

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2016050142601**

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

RE: Jonathan G. Sweeney, Respondent
General Securities Representative
CRD No. 4914852

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

Jonathan G. Sweeney entered the securities industry in 2005 when he registered with FINRA through a member firm. Subsequently, Sweeney was associated with several member firms and was registered with FINRA in various capacities. From June 2011 through May 26, 2016, Sweeney was registered with FINRA as a General Securities Representative through Navy Federal Brokerage Services, LLC. Although Sweeney is no longer registered or associated with a FINRA member, he remains subject to FINRA’s jurisdiction pursuant to Article V, Section 4 of FINRA’s By-Laws. Sweeney has no disciplinary history.

OVERVIEW

In November 2015, Sweeney made material misrepresentations and omitted to state material information when he made an unsuitable recommendation that caused his customer, ML, to surrender two variable annuities and use the proceeds to purchase two new variable annuities. In so doing, Sweeney (i) willfully violated Section 10(b) of the Securities and Exchange Act of 1934 (“Exchange

Act”), Exchange Act Rule 10b-5, and FINRA Rules 2020 and 2010; and (ii) violated FINRA Rules 2111, 2330(b), and 2010.

In addition, between December 2011 and April 2016, Sweeney reused original signatures from forms his customers had signed to complete new, separate forms that his customers had not signed, and he then submitted the new forms to Navy Federal as original documents. By doing so, Sweeney violated FINRA Rule 2010. He also violated FINRA Rules 4511 and 2010 by causing Navy Federal to create and maintain inaccurate books and records, in violation of Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder.

FACTS AND VIOLATIVE CONDUCT

Sweeney Engaged in Securities Fraud

Section 10(b) of the Exchange Act makes it unlawful for any person to employ “any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe.” Exchange Act Rule 10b-5 provides, in pertinent part, that “[i]t shall be unlawful for any person, directly or indirectly, . . . [t]o make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.” FINRA Rule 2020 is similar to, yet broader than, Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5 and provides that “[n]o member shall effect any transaction in, or induct the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.” A violation of these rules also constitutes a violation of FINRA Rule 2010.

In November 2015, Sweeney recommended that ML surrender two variable annuities and use the proceeds to purchase two new variable annuities. In order to convince her to accept his recommendation and in connection with the recommended transactions, Sweeney intentionally misrepresented material facts to ML. Specifically, Sweeney represented to ML that the new annuities provided ML with the same benefits as the original annuities. This representation was false. As Sweeney knew, the living and death benefits provided for by the original annuities and new annuities had materially different features. Most significantly, the original annuities had guaranteed living benefits with enhanced growth features, and one of the original annuities had guaranteed death benefits with an annual step-up in value.

In addition, Sweeney knew yet intentionally omitted to disclose several material adverse facts to ML in connection with the recommended transactions. He did not tell ML that she would lose the enhanced living and death benefits to which she was entitled under the original annuities if she surrendered the original annuities, nor did he tell her the value of these enhanced benefits. Nor did he tell ML that she would forfeit the enhanced growth features of the original annuities

by switching to the new annuities, that the accumulation values for her living and death benefits under her original annuities were higher than the cash surrender values, or that cashing out her original annuities would cause her to realize certain losses based on the performance of her various subaccount investments that she would not otherwise incur.

By virtue of the foregoing, Sweeney willfully violated Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, and FINRA Rules 2020 and 2010.

Sweeney Made Unsuitable Recommendations

FINRA Rules 2111 and 2330(b) require registered representatives to have a reasonable basis to believe that a recommended variable annuity purchase or exchange is suitable for the customer based on the customer's overall investment profile. Specifically with respect to recommended variable annuity exchanges, Rule 2330(b) requires that the exchange be suitable in accordance with Rule 2111 taking into consideration, among other things, whether 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), and benefit from product enhancements and improvements. A violation of FINRA Rules 2111 and 2330(b) also constitutes a violation of FINRA Rule 2010.

In November 2015, Sweeney recommended and effected the replacement of the original annuities with the new annuities in ML's account. At the time, ML's investments in the original annuities described above comprised about 72% of her overall investable assets, and ML relied on the guaranteed lifetime minimum income provided by the original annuities. She intended to use the enhanced death benefits to pass on to her beneficiaries. In addition, the surrender periods for the original annuities had expired, which would have allowed her to convert quickly to cash, all or a portion of, her Navy Federal investments without incurring significant costs or penalties had she needed to.

Sweeney effected the annuity exchanges without having a reasonable basis to believe that such sales and purchases were suitable for ML in view of her age, retirement status, financial needs, and her desire to have guaranteed lifetime income streams and enhanced death benefits to pass on to her beneficiaries. The replacements caused ML to forfeit certain enhanced living and death benefits and subjected her to new seven-year surrender periods. She lost the original annuities' values for the living and death benefits, which were higher than the current cash values of those annuities. She also lost the enhanced growth features of the original annuities until such time that she elected to annuitize the contracts.

Sweeney did not have a reasonable basis to believe that his recommendation was suitable for ML because he knew that the new annuities did not provide ML with product enhancements or improvements, but rather caused her to forfeit

significant benefits and become subject to a new surrender period. By virtue of the foregoing, Sweeney violated FINRA Rules 2111, 2330(b) and 2010.

Sweeney Falsified Documents and Caused Navy Federal to Create and Maintain Inaccurate Books and Records

FINRA Rule 2010 provides that a registered representative, in the conduct of his business, “shall observe high standards of commercial honor and just and equitable principles of trade.” Reusing customer signatures or filling in information on a document after it was signed in blank by a customer violates FINRA Rule 2010.

FINRA Rule 4511 requires each member firm to make and preserve books and records in conformity with applicable FINRA rules and Exchange Act Rules 17a-3 and 17a-4. Exchange Act Rule 17a-4(b)(4) requires firms to preserve records relating to communications concerning the firm’s business. A registered representative who enters inaccurate information into a firm’s books and records violates FINRA Rules 4511 and 2010.

From December 2011 through April 2016, Navy Federal’s written supervisory procedures prohibited registered representatives from requesting that a customer sign a blank or incomplete form; prohibited forgery, falsifying documents, and signing documents on behalf of another person; and required representatives to obtain customer signatures on various completed forms. Sweeney was aware of these policies.

Nonetheless, during that period, Sweeney engaged in a practice of having his customers sign certain forms, reusing the original signatures from those forms to complete new forms, and then submitting those new forms to Navy Federal and to mutual fund and insurance companies as original documents. The forms included—among others—new account applications, advisory agreements, transaction cover sheets, IRA rollover and transfer forms, IRA applications, mutual fund applications, variable annuity applications, and notices and disclosure documents for variable annuity investments. These new forms, which did not include the original signature of Sweeney’s customers, were used to open and administer customer accounts, record customer financial information, and authorize securities transactions and fund transfers.

By reusing customers’ signatures as described above, Sweeney violated FINRA Rule 2010. In addition, by submitting the documents to Navy Federal and others with reused signatures, Sweeney caused Navy Federal to create and maintain inaccurate books and records in violation of Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 promulgated thereunder. In doing so, Sweeney violated FINRA Rules 4511 and 2010.

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

- A bar from association with any FINRA member in any capacity.

The sanctions imposed herein shall be effective on a date set by FINRA staff. A bar or expulsion shall become effective upon approval or acceptance of this AWC.

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).

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.

