FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

Department of Enforcement, Complainant, v. David Randall Lockey (CRD No. 3095863) Respondent.	Disciplinary Proceeding No. 2013034954001 Hearing Officer: MC **ORDER ACCEPTING OFFER OF SETTLEMENT** Date: October 7, 2016

INTRODUCTION

Disciplinary Proceeding No. 2013034954001 was filed on March 30, 2016, by the Department of Enforcement of the Financial Industry Regulatory Authority ("FINRA") ("Complainant"). Respondent David Randall Lockey ("Lockey" or "Respondent") submitted an Offer of Settlement (Offer) to Complainant dated September 30, 2016. 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 (as amended by the Offer of Settlement), 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 (as amended by the Offer of Settlement), 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.

BACKGROUND

Lockey entered the securities industry in June 2000, when he associated with a FINRA member firm as an operations specialist and subsequently registered with FINRA in May 2001. During his career in the securities industry, Lockey obtained Series 7 and 66 securities licenses. He associated with four other FINRA member firms before associating with SWS Financial Services ("SWS"), which is now known as Hilltop Securities Independent Network, Inc., from April 2012 until his termination from the firm on March 28, 2014, for "short term liquidations in Class A open end mutual funds."

Lockey was also terminated from the FINRA member firm with which he was associated immediately prior to associating with SWS for "recommending strategies involving short-term holds on long-term investments and failing to timely respond to trade-related inquiry from Compliance."

On April 1, 2014, SWS filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") on Lockey's behalf, terminating his registrations with FINRA and his association with the firm on that day. Lockey has not been registered with FINRA in a registered representative capacity since April 1, 2014.

Under Article V, Section 4 of the FINRA By-Laws, FINRA possesses jurisdiction over Lockey because: (a) the Complaint was filed within two years after the effective date of termination of Lockey's FINRA registration, namely April 1, 2014, and (b) the Complaint charges him with misconduct committed while he was associated with a FINRA member and registered with FINRA.

FINDINGS AND CONCLUSIONS

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

ALLEGED ACTS OR PRACTICES AND VIOLATIONS BY RESPONDENT

As alleged in the Complaint (as amended herein), Respondent engaged in the following acts, or failed to act as follows:

1. During the period from May 2012 through March 2014 ("Relevant Period"), registered Lockey, while associated with SWS, engaged in unsuitable short-term trading and switching in open-end mutual funds ("OMFs") and/or unit investment trusts ("UITs") in four different customer accounts, and engaged in unsuitable trading and switching in closed-end funds ("CEFs") in two of the four customers' accounts, in violation of NASD Conduct Rule 2310 (for conduct prior to July 9, 2012), FINRA Rule 2111 (for conduct on or after July 9, 2012), and FINRA Rule 2010.
2. Lockey also falsified five required SWS switch forms, making it appear that certain OMF and/or UIT securities purchased through him at his prior employer had been held in customer accounts longer than they actually had been, in violation of FINRA Rule 4511(b) and FINRA Rule 2010.

FACTUAL BACKGROUND

Lockey Engaged in Unsuitable Short-Term Trading in Four Customers' Accounts

3. During the Relevant Period, while associated with SWS, Lockey recommended and engaged in a pattern of unsuitable short-term trading of OMFs and/or UITs in the accounts of four SWS customers who had been his customers at his prior employer

member firm. Lockey also engaged in unsuitable trading of CEFs in two of the four customers' accounts.

4. Each of the four customers transferred his or her account(s) to SWS when Lockey joined that firm after being terminated by his prior member.

5. Each of the four customer's investment objectives included income and/or long term capital growth.

6. Each of the four customer accounts held OMFs and/or UITs that carried substantial transaction fees. As such, those products are generally intended to be held long-term, at least more than one year, in order to off-set their costs.

7. Nevertheless, Lockey recommended that his customers hold the OMFs and/or UITs less than one year, contrary to the design of the products.

8. In total, Lockey executed 37 trades in OMFs and/or UITs in the customers' accounts in which the holding periods were less than one year.

