

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2020065154601**

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

RE: Arlington Securities, Inc. (Respondent)
Member Firm
CRD No. 19596

Robert Earl Hillard (Respondent)
General Securities Representative
CRD No. 1005606

Pursuant to FINRA Rule 9216, Respondents Arlington Securities, Inc. and Robert Earl Hillard 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 Respondents alleging violations based on the same factual findings described in this AWC.

I.

ACCEPTANCE AND CONSENT

- A. Respondents accept and consent to the following findings by FINRA without admitting or denying them:

BACKGROUND

Arlington Securities became a FINRA member in 1987. The firm, which is headquartered in St. Louis, Missouri, has 11 branch offices and 19 registered representatives. The firm operates under the independent contractor model, servicing a retail customer base.

Robert Hillard first became registered with FINRA in 1981 through an association with a FINRA member firm. In March 1990, he became registered with FINRA as a General Securities Representative through an association with Arlington Securities. Hillard remains associated with Arlington Securities and has since registered with FINRA in multiple capacities, including as a General Securities Principal and a Municipal Securities Principal. Hillard has been the President, Chief Executive Officer, and Chief Financial Officer of Arlington Securities since February 1990.¹

¹ For more information about Arlington Securities and Hillard, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

Hillard was the respondent in five formal disciplinary actions between 1989 and 1995 brought by FINRA and other regulators. Two of these were settlements that involved supervisory failures.

OVERVIEW

From December 31, 2018, through October 28, 2019, Robert Hillard recommended that 14 customers liquidate their lower-cost Class A and Class C mutual funds to purchase higher-cost variable annuities without having a reasonable basis to believe the transactions were suitable. As a result, the customers paid \$67,026.47 in higher fees. Based on the foregoing, Hillard violated FINRA Rules 2330(b), 2111, and 2010.

Since at least December 2018 through the present, Arlington Securities' supervisory system, including its written supervisory procedures (WSPs), was not reasonably designed to achieve compliance with FINRA's suitability requirements regarding recommendations to sell mutual funds or purchase variable annuities. The firm also failed to reasonably supervise Hillard's unsuitable recommendations that customers exchange their low-cost mutual funds for higher-cost variable annuities. Based on the foregoing, Arlington Securities violated FINRA Rules 3110, 2330(c), 2330(d), and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from an examination conducted by FINRA's Department of Member Supervision.

A. Hillard's Unsuitable Recommendations

Prior to June 30, 2020, FINRA Rule 2111(a) required member firms and their associated persons to have a reasonable basis to believe that a recommended securities transaction or investment strategy is suitable for a customer, based on information obtained through the reasonable diligence of the firm or associated person to ascertain the customer's investment profile.² 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 Rule 2111 Supplementary Material .05(a) (Rule 2111.05(a)) required "a member or associated person to have a reasonable basis to believe, based on reasonable diligence," that a recommended securities transaction "is suitable for at least *some* investors" and "that the recommendation is suitable for a particular customer based on that customer's investment profile."

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, in many cases, a guaranteed death benefit. An investment-only variable

² On June 30, 2020, recommendations to retail customers became subject to Rule 15c-1 of the Securities Exchange Act of 1934 (Regulation Best Interest). FINRA Rule 2111 is still in effect, but as of June 30, 2020, it no longer applies to recommendations that are subject to Regulation Best Interest.

annuity is unlike a traditional variable annuity because it does not offer a guaranteed death benefit or optional living benefit riders. Instead, it is typically considered an investment vehicle, and its primary benefit is the tax deferral of income until withdrawals are made.

Registered representatives must exercise particular care to ensure that a variable annuity is suitable for a customer before recommending it. In addition to the general suitability requirements imposed under Rule 2111, FINRA Rule 2330(b) specifically requires that, when recommending the purchase of variable annuities, representatives have a reasonable basis to believe that: (1) “the customer has been informed, in general terms, of the various features of variable annuities;” (2) “the customer would benefit from certain features of the variable annuity, such as tax-deferred growth, annuitization, or a death or living benefit;” and (3) “the particular variable annuity, as a whole, the underlying subaccounts . . . and riders and similar product enhancements, if any, are suitable . . . for the particular customer.”

A violation of FINRA Rules 2111 and 2330 also constitutes a violation of FINRA Rule 2010, which requires member firms and associated persons to “observe high standards of commercial honor and just and equitable principles of trade” in the conduct of their business.

Mutual fund issuers offer different classes of mutual fund shares, including Class A and Class C shares. As a general matter, Class A shares are subject to a front-end sales charge, while Class C shares typically do not carry a front-end sales charge, but instead have significantly higher ongoing expenses than Class A shares. Some mutual fund companies will, after a specified holding period (often eight or ten years), automatically convert Class C shares into Class A shares, which reduces both the customers’ ongoing expenses and the “trail” commissions of the registered representative who sold the mutual fund.

