

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015046281401**

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

RE: Richard Graham, Respondent
Former Registered Representative
CRD No. 2955860

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

Richard Graham first became registered with a FINRA member firm in 2001. He was registered with The Huntington Investment Company ("Huntington") from July 2005 through July 2013, when he voluntarily resigned to join another FINRA member firm. He voluntarily resigned from that FINRA member firm on August 15, 2016.

Graham has not been associated with a FINRA member since his resignation from his most recent employer firm. Although Graham is not currently associated with a FINRA member, he remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

OVERVIEW

Between November 2012 and May 2013, while registered with Huntington, Graham made unsuitable recommendations regarding the purchase of unit investment trusts ("UITs") to two customers. In so doing, he violated FINRA Rules 2111 and 2010.

FACTS AND VIOLATIVE CONDUCT

Graham's background

Beginning in June 2007 and continuing until his resignation in July 2013, Graham worked out of multiple branches of Huntington's bank affiliate, The Huntington National Bank, in and around Lafayette, Indiana.

The UITs

A UIT is a type of investment company that issues securities, typically called "units," representing undivided interests in a relatively fixed portfolio of securities. The UITs at issue invested in a portfolio consisting of common stock of closed-end investment companies (known as "closed-end funds") selected by a portfolio consultant. The UITs' portfolios were not managed and generally did not sell or replace securities once the offering period was closed. The trusts terminated on mandatory termination dates determined before the offerings. At termination, the trusts' holdings in the closed-end funds were either liquidated or distributed by the trustees. The mandatory termination dates did not match the maturity dates of the bonds held by the closed-end funds. Accordingly, the values of the UITs at the termination of the trusts were based on the then-current value of the closed-end funds and not the principal that the bonds held by the closed-end funds would return at the bonds' maturities. Certain of the underlying closed-end funds the UITs invested in employed leverage to potentially increase portfolio returns. This leverage increased risk, including the likelihood of increased price volatility and the possibility that the closed-end funds' common share income would fall if the dividend rates on the preferred shares or the interest rates on any borrowing rose, causing the UITs' NAVs and/or distribution payments to decrease. Certain of the UITs Graham recommended contained closed-end funds invested in municipal bonds. Other UITs Graham recommended contained closed-end funds invested in high-yield bonds below investment-grade quality, *i.e.*, junk bonds.

The UIT prospectuses disclosed several risks, including that the UITs' value generally would fall if interest rates rose, that the portfolios invested in closed-end funds that employed leverage, and that the closed-end funds may invest in securities rated below investment-grade. The UIT prospectuses advised that investing in junk bonds should be viewed as speculative and that junk bonds are subject to numerous risks, including higher interest rates, economic recession,

deterioration of the junk bond market, possible downgrades, and defaults of interest and/or principal. The prospectuses also disclosed risks specific to municipal UITs, including that municipal bonds are long-term fixed-rate debt obligations and that the market for municipal bonds is generally less liquid than for other securities and are thus more volatile and subject to greater price fluctuations.

Graham's Recommendations

Customers A and B

Graham met with Customers A and B, a married couple, who were then 61 and 53 years old, respectively, in November 2012. The customers were not native English speakers and relied on their adult child to help translate during the meeting. Together, their net worth was comprised of approximately \$161,000 in cash and \$212,000 in a fixed annuity. Their only listed investment objective was "income," their risk tolerance was "conservative," and they had a "short" investment time horizon. Their account opening documents showed that they had "limited" investment knowledge. Customers A and B wanted to retire within 10 years and they did not participate in their employers' 401(k) plans. At the time of the recommendation, Graham knew that they intended to surrender their fixed annuity and to invest the entirety of both the proceeds and their cash in the UITs he recommended.

