

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JEFFREY D. NOARD,  
(CRD No. 1983392),

Respondent.

Disciplinary Proceeding  
No. 2012034936101

Hearing Officer–AHP

**HEARING PANEL DECISION**

July 17, 2015

**Respondent recommended an unsuitable security to his customer in violation of NASD Rule 2310 and FINRA Rule 2010. Respondent is suspended in all capacities for ten business days, fined \$2,500, and ordered to pay costs.**

**Appearances**

Christopher Perrin, Esq., and Robert D.H. Flood, Esq., Rockville, Maryland, for the Department of Enforcement.

Christopher P. Parrington, Esq., and Andrew R. Shedlock, Esq., Foley & Mansfield, PLLP, Minneapolis, Minnesota, for Jeffrey D. Noard.

**DECISION**

Jeffrey D. Noard is a registered securities broker. FINRA's Department of Enforcement opened an investigation into Noard's sales of securities to one of his elderly customers because the securities appeared to be unsuitable for the customer. Following the investigation, the Department of Enforcement initiated this disciplinary proceeding by filing a complaint with FINRA's Office of Hearing Officers.

The Complaint alleges that Noard recommended and sold two unsuitable securities to customer JD, thereby violating NASD Rule 2310 and FINRA Rule 2010.<sup>1</sup> At

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<sup>1</sup> FINRA's rules are set forth in the FINRA Manual available at <http://www.finra.org/industry/finra-rules>. FINRA's Conduct Rules apply to persons associated with a FINRA member firm pursuant to Rule 0140. NASD Rule 2310 has been superseded by FINRA Rule 2111, which became effective on July 9, 2012.

the time, NASD Rule 2310 provided that persons associated with a FINRA member firm must have a reasonable basis to believe that a recommended securities transaction is suitable for the customer, based on the information the customer provided regarding the customer's other securities holdings, financial condition, and needs. FINRA Rule 2010 requires FINRA members to observe high standards of commercial honor and principles of trade in the conduct of their business.

Noard filed an Answer to the Complaint in which he denied the charges and requested a hearing. Noard affirmatively asserted that he had a reasonable basis for believing that the securities were suitable for JD based on all the facts and circumstances he knew about her at the time he made the recommendations.

Following a hearing,<sup>2</sup> the Hearing Panel concluded that Noard violated NASD Rule 2310 and FINRA Rule 2010 by making unsuitable recommendations to customer JD.

## **I. Findings of Fact**

Most of the underlying material facts are not disputed. The ultimate issue is whether Noard's recommendations were reasonable at the time they were made in light of the information JD had given him about her financial condition, needs, and resources.

### **A. Noard's Background in the Securities Industry**

Noard has been a registered securities broker for more than 25 years. Shortly after he entered the securities industry, JD and her now deceased husband became his customers. They continued as customers over the years, following him as he transferred to a number of different FINRA broker-dealers. JD remains his customer to the present.

At the time he made the unsuitable recommendations to JD, Noard was associated with Allied Beacon Partners, Inc. and registered with FINRA as a General Securities Representative. Noard left Allied Beacon in June 2013, and he is now associated with Cabot Lodge Securities LLC.

### **B. FINRA's Investigation that Led to this Disciplinary Proceeding**

In late 2012, FINRA's preliminary investigation unit learned that dozens of FINRA member firms were using very aggressive marketing materials to sell securities issued by GWG Holdings, Inc. The marketing materials generally stated that the GWG securities provided very high yields as compared to certificates of deposit.<sup>3</sup>

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<sup>2</sup> The hearing was held in Chicago, Illinois, on June 2, 2015.

<sup>3</sup> Hearing Transcript ("Tr.") 282-83.

Allied Beacon (where Noard worked at the time) was one of the broker-dealers selling the large amounts of GWG securities.<sup>4</sup> Thus, FINRA initiated a review of Allied Beacon's marketing and sales of GWG securities. In connection with this review, FINRA staff discovered that Noard had sold two GWG Renewable Secured Debentures ("GWG Debentures") to JD. Upon further analysis, FINRA staff determined that the GWG Debentures were not suitable for JD. Thus, Enforcement began this disciplinary proceeding against Noard.

