

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2018059035701**

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

RE: Richard Michael Wesselt, Respondent
CRD No. 2195569

Pursuant to FINRA Rule 9216, Respondent Richard Michael Wesselt submits 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 Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent hereby accepts and consents, 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

In 1992, Wesselt first became registered through a FINRA member firm as an Investment Company and Variable Contracts Products Representative. In March 1997, a FINRA member firm discharged Wesselt for “placing a customer’s signature on a document.” Another FINRA member firm discharged Wesselt in February 2014 for a “[s]uspected breach of firm policy regarding signatures on blank documents.”

From March 2014 through September 2017, Wesselt was registered as an Investment Company and Variable Contracts Products Representative through O.N. Equity Sales Company, Inc. (CRD No. 2936). On September 6, 2017, O.N. Equity filed a Form U5, terminating Wesselt’s registration. Wesselt is currently associated with another FINRA member firm.

OVERVIEW

From March 2014 through September 2017, Wesselt promoted investment strategies involving the purchase of variable annuities and whole life insurance policies. An integral component of Wesselt's strategies was his recommendation that customers first liquidate their retirement savings in order to purchase variable annuities. Then, almost immediately after purchasing these annuities, Wesselt often recommended that customers make substantial and costly withdrawals from the annuities in order to purchase from Wesselt whole life insurance policies. Wesselt told these customers, many of whom were incurring large or unexpected expenses, that they could use the cash value in their whole life insurance policies to make loans to themselves. Wesselt's recommendations to 78 customers that they purchase variable annuities as part of this investment strategy were unsuitable, and resulted in significant harm to these customers, including unnecessary surrender charges, costly fees and penalties, forfeiture of expected benefits, and the depletion or complete loss of their retirement savings.

Wesselt's recommendation of this unsuitable investment strategy to 78 customers violated FINRA Rules 2111, 2330(b) and 2010.

In connection with his unsuitable recommendations, Wesselt had customers sign incomplete or blank pages of various documents, including new account documents, variable annuity disclosure forms, and documents authorizing the withdrawal of funds from variable annuities, in violation of FINRA Rule 2010; this conduct also caused his firm to have inaccurate books and records in violation of FINRA Rules 4511 and 2010.

FACTS AND VIOLATIVE CONDUCT

A. Unsuitable Recommendations

FINRA's Suitability Rules

FINRA Rule 2111(a) provides in pertinent part that "[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, among other things, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, and risk tolerance. FINRA's Regulatory Notice 12-55 confirmed that suitability obligations apply to "a registered representative's recommendation of an 'investment strategy' involving both a security and non-security investment."

A variable annuity is a complex, long-term investment vehicle that offers tax-deferred treatment of earnings, annuity payout options that can include guaranteed income payments, and a death benefit. Because of their cost and complexity, registered representatives must exercise particular care to ensure that a variable annuity is suitable

for a customer before recommending it. Thus, in addition to the general suitability requirements imposed under Rule 2111, FINRA Rule 2330(b) specifically requires that, when recommending variable annuities, representatives have a reasonable basis to believe that “the particular deferred variable annuity as a whole ... and riders and similar product enhancements, if any, are suitable ... for the particular customer”

In general, variable annuities have two phases: (1) an accumulation phase, during which the investor’s premiums are allocated to investment portfolios; and (2) a distribution phase, during which the insurance company guarantees a minimum payment to the investor based on the principle and investment returns. A recommendation that a customer with short-term liquidity needs purchase a variable annuity may be unsuitable because withdrawals during the accumulation phase can be costly, often resulting in the imposition of surrender charges, income tax liability, and tax penalties.

Wesselt’s “Infinite Banking” Investment Strategy

From March 2014 through September 2017, Wesselt made unsuitable recommendations to 78 customers to purchase a variable annuity. These recommendations were inconsistent with the customers’ investment profiles, including their time horizon, liquidity needs, and risk tolerance. Despite that variable annuities are intended to be long-term investments, Wesselt knew when he made the recommendations that his customers would be making short-term withdrawals from their variable annuities. Specifically, Wesselt recommended that his customers follow an investment strategy that he termed “building your own bank” or “infinite banking.” Wesselt’s strategy was predicated on persuading customers to liquidate their retirement accounts, which typically held a portfolio of mutual funds, to use the proceeds of that liquidation to purchase variable annuities, and then to liquidate the variable annuities in order to build cash value in whole life insurance policies.

During the relevant period, Wesselt was one of the top producers for variable annuity sales at O.N. Equity; in 2016 he was the firm’s highest producer. For the 78 customers who were harmed by his variable annuity recommendations, and recommendations to take early withdrawals, Wesselt earned \$686,025 in commissions on the sale of the variable annuities.

Wesselt’s recommended investment strategy generally involved three steps.

First, Wesselt recommended that his customers liquidate their retirement savings, which they often held in qualified, tax-deferred accounts such as 401(k)s or IRAs. As a result, these customers lost benefits associated with their 401(k)s, including services such as access to investment advice, telephone help lines, educational materials and workshops. Also, assets held in 401(k) plans are typically protected from creditors and legal judgments, and certain 401(k) plans may allow for penalty free withdrawals.

