

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 201303681990\**

TO: Department of Enforcement  
Financial Industry Regulatory Authority ("FINRA")

RE: Scott F. Goldman, Respondent  
Registered Representative  
CRD No. 1682329

Pursuant to FINRA Rule 9216 of FINRA's 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 below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against me alleging violations based on the same factual findings described herein.

**I.**

**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 FINRA, or to which FINRA 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 FINRA:

**BACKGROUND**

Respondent Scott F. Goldman ("Respondent" or "Goldman") first entered the securities industry in July 1987 when he became associated with a member firm. Since that time he has been registered with several member firms, including, in pertinent part here, from September 2009 until December 2009 with LPL Financial Corporation ("LPL"), and from January 2010 until May 2016 with H. Beck, Inc. ("Beck"). After leaving Beck in May 2016, Goldman became registered with another FINRA member firm where he is currently registered.

**RELEVANT DISCIPLINARY HISTORY**

Respondent has no relevant disciplinary history.

## **OVERVIEW**

From November 2009 until August 2010 (the "Relevant Period"), Goldman recommended an investment strategy to an elderly customer ("Customer") that was unsuitable because it unduly concentrated her in risky, leveraged precious metal products, in violation of NASD Rules 2310 and 2821, as well as FINRA Rule 2010.

## **FACTS AND VIOLATIVE CONDUCT**

### **1. Goldman's "Champion" Models**

In late 2009 and in 2010, Goldman utilized six different investment strategies that he called "Champion" models. In the models, Goldman generally invested his customers' accounts in mutual funds, either directly with a mutual fund family or indirectly through the subaccounts of a variable annuity he would purchase. Each of the models had a different investment objective and different level of risk depending on how he allocated the customer's funds.

For each of the Champion models, Goldman obtained discretion from his customers to move funds back and forth between a money market fund and other mutual funds available within the mutual fund family, or between a variable annuity money market subaccount and other subaccounts within the annuity, based on various market factors monitored by Goldman.

One of Goldman's Champion models was the "Champion Precious Metals Model," which Goldman identified as the riskiest of his Champion models because it was concentrated in a single and often volatile sector – precious metals. It also generally used leveraged mutual funds.<sup>1</sup> FINRA has recognized the risky nature of leveraged products.<sup>2</sup>

### **2. Goldman's Recommendations to the Customer**

Goldman first met the Customer and her husband in the Summer of 2009. At that time, the Customer was 68 years old and retired, and her husband was terminally ill. After her husband passed away in August 2009, the Customer opened an account with Goldman and consulted with him regarding investment strategies for

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<sup>1</sup> A leveraged mutual fund is a mutual fund whose basket of securities uses derivatives, futures contracts, or swap agreements to attempt to perform at a multiple of the index it is tracking.

<sup>2</sup> For example, FINRA advised its membership in June 2009 in FINRA Regulatory Notice 09-31 concerning similar products – leveraged Exchange Traded Funds ("ETFs") – that "[d]ue to the effect of compounding, their performance over longer periods of time can differ significantly from the performance . . . of their underlying index or benchmark during the same period of time." Thus, Regulatory Notice 09-31 advised broker-dealers and their representatives that leveraged ETFs "are typically not suitable for retail investors who plan to hold them for more than one trading session, particularly in volatile markets."

her own assets, as well as assets she inherited from her deceased husband.

In November 2009, Goldman recommended that the Customer invest in his high-risk Champion Precious Metals Model. Goldman's recommendations were executed in transactions through January 2010 totaling approximately \$135,000, which amounted to 22% of the Customer's liquid net worth at that time. The investments were made through two different accounts and products: (1) a variable annuity in the Customer's individual name, with subaccounts allocated to a leveraged precious metals fund ("VA"), and (2) directly with a precious metals leveraged mutual fund ("PM Fund") in an IRA account ("IRA Account"). The PM Fund investment strategy sought to correlate its performance with 1.5 times the performance of the Dow Jones Precious Metals Index, over the course of one day. Due to the leveraged nature of the product, the PM Fund prospectus stated:

[t]he Fund is ... riskier than similarly benchmarked funds that do not use leverage. Accordingly, the Fund may not be suitable for all investors and should be used only by knowledgeable investors who understand the potential consequences of seeking daily leveraged investment results.

