

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Walter Marino (CRD No. 2121623),

Respondent.

DISCIPLINARY PROCEEDING
No. 2015046537501

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In May and June 2014, Respondent Walter Marino recommended unsuitable replacements (also known as exchanges) of non-qualified variable annuities to two customers without having a reasonable basis for recommending the transactions.
2. Marino received commissions of approximately \$60,000 from the unsuitable transactions. Marino's customers, however, received no benefit from the exchanges Marino recommended. Indeed, both customers suffered financial harm due to the costs incurred as a result of the annuity replacements.
3. Marino's recommendation to customer AA resulted in her incurring an \$82,523.23 surrender charge. In addition, in recommending that AA and the second customer, TM and her husband MM (collectively, "TM/MM"), replace non-qualified annuities, Marino failed to utilize the tax-free exchange available under Section 1035 of the

Internal Revenue Code (“1035 exchange”). In so doing, Marino caused both AA and TM/MM to incur significant tax liabilities.

4. The new annuities that Marino recommended to replace those being surrendered also resulted in an increase in annual mortality and expense charges, a new, annual advisory fee of 1.5% of the new annuity’s value, and new surrender periods for both AA and TM/MM.
5. By recommending unsuitable annuity replacements that benefitted him but caused substantial financial harm to his customers, Marino violated FINRA Rules 2111, 2330(b) and 2010.
6. To evade the supervisory scrutiny associated with variable annuity replacements, Marino lied to his employer, Legend Equities Corporation (“Legend Equities” or the “Firm”) (BD No. 30999). Specifically, in multiple documents provided to Legend Equities, Marino misrepresented the source of funds being used to purchase the new annuities as being from a “check” or money market funds and stated that the annuities being purchased were not replacing existing annuities when that statement was untrue. As a result of this conduct, Marino violated FINRA Rule 2010.
7. In addition, by creating Firm records that misrepresented (i) the source of funds and (ii) that the annuity purchases did not involve replacements, Marino violated FINRA Rules 4511 and 2010.

RESPONDENT AND JURISDICTION

8. Respondent Marino first became registered with FINRA as a General Securities Representative (“GS”) through his association with a member firm in 1993. He was

registered with ten different member firms between 1993 and 2002, when he joined Legend Equities. Marino was registered as a GS through Legend Equities until August 11, 2015.

9. Marino's most recent member firm filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") with FINRA stating that Marino was terminated effective December 5, 2016.
10. Although Respondent is no longer registered with FINRA 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) the Complaint was filed within two years after the effective date of termination of Respondent's registration with a member firm; and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

FIRST CAUSE OF ACTION
Unsuitable Recommendations
(Violations of FINRA Rules 2330(b), 2111 and 2010)

11. The Department re-alleges and incorporates by reference paragraphs 1 through 10 above.
12. FINRA Rule 2330(b) prohibits a registered representative from recommending the purchase or exchange of a deferred variable annuity, unless the representative has a reasonable basis to believe that the purchase or exchange meets the suitability requirements of FINRA Rules 2111 and 2330(b)(1)(A).
13. For a variable annuity exchange, Rule 2330(b)(1)(B) also requires the representative to take into consideration whether (i) the customer would incur a surrender charge, be

subject to the commencement of a new surrender period, lose existing benefits (such as death, living, or other contractual benefits), or be subject to increased fees or charges (such as mortality and expense fees, investment advisory fees, or charges for riders and similar product enhancements); and (ii) the customer would benefit from product enhancements and improvements.

14. As set forth below, Marino recommended unsuitable variable annuity exchanges to two customers, AA and TM/MM, without a reasonable basis for recommending the transactions.

