

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2016050474001**

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

RE: Donald Lane Preston, Respondent
Investment Company and Variable Contracts Products Representative
CRD No. 4704220

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Donald Lane Preston ("Preston" or "Respondent") 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

Preston entered the securities industry in September 2003 when he became associated with PFS Investments Inc. ("PFS" or the "Firm"), a FINRA-regulated broker-dealer, as an Investment Company and Variable Contracts Products Representative. Preston holds the following securities licenses: Series 6 (Nov. 2003); and Series 63 (Nov. 2003).

In a Uniform Termination Notice for Securities Industry Registration ("Form U5") dated June 13, 2016, the Firm reported Preston's voluntary resignation. In an Amended Form U5 dated June 21, 2016, the Firm reported that Preston resigned following the Firm's determination that he violated the Firm's written supervisory procedures relating to suitability.

Although Preston is not currently associated with a FINRA-regulated broker-dealer, he remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-laws.

RELEVANT DISCIPLINARY HISTORY

Preston has no prior disciplinary history.

OVERVIEW

During the period of March 2015 through February 2016 (the "Relevant Period"), Preston recommended three unsuitable investments to his Firm customer, ML, in violation of FINRA Rules 2330, 2111 and 2010.

Preston also willfully failed to timely disclose a May 2010 tax lien and a December 2013 compromise with creditors by the filing of an amended Uniform Application for Securities Industry Registration or Transfer ("Form U4"), in violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

In addition, during the Relevant Period, Preston made false statements to the Firm about, among other things, his disclosure of reportable events and the proposed investments, in violation of FINRA Rule 2010. By making false statements regarding the source of funds and ML's liquidity needs on the investment applications and other forms required by the Firm in connection with the proposed transactions, Preston also violated FINRA Rules 4511 and 2010 by causing his Firm to maintain inaccurate books and records in violation of Section 17(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 17a-3 promulgated thereunder.

FACTS AND VIOLATIVE CONDUCT

A. Preston's Unsuitable Recommendations

FINRA Rules 2111 and 2330(b) require a registered representative to have a reasonable basis to believe that a recommended transaction, including any variable annuity purchase or exchange, is suitable for the customer to whom the recommendation is made. When evaluating suitability, FINRA Rule 2111 requires a registered representative to consider, among other things, the customer's age, other investments, and financial situation. When recommending a variable annuity purchase or exchange, FINRA Rules 2111 and 2330(b) require a registered representative to consider the impact of surrender charges and any new surrender period, the loss of existing benefits, and the possibility of increased fees and expenses, among other things.

FINRA Rule 2010 requires FINRA members and their associated persons to "observe high standards of commercial honor and just and equitable principles of trade." A violation of FINRA Rules 2330 and 2111 is a violation of FINRA Rule 2010.

During the Relevant Period, Preston recommended three investments to his Firm customer ML without having a reasonable basis to believe that the proposed investments were suitable. Significantly, at the time Preston recommended the investments, Preston knew that ML was unemployed and needed ready access to cash for his living and medical expenses.

In January 2015, Preston processed ML's request for an early distribution of \$9,500 from his existing variable annuity to generate cash to cover ML's monthly living expenses. Two

months later, in March 2015, Preston recommended that ML exchange his variable annuity for a new variable annuity, even though the new product featured increased fees and expenses, and would result in the loss of a joint death benefit with an annual increase to its guaranteed payout. Preston submitted the proposed variable annuity exchange for the Firm's review and approval nine times during March and April 2015 even though ML's financial situation and needs had not changed; each time the Firm rejected the proposed exchange after considering the terms of the proposed exchange and ML's finances.

On May 3, 2015, Preston processed ML's request for a second early distribution of approximately \$37,000 from his variable annuity. Shortly thereafter, Preston recommended that ML withdraw \$100,000 from his variable annuity and invest it in Class A Shares of an IRA Mutual Fund. At the time Preston recommended the mutual fund investment, ML's financial situation and needs had not changed. Although Preston could have recommended depositing the funds in an available money market fund to avoid withdrawal fees or additional commissions, Preston recommended a long-term investment with higher associated fees and commissions. On May 22, 2015, the Firm approved the proposed investment, relying on false statements Preston made in the new account application regarding ML's liquidity needs and the source of funds. Preston's unsuitable recommendation resulted in ML incurring fees of \$3,515.51 and Preston's commission of \$1,427.39.

During the period of June to November 2015, ML requested and received monthly distributions from his IRA Mutual Fund. Even so, in December 2015, Preston recommended that ML invest the balance of his IRA Mutual Fund, approximately \$59,000, in another variable annuity. At the time Preston recommended the investment, ML's financial situation and needs had not changed. The proposed transaction again featured increased penalties, fees and expenses, as well as the loss of the guaranteed joint death benefit.¹

By recommending two variable annuity exchanges and a mutual fund investment to ML without having a reasonable basis for doing so, Preston violated FINRA Rules 2330(b), 2111, and 2010.

B. Preston's Willful Failure to Update His Form U4

Article V, Section 2(c) of FINRA's By-Laws requires that registered representatives keep their Form U4 "current at all times," and that amendments to a Form U4 must be filed with FINRA "not later than thirty days of learning of the facts and circumstances giving rise to the amendment."