Thereafter, in a series of transactions in March and May 2010, Goldman recommended that an additional \$188,219 from the Customer's deceased husband's bank certificates of deposit that she inherited be added to the existing IRA Account, with the PM Fund. As of May 2010, approximately 53% of the Customer's liquid net worth was invested in Goldman's Champion Precious Metals Model at the times that the portfolios were fully allocated to the precious metals funds.<sup>3</sup>

In recommending high concentrations of investments in the Champion Precious Metals Model, in November 2009, and in March and May 2010, Goldman violated NASD Rule 2310 which required the recommendations to be suitable for the Customer based on the "other security holdings and [her] financial situation and needs." Goldman's recommendations resulted in a concentration of 22% of the Customer's liquid net worth as of January 2010, and 53% as of May 2010, in risky leveraged products, and in a single sector – the precious metals sector – during the times that the investments were allocated to the precious metal funds.

The November 2009 recommendation to allocate the subaccounts of the VA to a leveraged precious metals fund also violated NASD Rule 2821. NASD Rule 2821 applied "to recommended purchases and exchanges of deferred variable annuities and recommended initial subaccount allocations." NASD Rule 2821 specifically required that:

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<sup>3</sup> In August 2010, the Customer became an investment advisory client of Goldman's, therefore, the violations at issue here are for the November 2009-August 2010 timeframe.

(i) the customer has been informed, in general terms, of various features of deferred variable annuities, such as ... the investment components of deferred variable annuities; and market risk;

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(iii) the particular deferred variable annuity as a whole, the underlying subaccounts to which funds are allocated at the time of the purchase or exchange of the deferred variable annuity, and riders and similar product enhancements, if any, are suitable ...

As set forth above, Goldman's initial recommendation as to the underlying subaccount allocation in the VA was unsuitable in light of the Customer's financial situation and needs and the resulting concentration level in a leveraged fund and in a single, volatile sector. In addition, the Customer received the fund prospectus but was not adequately informed of the investment components of the VA in that she did not understand the nature of, and market risk associated with, the leveraged precious metal fund in the subaccounts. Therefore, Goldman violated NASD Rule 2821.<sup>4</sup>

The above violations of NASD Rules 2310 and 2821 by Goldman also violated FINRA Rule 2010.

B. I also consent to the imposition of the following sanctions:

A fine of \$10,000 and a 20 calendar day suspension from associating with any FINRA registered firm in any capacity.<sup>5</sup>

I agree to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. I have submitted an Election of Payment form showing the method by which I propose to pay the fine imposed.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

I understand that if I am barred or suspended from associating with any FINRA member, I become subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rules 8310 and 8311).

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<sup>4</sup> After the Relevant Period, the Customer began incurring losses, which by November 2012 had lost approximately 32% in value. Around that same time, her life circumstances had changed, which required her to depend on these funds for daily living.

<sup>5</sup> FINRA is not imposing restitution of losses because the Customer recouped her losses via a settlement.

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

**II.**

**WAIVER OF PROCEDURAL RIGHTS**

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

- A. To have a Complaint issued specifying the allegations against me;
- B. To be notified of the 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 National Adjudicatory Council ("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 Chief Legal Officer, 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 FINRA Rule 9143 or the separation of functions prohibitions of FINRA 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.

**III.**

**OTHER MATTERS**

I understand that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and

C. If accepted:

1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
4. 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. I may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects my: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

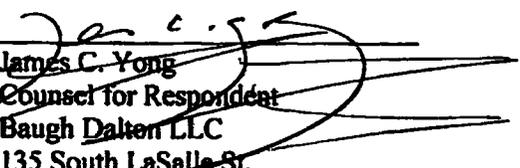
D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

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; that I have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

12-8-2016  
Date (mm/dd/yyyy)

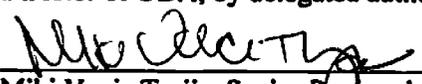
Tom Goldman  
Respondent, Scott F. Goldman

Reviewed by:

  
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12/19/16  
Date

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

  
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