

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

Department of Enforcement,

Complainant,

v.

Frederick David Holloway
(CRD No. 248814),

Respondent.

DISCIPLINARY PROCEEDING
No. 2016050025401

SECOND AMENDED COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between January 2013 and June 2016, Respondent Frederick David Holloway, the sole registered representative and owner of Holloway & Associates, Inc. ("HAI"), recommended that customers exchange one deferred variable annuity contract ("VA") for another without having a reasonable basis for the recommendations. Specifically, Holloway failed to conduct a meaningful comparative analysis of the costs, features, and benefits of the surrendered and newly acquired VAs. In addition, Holloway placed clients whose VA exchanges incurred a surrender charge into a more expensive Transamerica VA with a "bonus feature" without considering whether the VA with the bonus feature was in fact suitable. By virtue of this conduct, Holloway violated FINRA Rules 2330 and 2010.

2. Between January 2010 and September 2016, Holloway falsified or inappropriately altered VA transaction paperwork. Specifically, Holloway had clients sign uncompleted paperwork which he and his assistant filled in later and/or photocopied for use in other transactions. He also forged or directed his assistant to forge client initials to make changes to paperwork. By virtue of this conduct, Holloway violated FINRA Rule 2010. In addition, by modifying the pre-signed forms and forging initials on documents, Holloway caused HAI to create and maintain inaccurate books and records in violation of Section 17(a) of the Securities Exchange Act of 1934, Rules 17a-3 and 17a-4 thereunder, and FINRA Rule 4511, thereby violating FINRA Rule 2010.

3. Beginning in approximately early 2011, Holloway directed his assistant to impersonate clients and employees of an insurance company in telephone conversations regarding VA transactions. Holloway himself pretended to be an insurance company employee to obtain information from his clients' medical providers in connection with life insurance sales. This violated FINRA Rule 2010.

4. Holloway further violated FINRA Rule 2010 by directing his assistant to complete insurance continuing education classes for him in 2012 and again in 2014, and by filing a Form ADV in 2011 which contained false information regarding his business.

5. Finally, during the period June through August 2016, Holloway violated FINRA Rules 8210 and 2010 by deliberately withholding most of the documents requested pursuant to FINRA Rule 8210 until Enforcement learned of their existence and confronted Holloway about them, and by altering documents before they were produced to FINRA.

BACKGROUND AND BASIS OF JURISDICTION

6. Holloway began his career in the securities industry in 1971. In 1982, Holloway opened his own broker-dealer, HAI, located in Easton, Maryland. Holloway is the only person ever registered with HAI. Since that time, Holloway has continuously been registered with HAI, and was dually registered with two other firms in the past. Holloway holds Series 1, 24, and 26 licenses. In 1984, he became licensed in Maryland to sell insurance.

7. Approximately 70% of Holloway's income is derived from the sale of VAs. The remaining amounts come from the sale of insurance products and mutual funds.

8. In March 1991, Holloway became an Investment Advisor Representative in Maryland through his affiliated investment advisory firm, F. David Holloway, RIA. The advisory firm's registration lapsed effective December 31, 2016. Holloway has had no investment advisory clients since at least 2006.

VIOLATIONS

I. MISCONDUCT IN CONNECTION WITH VA EXCHANGES

FIRST CAUSE OF ACTION

Recommending Variable Annuities Exchanges Without a Reasonable Basis (Violation of FINRA Rules 2330 and 2010)

9. The Department of Enforcement realleges and incorporates by reference paragraphs 1-8 above.

10. FINRA Rule 2330(b) prohibits a registered representative from recommending the purchase or exchange of a deferred variable annuity unless the representative has a reasonable basis to believe that the purchase or exchange was suitable.

11. For variable annuities exchanges, FINRA Rule 2330(b) (1) (B) also requires that the registered representative take into consideration whether the customer would incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, be subject to increased fees or charges, and benefit from product enhancements and improvements.

12. Throughout his career, Holloway sold VAs offered by AIG, John Hancock, and Transamerica. In October 2016, Holloway's book of business included approximately \$50 million in VAs.

13. During the period January 2013 through June 2016, Transamerica offered several different classes of annuities with different surrender periods, benefits, and operating fees. These included X-Share and B-Share VAs. Among other features, the X-Share VA included a "premium enhancement," also known as a "bonus," which is an increase in the initial contract value of the VA (of up to 5.5%, depending on the age of the customer). The base contract cost of the X-Share VA is 35 basis points (26% or 30%) higher than that of the B-Share.

14. During this period, Holloway sold 166 Transamerica VAs to his clients. Forty-two of these transactions resulted from exchanges from 49 John Hancock VAs to Transamerica VAs recommended and effectuated by Holloway.

15. Holloway recommended these exchanges without a reasonable basis for doing so. He recommended that these customers exchange their John Hancock VAs for Transamerica VAs without making adequate efforts to ensure that the proposed exchanges were suitable for, and in the best interests of, his customers. He failed to compare the fees and expenses of the VAs being surrendered to those of the VAs being purchased, and did not run income projections comparing the future guaranteed income streams available from the products.

