

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20160518176**

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

RE: Christopher M. Herrmann, Respondent
CRD No. 4123657

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I 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

Christopher M. Herrmann first entered the securities industry in February 2000 as an Investment Company and Variable Contracts Products Representative with a FINRA-registered firm. Between September 2011 and May 2015, Herrmann was associated as a General Securities Representative with Key Investment Services LLC (CRD #136300) ("KIS"). Since then, Herrmann has not been associated with another FINRA-registered firm. However, KIS filed an amended Form U5 disclosing new information on October 25, 2016. Therefore, although he is not currently associated with a FINRA member firm or registered with FINRA, Herrmann remains subject to FINRA's jurisdiction, pursuant to Article V, Section 4 of FINRA's By-Laws, until October 24, 2018.

RELEVANT DISCIPLINARY HISTORY

Herrmann has no relevant disciplinary history.

OVERVIEW

In September 2013, and again in October 2014, Herrmann recommended annuity transactions, while failing to facilitate the transactions as a tax-free 1035 exchange, which resulted in significant tax liabilities to the customers. Herrmann's recommendations were not suitable for his customers, because the recommendations did not take into account his customers' tax status and the tax consequences of the transactions he recommended to the customers. In so doing, Herrmann violated FINRA Rules 2111 and 2010.

Herrmann also circumvented KIS's compliance procedures and thereby its supervision of the two annuity switch transactions, by failing to facilitate the transactions as tax-free 1035 exchanges and providing false information on annuity-related documents, in violation of FINRA Rules 4511 and 2010.

FACTS AND VIOLATIVE CONDUCT

Herrmann Makes Unsuitable Recommendations

FINRA Rule 2111(a) provides that "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." Moreover, 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."

The Supplementary Material to FINRA Rule 2111 provides that there are three obligations associated with this Rule: reasonable-basis suitability, customer-specific suitability, and quantitative suitability. FINRA Rule 2111.05(b) provides that the "customer-specific obligation requires that a member or associated person have a reasonable basis to believe that the recommendation is suitable for a particular customer based on that customer's investment profile, as delineated in Rule 2111(a)."

FINRA Rule 2010 requires associated persons to observe high standards of commercial honor and just and equitable principles of trade. A violation of FINRA Rule 2111 also constitutes a violation of FINRA Rule 2010.

In September 2013, Herrmann recommended to customer MG that she liquidate two fixed annuities and use the funds from the liquidations to purchase a variable annuity. At that time, customer MG was retired and elderly. Customer MG followed this recommendation and on September 12, 2013 and September 13,

2013, two checks from the surrendered fixed annuity policies were issued to MG in the amount of \$256,023.17 and \$112,657.26 respectively. Less than two weeks later, on September 24, 2013, MG used these funds to purchase a new variable annuity.

On October 30, 2014, Herrmann recommended to customer BF that she liquidate a variable annuity and use the funds from that liquidation to purchase a fixed annuity. At the time, customer BF was retired and elderly. Customer BF followed this recommendation and on November 3, 2014, a check in the amount of \$160,027.60 was issued to the customer. On November 14, 2014, customer BF used a portion of these funds to purchase a fixed annuity.

The liquidation of the annuities held by customers MG and BF were taxable events that resulted in negative tax consequences to those customers, consequences that would not have occurred if Herrmann had recommended that the new annuities be purchased by MG and BF as tax-free 1035 exchanges.¹ Herrmann was aware of the tax consequences that would result from his recommendations to MG and BF, and was aware that he could facilitate the annuity transactions as tax-free 1035 exchanges, yet he failed to do so.

Herrmann's recommendations were unsuitable, because he did not take into account MG and BF's tax status, and the tax consequences of his recommendations to them, which caused them to incur unnecessary tax liability and pay taxes on their liquidations when they could have completed the transactions tax-free.² As a result, Herrmann violated FINRA Rules 2111 and 2010.

Herrmann Circumvents Firm Supervisory Procedures

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." Moreover, a registered representative who enters inaccurate information into a firm's books and records violates FINRA Rules 4511 and 2010. A violation of FINRA Rule 4511 is a violation of FINRA Rule 2010.

Circumventing firm supervision of annuity switches by not complying with the firm's annuity procedures represents unethical conduct under FINRA Rule 2010.

Throughout 2013 and 2014, KIS's compliance procedures included a Switch Disclosure Policy which stated, in part, "KIS generally considers the purchase of annuities, life insurance, mutual funds, unit investment trusts, brokered and market-linked certificates of deposit and structured notes as long-term investments." The policy therefore required that its registered representatives

¹ For an explanation of 1035 exchanges, go to <http://www.finra.org/investors/variable-annuities>.

² KIS paid the negative tax consequences unnecessarily incurred by MG and BF, which was \$18,726 and \$22,399 respectively.

complete a Switch Disclosure for all transactions where one long-term investment product, such as an annuity, was being liquidated in order to purchase another long-term investment that carries a new sales/surrender charge. These procedures were designed to provide customers with the information necessary to compare the relative costs and benefits of the annuities being replaced, and to allow the firm an opportunity to perform a supervisory review of the suitability of such transactions and the disclosures made to the customer.

When Herrmann recommended and affected the annuity transactions described above, he circumvented KIS's supervisory procedures and supervision by failing to submit Switch Disclosure forms for those transactions, notwithstanding his recommendations and that the purchases of new annuities were funded with the proceeds of the liquidation of prior annuities just weeks before.

Herrmann further concealed these switch transactions from KIS's supervisory review by providing inaccurate information on the documents he submitted to the annuity companies, which KIS also received, in order to effectuate the purchase and sale transactions. Specifically, on September 20, 2013, Herrmann falsely represented in writing on the annuity application that MG's transaction was "not a switch." Further, on October 30, 2014, Herrmann falsely represented that the funds used to purchase BF's new fixed annuity resulted from "Income from Earnings," when in fact, the proceeds came from BF's liquidation of her variable annuity.

By virtue of the foregoing, Respondent violated FINRA Rules 4511 and 2010.

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

(1) A nine-month suspension from association with any FINRA member in any capacity; and

(2) A fine of \$10,000.

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:

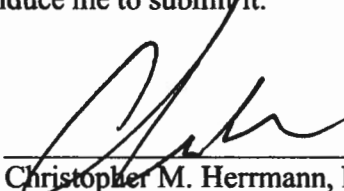
- A. Submission of this AWC is voluntary and will not resolve this matter unless and

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 understand and acknowledge that FINRA does not represent or advise me and I cannot rely on FINRA or FINRA staff members for legal advice; 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.

10/12/2018
Date (mm/dd/yyyy)


Christopher M. Herrmann, Respondent

Accepted by FINRA:

10/19/18
Date

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


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Attachment: Election of Payment Form