Customer AA

The Initial Variable Annuity Purchase

15. Customer AA was born in 1936 and is a widowed, retired high school teacher living in Florida. As of May 2014, the time her annuity was replaced, her liquid net worth was \$3 million; her annual income from investments was \$250,000; her investment objectives were “income,” “safety of principal and income,” and “safety of principal and growth”; and her risk tolerance was “moderately conservative.”
16. In August 2012, Marino sold AA a non-qualified variable annuity issued by Jackson National Life Insurance (“JNL”) known as the “Perspective II” (“JNL Annuity”). AA invested a total of \$1,093,623.17 in the JNL Annuity. The investment was allocated equally among two subaccounts. The total mortality and expense charge and administrative fee for the JNL Annuity was 1.25% annually. In addition, the JNL Annuity had a five-year surrender period with a declining charge of 8%, 7%, 6%, 4% and 2%, which was set to expire in August 2017.

17. As of May 7, 2014, the JNL Annuity had a contract value of \$1,308,168.00, including a profit of \$214,544.83.

The Unsuitable Replacement Purchase

18. In or around May 2014, Marino recommended to AA that she replace the JNL Annuity with a non-qualified variable annuity sold by The Variable Annuity Life Insurance Company (“VALIC”) known as the “Equity Director” (“VALIC Annuity”). Although Marino was aware that AA would incur a 7% surrender charge under the JNL Annuity, he did not disclose the charge to AA.

19. Marino also recommended that AA open a managed account at Legend Advisory Corporation (“LAC”), an affiliate of Legend Equities, to manage the VALIC Annuity subaccounts. The advisory fee for the LAC managed account was 1.5% annually.

20. Based on Marino’s recommendation, AA surrendered her JNL Annuity on May 7, 2014, immediately incurring an \$82,523.23 surrender charge. Marino instructed AA to direct JNL to deliver the net surrender proceeds of \$1,221,787.28 to VALIC to purchase the VALIC Annuity. Because the surrender of the JNL VA was not done through a tax-free 1035 exchange, AA’s net profit on the sale – \$128,164.11 – was a taxable gain.

21. Marino received a commission of approximately \$50,000 on AA’s VALIC Annuity purchase. Marino also received a portion of the annual advisory fee for the LAC managed account.

22. AA’s investment in the VALIC Annuity was allocated to five sub-accounts selected by LAC. The VALIC Annuity has a mortality and expense charge and administrative fee ranging from 1.6% to 2.1% annually, depending upon the subaccounts selected.

The VALIC Annuity also has a five-year surrender period during which time withdrawals were subject to a 5% surrender charge.

23. Marino's recommendation for the replacement of AA's JNL Annuity was unsuitable because it resulted in AA incurring an \$82,523.23 surrender charge. Marino's recommendation was unsuitable for the additional reason that the VALIC Annuity did not provide any benefit to AA that outweighed the increased fees and expenses and the new surrender period AA incurred as a result of the exchange. Marino's recommendation was also unsuitable because the JNL Annuity replacement was not done via a 1035 exchange, causing AA to incur substantial tax liabilities.

Customers TM and MM

24. Customers TM and MM are married and have three children. TM was born in 1960 and MM was born in 1959. TM is a school teacher and MM is a tradesman in the construction industry. As of June 2014, when Marino made his unsuitable recommendation, their liquid net worth was \$100,000 - \$250,000; their annual household income was \$100,000 - \$250,000; their investment objective was long term growth; and their risk tolerance was high.

The Initial Annuity Purchase

25. In May 2009, Marino sold TM/MM a non-qualified JNL Annuity (the Perspective II). TM/MM invested \$146,980 in the JNL Annuity. The investment was allocated among two subaccounts, 20% to one subaccount, and 80% to the other. The total mortality and expense charge and administrative fee for the JNL Annuity was 1.35% annually. In addition, the JNL Annuity had a five-year surrender period which expired in May 2014.

26. As of June 12, 2014, the JNL Annuity had a value of approximately \$246,000.00, including a profit of approximately \$101,000.00.

The Unsuitable Replacement Purchase

27. In June 2014, Marino recommended to TM/MM that they replace the JNL Annuity with a non-qualified VALIC Annuity (the Equity Director). As he did with AA, Marino also recommended that TM/MM open a managed account at LAC to manage the VALIC Annuity subaccounts. The advisory fee for the LAC managed account was 1.5% annually.