16. In addition, at Holloway's recommendation, 30 of the 42 Transamerica VAs purchased were X-Share VAs with the premium enhancement. Holloway treated and described the X-Share premium enhancement as a reimbursement for surrender charges resulting from an annuity exchange, although a warning to the contrary appeared prominently in Transamerica's X-Share offering materials. As a result of Holloway's recommendation, these 30 X-Share VAs were purchased for an inappropriate reason, and Holloway did not consider the effect the higher fees associated with the premium enhancement could have on his client's accounts.

17. Holloway sold X-Share VAs only to those clients exchanging from John Hancock VAs who incurred significant surrender charges (more than \$723) from the redemption of their John Hancock VAs. He recommended that all customers who did not incur surrender charges purchase B-Share VAs. Of those customers who incurred surrender charges of \$723 or less, all but one (who chose on her own to buy what was designated as an L-Share VA) purchased the less expensive B-Share VAs at Holloway's recommendation.

18. Holloway violated FINRA Rule 2330, and thereby also violated FINRA Rule 2010, by recommending that his clients exchange their John Hancock VAs for the Transamerica VAs without a reasonable basis, and by recommending that clients purchase the more expensive X-Share VAs based on his failure to understand that the bonus enhancement, which was paid for by the client, was not intended to compensate the client for a surrender charge.

SECOND CAUSE OF ACTION

Use of Pre-Signed Documents, Altered Documents, and Forged Customer Initials (Violation of FINRA Rule 2010)

19. The Department of Enforcement realleges and incorporates by reference paragraphs 1-18 above.

20. In connection with his recommendation of Transamerica VAs, Holloway presented his clients with a packet of selected materials, including, among other things, the Transamerica prospectus (on CD), the Transamerica deferred variable annuity application, various Transamerica authorization forms, and various HAI forms and notices. Holloway routinely had his clients sign the Transamerica application and other forms before he or his assistant completed the forms. After the uncompleted forms were signed by the clients, Holloway's assistant filled in information on the forms based on existing information contained in the client files. Holloway, or his assistant acting at his direction, then filled in the information relating to the selection of VA riders, beneficiary information, and subaccount investments. These forms were then submitted to Transamerica or the financial institutions from which the funds would be transferred.

21. When customers made multiple VA purchases, Holloway obtained one copy of the uncompleted signed forms, photocopied the signature pages of the forms, and created purchase-related forms for each transaction using the same signature.

22. In addition to having forms signed in blank, Holloway modified or directed his assistant to modify various forms used in connection with VA transactions. In some instances Transamerica or John Hancock returned VA paperwork to HAI due to documentation errors. Holloway made the requested changes or corrections on the forms and placed the client's initials near the changes or directed his assistant do so.

23. Holloway failed to observe high standards of commercial honor and just and equitable principles of trade by having clients sign blank documents relating to VA purchases and exchanges, photocopying signatures, and then altering signed forms, and by forging (or directing the forgery) of client initials. By engaging in this conduct, Holloway created the false impression

that the clients had read and verified the information contained in the pre-signed or altered documents and thereby violated FINRA Rule 2010.

24. In addition, FINRA Rule 4511(a) requires members to “make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules.” By having clients sign the Transamerica VA applications and forms in blank, altering those documents, and then incorporating the altered forms as part of HAI’s financial records, Holloway caused HAI to create and maintain inaccurate books and records in violation of Section 17(a) of the Securities Exchange Act of 1934, Rules 17a-3 and 17a-4 thereunder, and FINRA Rule 4511. In doing so, Holloway violated FINRA Rule 2010.

THIRD CAUSE OF ACTION

Impersonation of Issuer Employees and Clients (Violation of FINRA Rule 2010)

25. The Department of Enforcement realleges and incorporates by reference paragraphs 1-24 above.

26. Transamerica’s selling agreement specifically states that “Producer and Subproducers have no authority to . . . hold themselves out as employees or affiliates of [Transamerica].” Nevertheless, Holloway directed his assistant to represent that she was a Transamerica employee on calls to his clients’ financial institutions that were transferring funds to Transamerica. Holloway typically instructed his assistant to do this when there was a delay in transferring the funds to Transamerica in order to try to expedite the transfer.

27. In three instances, Holloway also directed his assistant to impersonate clients on calls to their existing financial institutions in connection with VA transactions in order to facilitate the transfer of funds and determine their holdings.

28. Holloway also falsely told a client's medical provider that he was an employee of an insurance company whose insurance products he sold in order to inquire about the status of medical records relating to one of his life insurance policy sales.

29. By directing his assistant to engage in this deceptive conduct and directly engaging in this deceptive conduct, Holloway failed to observe high standards of commercial honor and just and equitable principles of trade, and thereby violated FINRA Rule 2010.

