

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Walter Marino (CRD No. 2121623),

Respondent.

Disciplinary Proceeding
No. 2015046537501

Hearing Officer - LOM

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: October 6, 2017

INTRODUCTION

Disciplinary Proceeding No. 2015046537501 was filed on April 24, 2017, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Walter Marino submitted an Offer of Settlement (Offer) to Complainant dated October 4, 2017. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, 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, to the entry of

findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

SUMMARY

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.

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.

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.

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.

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.

To evade the supervisory scrutiny associated with variable annuity replacements, Marino lied to his employer, Legend. 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.

Moreover, 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.

In addition, in October 2016, while associated with Lincoln, Marino made an unsuitable recommendation to a customer to surrender a variable annuity resulting in a \$6,980.52 surrender charge. As a result of this conduct, Marino violated FINRA Rules 2111 and 2010.

RESPONDENT AND JURISDICTION

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.

On October 9, 2015, Marino became registered through Lincoln, until his termination on October 20, 2016. On October 20, 2016, Lincoln filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) with FINRA stating that Marino had been terminated effective the same day for making an unsuitable recommendation to a client to fully surrender an annuity without knowing the surrender fees that would be incurred by the client.

Marino’s most recent member firm filed a Form U5 with FINRA stating that Marino was terminated effective December 5, 2016.

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)

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).

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.

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

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.”

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.

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

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.

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.

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.

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.

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.

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

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 \$500,000 - \$1,000,000; their annual household income was approximately \$200,000; their investment objective was long term growth; and their risk tolerance was conservative - moderate.

The Initial Annuity Purchase

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.

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

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.

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.

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.

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.

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.

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)

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.

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.

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.

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.”

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.

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.

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.

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

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.

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

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 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.

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 Forms 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.

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

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

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

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.

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)

FINRA Rule 4511 requires members and associated persons to make and preserve accurate books and records as required under, among other things, FINRA rules.

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.

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/MMs VALIC Annuities and by stating that AA's and TM/MMs 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.

As a result of this conduct, Marino violated FINRA Rules 4511 and 2010.

Fourth Cause of Action
Unsuitable Recommendation
(Violations of FINRA Rules 2111 and 2010)

FINRA Rule 2111(a) provides that an associated person must have a reasonable basis to believe that a recommended transaction involving a security is suitable for the

customer, based on the information obtained through the reasonable diligence of the associated person to ascertain the customer's investment profile.

As noted in Supplementary Material .05, Rule 2111 includes a reasonable-basis obligation that requires an associated person to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least some investors. In this regard, an associated person's reasonable diligence must provide an understanding of the potential risks and rewards associated with the recommended transaction. The lack of such an understanding when recommending a transaction violates the suitability rule.

As set forth below, Marino recommended an unsuitable variable annuity surrender to customer MD, without a reasonable basis for recommending the transaction.

MD was born in 1950 and is a semi-retired real estate agent. In October 2007, Marino sold MD a JNL Annuity for a purchase price of \$214,123.00. At the time, Marino was employed at Legend. The JNL Annuity had a five year surrender period that expired in October 2012. In April 2015, while still at Legend, Marino recommended that MD deposit an additional \$139,610 into the JNL Annuity. Marino received an additional commission on that deposit. A new surrender period applied to the money that was deposited in April 2015 in the JNL Annuity.

In October 2016, while employed at Lincoln, Marino recommended that MD surrender her JNL Annuity to invest in a fee-based account at Lincoln. In so doing, Marino failed to conduct a reasonable investigation to determine whether the transaction would result in a surrender charge to MD or the forfeiture of any benefits. In fact, the transaction resulted in a \$6,980.52 surrender charge, and the forfeiture of an enhanced death benefit which exceeded the value of the JNL VA by approximately \$28,000, and a

lifetime income benefit that provided MD with the ability to receive annual income payments of \$24,305.73. As a result of these charges and forfeitures, Marino's recommendation to surrender the JNL Annuity was unsuitable.

As a result of this conduct, Marino violated FINRA Rules 2111 and 2010.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be

Suspended from association with any FINRA member in all capacities for a period of one year.

Respondent has submitted a sworn financial statement and demonstrated an inability to pay. In light of the financial status of Respondent, no monetary sanctions have been imposed.

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

SO ORDERED.

FINRA

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



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