FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. CHRISTOPHER B. ARIOLA, (CRD No. 2957096). Respondent.	DISCIPLINARY PROCEEDING No. 2012034139101 HEARING OFFICER:

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From late December 2011 through July 2012, while he was registered with Bay Mutual Financial, LLC ("BMF"), Respondent recommended that three elderly retirees invest a substantial portion of their limited retirement assets in certain gold and energy stocks. These recommendations were unsuitable given these customers' financial circumstances, investment objectives, and low risk tolerances, and because the recommendations resulted in these customers' accounts being unduly concentrated in gold and energy stocks. During the same period, Respondent made similar unsuitable recommendations with respect to a former BMF customer's TD Ameritrade retirement account that Respondent controlled on the former customer's behalf. As a result of his unsuitable recommendations, these four customers suffered a combined total of approximately $140,000 in realized losses and Ariola violated NASD Rule 2310 and FINRA Rule 2010.

2. From December 2009 through July 2012, while he was registered with BMF, Ariola obtained access to a former BMF customer's TD Ameritrade retirement account and engaged in securities trading in that account on the customer's behalf without providing the required written notice of such outside brokerage account to his employing firm, BFM, or of his registered status with BMF to TD Ameritrade. As a result of the foregoing, Ariola violated NASD Rule 3050(c) and FINRA Rule 2010.

RESPONDENT AND JURISDICTION

3. Respondent first became registered with FINRA as a General Securities Representative through a member firm in October 1997. Respondent joined FINRA member firm BMF in September 2004. He was associated with BMF until September 2012, when he was permitted to resign from the firm. Thereafter, Respondent was associated with another FINRA member firm until September 3, 2014.

4. Although Respondent is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) this Complaint was filed within two years after the effective date of termination of Respondent's registration with a FINRA member firm, namely September 3, 2014, and (2) this Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

Background

5. While he was registered with BMF, Respondent worked on a team servicing the 401(k) retirement plan for a bus transportation company in California (hereinafter, referred to as the "Bus Company").

6. From July 2007 through August 2012, the Bus Company had two types of retirement plans available for its employees. The first was a defined contribution plan or "401(k)" plan and the second was a deferred compensation or "457" plan. Both plans offered participants various mutual fund investment options.

7. Respondent's primary responsibilities at BMF involved conducting investor education meetings for Bus Company employees and generally assisting them with decisions about investment elections and distribution options for their 401(k) plans. If a Bus Company employee elected to roll over his or her 401(k) into a BMF Individual Retirement Account ("IRA"), Respondent would service such BMF IRAs, including by providing investment recommendations to some BMF customers.

8. At various times while he was associated with BMF, Respondent was the broker-of-record for and serviced BMF IRAs belonging to former Bus Company employees WF, LH, SH, and DS, whom Respondent met through his work servicing the Bus Company 401(k) plan.

Respondent Made Unsuitable Recommendations to His Customers to Invest in Gold and Energy Stocks

9. In general, Respondent initially recommended that his customers invest in bond mutual funds and closed-end funds ("CEFs"). In early 2012, however, Respondent recommended that his customers invest heavily in gold and energy stocks, including high-yield dividend producing stocks that exposed his customers to significant investment risk.

10. Some of the gold and energy stocks that Respondent recommended were negatively impacted by corporate events or announcements that occurred shortly before he recommended the stocks to his customers. For example, shortly before Respondent began recommending that Customers LH, SH, and DS invest in James River Coal stock (JRCC), Moody's changed its outlook on the company from stable to negative and affirmed the

company's "B3" credit rating. Similarly, shortly before Respondent recommended that Customers LH, SH, DS, and WF invest in Hugoton Royalty Trust stock (HGT), the company announced an upcoming court hearing on approval of a proposed litigation settlement that would require the company to pay approximately $29.6 million. Despite the risk associated with such negative events, Respondent recommended these stocks to his customers.

