

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E062003037501

TO: Department of Enforcement
NASD

RE: Jerry Don Bailey
Investment Company & Variable
Contracts Products Representative
CRD No. 1756858

Pursuant to Rule 9216 of NASD Code of Procedure, Jerry Don Bailey ("Bailey" or "Respondent") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against Respondent alleging violations based on the same factual findings.

The Respondent understands that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Enforcement and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Respondent; and
3. If accepted:
 - a. this AWC will become part of the Respondent's permanent disciplinary record and may be considered in any future actions brought by NASD against him;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about the Respondent's disciplinary record;
 - c. NASD, may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and
 - d. 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 allegation in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects Respondent's testimonial obligations or right to take legal or factual

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positions in litigation or other legal proceedings in which NASD is not a party.

The Respondent also understands that his experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history are as follows:

Jerry Don Bailey entered the securities industry in September 1987, when he associated with an NASD member firm. He registered with several member firms before associating with World Choice Securities, Inc., ("World Choice") in September 2000. Bailey remained at World Choice until June 2002. He subsequently registered with two other member firms before leaving the industry on March 11, 2003. Bailey is not currently registered with a member firm. During his career in the securities industry Bailey obtained Series 6 and 63 securities licenses. He has no prior relevant disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Formal Complaint issued specifying the allegations against him;
- B. To be notified of the Formal 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, the Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, 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 Rule 9143 or the separation of functions prohibitions of 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.

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II.

ACCEPTANCE AND CONSENT ¹

A. The Respondent hereby accepts and consents, without admitting or denying the allegations or findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD 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 NASD:

1. During the period from approximately September 2000 through at least December 2000, Jerry Don Bailey made unsuitable variable annuity and/or variable universal life insurance recommendations to at least five World Choice customers. Bailey failed to obtain financial information from any of the customers before making investment recommendations, and had several of the customers sign disclosure and other documents in blank. Bailey also made numerous misrepresentations and omitted to state material facts in connection with his unsuitable investment recommendations. His specific activities with respect to each customer are discussed below.

a. Customers JS and CS, a husband and wife who, at the time of their investments through Bailey, were self-employed farmers in their early fifties with plans to retire at age 59½. Based on Bailey's recommendation, on approximately September 6, 2000, customer JS purchased a \$50,000 variable annuity policy; and on approximately December 27, 2000, customer CS made an initial payment of \$125,000 to purchase a \$4 million face value variable universal life insurance policy.

These transactions were unsuitable because: (1) customer CS had no need for life insurance; (2) based on CS's annual income and net worth, she did not have the financial ability to make the premium payments on the variable universal life insurance policy after the first year; and (3) the sub-account allocations for JS's variable annuity were inconsistent with his investment objective and risk tolerance.

In addition to making unsuitable investment recommendations to customers JS and CS, Bailey also misrepresented and omitted to state certain material facts. Specifically Bailey: (1) falsely represented that the variable universal life insurance policy that he recommended and sold to CS was a retirement investment; (2) misrepresented both customers' investment experience on new account forms; and (3) failed to adequately disclose to JS and CS the risks associated with their respective investments, including the ten year surrender periods associated with the investments and the penalties associated with early withdrawals.

¹ NASD will bring a separate disciplinary action against World Choice and the responsible principal for, among other things, failure to supervise the activities described herein.

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- b. Customers FB and MS were, at the time of Bailey's investment recommendation, an 84 year old mother and 65 year old daughter, respectively. Customer FB, who was seeking an investment that would provide for her daughter, MS, and two grandchildren, had no need for life insurance and desired safety of investment principal and shelter from inheritance and other taxes. Bailey recommended that customer FB purchase a variable universal life insurance policy. However, she was unable to pass the physical necessary to obtain the insurance. Bailey then recommended that the policy be written on MS, the daughter, with FB, the mother, as the beneficiary. On approximately November 15, 2000, MS made an initial payment of approximately \$148,000 to purchase a \$2 million face value variable universal life insurance policy. The funds used to make the investment were the proceeds received from the liquidation of FB's certificates of deposit.

The variable universal life insurance policy was unsuitable for MS because: (1) MS had no need for life insurance; and (2) based on MS's income and net worth, she did not have the financial ability to keep the variable universal life insurance policy in effect after the first year.

In addition to making unsuitable investment recommendations to customer MS, Bailey also misrepresented and omitted to state certain material facts. Specifically he: (1) falsely represented to MS that the variable universal life insurance policy was not life insurance; (2) falsely represented to MS that the variable universal life insurance policy would provide her with tax-free income with low risk to principal; (3) misrepresented MS's investment experience on new account forms; and (4) failed to adequately disclose to MS the risks associated with the variable universal life insurance policy, including the ten year surrender periods associated with the investments and the penalties associated with early withdrawals.

- c. At the time of Bailey's recommendation, Customer JW was an owner of an oil field services company with plans to retire in one year. Bailey recommended that JW switch from one variable annuity to another, without fully disclosing the costs or benefits associated with such switch. Based on Bailey's recommendation, on approximately November 15, 2000, JW purchased a \$217,000 variable annuity through a 1035 exchange.

The variable annuity switch was unsuitable for JW because: (1) it subjected him to surrender fees totaling \$14,000 with no substantial benefit derived from the switch; and (2) the sub-account allocations for JW's variable annuity were inconsistent with his investment objectives and risk tolerance.

In addition to making unsuitable investment recommendations to customer JW, Bailey also misrepresented and omitted to state certain material facts. Specifically Bailey: (1) failed to tell the customer that he would incur significant surrender fees on the switch; (2) misrepresented

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the customer's investment experience on a new account form; and (3) failed to discuss the sub-account allocations for the variable annuity with JW.

- d. During the relevant time period, customer JH was a 64 year old farmer with no dependents and no need for life insurance. Based on Bailey's recommendation, on approximately October 12, 2000, customer JH purchased a \$200,000 variable annuity policy; and on approximately December 21, 2000, he made an initial payment of \$100,000 to purchase a \$2.1 million face value variable universal life insurance policy. The variable life insurance investment was unsuitable for JH because he had no need for life insurance. The variable annuity investment was unsuitable for JH because the sub-account allocations were inconsistent with his investment objectives.

In addition to making unsuitable investment recommendations to customer JH, Bailey also misrepresented and omitted to state certain material facts. Specifically Bailey: (1) falsely represented that the variable universal life insurance policy that he recommended and sold to JH was primarily an investment with an insurance component; (2) failed to discuss the sub-account allocations for the variable universal life insurance or the variable annuity with JH; and (3) failed to adequately disclose the risks associated with either of the investments recommended to JH including, including the ten year surrender periods associated with the investments and the penalties associated with early withdrawals.

Such acts, practices, and course of conduct constitute separate and distinct violations of Section 10b of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and NASD Conduct Rules 2110, 2120 and 2310 by Jerry Don Bailey.

- B. The Respondent also consents to the imposition, at a maximum, of the following sanctions:

A bar from association with any NASD member in any capacity.

Pursuant to IM-8310-2(f), a bar or expulsion shall become effective upon approval or acceptance of this AWC by the NAC.

III.

OTHER MATTERS

Respondent understands that if he is barred or suspended from associating with any NASD member, he becomes subject to a statutory disqualification as that term is defined in Section

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, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce him to submit it.

9-19-05
Date


Jerry Don Bailey

Reviewed by:

Counsel for Respondent

Accepted by NASD:

9/21/2005
Date

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

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