### **C. GWG**

GWG was founded in 2006 and is based in Minneapolis, Minnesota. The company, through several subsidiaries, purchases life insurance policies in the secondary market in the United States.<sup>5</sup> In simple terms, GWG borrows money to buy life insurance policies in the secondary market at prices that are less than the face value of the insurance benefits payable upon the death of the insureds. The company holds each policy to maturity in order to collect the policy's face value upon the insured's death.<sup>6</sup> While GWG holds the policies, it must make the premium payments as they fall due.

The success of GWG's business model is dependent upon it collecting more upon the maturity of the policies than it has paid to purchase, finance, and service the policies.<sup>7</sup> Thus, GWG must be able to buy the insurance policies at a deep enough discount to cover its borrowing and operational costs. GWG must also be able to accurately calculate the insureds' expected actuarial mortality rates to predict the probable flow of policy benefits.

Between 2008 and 2012, GWG financed its business almost entirely through a \$100 million senior revolving credit facility provided by Autobahn Funding Company, LLC, a bank-sponsored commercial paper conduit administered by DZ Bank AG Deutsche Zentral-Genossenschaftsbank ("Autobahn/DZ Bank") to GWG DLP Funding II, LLC ("DLP Funding II"), one of GWG's subsidiaries.<sup>8</sup> DLP Funding II is a special purpose subsidiary established to own the life insurance portfolio. Under the terms of the Autobahn/DZ Bank credit facility, the life insurance portfolio owned by DLP Funding II

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<sup>4</sup> The marketing materials FINRA reviewed were produced by other broker-dealers, and Noard did not use any of the objectionable marketing materials.

<sup>5</sup> JX-2, at 1, 51 (GWG May 15, 2012 Offering Prospectus).

<sup>6</sup> JX-2, at 49. GWG also receives between one and four percent of the face value of the policy benefits in the form of an origination fee. JX-2, at 51.

<sup>7</sup> See JX-2, at 51-52. GWG bears the costs associated with the assessment, valuation, purchase, underwriting, monitoring, administration, and servicing of the life insurance policies it purchases.

<sup>8</sup> JX-2, at 51.

is held in trust and serves as collateral for the Autobahn/DZ Bank credit facility.<sup>9</sup> The July 2008 Autobahn/DZ Bank credit facility was set to mature in July 2013.

Noard first learned of GWG in late 2010 from James Hintz, who was at the time the chief compliance officer and president of Allied Beacon.<sup>10</sup> Noard then began doing some due diligence on the company. He learned the general nature of GWG's business and spoke to a number of GWG's officers, including its president, Jon Sabes. Based on what he learned, Noard began selling GWG securities to some of his more wealthy clients.<sup>11</sup> The notes were offered in private placements that were exempt from registration under the Securities Act of 1933. Noard recommended the notes because they were paying a "very good interest rate" (5.5 percent) because of their risk.<sup>12</sup>

In or about January 2012, GWG began offering another debt security called renewable secured debentures to raise funds to purchase more life insurance policies, service GWG's existing debt, and pay operational expenses.<sup>13</sup> The GWG Debentures had varying maturity terms and interest rates, from six-month debentures offering an annual interest rate of 4.75 percent to seven-year debentures offering 9.50 percent. Noard began selling the first issue of Renewable Secured Debentures in early 2012.<sup>14</sup>

#### **D. The May 2012 GWG Debentures**

The May 2012 Prospectus ("Prospectus") for the GWG Debentures states that GWG expected to net approximately \$229 million from the offering, the majority of which would be used to purchase additional life insurance policies in the secondary market.<sup>15</sup>

The GWG Debentures were high risk securities suitable only for persons with substantial financial resources who could afford to lose their entire investment. JD was not such an investor.

The Prospectus highlighted 31 risk factors related to GWG, its business, and the offering.<sup>16</sup> Among the most significant:

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<sup>9</sup> JX-2, at 14.

<sup>10</sup> Tr. 30.

<sup>11</sup> Tr. 31, 34.

<sup>12</sup> Tr. 31.

<sup>13</sup> Tr. 36.

<sup>14</sup> Tr. 36-37.

<sup>15</sup> JX-2, at 35.