Customers LH and SH

11. Customer LH and Customer SH are a married couple who both worked as bus drivers for over 30 years. They both retired from the Bus Company in February 2010.

12. Customer LH was born in [redacted] and was 72 years old when he retired and opened his BMF IRA with Respondent.

13. Customer SH was born in [redacted] and she was 64 years old when she retired and opened her BMF IRA with Respondent.

14. Customer LH has two years of college education and Customer SH has a high school diploma. Prior to opening their BMF IRAs, both Customer LH's and Customer SH's investment experience was limited to their retirement plan accounts. Throughout the time they invested in the 401(k) plan, however, Customers LH and SH relied upon their financial advisors to select the investments and asset allocation for their accounts.

15. In February 2010, Customers LH and SH rolled their 401(k)s, valued at approximately $250,000 and $273,000, respectively, into BMF IRAs with Respondent. Customers LH and SH had no other retirement accounts.

16. The new account forms for Customers LH's and SH's BMF IRAs reflect a total net worth (excluding their residence) of $600,000 to $700,000. Thus, Respondent knew that the

vast majority of Customers LH's and SH's net worth would be invested in their BMF IRAs with Respondent.

17. Respondent further knew that both Customers LH's and SH's investment objectives were income and that their risk tolerances were low, as reflected on their BMF IRA new account forms.

18. By December 2011, Customer LH's BMF IRA was valued at approximately $210,700 and allocated 2 percent cash, 24 percent dividend yielding stocks, and 74 percent in bond mutual funds. Beginning in March 2012 through June 2012, in a series of transactions, Respondent recommended that Customer LH invest in nine gold and energy stocks. By May 2012, Respondent had concentrated approximately 80 percent of Customer LH's BMF IRA into the recommended gold and energy stocks and thereby significantly increased the risk of loss in Customer LH's BMF IRA. Indeed, in May 2012, Customer LH's BMF IRA declined in value by over $49,000.

19. By December 2011, Customer SH's BMF IRA was valued at approximately $290,200 and allocated 3 percent cash, 23 percent dividend yielding stocks, and 74 percent in bond mutual funds. Beginning in March 2012 through June 2012, in a series of transactions, Respondent recommended that Customer SH invest in nine gold and energy stocks. By May 2012, Respondent had concentrated approximately 80 percent of Customer SH's BMF IRA into the recommended gold and energy stocks and thereby significantly increased the risk of loss in Customer SH's BMF IRA. Indeed, in May 2012, Customer SH's BMF IRA declined in value by over $60,000.

20. Ultimately, Customers LH and SH suffered realized losses of approximately $40,000 and $53,000, respectively, as a result of Respondent's recommendation that they invest in the recommended gold and energy stocks.

Customer DS

21. Customer DS was born in [redacted] and was 64 years old when he retired and opened his BMF IRA with Respondent.

22. Customer DS's highest level of education is high school and he worked for the Bus Company as a bus driver for 37 years before retiring in July 2010.

23. When he retired, Customer DS's prior investment experience was limited to his Bus Company retirement plan accounts. Throughout the time that Customer DS invested in his company-sponsored retirement plan accounts, however, he relied upon his financial advisors to select the investments and asset allocation for those accounts.

24. In August 2010, Customer DS rolled over his 401(k) and 457 plan balances, totaling approximately $454,000, into a BMF IRA with Respondent. Customer DS had no other retirement accounts.

25. The new account form for Customer DS's BMF IRA reflects that he had a total net worth (excluding his residence) of $450,000 to $500,000. Thus, Respondent knew that the vast majority of Customer DS's net worth would be invested in his BMF IRA with Respondent.

26. Respondent understood that Customer DS's objective was income and that his risk tolerance was low, as reflected on his BMF IRA new account form.