28. On June 12, 2014, TM/MM surrendered their JNL Annuity. Marino instructed TM/MM to direct JNL to deliver the net surrender proceeds of \$245,990.00 to VALIC to purchase the VALIC Annuity. Because the transaction was not done via a tax-free 1035 exchange, TM/MM's net profit on the sale – \$100,990.00 – was a taxable gain.

29. Marino received a commission of approximately \$10,000 on TM/MM's VALIC Annuity purchase. Marino also received a portion of the annual advisory fee for the LAC managed account.

30. TM/MM's investment in the VALIC Annuity was allocated to eleven sub-accounts selected by LAC. The VALIC Annuity has a mortality and expense charge and administrative fee ranging from 1.6% to 2.1% annually, depending upon the subaccounts selected. The VALIC Annuity also has a five-year surrender period during which time withdrawals were subject to a 5% surrender charge.

31. Marino's recommendation for the replacement of TM/MM's JNL Annuity was unsuitable because the VALIC Annuity did not provide any benefit to TM/MM that

outweighed the increased fees and expenses and the new surrender periods TM/MM incurred as a result of the exchange. Moreover, Marino's recommendation was unsuitable because the JNL Annuity replacement was not done via a 1035 exchange, causing TM/MM to incur substantial tax liabilities.

32. As set forth above, Marino recommended unsuitable variable annuity replacements to AA and TM/MM, and did not have a reasonable basis to believe that the transactions were suitable. As a result of this conduct, Marino violated FINRA Rules 2111, 2330(b) and 2010.

SECOND CAUSE OF ACTION
Misrepresentations
(Violations of FINRA Rule 2010)

33. The Department re-alleges and incorporates by reference paragraphs 1 through 32 above.
34. FINRA Rule 2010 requires that FINRA members and associated persons observe high standards of commercial honor and just and equitable principles of trade. The submission of false or misleading information on a variable annuity application is a violation of FINRA Rule 2010.
35. FINRA Rule 2330(b)(1) requires associated persons recommending a variable annuity to document their determination that the transaction is suitable in accordance with requirements of FINRA Rules 2111 and 2330(b)(1), including whether the transaction involves a replacement or exchange.
36. Legend Equities' written supervisory procedures ("WSPs") required registered representatives to document the suitability determination required by FINRA Rules 2111 and 2330(b)(1) on the appropriate variable annuity application forms.

37. Legend Equities' WSPs further provide that after the registered representative completes the variable annuity account application forms, a registered principal would "review and determine whether he or she approves of the recommended purchase or exchange of the ... variable annuity."
38. Marino knew that Legend Equities' approval of AA's and TM/MM's VALIC Annuity purchases would be based upon information provided by Marino in the respective variable annuity account application forms.
39. AA's VALIC Annuity account application forms included (i) an "Equity Director Fixed and Variable Annuity Application" (the "Annuity Application"); (ii) a Legend Equities "Variable Annuity Disclosure Form" (the "Disclosure Form"); and (iii) a VALIC Annuity Suitability Questionnaire ("VALIC Questionnaire"). Marino personally filled out all of these documents and dated them May 7, 2014.
40. TM/MM's VALIC Annuity account application forms included (i) an Annuity Application; (ii) a Disclosure Form; and (iii) a VALIC Definition of Replacement form ("Definition of Replacement"). Marino personally filled out all of these documents and dated them June 12, 2014.
41. To conceal from Legend Equities the fact that AA's and TM/MM's VALIC Annuity purchases were actually exchanges/replacements, and avoid the enhanced supervisory scrutiny that variable annuity exchanges/replacements are subjected to, Marino made numerous material misrepresentations and omissions of fact in AA's and TM/MM's Annuity account application forms.

False Statements in AA's and TM/MM's Annuity Applications

42. First, AA's and TM/MM's Annuity Applications contain a section entitled "Required Affirmations" which asks the customer "Will this annuity replace, discontinue or change any existing life Insurance or annuity contract in this or any other company?" Marino falsely answered "no" in response to that question.
43. In addition, in the section of the Annuity Applications entitled "Dealer/Licensed Agent Information and Signatures," Marino falsely answered "no" to the question "Do you have any reason to believe the annuity applied for will replace or change any existing life insurance or annuity?" and falsely stated "By signing this form, I certify that I have truly and accurately recorded herein the information provided by the applicant."