<sup>16</sup> JX-2, at 22-29.

- GWG had a limited operating history, and it had never made a profit. It had lost more than \$3 million through December 2011.
- GWG’s entire business was financed by debt, and its continuing business assumed continued access to its line of credit.
- GWG was not obligated to redeem the GWG Debentures before their maturity date.
- The GWG Debentures were illiquid; no public market existed for the GWG Debentures.
- GWG life insurance policies were not collateral for the GWG Debentures; they were pledged collateral for the Autobahn/DZ Bank credit facility.

The high degree of risk associated with the GWG Debentures is further underscored by the suitability standards in the Prospectus that restricted investment in the GWG Debentures to persons that had either: (i) a net worth (not including home, furnishings, and personal automobiles) of at least \$70,000 and an annual gross income of at least \$70,000, or (ii) a net worth (not including home, furnishings, and personal automobiles) of at least \$250,000.<sup>17</sup> GWG imposed these suitability standards due to the long-term nature of an investment in the GWG Debentures and their relative illiquidity.<sup>18</sup>

Noard discounted the risk disclosures in the Prospectus. In recommending the GWG Debentures to investors, he substituted his own judgment that the securities bore moderate short-term risk.<sup>19</sup> Noard clarified that he gave little importance to the Prospectus because it, like every other prospectus, contained standard risk disclosures regardless of the nature of the company. In effect, he considered the risk disclosures as nothing more than boilerplate legalese. Noard substituted his own judgment, which he had formed from speaking to GWG’s executives and from his experience selling other GWG securities.<sup>20</sup> Most notably, Noard rashly marginalized the warning that the GWG Debentures were only suitable for investors who could stand to suffer a complete loss, dismissively arguing that this was a trait common to all securities.

Instead of reviewing the Prospectus with JD, Noard gave her a brief summary of the most positive aspects of GWG’s business. Noard talked about how the total value of the policies in its portfolio had increased. He also talked about the average age of the persons insured by the policies, GWG’s bank debt, and “the general things that [he]

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<sup>17</sup> JX-2, at 6.

<sup>18</sup> JX-2, at 7.

<sup>19</sup> Tr. 50.

<sup>20</sup> See Tr. 50-51.

talk[s] about when [he] talk[s] about the investments with clients.”<sup>21</sup> Noard did not get into the specifics of GWG’s investment model.<sup>22</sup>

Noard did reassure JD that the GWG Debentures were a good investment by describing his familiarity with the company. He told her that he talked to persons at GWG weekly and that he “had quite a bit of money invested.”<sup>23</sup> Noard referred to GWG as a “seed” and discussed the company’s good potential “down the road.”<sup>24</sup> To the extent he discussed risk, he downplayed its severity. For example, he claimed that he discussed the actuarial risk caused by people living longer. But at the same time he reassured her that the life expectancy of the insureds in the portfolio was over 80 years and therefore the risk would mitigate over time as the average age increased.<sup>25</sup> Noard did not explain to JD that many of his assurances referred to GWG’s long-term prospects, while her investment window was short-term.

#### **E. Noard Did Not Perform a Proper Suitability Analysis**

Noard gave no thought to whether the GWG Debentures were suitable for JD before he recommended that she purchase them. According to Noard, who provided the only account of his meeting with JD on June 16, 2012,<sup>26</sup> he had not planned to recommend that JD purchase any GWG Debentures.<sup>27</sup> JD had set the June 16 meeting with Noard because she wanted him to help her son with an IRA rollover.<sup>28</sup> During the meeting, Noard recommended the GWG Debentures to JD’s son, and her son then commented that they might be good investments for his mother as well.<sup>29</sup> Noard agreed. He then quickly recommended that JD purchase two GWG Debentures. She accepted Noard’s recommendation without reviewing the Prospectus. JD then signed two subscription agreements. The first was for a \$10,000 Renewable Secured Debenture with a two-year maturity, and the second was for a \$10,000 Renewable Secured Debenture with a six-month maturity.<sup>30</sup>

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<sup>21</sup> Tr. 180.

<sup>22</sup> Tr. 180.

<sup>23</sup> Tr. 181.

<sup>24</sup> Tr. 181.

<sup>25</sup> Tr. 182.