27. By December 2011, Customer DS's BMF IRA was valued at approximately $401,200 and allocated 32 percent in stable value/money market funds, 22 percent in large cap stock, 30 percent in mid-cap stock, and 15 percent in a utility mutual fund. Beginning in late

December 2011 through May 2012, in a series of transactions, Respondent recommended that Customer DS invest a significant portion of his retirement assets in twelve gold and energy stocks. By May 2012, Respondent had concentrated 44 percent of Customer DS's BMF IRA into the recommended gold and energy stocks and thereby significantly increased the risk of loss in Customer DS's BMF IRA. Indeed, in May 2012, Customer DS's BMF IRA declined in value by approximately $42,000.

28. Ultimately, Customer DS suffered realized losses of approximately $45,000, as a result of investing in the recommended gold and energy stocks.

Respondent Engaged in Unsuitable and Undisclosed Securities Trading in a Former BMF Customer's TD Ameritrade IRA

Customer WF

29. Customer WF was born in [redacted] and was 60 years old when he retired in July 2007 and opened his BMF IRA with Respondent.

30. Customer WF's highest level of education is high school and he worked for the Bus Company as a bus driver for 29 years before retiring in July 2007.

31. When he retired, Customer WF's prior investment experience was limited to his Bus Company retirement plan accounts. Throughout the time that Customer WF invested in his company-sponsored retirement plan accounts, however, he relied upon his financial advisors to select the investments and asset allocation for those accounts.

32. In July 2007, Customer WF rolled over his 401(k) and 457 plan balances, totaling approximately $474,000, into a BMF IRA with Respondent. Customer WF had no other retirement accounts.

33. The new account form for Customer WF's BMF IRA reflects that he had a total net worth (excluding his residence) of $600,000 to $700,000. Thus, Respondent knew that the vast majority of Customer WF's net worth would be invested in his BMF IRA.

34. The new account form for Customer WF's BMF IRA reflects that Customer WF's risk tolerance is "moderate."

35. Although the new account form for Customer WF's BMF IRA indicates that his investment objective was "long-term growth," Respondent knew Customer WF's primary investment objective was income.

36. By December 2008, Customer WF's retirement portfolio in his BMF IRA had declined by over 50 percent from the initial rollover amount.

37. By December 2009, after accounting for monthly distributions, Customer WF's BMF IRA had suffered approximately $179,000 in losses.

38. In December 2009, Respondent encouraged Customer WF to transfer his IRA away from BMF to another firm. To this end, Respondent visited Customer WF at his home and helped him set up an account through TD Ameritrade's online platform. Thereafter, Customer WF transferred his remaining retirement assets, valued at approximately $170,000, from his BMF IRA into the TD Ameritrade account that Respondent helped him establish.

39. From December 2009 through July 2012, Respondent executed 863 securities transactions in Customer WF's TD Ameritrade account on WF's behalf. Specifically, although Respondent was not named on the account, Customer WF provided Respondent with Customer WF's login and password information for his TD Ameritrade account, which Respondent used to access TD Ameritrade's online platform from his BMF computer terminal and enter securities transactions in Customer WF's TD Ameritrade account.

40. Respondent exercised discretion over and/or controlled Customer WF's TD Ameritrade account. Specifically, Respondent elected what investments to buy or sell and when to buy or sell. Moreover, after March 2010, Respondent began receiving account statements and confirmations for the account via electronic delivery, after the email address of record for the TD Ameritrade account was changed to Respondent's personal email.

41. By December 2011, the value of Customer WF's TD Ameritrade IRA had declined substantially.

42. As of December 2011, Customer WF's TD Ameritrade account was valued at approximately $23,800 and was allocated 99% in stocks. Starting in March 2012 through July 2012, Respondent began purchasing the same gold and energy stocks in Customer WF's TD Ameritrade account that he was recommending to BMF customers. Specifically, in a series of transactions, Respondent bought and sold ten gold and energy stocks in Customer WF's TD Ameritrade account. By engaging in short-term trading of gold and energy stocks in Customer WF's TD Ameritrade account, Respondent increased the risk of loss to Customer WF's already depleted and limited retirement assets. Moreover, while Customer WF sought to invest in income-generating investments, Respondent typically only held these securities in Customer WF's TD Ameritrade account for less than 20 days and, thus, Customer WF did not receive the benefit of investing in high yield dividend producing securities.