9. Lockey also executed 23 unsuitable transactions in CEFs in two of the four customers' accounts. The manner in which Lockey traded the CEFs in the customers' accounts was inconsistent with the customers' stated investment objectives and subjected the customers to unnecessary commission expenses.

10. Lockey's trading activity in the four customers' accounts also involved switching whereby he sold OMFs, CEFs and/or UITs and used some or all of the sales proceeds to purchase new OMFs, CEFs and/or UITs, with little or no economic benefit to the customers.

11. In two customers' accounts, Lockey also purchased and sold the same security multiple times, again with little or no economic benefit to the customers.

12. Lockey's improper trading activities in the four customers' accounts generated gross compensation of $68,641.26 for Lockey and SWS. While one customer had a small gain in his account, the remaining three customers suffered collective trading losses totaling $5,329.75.

13. The short-term trading and switching strategy in OMFs and/or UITs that Lockey employed in the customers' accounts was not suitable for any customer, given the nature of the products.

14. Lockey made the recommendations to buy and sell the OMFs, CEFs and/or UITs without having reasonable grounds for believing that such recommendations were suitable for the four customers below in view of the nature and frequency of the transactions, and based upon the facts known to him regarding the customers' investment objectives.

Unsuitable Trading Activity in Customer HD's Account

15. Customer HD is a 67-year-old retired engineer. During the relevant time period, HD's primary investment objective was growth, with income as a secondary objective.

16. Shortly after HD's account was transferred to SWS from Lockey's prior member firm, Lockey began liquidating OMF and UIT securities that had been held in HD's account for less than a year. Lockey also short-term traded new OMF and UIT positions in HD's SWS account. Additionally, Lockey short-term traded CEFs in HD's account, including buying and selling the same CEF security in HD's account three different times. Although HD's account had an overall small gain, Lockey's trading activities in CEFs resulted in trading losses totaling $20,602.90 in HD's account.

17. In total, Lockey executed 34 short-term trades in HD's account, including sixteen transactions involving CEFs, twelve transactions involving OMFs, and six transactions involving UITs.

18. HD relied on Lockey's recommendations in making his investment decisions.

19. Lockey engaged in a pattern of recommending and executing short-term OMF, CEF and UIT transactions, including switches, in HD's account. He did so without having reasonable grounds for believing that such transactions were suitable for HD in view of the nature and frequency of the recommended transactions, and in light of HD's investment objectives.

20. Lockey's overall trading activity in HD's account resulted in a small gain of $4,948.42 in net trading profits. However, the activity generated compensation for Lockey in the amount of $35,153.45.

Unsuitable Trading Activity in Customer SB's Account

21. Customer SB is a 44-year-old social worker. His securities account was funded by money inherited after his mother's death. During the relevant time period, SB's primary investment objective was income, with growth as a secondary objective.

22. Soon after SB's account was transferred to SWS from Lockey's prior member firm, Lockey began short-term trading OMFs, CEFs and UITs in the account.

23. Lockey liquidated several OMF securities that had been held in SB's account for less than a year, and purchased new OMFs, CEFs and UITs, which he also short-term traded.

24. In one instance, Lockey bought and sold the same CEF security in SB's account two times. This particular trading activity resulted in net trading losses of $186.31.

25. In total, Lockey executed 16 short-term trades in SB's account including seven transactions involving CEFs, seven transactions involving OMFs, and two transactions involving UITs.

26. SB relied on Lockey's recommendations in making his investment decisions.

27. Lockey engaged in a pattern of recommending and executing short-term OMF, CEF and UIT transactions, including switches, in SB's account. He did so without having reasonable grounds for believing that such transactions were suitable for SB in view of the nature and frequency of the recommended transactions, and in light of SB's investment objectives.

28. Lockey's trading activities resulted in overall trading losses in the amount of $2,634.57 in SB's account. However, the trading generated compensation of $19,215.83 for Lockey.

Unsuitable Trading Activity in Customer DT's Account

29. Customer DT is a 59- year-old commercial delivery service driver. During the relevant time period, his primary investment objective was growth, with income as a secondary objective.