<sup>26</sup> JD testified that she did not recall any meetings or discussions with Noard about the GWG Debentures, including the risks associated with this investment. Tr. 227-28, 234.

<sup>27</sup> Tr. 206.

<sup>28</sup> Tr. 178.

<sup>29</sup> Tr. 178-79.

<sup>30</sup> JX-7; JX-8.

Because Noard had not planned to recommend the GWG Debentures to JD, none of the required paperwork had been prepared in advance. Thus, Noard had to complete an Allied Beacon alternative investment client profile form for JD (“JD Client Profile Form”) before Noard could purchase the GWG Debentures for her account. A new form was required because JD had not purchased alternative investments in the past.

The JD Client Profile Form includes a combination of computer generated and handwritten information.<sup>31</sup> Some fields were prepopulated from Allied Beacon’s system, while others also included handwritten data. The form also has a number of handwritten strikeouts and corrections.

Noard could not recall specifics regarding the preparation of the JD Client Profile Form. He speculated that it was likely that his assistant completed and printed the JD Client Profile Form during the June 16 meeting.<sup>32</sup> Noard was less definite about the handwritten entries.

Noard testified that almost all of the handwritten entries and corrections were made by his assistant. But Noard did not present evidence to corroborate his testimony. Noard guessed that he most likely dictated the handwritten changes on the form to his assistant, who then wrote the changes on the preprinted form. Noard appears to have drawn this conclusion from his recall of meetings with other customers at which he had dictated client information to his assistant, suggesting that this was a somewhat common practice.<sup>33</sup> However, Noard could not state with certainty when the handwritten changes were made, leaving open the possibility that they were made after JD signed the form to qualify her purchase of the GWG Debentures. In any event, Noard admitted that he did not review the completed form with JD.<sup>34</sup>

Noard did recall one handwritten change. He testified that he downgraded her risk tolerance from “Moderate” to “Moderately Conservative.”<sup>35</sup> Noard explained that he corrected her risk tolerance to make it more modest and thereby more accurately reflect her financial circumstances. Significantly, the form described a person with a “Moderately Conservative” risk tolerance as one who is “willing to accept low risk to my initial principal, including low volatility, to seek a modest level of portfolio returns.”<sup>36</sup> In contrast, the form described a person with a “Moderate” risk tolerance as one who is willing to accept high risk to achieve higher returns and understands that she could “lose

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<sup>31</sup> JX-3.

<sup>32</sup> Tr. 78.

<sup>33</sup> Tr. 80. Noard did not call his assistant as a witness.

<sup>34</sup> Tr. 78.

<sup>35</sup> Tr. 81; JX-3, at 4.

<sup>36</sup> JX-3, at 4.

a portion of the money invested.”<sup>37</sup> Noard downgraded JD’s designated risk tolerance because he knew that she was not in a position to lose even a portion of her investment. This conclusion is supported by his on-the-record interview testimony during which he testified that JD had a low risk tolerance.<sup>38</sup> At the same time he volunteered that he had “no excuse” for recommending and selling the GWG Debentures to JD.<sup>39</sup>

Other preprinted information on the JD Client Profile Form showed that she was 82 years old with an annual income of \$40,000. Her estimated net worth was \$150,000, and her liquid net worth was \$40,000. Her investment objective was income, which she planned to use to partially fund her retirement.

Under the heading “Current Clients/Holdings,” the preprinted entries reflect that she had \$50,000 in cash and equivalent, \$2,000 in bonds, and what appears to be \$9,000 in “Other.”<sup>40</sup> Handwritten changes on the form included the addition of \$10,000 in equities, \$200,000 in “Properties,” and \$3,000 in an annuity. The “Other” category was deleted. With the handwritten changes, the form disclosed that JD had “Holdings” totaling \$265,000.<sup>41</sup>

Noard claimed that the handwritten changes to the preprinted data reflected his independent knowledge of JD’s finances. Noard did not claim that JD or her son provided the updated information. And JD could not remember anything about the June 16 meeting; thus, she could not shed light on the various alterations on the form, including who made them or when.

