of the original products, and designated the transactions as unsolicited. Again, Stephan had recommended each of these four exchanges, and the customer did not complain about the performance of the original products.

First Cause of Action
Unsuitable Mutual Fund Trading
(FINRA Rules 2111 and 2010, and NASD Rule 2310)

33. FINRA Rule 2111 (for conduct occurring on and after July 9, 2012) provides:

A member or an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer’s investment profile. A customer’s investment profile includes, but is not limited to, the customer’s age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the member or associated person in connection with such recommendation.

34. NASD Rule 2310 (for conduct occurring prior to July 9, 2012), provided:

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.

35. FINRA Rule 2010 requires an associated person, in the conduct of his/her business to “observe high standards of commercial honor and just and equitable principles of trade.”

36. Stephan lacked a reasonable basis to recommend that TF invest in twenty different mutual fund families during the Relevant Period because his recommendations

generated higher sales charges than similar investments across fewer fund families. With respect to ten of the twenty purchases, Stephan also lacked a reasonable basis for recommending that TF purchase Class A share mutual fund shares in an amount that was just \$5,000 or \$10,000 below an available breakpoint.

37. As alleged above, Stephan's recommendations that TF invest in multiple fund families, without regard for available breakpoints, directly resulted in TF incurring approximately \$30,000 in unnecessary sales charges.

38. Based on the foregoing, Stephan violated FINRA Rules 2111 and 2010, and NASD Rule 2310.

Second Cause of Action
Mismarking Transactions and Inaccurate Switch Forms
(FINRA Rules 4511 and 2010)

39. FINRA Rule 4511 provides that "[m]embers shall make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules."

40. FINRA members, and their associated persons, have an obligation to ensure that books and records made and preserved under FINRA Rule 4511 are accurate.

41. The creation and/or maintenance of inaccurate books and records also violates FINRA Rule 2010.

42. SEA Rule 17a-3(a)(6)(i) promulgated under the Securities Exchange Act of 1934 requires firms to make and keep current "[a] memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted," which shall include "the terms and conditions of the order or instructions"

43. As alleged above, during the Relevant Period Stephan falsely marked 95 transactions in TF's account as "unsolicited" when in fact they were "solicited."

44. In addition, as alleged above, Stephan created eight LPL investment switch forms in which he attested on the forms that the customer requested the exchanges because she was unhappy with the performance of the products, which was false. Further, the eight switch forms categorized the transactions as "unsolicited," when in fact they were "solicited."

Based on the foregoing, Stephan violated FINRA Rules 4511 and 2010 by causing LPL's books and records to be inaccurate.

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 for eight (8) months from association with any FINRA member firm in any capacity, fined \$10,000, and pay restitution to the customer listed on Attachment A hereto in the amount of \$29,430.00, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from May 21, 2012, until the date this Offer is accepted.

Respondent shall submit satisfactory proof of payment of restitution or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted to Roger Kiley, Principal Counsel, 55 West Monroe Street, Ste. 2700, Chicago, IL 60603, either by letter that identifies Respondent Brian Lawrence Stephan and Disciplinary Proceeding No. 2014042022401 and includes a copy of the check, money order or other method of payment or

by e-mail, with pdf copies of the payment documentation, to EnforcementNotice@FINRA.org.

This proof shall be provided to the FINRA staff member listed above no later than 120 days after acceptance of the Offer.

If for any reason Respondent cannot locate any customer identified in Attachment A after reasonable and documented efforts within 120 days from the date the Offer is accepted, or such additional period agreed to by a FINRA staff member in writing, Respondent shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property or abandoned property fund for the state in which the customer is last known to have resided. Respondent shall provide satisfactory proof of such action to the FINRA staff member identified above and in the manner described above, within 14 days of forwarding the undistributed restitution and interest to the appropriate state authority.

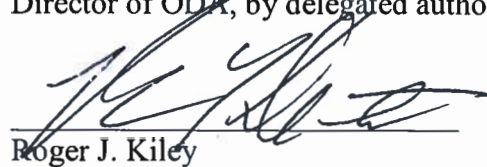
The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

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

A handwritten signature in black ink, appearing to read 'R. Kiley', is written over a horizontal line.

Roger J. Kiley
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(312)899-4353; (312)899-4600 (fax)

ATTACHMENT A

ACCOUNT NUMBER (LAST 4)	CUSTOMER INITIALS	RESTITUTION	INTEREST (FROM 5/21/12 THROUGH DATE OFFER ACCEPTED)
0034	T.F.	\$29,430	TBC