30. Shortly after DT's account was transferred to SWS from Lockey's prior member firm, Lockey began liquidating OMF securities that had been held in DT's account for less than a year, and used the proceeds to purchase, among other securities, new OMFs. During the relevant time period, Lockey executed five short-term transactions in OMFs in DT's account.

31. Lockey engaged in a pattern of recommending and executing short-term OMF transactions in DT's account. He did so without having reasonable grounds for believing

that such transactions were suitable for DT in view of the nature and frequency of the recommended transactions, and in light of DT's investment objectives.

32. Lockey's trading activities resulted in trading losses in the amount of $2,453.00 in DT's account. However, the activity generated compensation in the amount of $5,565.37 for Lockey.

Unsuitable Trading Activity in Customer LH's Account

33. Customer LH is a 58-year-old bookkeeper for a family-owned business. Lockey was the registered representative for two of LH's SWS accounts, a joint account with her husband and an individual IRA account. During the relevant time period, LH's investment objective for both accounts was growth.

34. Lockey short-term traded OMFs and UITs in LH's accounts, including securities that had been purchased at Lockey's prior member firm and subsequently transferred to LH's accounts at SWS.

35. During the relevant time period, Lockey executed five short-term trades in the accounts, including one transaction involving a UIT and four transactions involving OMFs.

36. Lockey engaged in a pattern of recommending and executing short-term OMF and UIT transactions in LH's account. He did so without having reasonable grounds for believing that such transactions were suitable for LH in view of the nature and frequency of the recommended transactions, and in light of LH's investment objective.

37. Lockey's trading activities resulted in trading losses in the amount of $242.18 in LH's accounts. However, the activity generated compensation in the amount of $1,842.48 for Lockey.

Lockey Falsified SWS Switch Forms and Caused the Firm to Maintain Inaccurate Books and Records

38. In five instances during the relevant time period, Lockey falsified the date of purchase of certain OMF and/or UIT securities that he traded in customer accounts, making it appear that the securities had been held longer than they actually had been.

39. SWS's written supervisory procedures required the completion of a *Long Term Investment Exchange Acknowledgement and Authorization Form* (also known at SWS as a "Switch Form") anytime a customer switched from a variable product, OMF or UIT to another similar security.

40. The purpose of the Switch Form was for SWS to protect its customers from improper short-term switching of long-term products.

41. The Switch Form required a registered representative to identify the name of the investment being sold, the date of purchase of that investment, the name of the new investment product, and the reason for the switch.

42. Five Switch Forms completed by Lockey for transactions executed in the above-described customers' accounts contained an inaccurate original purchase date for investments that Lockey had recommended in the customer's account when the account was held at Lockey's prior member firm, and subsequently short-term traded when the customer's account was transferred to SWS.

43. Specifically, Lockey consistently provided a much earlier purchase date, so that it appeared that the product had been held for more than one year prior to sale at SWS.

44. By falsifying required SWS Switch Forms, Lockey caused SWS to maintain inaccurate books and records.

Customer HD

45. In customer HD's account, Lockey completed a Switch Form dated September 28, 2012, on which he wrote that the securities liquidated to purchase a new OMF security in August and September 2012, had been purchased in 2009.

46. In reality, the liquidated securities had been purchased less than a year earlier in October 2011.

47. Lockey completed another Switch Form dated June 27, 2012, on which he wrote that the securities liquidated to purchase new OMF securities in June 2012, had been purchased in January 2007.

48. The liquidated securities had actually been purchased between March 2010 and March 2012.

Customer SB

49. For customer SB's account, Lockey completed a Switch Form dated February 19, 2013, on which he wrote that the OMF security liquidated to purchase a new UIT security in February 2013, had been purchased in 2009. In reality, the liquidated security had been purchased during the period from October 2010 to October 2011.

50. Lockey completed another Switch Form dated April 22, 2013, on which he wrote that the OMF security liquidated to purchase a new UIT security in March 2013, had been purchased in 2009.