Next, Wesselt recommended that customers purchase a variable annuity with funds liquidated from their retirement plans. Wesselt generally recommended that his

customers purchase an X, or bonus, share class variable annuity. These products, which add a cash bonus to the contract, typically have the longest surrender periods of any variable annuities offered in the marketplace and charge higher mortality and expense fees than other share classes. Early withdrawals decrease the amount of the bonus awarded under the contract. Wesselt also recommended customers invest in a guaranteed minimum withdrawal benefit rider, which allows lifetime withdrawals of a specified percentage once the customer reaches a specified age. Both the X-share and the withdrawal rider increased the customers' fees for purchasing the variable annuity, and thus were uniquely unsuited for customers who intended to make short-term withdrawals from the variable annuity. Wesselt typically had his customers sign blank or incomplete disclosure documents or had them sign those documents quickly in his presence. As a result, his customers frequently did not understand the unique features and risks associated with these variable annuities and riders.

Finally, after the variable annuity was issued, Wesselt recommended customers take early withdrawals, causing customers to lose benefits associated with the variable annuity and incur surrender charges. Wesselt's recommendations that customers make withdrawals from their variable annuities generally fell into two categories: (1) large one-time withdrawals to pay life insurance premiums; and (2) large one-time withdrawals to pay significant expenses, such as the purchase of a home or the settlement of a divorce.

Wesselt's Recommended Investment Strategy was Unsuitable for 78 Customers

Wesselt's recommendations to 78 customers that they purchase and then take early withdrawals from their variable annuities in order to pursue his "infinite banking" investment strategy, were unsuitable in light of those customers' investment profiles—including their investment time horizons, liquidity needs, and risk tolerances—and those recommendations resulted in substantial customer harm.

For example,

- In September 2014, Customer 1, 43 years old, met with Wesselt to discuss her financial needs, which included substantial daycare expenses. Wesselt recommended that she liquidate her 401(k) account, which was worth approximately \$220,000, and use the proceeds to purchase an X-share variable annuity with a lifetime withdrawal rider. At the same time, Wesselt recommended that Customer 1 purchase whole life insurance policies for herself and her family, and pay for the premiums on these policies by making withdrawals from the variable annuity. Finally, Wesselt recommended that Customer 1 take loans from her life insurance policies to pay for her family's daycare expenses. In four years, Customer 1 withdrew \$225,662 from her variable annuity to pay life insurance premiums and other expenses, which included surrender fees of \$11,998 and tax withholding of \$71,564. The early withdrawals also caused Customer 1 to incur a tax penalty. She is no longer able to afford her life insurance premiums, and her variable annuity, which held most of her retirement savings, is now worth less than \$10,000.

- Customer 2, who was 33 years old at the time, met with Wesselt in December 2014 to discuss financial planning after taking a new job. Wesselt recommended that he purchase a whole life insurance policy and use his 401(k), which was worth approximately \$40,000, to purchase an X-share variable annuity with a lifetime withdrawal rider. Three days after the variable annuity was issued, Wesselt recommended that this customer take a withdrawal from this variable annuity to pay life insurance premiums. Wesselt later recommended that he withdraw funds from his variable annuity to pay for repairs on his home. In November 2015, Wesselt recommended another withdrawal to pay for the next year's life insurance premiums. In less than a year, Customer 2's variable annuity declined from \$39,693 to \$13,601, he incurred \$1,814 in surrender charges, he paid \$7,286 in tax withholding, and was assessed a tax penalty for early withdrawal of retirement funds.
- Customer 3 met with Wesselt in October 2014, when she was 59 years old and nearing retirement, and sought Wesselt's advice regarding the purchase of an apartment and assisting a child with student loan repayment. Wesselt recommended that she purchase a variable annuity, using approximately \$58,000 that she held in a 401(k). In June 2015, Wesselt recommended Customer 3 purchase a whole life insurance policy and make annual withdrawals from her variable annuity to make premium payments on that policy. Each annual withdrawal from her variable annuity was \$16,840, which included \$12,000 for premiums, \$840 in surrender charges, and tax withholding of \$4,000. The withdrawals could only be sustained for three years, as each withdrawal depleted the contract value of Customer 3's variable annuity. By June 2017, the variable annuity had declined from its original value of \$57,955 to \$8,489.
- Customer 4, who was 52 years old, met with Wesselt in the spring of 2016 to discuss finances and an impending divorce. She needed to pay \$40,000 as part of a divorce settlement, and the only available funds to do so were in the customer's 401(k). Customer 4 also wanted to help her child pay off student loans. Though Wesselt was aware of Customer 4's immediate need for these funds, he nonetheless recommended that she roll her 401(k) into an X-share VA with a lifetime withdrawal rider. The initial contract value was \$133,144. Within three days of its issuance, Wesselt recommended that she withdraw \$63,697, which included \$40,000 for the divorce settlement. A week later, Wesselt recommended that she withdraw \$55,323 from the variable annuity in order to pay \$33,000 in premiums for a new whole life policy that Wesselt sold her. In just one week, Customer 4's variable annuity declined by 85% to \$19,764, and she paid \$8,180 in surrender charges. In addition to funds withheld for taxes, Customer 4 was also assessed a tax penalty for taking the early withdrawals.
- Customer 5, a 49-year-old single parent of a child with special needs, met Wesselt in December 2014. Wesselt knew that Customer 5 had limited means, did not have a steady income, and needed liquidity because of her significant, recurring