In late 2018, some of the Class C share mutual funds that Hillard had previously sold to his customers began to convert to Class A shares. These conversions resulted in a substantial decrease in Hillard’s personal income. Hillard expected other Class C shares would also convert to Class A shares, further reducing Hillard’s ongoing trail commissions. Between December 31, 2018, and October 28, 2019, Hillard recommended that 14 customers (who in total had 17 accounts) liquidate a total of 63 mutual funds (46 Class C share mutual funds and 17 Class A share mutual funds) to purchase an investment-only variable annuity.

In making these recommendations, Hillard did not have a reasonable basis to believe whether the customers would benefit from the features of an investment-only variable annuity and thus did not have a reasonable basis to conclude that his recommendations were suitable. Because the investment-only variable annuity, unlike the customers’ mutual fund holdings, charged additional fees, each of the recommendations resulted in an increase in the customers’ annual expense of between 0.041% and 1.24%, with an average increase of 0.43%. All but one of the accounts for which Hillard recommended an investment-only variable annuity were qualified accounts which already provided tax

deferral of income to the customers. Moreover, with respect to the one remaining customer, Hillard did not have a reasonable basis to believe the annuity's benefits were outweighed by its costs, including an increase of 0.66% in ongoing annual expenses.

Hillard also did not have a reasonable basis to believe the investment-only variable annuity, as a whole, was suitable for each individual customer based on the customer's investment profile, including the customer's age, financial situation and needs, net worth, and risk tolerance. Hillard provided substantially identical written rationales for all of these recommendations without consideration of the differences in the individual profiles of each customer. Specifically, Hillard noted, among other things, that a benefit of the variable annuities was the ease for transfer among funds. However, Hillard did not have a reasonable basis to believe the customers needed or would benefit from more active trading, given that they had all held their existing Class C mutual funds for an average of over five years.

As a result of Hillard's unsuitable recommendations, Hillard's customers collectively paid an additional \$67,026.47 in annual fees. Based on the foregoing, Hillard violated FINRA Rules 2111, 2330(b), and 2010.

B. Arlington Securities' Failure to Supervise

FINRA Rule 2330(c) requires that a registered principal review variable annuity purchases and exchanges within seven days of receiving a "complete and correct" application package, and to approve the recommended transaction "only if he or she has determined that there is a reasonable basis to believe that the transaction would be suitable" based on the factors identified in FINRA Rule 2330(b).

FINRA Rule 2330(d) requires, among other things, that firms "establish and maintain specific written supervisory procedures reasonably designed to achieve compliance with the standards set forth in [Rule 2330]."

FINRA Rule 3110(a) requires member firms to establish and maintain a system to supervise the activities of associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA Rules. FINRA Rule 3110(b) requires member firms to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA Rules. The duty to supervise under Rule 3110 also requires member firms to reasonably investigate red flags that suggest misconduct may be occurring and to act upon the results of such investigation.

Since at least December 2018, Arlington Securities' supervisory system and WSPs were not reasonably designed to supervise the suitability of representatives' recommendations relating to mutual funds and variable annuities. The firm's WSPs failed to describe the steps that supervisors must take to review the suitability of these transactions, including

the identification of potential red flags that the recommendation is not consistent with the customer's investment profile.³ The firm's WSPs also failed to describe the steps supervisors must take when reviewing the suitability of variable annuity purchases in order to comply with FINRA Rule 2330(b)—including whether there is a reasonable basis to believe that: (1) the customer has been informed, in general terms, of the various features of variable annuities; (2) the customer would benefit from certain features of the variable annuity, such as tax-deferred growth, annuitization, or a death or living benefit; and (3) a particular variable annuity, as a whole, along with the underlying subaccounts, is suitable for the particular customer based on the customer's investment profile.

Arlington Securities also failed to reasonably review the suitability of Hillard's recommendations that his customers liquidate their mutual funds in order to purchase higher-cost variable annuities. Specifically, the firm did not identify red flags associated with these transactions, such as his use of a substantially identical rationale for all 14 customers, despite differences in their investment profiles. The firm also failed to analyze whether there was any benefit to purchasing an investment-only variable annuity in a qualified account, or whether the customers' objective of making fund transfers easier could be accomplished through cost-free exchanges within the same mutual fund family. Finally, the firm failed to consider that the customer's ongoing fees on their existing mutual funds had or would decrease by converting to Class A shares, which would further increase the differential in fees with the investment-only variable annuity.

Based on the foregoing, Arlington Securities violated FINRA Rules 2330(c), 2330(d), 3110, and 2010.

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

- Hillard consents to:
 - a four-month suspension from association with any FINRA member in all capacities;
 - a \$10,000 fine; and
 - joint and several restitution to customers in the amount of \$67,026.47, plus interest, as described below.
- Arlington Securities consents to:
 - a censure;
 - a \$50,000 fine;
 - joint and several restitution to customers in the amount of \$67,026.47, plus interest, as described below; and

³ Hillard was not responsible for supervising transactions he recommended to customers.