51. The liquidated security had actually been purchased during the period from June 2011 to October 2011.

Customer LH

52. Lockey completed a Switch Form dated May 14, 2012, for transactions in LH's account. Lockey wrote on the form that the OMF and UIT securities liquidated to purchase a new OMF security in May 2012 had been purchased in "Ivy-2009."

53. In reality, the liquidated securities had been purchased during the period from May 2011 through March 2012, with all of the Ivy OMF securities having been purchased a little less than a year earlier in late May 2011.

FIRST CAUSE OF ACTION

Unsuitable Short-Term Trading and Switching
(violations of NASD Conduct Rule 2310 (for conduct prior to July 9, 2012), FINRA Rule 2111 (for conduct on and after July 9, 2012), and FINRA Rule 2010)

54. NASD Rule 2310, which was effective through July 8, 2012, required that in recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.

55. FINRA Rule 2111, which became effective on July 9, 2012, provides that a member or an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer's investment profile. A customer's investment profile includes, but is not limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment

time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the member or associated person in connection with such recommendation.

56. FINRA Rule 2010 requires associated persons to observe high standards of commercial honor and just and equitable principles of trade.

57. During the relevant time period, while associated with SWS, Lockey executed 60 unsuitable short-terms trades in OMFs, CEFs and/or UITs in the accounts of four customers. The holding periods for the transactions were all less than one year.

58. Lockey's improper trading activities in the four customers' accounts generated compensation in the amount of $61,777.13 for Lockey. Three of the four customers, on the other hand, suffered collective trading losses totaling $5,329.75.

59. Lockey made the recommendations to buy and sell the OMFs, CEFs and/or UITs without having reasonable grounds for believing that such recommendations were suitable for the four customers in view of the nature and frequency of the transactions, and based upon the facts known to him regarding the customers' investment objectives. As a result, the pattern of short-term trading and switching of the OMF, CEF and/or UIT securities was unsuitable for all four customers.

60. Given the nature of the long-term OMF and UIT investments, Lockey's short-term trading and switching in those securities was unsuitable for any customer.

61. Based on the foregoing, Lockey violated NASD Conduct Rule 2310 (for conduct prior to July 9, 2012), FINRA Rule 2111 (for conduct on or after July 9, 2012), and FINRA Rule 2010.

SECOND CAUSE OF ACTION

Falsification of Documents
(violations of FINRA Rule 4511(b) and FINRA Rule 2010)

62. FINRA Rule 4511 provides that "[e]ach FINRA member shall make and preserve books and records as required under FINRA rules, the Exchange Act and the applicable Exchange Act rules."

63. During the relevant time period, while associated with SWS, Lockey falsified SWS required switch forms by including inaccurate purchase dates for certain OMF and/or UIT securities, making it appear that the securities had been held in certain customers' accounts longer than they actually had been.

64. Based on the foregoing, Lockey violated FINRA Rule 4511(b) and FINRA Rule 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 Lockey be suspended for six months in all capacities from associating with any FINRA member firm, fined $10,000, ordered to pay partial disgorgement in the amount of $46,447.38, plus interest thereon, and ordered to pay restitution in the amount of $5,329.75, plus interest thereon.

The fine shall be due and payable either immediately upon re-association with a member firm, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

An order to pay restitution to customers SB, DT and LH, listed on Attachment A to the Offer of Settlement, in the total amount of $5,329.75, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from March 2014, until the date of payment. Restitution amounts ordered, pursuant to this disciplinary action, are due and payable immediately upon re-association with a member firm, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies. If for any reason Respondent cannot locate any customer identified in Attachment A to the Offer of Settlement after reasonable and documented efforts within such period, or such additional period agreed to by the staff, Respondent shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property, or abandoned property fund for the state in which the customer is last known to have resided.

Disgorgement of a portion of commissions received, which is ordered to be paid to FINRA in the amount of $46,447.38, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621, from March 2014 until the date this Offer of Settlement is accepted by the NAC. Disgorgement shall be due and payable either immediately upon re-association with a member firm, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

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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