

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015044994801**

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

RE: Danny P. Divver, Respondent
Investment Company Products/Variable Contracts Representative
CRD No. 1229669

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Danny P. Divver, 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

Danny P. Divver ("Divver" or "Respondent") entered the securities industry in January 1985 when he became associated with a FINRA-regulated broker-dealer as an Investment Company Products/Variable Contracts Representative ("IR"). During the period of January 1985 to April 2015, Divver was associated as an IR with four FINRA-regulated broker-dealers, including SagePoint Financial, Inc. ("SagePoint" or the "Firm").

Divver obtained the following securities licenses between 1985 and 2014: Series 6; Series 65; and Series 63.

From October 2008 to April 2015, Divver was registered as an IR with SagePoint. In a Uniform Termination Notice for Securities Industry Registration ("Form U5") dated April 20, 2015, SagePoint reported Divver's termination for violating "Firm policy regarding being named as a beneficiary on a client account."

Divver is not currently associated with a FINRA-regulated broker-dealer; however, Divver remains subject to FINRA's jurisdiction pursuant to Article V, Section 4(a) of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

Divver has no prior disciplinary history in the securities industry.

OVERVIEW

During the period of October 2014 through April 2015 (the "Relevant Period"), while associated with SagePoint, Divver engaged in outside business activities, including holding a power of attorney over a Firm customer and being named the executor of the customer's will, without providing prior written notice to the Firm, in violation of FINRA Rules 3270 and 2010.

In addition, during the Relevant Period, Divver was appointed as the beneficiary on a Firm customer's annuity policy, became a joint owner with rights of survivorship on the customer's bank accounts, and was named beneficiary of the customer's will, in violation of FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Divver's Undisclosed Outside Business Activities

FINRA Rule 3270 provides, in relevant part: "No registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member."

FINRA Rule 2010 requires members and associated persons to "observe high standards of commercial honor and just and equitable principles of trade." A violation of FINRA Rule 3270 is also a violation of FINRA Rule 2010.

Divver originally was appointed as power of attorney and executor for his customer MD in or around 2005 or 2006, when he was associated with another FINRA-member firm. He did not report these appointments to his then-FINRA member-firm employer or when he became associated with successor firms.

In October 2014, Divver brought MD, who was then eighty-eight years old and a customer of both SagePoint and Divver, to her attorney, with whom Divver also had a personal and professional relationship, to update her estate plans. In November 2014, Divver learned that MD had re-appointed him as power of attorney. In early 2015, Divver also learned that MD had re-appointed him as executor of her will.

During the Relevant Period, the Firm's written supervisory procedures ("WSPs") regarding outside business activities prohibited the Firm's registered representatives from

accepting or acting in the capacity of a power of attorney, or acting as an executor, for any person who was not an immediate family member.

Firm customer MD was not a member of Divver's immediate family, and Divver did not inform SagePoint of his positions as MD's power of attorney and executor at any time. By engaging in these outside business activities during the period of October 2014 to April 2015 without providing prior written notice to SagePoint, Divver violated FINRA Rules 3270 and 2010.

Divver's Violation of FINRA Rule 2010

FINRA Rule 2010 applies broadly and encompasses unethical behavior where "the misconduct reflects on the associated person's ability to comply with the regulatory requirements of the securities business and to fulfill his fiduciary duties in handling other people's money."

During the Relevant Period, the Firm's WSPs prohibited its registered representatives from acting as a beneficiary on a customer's policy or account unless the registered representative obtained prior written approval from the Firm's compliance department. The Firm's WSPs also required registered representatives to notify the Firm's compliance department immediately upon learning that they were the beneficiary of a client's estate and to rescind, in writing, any right to the client's assets.

In 1999, through Divver, MD invested \$200,000 in a variable annuity. In or around 2014, MD, through Divver, invested an additional approximately \$400,000 into the variable annuity.

In October 2014, Divver received a letter from the annuity issuer informing him that he was the primary beneficiary of MD's variable annuity; at that time, he also learned that his wife and children were the contingent beneficiaries. In November and December 2014, Divver accompanied MD to her bank, where MD added Divver to her two bank accounts as a joint owner with rights of survivorship. After MD passed away in March 2015, Divver learned that he was the primary beneficiary of her estate.

Divver did not notify the Firm of his status as beneficiary on MD's variable annuity, as joint owner of MD's two bank accounts, or as beneficiary of her estate at any time.

By virtue of the foregoing conduct, Divver violated FINRA Rule 2010.

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

1. A nine (9) month suspension from association with any FINRA member in any capacity; and
2. A \$10,000 fine.

The fine shall be due and payable either immediately upon reassociation with a member firm, 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 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.

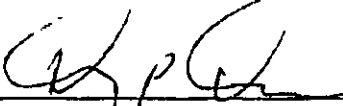
**III.
OTHER MATTERS**

I understand that:

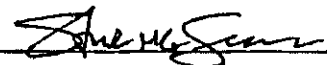
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will 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.

03/14/2017
Date (mm/dd/yyyy)


Danny P. Divver, Respondent

Reviewed by:


Stuart M.G. Seraina, Esq.
Counsel for Respondent
Kramon & Graham, PA
One South Street, Suite 2600
Baltimore, MD 21202
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Accepted by FINRA:

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

3.15.17
Date

 3/27/17
Richard Chin
Chief Counsel
FINRA Department of Enforcement
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200 Liberty Street, 11th Floor
New York, NY 10281