- an undertaking that, within 90 days of the date of the notice of acceptance of this AWC, a member of Arlington Securities' senior management who is a registered principal of the firm shall certify in writing that, as of the date of the certification, the firm has remediated the issues identified in this AWC, and implemented a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with FINRA Rules 2111 and 2330 regarding the issues identified in this AWC. The certification shall include a narrative description and supporting exhibits sufficient to demonstrate Arlington Securities' remediation and implementation. FINRA staff may request further evidence of Arlington Securities' remediation and implementation, and Arlington Securities agrees to provide such evidence. Arlington Securities shall submit the certification to Jamie P. Keesing, Counsel, FINRA Department of Enforcement, 9509 Key West Avenue, Rockville, MD 20850, and to Jamie.Keesing@finra.org, with a copy to EnforcementNotice@finra.org. Upon written request showing good cause, FINRA staff may extend this deadline.

Hillard 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.

Respondents agree to pay the monetary sanctions upon notice that this AWC has been accepted and that such payment is due and payable. Each respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Respondents specifically and voluntarily waive any right to claim an inability to pay, now or at any time after the execution of this AWC, the monetary sanctions imposed in this matter.

Restitution is ordered to be paid to the customers listed on Attachment A to this AWC (Eligible Customers) in the total amount of \$67,026.47, 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 October 28, 2019, until the date this AWC is accepted by the National Adjudicatory Council (NAC).

A registered principal on behalf of Arlington Securities shall submit satisfactory proof of payment of restitution and interest (separately specifying the date and amount of each paid to each Eligible Customer) or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted by email to EnforcementNotice@FINRA.org from a work-related account of the registered principal of Arlington Securities. The email must identify Arlington Securities and the case number and include a copy of the check, money order, or other method of payment. This

proof shall be provided by email to EnforcementNotice@FINRA.org no later than 120 days after the date of the notice of acceptance of the AWC.

The restitution amount plus interest to be paid to each Eligible Customer shall be treated by the Respondents as the Eligible Customer's property for purposes of state escheatment, unclaimed property, abandoned property, and similar laws. If after reasonable and documented efforts undertaken to effect restitution Respondents are unable to pay all Eligible Customers within 120 days after the date of the notice of acceptance of the AWC, Respondents shall submit to FINRA in the manner described above a list of the unpaid Eligible Customers and a description of Respondents' plan, not unacceptable to FINRA, to comply with the applicable escheatment, unclaimed property, abandoned property, or similar laws for each such Eligible Customer.

The imposition of a restitution order or any other monetary sanctions in this AWC, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

Restitution payments to customers shall be preceded or accompanied by a letter, not unacceptable to FINRA, describing the reason for the payment and the fact that the payment is being made pursuant to a settlement with FINRA and as a term of this AWC.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondents specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a complaint issued specifying the allegations against them;
- 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, Respondents 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 its acceptance or rejection.

Respondents 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

Respondents 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 Respondents; and
- C. If accepted:
 - 1. this AWC will become part of Respondents' permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondents;
 - 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 its subject matter in accordance with FINRA Rule 8313; and
 - 4. Respondents 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. Respondents 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 Respondents' right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondents' testimonial obligations in any litigation or other legal proceedings.

- D. Respondents may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that it 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.

The undersigned, on behalf of Respondents, certify that a person duly authorized to act on Respondents' behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Respondents have agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondents to submit this AWC.

December 4, 2024

Date

Robert Earl Hillard

Arlington Securities, Inc.
Respondent

Print Name: Robert Earl Hillard

Title: CEO

December 4, 2024

Date

Robert Earl Hillard

Robert Earl Hillard
Respondent

Reviewed by:

DJMJ

Donald J. Mehan, Jr.
Counsel for Respondents
Moline & Mehan, LLC
112 S. Hanley Road, Suite 200
St. Louis, MO 63105

Accepted by FINRA:

December 11, 2024

Date

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

Jamie P. Keesing
Jamie P. Keesing
Counsel
FINRA
Department of Enforcement
9509 Key West Avenue
Rockville, MD 20850

Attachment A

Customer	Restitution
Customer A	\$375.21
Customer B, Account 1	\$349.42
Customer B, Account 2	\$4,716.45
Customer C	\$2,361.20
Customer D	\$899.25
Customer E	\$8,679.60
Customer F	\$570.00
Customer G	\$2,837.23
Customer H	\$2,969.68
Customer I	\$1,059.91
Customer J	\$9,862.15
Customer K, Account 1	\$3,111.40
Customer K, Account 2	\$3,336.60
Customer L	\$3,243.80
Customer M	\$7,855.89
Customer N, Account 1	\$5,494.26
Customer N, Account 2	\$9,304.40
	Total: \$67,026.47