The handwritten changes under “Current Clients/Holdings” conflict with other preprinted information on the form and otherwise appear to be inaccurate in part. Most importantly, the entry for “Properties” in the amount of \$200,000 is inaccurate. Noard added the “Properties” valuation to the form based on his unverified understanding that JD owned the home her son MD lived in next to her residence. But she had transferred that property to MD and his wife approximately seven years earlier.<sup>42</sup> In fact, JD did not

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<sup>37</sup> JX-3, at 4.

<sup>38</sup> JX-4, at 18.

<sup>39</sup> JX-4, at 17.

<sup>40</sup> JX-3, at 4. The other category is difficult to read because it is crossed out.

<sup>41</sup> JX-3, at 4.

<sup>42</sup> Tr. 260-61. Noard’s lack of accurate information about JD’s assets is evidenced further by his claim made during his on-the-record interview in May 2013 that JD owned several properties worth approximately \$350,000 to \$400,000. *See* JX-4, at 18. Noard did not explain this discrepancy during the hearing.

own any real estate at the time she purchased the GWG Debentures.<sup>43</sup> Thus, JD had assets totaling no more than \$65,000, far less than the specified minimum required under the Prospectus.

Noard admitted that the GWG Debentures would not have been a suitable investment for JD but for one unique factor—her family lived in close proximity to her. To Noard this made the all the difference. Indeed, he testified that had her family lived elsewhere, such as a neighboring town, the GWG Debentures would not have been a suitable investment.<sup>44</sup>

Noard defended his decision to recommend the GWG Debentures to JD based on her family's aggregate financial resources. He maintained that he knew from his dealings with JD's family over the years that the family members residing with JD had a liquid net worth of more than \$1 million. Thus, he concluded that JD's investment of \$20,000 was reasonable because it represented a very small percentage of the entire family's net worth.<sup>45</sup> In other words, Noard based his suitability determination on the financial condition and resources of other family members, not JD's alone.

Noard further defended his recommendations by pointing out that JD had little or no need for the money she had. Noard drew that conclusion from his general knowledge of her lifestyle. Noard explained that she had very limited living expenses, the vast majority of which were paid by her children.

Noard also justified his recommendations by suggesting that he was protecting JD from making irresponsible choices about how she spent her money. During his on-the-record interview on May 2, 2013, Noard stated that JD regularly called him to ask that he withdraw money from her account to fund gifts to her children. Noard often tried to talk her out of giving her money away.<sup>46</sup> He characterized at least one of her children as "moochie."<sup>47</sup> Noard further implied that investing in GWG Debentures was better than her wasting her money as she had when she bought her son a motorcycle after she redeemed the GWG Debentures.<sup>48</sup> Thus, at least in part, Noard's motive in

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<sup>43</sup> Noard had never before included real estate among her assets on her various account forms. By counting the previously undisclosed real estate holdings, Noard argued that JD met the suitability standards in the Prospectus.

<sup>44</sup> Tr. 209-10.

<sup>45</sup> Tr. 208-09.

<sup>46</sup> JX-4, at 19.

<sup>47</sup> JX-4, at 17; Tr. 132. At the hearing, Noard clarified that he had misspoken at his on-the-record interview when he characterized her grandchildren as "moochy"; he meant to limit the characterization to one of her children. Tr. 136.

<sup>48</sup> Tr. 192.

recommending that she purchase the GWG Debentures was to prevent her from gifting more money to her children and not because he deemed it a suitable investment.

## II. Conclusions of Law

Noard violated FINRA's suitability rule<sup>49</sup> when he recommended and sold high risk securities to JD. The suitability rule then in effect required Noard "to make a customer-specific determination of suitability and to tailor his recommendations to [JD's] financial profile and investment objectives."<sup>50</sup> Noard also was obligated to refrain from making any recommendation that was not in JD's best interests or that was inconsistent with her financial situation.<sup>51</sup> Noard failed to make this independent, customer-specific suitability determination.

The suitability rule further obligated Noard to disclose the risks associated with the GWG Debentures and to have satisfied himself that she understood the risks involved and was able to take those risks.<sup>52</sup> JD's acquiescence in following his recommendations did not relieve Noard of his obligation to make reasonable recommendations.<sup>53</sup> Here also, Noard failed to meet the requirements of the suitability rule. He did not explain adequately the risks associated with the GWG Debentures.