living expenses. Wesselt recommended that Customer 5 roll her 401(k) into an X-share variable annuity with a lifetime withdrawal rider. This policy was issued on January 20, 2015 with a value of \$196,827. At the same time, Wesselt also recommended that Customer 5 make withdrawals from the variable annuity in order to pay premiums on whole life insurance policies that he sold to her. Two months later, Customer 5 began making withdrawals from her variable annuity to pay for her living expenses. Over the next two years, Customer 5 made a series of withdrawals that ultimately resulted in the complete liquidation of her variable annuity. She paid \$16,044 in surrender charges and \$37,426 in tax withholding. Customer 5 also was subject to a tax penalty for taking early withdrawals from her retirement account.

In total, Wesselt made unsuitable recommendations that 78 customers purchase and then liquidate variable annuities. These unsuitable recommendations caused the customers to incur surrender charges of \$378,452. These 78 customers were subjected to costly fees and penalties, forfeiture of expected benefits, lapsed or cancelled policies, and the depletion or complete loss of their retirement savings. Wesselt, by contrast, earned commissions of \$686,025 from the sale of these variable annuities.

Wesselt's unsuitable recommendations to 78 customers violated FINRA Rules 2111, 2330(b) and 2010.

B. Wesselt's Improper Signature Practices

FINRA Rule 2010 provides that a "member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." Causing customers to sign incomplete or blank forms or using photocopied or recycled customer signatures violates FINRA Rule 2010.

FINRA Rule 4511 requires each member firm to make and preserve books and records in conformity with applicable FINRA rules and Exchange Act Rules 17a-3 and 17a-4. Exchange Act Rule 17a-4(b)(4) requires firms to preserve records relating to communications concerning the firm's business. A registered representative who enters inaccurate information into a firm's books and records violates FINRA Rules 4511 and 2010.

O.N. Equity's written supervisory procedures expressly prohibited its registered representatives from having customers sign blank or partially completed documents. Wesselt was aware of these procedures and he signed annual compliance certifications on three occasions, attesting that he understood the firm's procedures. Wesselt had also previously been terminated from his prior employer for allowing a customer to sign a blank form.

Nonetheless, during his tenure at O.N. Equity, employees in Wesselt's office engaged in a practice of obtaining customer signatures on blank or incomplete forms at Wesselt's direction. The forms included, among others, new account agreements and variable annuity withdrawal request forms. Wesselt directed his staff to send or provide partial

documents or forms, or signature pages, to customers with instructions to sign and return the document. The forms were then completed by Wesselt or his staff and submitted to O.N. Equity or the variable annuity company for processing. As a result of this practice, many of Wesselt's customers did not have the opportunity to read important disclosures regarding their variable annuities, and thus were unaware of the features, costs, and risks associated with these products. Similarly, blank variable annuity withdrawal forms provided no information about the amount of the withdrawal, the withholding of taxes, or surrender fees.

By directing his employees to have customers sign blank or incomplete forms, Wesselt caused O.N. Equity to create and maintain inaccurate books and records in violation of Rules 17a-3 and 17a-4 of the Exchange Act.

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

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

- A bar from association with any FINRA member in all capacities.

Respondent understands that if he is barred or suspended from associating with any FINRA member, he becomes 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, he 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. A bar or expulsion shall become effective upon approval or acceptance of this AWC.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against him;
- 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, Respondent specifically and voluntarily waives 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.

Respondent further specifically and voluntarily waives 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

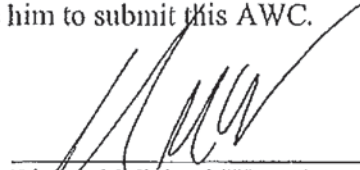
Respondent understands that:

- 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 Respondent; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
 - 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. Respondent 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. Respondent 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 Respondent's: (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.

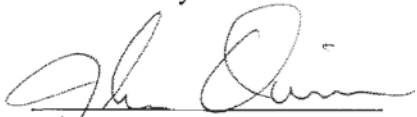
Respondent certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; Respondent has agreed to the AWC's provisions voluntarily; and no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce him to submit this AWC.

10/28/20
Date



Richard Michael Wesselt
Respondent

Reviewed by:



John P. Quinn
Counsel for Respondent
Marshall Dennehey
2000 Market Street, Suite 2300
Philadelphia, PA 19103

Accepted by FINRA:

11/9/2020
Date

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



Kathryn S. Gostinger
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