

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO: E3B2004013301

TO: Department of Enforcement
NASD

RE: John A. B. Black; Respondent
Investment Company / Variable Contracts Representative
CRD No. 2131246

Pursuant to Rule 9216 of NASD Code of Procedure, I submit 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 me alleging violations based on the same factual findings.

I understand 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 me; and
3. If accepted:
 - a. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against me;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about my 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. I 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. Nothing in this provision affects my testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

I also understand that my 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:

John A. B. Black entered the securities industry in February 1990 as an associated person of a member of NASD. From February 1991 until December 2004, he was registered through NYLIFE Securities, Inc. as an Investment Company / Variable Contracts Representative. He is not currently registered or associated with any member firm.

Respondent Black has no formal disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against me;
- 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, I 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.

I further specifically and voluntarily waive 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.

II.

ACCEPTANCE AND CONSENT

- A. I 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 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.

In 2001 customer EAQ was a retired 71-year-old woman, recently widowed, with a net worth of approximately \$300,000, including death benefits paid following her husband's death, and an annual income of less than \$30,000. EAQ was not sophisticated regarding investments or financial matters.

During the period from on or about November 15, 2001, until on or about January 28, 2002, based on the recommendations of John A. B. Black, EAQ purchased three single premium variable annuity contracts for approximately \$231,293.70 and seven variable universal life insurance policies for initial premiums of approximately \$68,809.88. Respondent Black earned approximately \$13,733 in commissions from the sale of those products to EAQ.

The securities products purchased by EAQ were not suitable for her. She did not need the annuitization or tax deferral features of the products. The annual premium costs of the variable universal life policies (\$12,055.88), together with the annual premiums for other life insurance policies purchased by EAQ through Respondent Black during the same period (\$4,056), were excessive in relation to EAQ's annual income. Six of the seven variable universal life insurance policies insured the lives of EAQ's son and grandchildren.

Respondent Black recommended the purchase of the variable annuity contracts and variable universal life insurance policies without having reasonable grounds to believe that his recommendations were suitable for EAQ upon the basis of the facts disclosed by EAQ as to her other security holdings and as to her

financial situation and needs.

Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2310(a). Such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Conduct Rule 2110 by Respondent Black.

2.

On or about November 15, 2001, Respondent Black falsified the information regarding EAQ on a variable annuity application by falsely stating that EAQ had previously purchased investment products.

During the period from on or about November 15, 2001, until on or about January 28, 2002, Respondent Black falsified the information regarding EAQ on three variable annuity applications and in the client profiles for seven variable universal life insurance policies, by falsely stating that EAQ had the "highest" risk tolerance, that she was "extremely willing" to risk a potential decline in value for the potential of a higher return, and that her investment objective was "aggressive growth."

Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 3110. Such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Conduct Rule 2110 by Respondent Black.

3.

In 2002 customer EMH was a 55-year-old woman, recently widowed and seasonally employed as an apple packer, with a net worth of approximately \$195,000, including death benefits paid following her husband's death, and an annual income of approximately \$15,000. EMH did not graduate from high school and was not sophisticated regarding investments and financial matters.

During the period from on or about September 24, 2002, until on or about October 24, 2002, based on the recommendations of Respondent Black, EMH purchased three variable annuity contracts for approximately \$164,765. Respondent Black earned approximately \$5,103 in commissions from the sale of the variable

annuity contracts to EMH.

The variable annuity contracts purchased by EMH were not suitable for her. She did not need the annuitization, death benefit or tax deferral features of the products. The purchase of the variable annuity contracts left EMH with insufficient liquid assets to pay her living expenses, including her mortgage payments and the premiums for a whole life insurance policy, which she purchased through Respondent Black in September 2002. EMH was required to make periodic withdrawals from her variable annuities in order to meet her living expenses.

Respondent Black recommended the purchase of the variable annuity contracts without having reasonable grounds to believe that his recommendations were suitable for EMH upon the basis of the facts disclosed by EMH as to her other security holdings and as to her financial situation and needs.

Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2310(a). Such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Conduct Rule 2110 by Respondent Black.

4.

On or about September 24, 2002, Respondent Black falsified the information regarding EMH on a variable annuity application by falsely stating that EMH had previously purchased investment products.

During the period from on or about September 24, 2002, until on or about October 24, 2002, Respondent Black falsified the information regarding EMH on three variable annuity applications by falsely stating that EAQ had the "highest" risk tolerance, that she was "extremely willing" to risk a potential decline in value for the potential of a higher return, and that her investment objective was "aggressive growth."

Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 3110. Such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Conduct Rule 2110 by Respondent Black.

B. I also consent to the imposition, at a maximum, of the following sanctions:

John A. B. Black shall be barred from associating with any member of NASD in any capacity. The sanctions imposed herein shall be effective on a date set by NASD staff. 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

A. I understand that if I am barred or suspended from associating with any NASD member, I become 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, I may not be associated with any NASD 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.)

I certify that I have read and understand all of the provisions of this AWC and have 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 me to submit it.

3-15-06
Date

John A. B. Black
John A. B. Black
Respondent

Reviewed by:

P. Arley Harrel
P. Arley Harrel
Counsel for Respondent
Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380

Accepted by NASD:

March 31, 2006

Date

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

David Utevsky

David Utevsky

Regional Counsel

NASD Department of Enforcement

601 Union Street, Suite 1616

Seattle, WA 98101

(206) 624-0790

NASD District Director

James Dawson

NASD, District 3—Seattle

601 Union Street, Suite 1616

Seattle, WA 98101

(206) 624-0790