FINRA Rule 1122 prohibits members or associated persons from filing with FINRA information regarding registration "which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof." A violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA

¹ Following review in accordance with its written supervisory procedures, the Firm again rejected the proposed variable annuity exchange.

Rule 1122 also constitutes a violation of FINRA Rule 2010.

Registered representatives are required to disclose compromises with creditors and unsatisfied liens on their Form U4. Specifically, Question 14K of the Form U4 asks registered representatives, "Within the past 10 years ... have you made a compromise with creditors....?" Similarly, Question 14M of the Form U4 asks registered representatives, "Do you have any unsatisfied judgments or liens against you?" If a registered representative answers either question in the affirmative, he or she is also required to provide detailed information about each reportable event, including the amount and date of the compromise or lien.

On May 17, 2010, the State of Ohio filed a tax lien against Preston in the amount of \$1,150 (the "Lien"). Preston received notice of the Lien on or about May 17, 2010. Although Preston was required to disclose the Lien via the filing of amended Form U4 no later than June 16, 2010, Preston never disclosed the Lien to the Firm or on his Form U4.

On December 31, 2013, Preston entered into a compromise pursuant to which he resolved outstanding credit card debt of \$14,741 (the "Compromise"). Preston should have disclosed the Compromise on his Form U4 no later than January 30, 2014. However, Preston did not report the Compromise to the Firm or via the filing of an amended Form U4 until December 22, 2014, approximately one year late.

By willfully failing to disclose the Lien and to timely disclose the Compromise, Preston violated Article V, Section 2(c) of FINRA's By-Laws, and FINRA Rules 1122 and 2010.

C. Preston Made False Statements to the Firm

During the Relevant Period, and in connection with his attempts to obtain approval of the proposed variable annuity exchanges and ML's mutual fund investment, Preston made false statements to the Firm. Preston made the false statements in forms the Firm required as part of its review and approval of the proposed transactions, including: seven variable annuity applications, six pre-approval forms for variable annuity exchanges, and an application to purchase the IRA Mutual Fund. Preston's misrepresentations included false statements regarding ML's current and anticipated liquidity needs; the purpose for the proposed exchanges; ML's receipt of a premature distribution from his existing variable annuity; and the source of funds for the proposed investment, which Preston inaccurately described as salary or business income.

Preston also made false attestations on at least four Firm annual compliance questionnaires completed each year in 2013 through 2016. Specifically, Preston attested that he had disclosed all pending liens, even though he knew the Firm was not aware of the Lien and Compromise. In addition, in 2015 and 2016, Preston attested that he had completed and submitted all of the forms the Firm required when making an investment recommendation, when, in fact, that was not true.

By virtue of the foregoing, Preston violated FINRA Rule 2010.

D. Preston Caused the Firm to Maintain Inaccurate Books and Records

FINRA Rule 4511 requires members to make and preserve books and records in conformity with Rules 17a-3 and 17a-4 of the Exchange Act. Rule 17a-3 requires firms to preserve, among other things, records of instructions and/or modifications received in connection with the purchase and sale of securities, and those records must be accurate. A violation of FINRA Rule 4511 also violates FINRA Rule 2010.

In May 2015, Preston submitted a new account application seeking approval to open an IRA Mutual Fund for customer ML. In the new account application, Preston represented that the source of funds for the purchase was the customer's salary or business income when, in fact, the proposed mutual fund purchase would be funded with a distribution of funds from ML's variable annuity.

By misrepresenting the source of funds on the Firm's new account application, Preston caused the Firm to maintain inaccurate books and records in violation of Section 17(a) of the Exchange Act and Rule 17a-3 promulgated thereunder. By virtue of the foregoing, Preston violated FINRA Rules 4511 and 2010.

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

1. A six-month suspension from associating with any FINRA member firm in any capacity;
2. A fine in the amount of \$10,000;
3. Restitution to ML of \$3,515.51 in fees; and
4. Disgorgement of \$1,427.39 in commissions received.

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.

Restitution is ordered to be paid to ML in the total amount of \$3,515.51, 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 from May 22, 2015, until the date of payment. Restitution amounts ordered, pursuant to this disciplinary action, are due and payable 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. 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. If for any reason Respondent cannot locate ML after reasonable and documented efforts within such period, or such additional period agreed to by the staff, 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.

Disgorgement of commissions received is ordered to be paid to FINRA in the amount of \$1,427.39, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621, from May 22, 2015 until the date this AWC is accepted by the NAC. Disgorgement 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 sanctions 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).

I understand that this settlement includes a finding that I willfully omitted to state a material fact on a Form U4, and that under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 and Article III, Section 4 of FINRA's By-Laws, these omissions make me subject to a statutory disqualification with respect to association with a member.

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.

6/11/2018

Date (mm/dd/yyyy)

Donald Lane Preston

Donald Lane Preston, Respondent

Reviewed by:

David S. Preston, 6/11/18

David S. Preston

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Accepted by FINRA:

6.11.18

Date

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

Regina Alter

Regina Alter

Senior Counsel

FINRA Department of Enforcement

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