II. DISHONEST AND IMPROPER CONDUCT IN CONNECTION WITH REGULATORY MATTERS

FOURTH CAUSE OF ACTION False Certification of Continuing Education (Violation of FINRA Rule 2010)

30. The Department of Enforcement realleges and incorporates by reference paragraphs 1-29 above.

31. Holloway's insurance license enabled him to sell variable annuities in Maryland. Holloway was required under Maryland regulations to complete eight hours of continuing education during the licensing renewal period in order to renew his insurance license. After completing a continuing education course, Holloway was required to certify that the course was successfully completed.

32. In 2014, Holloway directed his assistant to complete his continuing education courses so that he could meet his Maryland insurance licensing requirement. She completed approximately seven on-line self-study credit hours for Holloway for the January 2013 to November 2015 licensing renewal period. His assistant also completed a four credit self-study continuing education course for Holloway in 2012 that helped satisfy his continuing education requirement

for the prior licensing renewal period. Holloway was able to retain his state insurance license and sell variable annuities because his assistant completed the courses.

33. By engaging in this deceptive conduct, Holloway failed to observe high standards of commercial honor and just and equitable principles of trade, and thereby violated FINRA Rule 2010.

FIFTH CAUSE OF ACTION
False Statements on Form ADV
(Violation of FINRA Rule 2010)

34. The Department of Enforcement realleges and incorporates by reference paragraphs 1-33 above.

35. Holloway submitted a Form ADV (Uniform Application for Investment Adviser Registration) to the FINRA-operated Investment Adviser Registration Depository system on September 7, 2011, in which he willfully made false statements, creating the false appearance that he maintained an active business of providing financial planning services. He indicated on the Form ADV that he provided investment advisory services to 101-250 clients in the prior fiscal year, consisting of individuals, pensions and profit sharing plans, charitable organizations, and corporations. He further indicated that he provided financial planning services to 26-50 advisory clients during the prior fiscal year and that the investments made based on those services totaled between \$2,500,001 and \$5,000,000.

36. The statements Holloway made on Form ADV were false because he did not have any investment advisory clients, did not provide any fee-based financial planning services, and did not generate any investments through financial planning services for at least five years before making that filing.

37. Holloway failed to observe high standards of commercial honor and just and equitable principles of trade, and thereby violated FINRA Rule 2010, by making false statements in his Form ADV.

38. Section 207 of Investment Advisers Act of 1940 makes it unlawful to willfully make any untrue statement of material fact in any registration application or report filed pursuant to that Act.

39. Holloway violated FINRA Rule 2010 by engaging in conduct that violated Section 207 of the Investment Advisers Act of 1940.

SIXTH CAUSE OF ACTION
Incomplete and Altered Responses to Rule 8210 Request
(Violation of FINRA Rules 8210 and 2010)

40. The Department of Enforcement realleges and incorporates by reference paragraphs 1-39 above.

41. On June 24, 2016, Enforcement sent Holloway a FINRA Rule 8210 document request seeking the production of “[a]ll documents, regardless of when they were created, which comprise the complete client and/or account files” of ten specified clients. His assistant gathered all of the responsive documents, consisting of more than 4,400 pages, but Holloway decided to produce only a small portion of the documents out of concern that FINRA might conclude that he had been churning accounts.

42. On July 8, 2016, Holloway responded to the Rule 8210 request by providing certain VA-to-VA exchange paperwork, HAI Account Information Forms, and other documents, such as marketing materials and account statements. The July 8, 2016 production was approximately 484 pages.

43. On eight of the client Account Information Forms he produced, Holloway added check marks to the investment time horizon section of the forms (which were previously blank) before he produced them to FINRA. Holloway knew this information was required on the forms because FINRA cited Holloway for failing to include customers' investment time horizon information on the forms during its 2015 exam cycle.

44. On July 14, 2016, Enforcement sent Holloway a letter stating that the June 8, 2017 production did not appear to be complete and that he should "provide the complete client files as requested" by July 27, 2016. The next day, on July 15, 2016, Holloway produced additional VA paperwork for four of the ten clients. The supplemental production for the four clients consisted of approximately 162 pages. Holloway's transmittal letter indicated that no additional client account documents existed for the remaining six clients.

45. On August 15, 2016, Enforcement conducted an unannounced on-site visit of Holloway's office, and ascertained that Holloway's client files were substantially larger and more comprehensive than the documents he had produced to FINRA. After being confronted by the staff about this discrepancy, Holloway produced the entire client files to FINRA, through his counsel, on October 4, 2016. This final document production contained approximately 3,773 additional pages.

46. By deliberately failing to produce the vast majority of the documents requested pursuant to Rule 8210 and by altering documents before producing them to FINRA, Holloway violated FINRA Rule 8210, and thereby also violated FINRA Rule 2010.

RELIEF REQUESTED

WHEREFORE, the Department of Enforcement respectfully requests that the 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) be imposed, including that Respondent be required to disgorge fully any and all ill-gotten gains; and
- 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: 8/1/2018


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