43. Ultimately, Customer WF suffered approximately $4,700 in realized losses in the recommended gold and energy stocks.

44. From December 2009 through July 2012, Respondent never provided his employer, BMF, with written notice of his role with respect to Customer WF's TD Ameritrade account, *i.e.* that he was exercising discretion over and/or controlling the account.

45. From December 2009 through July 2012, Respondent never provided TD Ameritrade with written notice of his registered status with BMF. In fact, Respondent attempted to conceal his registered status from TD Ameritrade by advising Customer WF that, if anyone at TD Ameritrade asked who was entering trades in the account, Customer WF was to tell TD Ameritrade only that a "friend" was helping him with the investment decisions.

FIRST CAUSE OF ACTION
Unsuitable Recommendations
(Violations of NASD Rule 2310 and FINRA Rule 2010)

46. The Department realleges and incorporates by reference paragraphs 1-45 above.

47. NASD Rule 2310 requires that a registered representative have "reasonable grounds" for believing that a recommendation is suitable for a customer based upon the customer's disclosed security holdings and financial situation and needs. The rule also requires a broker to educate clients about the risks associated with any recommendations. Before a broker recommends a risky or speculative investment, he must not only be satisfied that the investments are appropriate for the particular customer, but he must also be satisfied that the customer understands and is willing to assume those risks.

48. Respondent recommended that Customers LH, SH, DS, and WF – all elderly retirees with limited financial resources, limited investment experience, and low to moderate risk tolerances – over-concentrate their retirement portfolios in gold and energy stocks, some of which were high yield, high risk securities. Respondent also engaged in short-term trading with Customer WF's limited retirement assets held in the TD Ameritrade account.

49. Respondent lacked reasonable grounds for believing that: (i) the recommended gold and energy stocks, individually and/or collectively, were suitable for Customers LH, SH, DS, and WF; and (ii) that these customers understood and were willing to assume the investment

risks particular to the recommended gold and energy stocks. The risk of loss associated with concentrating these customers' retirement portfolios in gold and energy stocks, as well as the high yield, high risk securities recommended by Respondent, were inconsistent with the customers' risk tolerances and made Respondent's recommendations unsuitable.

50. As a result of the foregoing conduct, Ariola violated NASD Rule 2310 and FINRA Rule 2010.

SECOND CAUSE OF ACTION
Transactions For or By Associated Persons
(Violations of NASD Rule 3050(c) and FINRA Rule 2010)

51. The Department realleges and incorporates by reference paragraphs 1-45 above.

52. NASD Rule 3050(c) requires that an associated person "prior to opening an account or placing an initial order for the purchase or sale of securities with another member, shall notify both the employer member and the executing member, in writing, of his or her association with the other member; provided, however, that if the account was established prior to the association of the person with the employer member, the associated person shall notify both members in writing promptly after becoming so associated." Per NASD Rule 3050(e), this requirement applies to any account or order in which an associated person has a financial interest or with respect to which such person has discretionary authority.

53. In December 2009, while he was registered with BMF, Respondent assisted Customer WF in opening a TD Ameritrade account.

54. From December 2009 through July 2012, Respondent engaged in securities transactions in the TD Ameritrade account on behalf of Customer WF.

55. From December 2009 through July 2012, Respondent exercised discretion over and/or otherwise controlled Customer WF's TD Ameritrade account.

56. Respondent failed to provide the required prior written notice to his employing firm, BMF, of the TD Ameritrade account.

57. Respondent failed to provide the required prior written notice to TD Ameritrade of his registered status with BMF.

58. As a result of the foregoing conduct, Ariola violated NASD Rule 3050(c) and FINRA Rule 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;

B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and

C. order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

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