

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E062004027401**

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REGISTRATION & DISCLOSURE

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

RE: Linsco/Private Ledger Corp.¹
Member Firm
CRD No. 6413

Phillip Scott Eggers
General Securities Representative
CRD No. 2064151

Pursuant to NASD Rule 9216 of FINRA's Code of Procedure, Linsco/Private Ledger Corp. and Phillip Scott Eggers ("Respondents") 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 herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondents 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

During all periods mentioned herein, Linsco/Private Ledger Corp. was a registered broker dealer with the Securities and Exchange Commission and a member of FINRA (f/k/a NASD). The firm's registration as a

¹ In January 2008, Linsco/Private Ledger Corp. changed its name to LPL Financial Corporation; however, in this AWC, the firm's original name will be used.

member of FINRA remains in effect and for the past five years, its relevant disciplinary history consists of the following:

In December 2005, FINRA accepted an AWC (E1120030718-01) whereby the firm was censured and fined \$2,400,000 for failing to establish, maintain, and enforce a supervisory system, including written procedures, reasonably designed to ensure that its registered persons adequately disclosed (1) the fees associated with mutual fund B shares; (2) the applicable breakpoints; and (3) the potential monetary difference between purchasing Class A shares, Class B shares, and Class C shares for the period the customers anticipated holding their investment. The firm's financial advisors also did not adequately consider, on a consistent basis, the suitability elements when recommending Class B or Class C shares. All of the aforementioned was in violation of NASD Conduct Rules 2110, 2310 and 3010.

In November 2005, FINRA accepted an AWC (E012002060302) whereby the firm was censured and fined \$75,000 for failing to establish, maintain, and enforce a supervisory system reasonably designed to supervise the activities of its registered persons in connection with their use of wire transfers, all in violation of NASD Conduct Rules 2110 and 3010.

In November 2004, FINRA accepted an AWC (CAF040093) whereby the firm was censured and fined \$450,000 for failing to have a supervisory system reasonably designed to ensure that Forms U4 and U5 were timely filed during the period from January 2002 through March 2004, all in violation of NASD Conduct Rules 2110 and 3010, and Article V, Sections 2(c) and 3(b) of FINRA's By-Laws.

In February 2003, FINRA accepted an AWC (CMS030029) whereby the firm was fined \$5,000 for failing to establish a supervisory system reasonably designed to supervise the firm's communications with the public via electronic media, in violation of NASD Conduct Rules 2110 and 3010.

Phillip Scott Eggers entered the securities industry in June 1990 as a General Securities Representative with a member of FINRA. From January 1998 to the present, he has been registered with FINRA member firm Linsco/Private Ledger Corp. as a General Securities Representative and as a General Securities Principal. He has no disciplinary history.

OVERVIEW

This matter involves unsuitable recommendations of securities in 1999 and 2000 by Phillip Scott Eggers, a registered representative of Linsco/Private Ledger Corp., to six customers who had retired from their jobs at Procter & Gamble, rolled over their profit sharing plan accounts to Individual Retirement Accounts, and set up these accounts for systematic withdrawals under the provisions of Section 72(t) of the Internal Revenue Code. At times, Eggers used discretion, without written authority, to effect sales to fund certain of these withdrawal transactions. He also distributed misleading sales literature to the customers. Egger's employing member firm, Linsco/Private Ledger Corp., failed to reasonably supervise him.

FACTS AND VIOLATIVE CONDUCT

1. During 1999, Phillip Scott Eggers, a registered representative with Linsco/Private Ledger Corp., conducted two seminars that were attended by employees of Procter & Gamble ("P & G"). The employees maintained company-sponsored profit sharing plan accounts with their employer, which were principally invested in P & G stock. At the seminars, Eggers presented certain investment strategies, including a program under which they could retire from their jobs, withdraw their cash and P & G stock from their company-sponsored Profit Sharing Trust Plan retirement accounts and deposit the funds/stock into Individual Retirement Accounts at Linsco/Private Ledger Corp. for the purchase of investments recommended by Eggers.

Eggers told the attendees that Section 72(t) of the Internal Revenue Code allowed for withdrawals from qualified retirement plans by persons under the age of 59 ½ without the ordinary ten-percent penalty. Such withdrawals generally must be taken as "substantially equal periodic payments" that must last for five years or until the individual reaches age 59 ½, whichever is longer. The amount of the payments must be calculated according to one of three methods, two of which result in amounts that are fixed for the term of the withdrawals.¹ Eggers told the attendees that they could elect this option by taking early retirement from the employer, rolling over their profit sharing plan accounts to IRA accounts, and investing in portfolios that would be intended to generate returns to fund the withdrawals. Seminar attendees who expressed an interest then met individually with Eggers to discuss how this election could be applied to their particular financial situation and objectives.

¹ Revenue Ruling 2002-62 allowed individuals who had selected one of these two methods to make a one-time switch to the third method in order to reduce the size of required distributions.

For the individual meetings, Eggers utilized a return projection program to prepare projected return spreadsheets that calculated returns on the basis of two assumptions: a 12% average annual rate of return, and a withdrawal rate of approximately 8%. During late 1999 through mid-2000, six customers elected to retire from their jobs with P & G, roll over the balance in their profit sharing plan accounts to IRA accounts, and invest in securities recommended by Eggers.