Based on Graham's recommendation, Customers A and B made two purchases of the Van Kampen Unit Investment Trust 1263 Closed End Strategy Master Municipal Income Portfolio Series 30: (1) \$149,994.48 on November 21, 2012; and (2) \$199,993.99 on December 5, 2012. As contemplated, they used the majority of their cash holdings to fund the November purchase and the majority of their funds from the surrender of their fixed annuity to fund the December purchase. Thus, collectively, they invested approximately \$350,000 of their \$373,000 net worth (94 percent) in the UITs. Between the time of the purchases and when Customers A and B sold the UITs in December 2013, the UITs lost \$79,297.70 in value, or approximately 22.7 percent. Graham's recommendation resulted in an over-concentration in a single fund and asset class and therefore exposed an excessively large portion of Customers A and B's net worth to fluctuation in the municipal bond market. As noted above, the customers had a "conservative" risk profile and were planning to retire within 10 years. Based on their relatively modest income, it would be difficult, if not impossible, to make up for lost funds during that limited time period. As such, placing 94 percent of their net worth in an investment that employed leverage, included non-investment grade securities, and could lose a large amount of principal in a short time period was unsuitable.

Customer C

Graham met with then 98-year old customer Customer C in April 2013. Her stated investment objectives were “income” and “capital appreciation” with a “moderately conservative” risk tolerance and short investment time horizon. At the time, her assets totaled approximately \$615,000, consisting of approximately \$443,000 in cash and CDs and \$172,000 in brokerage accounts at firms other than Huntington. Customer C’s only income source was social security.

Based on Graham’s recommendation, Customer C made three purchases of the Invesco Unit Trust Series 1313 Closed End Strategy Master Income Portfolio Series 35 totaling \$259,000: (1) \$173,997.93 on April 11, 2013; (2) \$59,998.02 on May 2, 2013; and (3) \$25,013.85 on May 21, 2013. These investments represented approximately 42 percent of her net worth. Between the time of the purchases and when Customer C sold the UITs in October 2013, the UITs lost \$29,493 in value, or approximately 11.4 percent.¹ Recommending that a 98-year-old customer with a moderately conservative risk tolerance invest 42 percent of her net worth in a single product that employed leverage and could sustain substantial losses in a short time period was not suitable.

Violations of FINRA Rule 2111 and 2010

FINRA Rule 2111 requires that a registered representative have, when recommending the purchase, sale, or exchange of any security to a customer, “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.” Supplementary Material .05(b) provides that the customer-specific suitability obligation requires that an “associated person have a reasonable basis to believe that the recommendation is suitable for a particular customer based on that customer’s investment profile, as delineated in Rule 2111(a).”

Concentration of a customer’s funds in a particular security increases the risk of loss beyond what is consistent with the objective of safe, non-speculative investing. Accordingly, undue concentration amounts to a violation of Rule 2111. Likewise, depending on their particular circumstances, seniors and retirees may have less tolerance for certain types of risk than other investors. And, as FINRA has cautioned, for many investors who are at or nearing retirement, there can be a

¹ Huntington compensated Customers A, B, and C for their losses after the customers complained to the firm.

temptation to reach for yield to maximize retirement income without the appreciation of the concomitant risk.²

As described above, Graham did not have a reasonable basis to believe that his UIT recommendations were suitable for Customers A, B, and C based on those customers' investment profiles. Accordingly, Graham violated FINRA Rule 2111. By virtue of those violations, Graham also violated FINRA Rule 2010.

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

- A suspension from association with any FINRA member in any capacity for two months;
- A fine of \$10,000; and
- Disgorgement of commissions received, which is ordered to be paid to FINRA in the amount of \$3,541.04, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621, from May 21, 2013, until the date this AWC is accepted by the NAC.

The fine and disgorgement shall be due and payable either immediately upon reassociation 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.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanctions 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).

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

² FINRA Regulatory Notice 07-43 (Sept. 2007)

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.

9/7/2016
Date

Richard D. Graham
Richard Graham

Reviewed by:

[Signature]
Keith L. Griffin
Griffin Law Firm, LLC
9450 North Meridian Street, Suite 300
Indianapolis, IN 46260
(317) 218-6075

Accepted by FINRA:

Sept 19, 2016
Date

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

[Signature]
Edwin Aradi
Senior Counsel
FINRA Department of Enforcement
15200 Omega Drive, 3rd Floor
Rockville, MD 20850
(301) 258-8555