The evidence establishes that Noard recommended and sold high risk renewable debentures to JD who was not suited for such investments. JD was 82 years old and retired at the time. Her modest annual income principally came from social security and a small pension her husband left her.<sup>54</sup> She had no prior investment experience with alternative investments such as the GWG Debentures. Her investments had been limited to conservative securities, consisting of stocks, mutual funds, bonds, and annuities. Her investment objectives had always been conservative to minimize her risk of loss, which

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<sup>49</sup> NASD Rule 2310(a) provides: "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." NASD Rule 0115 imposes the same duties and obligations upon persons associated with a member.

<sup>50</sup> *Dep't of Enforcement v. Brookstone Sec., Inc.*, No. 2007011413501, 2015 FINRA Discip. LEXIS 3, at \*45-46 (NAC Apr. 12, 2015), *appeal docketed*, SEC Admin. Proc. No. 3-16551 (May 15, 2015) (quoting *F.J. Kaufman & Co.*, 50 S.E.C. 164, 168 (1989)).

<sup>51</sup> *Brookstone*, 2015 FINRA Discip. LEXIS at 46 (quoting *Dane S. Faber*, 57 S.E.C. 297, 310 (2004)). *Accord Richard G. Cody*, Exchange Act Release No. 64565, 2011 SEC LEXIS 1862, at \*3 n.2 (May 27, 2011), *aff'd*, 693 F.3d 251 (1st Cir. 2012).

<sup>52</sup> *James B. Chase*, 56 S.E.C. 149, 159 (2003).

<sup>53</sup> *See Jack H. Stein*, 56 S.E.C. 108, 116-17 (2003).

<sup>54</sup> Tr. 65-66.

Noard acknowledged. She sought stability, income, and principal protection or growth to help her through retirement.

Despite JD's limited resources and conservative investment profile, Noard sought to excuse his recommendations on two grounds. First, Noard asserted that the GWG Debentures were not as risky as the Prospectus stated. He offered his judgment that they actually presented no more than a moderate risk of loss. Second, Noard claimed that he rightfully took into account her entire family's financial resources in concluding that the GWG Debentures were a suitable investment for JD. We reject both arguments.

First, the GWG Debentures presented a very high risk of loss and were inconsistent with JD's conservative investment objectives and financial needs.<sup>55</sup> In making a recommendation of such a security, a broker may not disregard the issuer's disclosed risks and in their place rely on sales brochures and unsupported positive statements from the issuer's principals. Noard improperly did just that. He failed to present JD with most of the disclosed risks and instead gave her his opinion regarding GWG's long-term prospects.<sup>56</sup> But Noard presented no reliable data to support his overly optimistic assessment. At the hearing, he pointed to events that occurred long after he made the recommendations, such as the fact that GWG went public approximately two years later. But these facts were not known to him at the time he recommended the GWG Debentures. In short, Noard lacked a reasonable basis to conclude that the GWG Debentures presented no more than modest risk and thus were suitable for JD at the time he made the recommendations.

Second, Noard was obligated to make his suitability determination by taking into consideration JD's security holdings and her financial situation and needs. Instead, Noard considered JD's family's assets in recommending the GWG Debentures to JD. Tellingly, Noard explained in detail in his response to the Department of Enforcement's post-complaint Rule 8210 requests for information that he considered the GWG Debentures suitable because "in the hypothetical event that JD lost her entire ... investment ... [he] knew with absolute certainty that JD had more than enough family financial support to sustain her ...."<sup>57</sup> Noard thereby violated the suitability rule.

Noard was required to evaluate the suitability of the GWG Debentures based on JD's assets alone. "[T]he financial situations and investment objectives of [JD's]

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<sup>55</sup> See *Luis Miguel Cespedes*, Exchange Act Release No. 59404, 2009 SEC LEXIS 368, at \*23 (Feb. 13, 2009) ("We have previously held that risky investments are unsuitable recommendations for investors with relatively modest wealth and limited investment experience.").

<sup>56</sup> Noard said he did briefly mention the risk that GWG might not be able to extend its bank line of credit, but he did not explain the consequences that would flow from such an event.