The six customers ranged in ages from 39 to 57. All six customers elected to set up their Section 72(t) withdrawal schedules for the maximum withdrawal amount permitted by Internal Revenue Service regulations.

Eggers recommended that the six customers principally allocate their IRA accounts to mutual funds, unit investment trusts, and to allocate a relatively small amount to individual equities. Many of the mutual funds that Eggers recommended were heavily allocated to growth securities. During the market decline that began at approximately the same time as the six customers' initial investments, the six customers' IRA accounts declined substantially in value. This decline was exacerbated by the relatively large allocation to "growth" mutual funds, and by the systematic withdrawals the six customers were required to take under Section 72(t). The six customers invested a total of \$2,841,000 with Eggers. By 2004, the six customers' accounts had sustained investment losses of \$597,000. As a result of these investment losses, and the customers' withdrawals pursuant to Section 72(t), the total decline in the value of their accounts was approximately \$1,425,133.

Eggers's recommendations to the six customers were not suitable for them because he did not have reasonable grounds for believing that his portfolios of mutual funds, unit investment trusts, and equities could achieve consistent annual rates of return that would be necessary to fund the 72(t) withdrawals without invading investment principal. Eggers knew, or should have known, that a portfolio allocated to growth investments likely would sustain periodic losses and be unable to generate the returns necessary to fund the systematic withdrawals. During the market decline that occurred from 2000 to 2003, Eggers encouraged the six customers to remain invested in the portfolios, believing that they would be in a better position to benefit from a market recovery.

Periodically, if there was insufficient cash in any of the six customers' accounts to fund their systematic withdrawals under Section 72(t), Eggers utilized discretion to determine which securities to sell to raise the proceeds necessary to fund the systematic withdrawals. Eggers never received written authorization from the customers to use discretion, and moreover, his firm never approved the accounts as discretionary.

Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2110, 2310 and 2510 by Respondent Phillip Scott Eggers.

2. During the period from May 1999 to June 2000, Phillip Scott Eggers, while associated with member firm Linsco/Private Ledger Corp, gave the six customers referenced above a document he had prepared which reflected a 12% annual growth rate for their respective accounts; however, his document failed to include a basis for the 12% annual growth rate.

Eggers gave one customer a document he had prepared which reflected an inflation rate of 0%; however, he failed to include with this document his basis for the 0% inflation rate.

Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 2210(d)(1)(A) by Respondent Phillip Scott Eggers.

3. During the period from May 1999 to June 2000, Linsco/Private Ledger Corp. failed to reasonably supervise Phillip Scott Eggers in connection with the activity described above. Eggers, whose office was in Plano, Texas, reported to the firm's Compliance department, which had offices in Boston, Massachusetts and San Diego, California. Eggers never sent the document he gave the six customers which reflected a 12% annual growth rate to the firm's Compliance department for review and approval. The firm's supervisory system did not provide for adequate review of the strategies employed by Eggers, his use of marketing materials, and the appropriateness of the investments he recommended to these customers.

Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 3010 by Respondent Linsco/Private Ledger Corp.

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

A censure and a monetary fine of \$125,000 against Respondent Linsco/Private Ledger Corp., of which \$25,000 is joint and several with Respondent Phillip Scott Eggers. In addition, Respondent Eggers is suspended, in all capacities, for a period of fifteen business days.

Respondents Linsco/Private Ledger Corp. and Phillip Scott Eggers agree to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. Respondents Linsco/Private Ledger Corp. and Phillip Scott Eggers have submitted Election of Payment forms showing the method by which they propose to pay the fine imposed.

Respondents Linsco/Private Ledger Corp. and Phillip Scott Eggers specifically and voluntarily waive any right to claim that they are unable to pay, now or at any

time hereafter, the monetary sanction(s) imposed in this matter.

Respondent Eggers 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 Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. 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 NASD Rule 8310 and IM-8310-1.)

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Formal Complaint issued specifying the allegations against them;
- 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 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 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.

Respondents further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of NASD Rule 9143 or the separation of functions prohibitions of NASD 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 NASD 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 actions brought by FINRA or any other regulator against Respondents;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; 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.
- 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 they may not deny the charges

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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.

Respondents certify that they have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that they 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 them to submit it.

Linsco/Private Ledger Corp. (n/k/a LPL Financial Corporation)

4/14/08
Date

By: 

Name: STEPHANIE L. BROWN
MANAGING DIRECTOR
Title: GENERAL COUNSEL

Reviewed by:



Peter W. Gillies
Counsel for Respondent Linsco/Private Ledger Corp.
LPL Financial Services
One Beacon Street, 22nd Floor
Boston, MA 02108-3106

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No. E062004027401/Linsco/Private Ledger Corp. and Phillip Scott Eggers

4-15-08
Date

Phil S. Eggers
Phillip Scott Eggers

Reviewed by:

Will S. Montgomery
Will S. Montgomery
Counsel for Respondent Eggers
Hunton & Williams
1445 Ross Avenue, Suite 3700
Dallas, TX 75202

Accepted by FINRA:

06/02/2008
Date

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

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