False Statements in AA's and TM/MM's Disclosure Forms

44. Next, AA's and TM/MM's Disclosure Forms contained a section entitled "Replacement/Exchange" that was to be completed if the sale involved a replacement or exchange. That section seeks detailed information concerning the variable annuity to be replaced, including the company and product names, relevant charges and fees, the amount of any surrender charge, and the number of years remaining. Marino omitted all information concerning the JNL Annuities being replaced, and wrote "N/A" (not applicable) in that section on both Disclosure Forms, representing that the transaction did not involve a replacement, which was false.
45. AA's and TM/MM's Disclosure Forms also sought information concerning the source of the funds used to purchase the variable annuities. Marino failed to disclose on both Disclosure Funds that the source of the funds was the surrender of the JNL Annuity.

Instead, Marino wrote that the source of funds was a “check,” which was false. He left blank the portion of the form asking whether the source of funds was the surrender of a variable annuity.

46. In addition, AA’s and TM/MM’s Disclosure Form contained a section entitled “Representative Attestation,” signed by Marino, that states “To the best of my knowledge and belief, the applicant’s statement as to whether or not an existing life insurance or annuity contract is being replaced is true and accurate.” As Marino knew, “the applicant’s statements” concerning that subject were all false.

False Statements in AA’s VALIC Questionnaire

47. AA’s VALIC Questionnaire asks the customer “Will the proposed annuity replace any product?” Marino checked “no” in response to that question. The Questionnaire also asks “What is the source of funds for the purchase of the proposed annuity?” to which Marino responded “check,” but failed to disclose that the “check” was actually the proceeds from AA’s surrender of her JNL Annuity.

False Statements in TM/MM’s Definition of Replacement Form

48. TM/MM’s Definition of Replacement Form states that its purpose is “to determine whether or not the proposed transaction is a replacement.” In this connection, the form asks the purchaser “As part of your purchase of a ... new annuity contract, has existing coverage been ... surrendered ... or otherwise terminated?” Marino falsely answered “no.” In addition, in response to the statement “To the best of my knowledge, a replacement is involved in this transaction” Marino again indicated “no,” which was also false.

Marino's Misleading Email concerning the Source of AA's Funds

49. Finally, in an email dated May 14, 2014, Legend Equities' compliance department asked Marino to provide a written explanation of the source of the \$1.2 million used to purchase AA's VALIC Annuity. Marino responded in an email that "the \$1.2 million is being funded by monies from the client's money market bank accounts," which was false.
50. As a result of the foregoing conduct, Marino violated FINRA Rule 2010.

**THIRD CAUSE OF ACTION
Falsification of Records
(Violations of FINRA Rules 4511 and 2010)**

51. The Department re-alleges and incorporates by reference paragraphs 1 through 50 above.
52. FINRA Rule 4511 requires members and associated persons to make and preserve accurate books and records as required under, among other things, FINRA rules.
53. As set forth above, FINRA Rule 2330(b)(1) requires associated persons recommending a variable annuity transaction to document whether the transaction involves a variable annuity replacement or exchange.
54. As set forth above, between May and June, 2014, Marino made false statements in the following books and records of Legend Equities by misrepresenting the source of funds being used to purchase AA's and TM/MM's VALIC Annuities and by stating that AA's and TM/MM's VALIC Annuity purchase did not involve an annuity replacement or exchange: (i) AA's Annuity Application; (ii) AA's Disclosure Form; (iii) AA's VALIC Questionnaire; (iv) TM/MM's Annuity Application; (v) TM/MM's Disclosure Form; and (vi) TM/MM's Definition of Replacement.

55. As a result of this conduct, Marino violated FINRA Rules 4511 and 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) be imposed, including that Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest; 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

Date: April 24, 2017



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