<sup>57</sup> CX-3, at 5.

relatives were not relevant in evaluating whether [the GWG Debentures] were suitable.”<sup>58</sup> JD’s relatives were not joint owners of JD’s accounts.

We conclude that Noard violated FINRA Rules 2310(a) and 2010.

### III. Sanctions

We first note that this is not an egregious violation of the suitability rule. Noard negligently failed to make the required suitability analysis and naively accepted GWG’s promotional statements in concluding that the GWG Debentures were less risky than the Prospectus stated they were. He had no excuse for ignoring the unmistakable risk associated with the GWG Debentures. Nor could he justify his overly optimistic assessment of GWG’s stability and safety. While it is true that JD did not suffer a loss, this factor does not mitigate the seriousness of his misconduct.<sup>59</sup>

In determining the appropriate sanction we first considered FINRA’s Sanction Guidelines (“Guidelines”) for unsuitable recommendations,<sup>60</sup> as well as the Principal Considerations in Determining Sanctions.<sup>61</sup> The Guidelines for making unsuitable recommendations recommend a suspension of ten business days to two years and a fine of between \$2,500 and \$110,000.<sup>62</sup> When aggravating factors predominate, the Guidelines recommend that the Hearing Panel strongly consider barring an individual respondent.<sup>63</sup>

Here, there are several aggravating factors. Foremost, JD was not a sophisticated investor, and she had no experience with alternative investments. Second, we find it aggravating that Noard disregarded most of the risk warnings in the Prospectus, substituting his unwarranted opinions regarding GWG and the GWG Debentures. And for those he did mention to JD, he did not explain them fully. Third, Noard failed to accept responsibility for his misconduct. Although he admitted during his on-the-record interview that he had made a mistake when he recommended that JD purchase the GWG

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<sup>58</sup> *David A. Gingras*, 50 S.E.C. 1286, 1290 (1992).

<sup>59</sup> *See Cody*, 693 F.3d at 260 (holding that “[t]he fact that the investments ultimately turned a profit does not make the purchases suitable when made”).

<sup>60</sup> FINRA Sanction Guidelines at 94 (2015), <http://www.finra.org/industry/sanction-guidelines>. The Guidelines for violations of FINRA Rule 2111, FINRA’s current suitability rule, are applicable. FINRA Rule 2111 superseded NASD Rule 2310 in 2011.

<sup>61</sup> Guidelines at 6.

<sup>62</sup> *Id.* at 94.

<sup>63</sup> *Id.*

Debentures, at the hearing he recast that admission to mean that he or his assistant had made clerical mistakes on her account forms.<sup>64</sup>

On the other hand, Noard made the recommendations in a misguided effort to help JD. The totality of the evidence shows that Noard believed he was acting responsibly and in JD's best interests. Noard has been a trusted advisor to her and her family for more than two decades, and we find that he had her best interests in mind when he too casually recommended that she purchase the GWG Debentures. Noard was not motivated by personal gain. He made no more than approximately \$200 to \$250 on the transactions.<sup>65</sup> We also note that this was an isolated instance. The evidence demonstrates that Noard sold GWG securities to 30 to 40 of his customers, and all of these other customers were suitable investors for the GWG securities they purchased.

After considering all of these factors, we conclude that the appropriate sanctions for Noard's unsuitable recommendations are a ten business day suspension and a \$2,500 fine.

#### **IV. Order**

Respondent Jeffrey D. Noard is suspended from associating with any FINRA member firm in all capacities for ten business days and fined \$2,500 for making unsuitable recommendations to his customer in violation of NASD Rule 2310 and FINRA Rule 2010.

In addition, Noard is ordered to pay costs in the amount of \$3,017.49, which includes the hearing transcript fees and an administrative fee of \$750.

If this decision becomes FINRA's final disciplinary action, the suspension shall begin at the opening of business on September 21, 2015, and end at the close of business on October 2, 2015. The fine and assessed costs shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.<sup>66</sup>

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Andrew H. Perkins  
Hearing Officer  
For the Hearing Panel

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<sup>64</sup> Tr. 133-34.

<sup>65</sup> Tr. 207.

<sup>66</sup> The Hearing Panel considered and rejected without discussion all other arguments of the parties.