

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2021070463601**

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

RE: Michael Joseph Lancaster (Respondent)
Former General Securities Representative
CRD No. 1353552

Pursuant to FINRA Rule 9216, Respondent Michael Joseph Lancaster 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 in this AWC.

I.

ACCEPTANCE AND CONSENT

- A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

Lancaster first registered with FINRA in 1987 as an Investment Company and Variable Contracts Products Representative (IR) through his association with a FINRA member. Thereafter, he was associated with a former FINRA member and a FINRA member as an IR and then subsequently another former FINRA member as an IR and General Securities Representative (GS) before being associated with FINRA member Kestra Investment Services, LLC (CRD No. 42046), formerly NFP Securities, Inc. (Kestra), in August 2001 as a GS. In May 2011, he became associated with LPL Financial LLC (CRD No. 6413) (LPL) as a GS. On February 24, 2021, LPL filed a Uniform Termination Notice for Securities Industry Registration (Form U5) stating that Lancaster had been terminated on January 27, 2021 because he “[s]hared in customer losses and issued payments to customer to cover subsequent losses without notice to [f]irm” and “failed to timely report [a] customer grievance to [f]irm.” From April 28, 2021 until July 26, 2021, Lancaster was associated with another FINRA member.

On December 2, 2005, Lancaster was fined \$5,000 and suspended from associating with any NASD member in any capacity for ten business days by NASD for effecting discretionary transactions in accounts owned by public customers without having obtained prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his employing member firm.

Lancaster is not currently associated with a FINRA member but remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.¹

OVERVIEW

In February 2011, Lancaster made an unsuitable recommendation of an investment to a customer, whose investment profile and risk tolerance were not consistent with the investment. In addition, from July 2012 to September 2020, Lancaster made an unsuitable recommendation relating to the customer's continued holding of the investment. Therefore, Lancaster violated NASD Rule 2310 (for conduct before July 9, 2012), FINRA Rule 2111 (for conduct on or after July 9, 2012), and FINRA Rule 2010. After the customer complained to Lancaster about the performance of the investment during 2016, Lancaster made payments to the customer totaling more than \$14,000 from May 2016 to May 2020 to attempt to settle the complaint without the knowledge or approval of his firm.

FACTS AND VIOLATIVE CONDUCT

This matter arose from FINRA's receipt in February 2021 of the Form U5 filed by LPL stating that Lancaster had been terminated in January 2021.

Lancaster made an unsuitable recommendation to a customer.

NASD Rule 2310, which is the predecessor to FINRA Rule 2111, states that "[i]n recommending to a customer the purchase ... of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs."

FINRA Rule 2111 states 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." This includes "an explicit recommendation to hold a security or securities."² A firm's or associated person's reasonable diligence also "must provide [the firm] ... or associated person with an understanding of the potential risks and rewards associated with the recommended security or strategy."³

A violation of NASD Rule 2310 or FINRA Rule 2111 also is a violation of FINRA Rule 2010.

¹ For more information about the respondent, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

² FINRA Rule 2111 Supplementary Material .03.

³ FINRA Rule 2111 Supplementary Material .05.

In February 2011, while associated with Kestra, Lancaster recommended that the customer, who was 72 years old at the time, invest \$70,000 in shares of a commercial equipment leasing and finance fund. Lancaster recommended this alternative investment to the customer even though the investment was inconsistent with the customer's investment profile and financial situation. For example, the liquid net worth required for the customer's investment amount, as stated in the investment prospectus, exceeded the customer's liquid net worth. Additionally, the high-risk and illiquid nature of the investment was not consistent with the customer's moderate risk tolerance. Yet, the customer used funds from his retirement account to make the investment during February 2011. During May 2011, after Lancaster became associated with LPL, the customer opened a LPL account and held the investment in that account. Even though the investment subsequently declined in value after May 2011, the customer continued to hold the investment based on Lancaster's recommendation that he do so from July 9, 2012 to September 18, 2020. The investment continued to decline in value until the customer liquidated the investment during January 2021. The customer sustained losses and was compensated by Kestra.⁴

Lancaster received \$4,410.00 in commissions in connection with the above-referenced recommendation.

Therefore, Lancaster violated NASD Rule 2310 (for conduct before July 9, 2012), FINRA Rule 2111 (for conduct on or after July 9, 2012), and FINRA Rule 2010.⁵

Lancaster attempted to settle the customer's complaint without his firm's knowledge or approval.

FINRA Rule 2010 requires an associated person, in the conduct of his or her business, to observe high standards of commercial honor and just and equitable principles of trade. Settling or attempting to settle a customer complaint without the knowledge or approval of a registered representative's member firm is conduct inconsistent with just and equitable principles of trade and violates FINRA Rule 2010.

In May 2016, the customer made an oral complaint to Lancaster about the declining value of the above-described alternative investment in his LPL account. From May 2016 to May 2020, Lancaster made seven payments to the customer in the total amount of \$14,460.40 to attempt to settle the customer's complaint. Lancaster did not inform LPL about the customer's complaint or his attempt to resolve it. Additionally, on compliance questionnaires that Lancaster submitted to LPL from 2016 to 2019, Lancaster falsely stated that he had not made any private settlement of claims or reimbursed customers for losses.

⁴ Kestra compensated the customer in connection with settlement of a demand letter sent by the customer with claims against Kestra and Lancaster, among others.

⁵ FINRA Rule 2111 superseded NASD Rule 2310 on July 9, 2012.

In September 2020, the customer, through his attorney, sent a written complaint to LPL regarding Lancaster, including Lancaster's attempt to settle his complaint.

Therefore, Lancaster violated FINRA Rule 2010.

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

- a four-month suspension from associating with any FINRA member in all capacities;
- a \$10,000 fine; and
- disgorgement of \$4,410.00 plus interest as described below.

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.

Disgorgement of commissions received is ordered to be paid to FINRA in the amount of \$4,410.00, 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 March 31, 2011 until the date this AWC is accepted by the National Adjudicatory Council (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.

Respondent specifically and voluntarily waives 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.

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

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 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 its acceptance or rejection.

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 its subject matter 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 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 Respondent's testimonial obligations in any litigation or other legal proceedings.

- D. Respondent may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that he 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.

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 understands and acknowledges that FINRA does not represent or advise him and Respondent cannot rely on FINRA for legal advice. 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 in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce him to submit this AWC.

Date

Nov. 10 '22

Michael Joseph Lancaster
Respondent

Accepted by FINRA:

November 11, 2022

Date

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



Kavitha Sivashanker
Senior Counsel

Florida Authorized House Counsel
Member NY Bar

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