

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2020068544901**

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

RE: Phil Donahue (Respondent)
Investment Company and Variable Contracts Products Representative
CRD No. 1206346

Pursuant to FINRA Rule 9216, Respondent Phil Donahue submits 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 Respondent alleging violations based on the same factual findings described in this AWC.

I.

ACCEPTANCE AND CONSENT

- A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

Respondent has been registered with FINRA as an Investment Company and Variable Contracts Products Representative through an association with PFS Investments Inc. (CRD No. 10111) since 1983, and as an Investment Company Products/Variable Contracts Principal since 1988. He remains associated with PFS Investments in both capacities.¹

OVERVIEW

In January and March 2016, Donahue recommended that two customers invest an unsuitably high percentage of their account into a single energy-sector security. As a result, Donahue violated FINRA Rules 2111 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's review of a customer arbitration filing.

FINRA Rule 2111 requires member firms and their associated persons to have a reasonable basis to believe that a recommended securities transaction or investment

¹ For more information about the respondent, visit BrokerCheck® at www.finra.org/brokercheck.

strategy is suitable for a customer, based on information obtained through the reasonable diligence of the firm 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, investment objectives, investment experience, investment time horizon, liquidity needs, and risk tolerance. A recommended securities transaction or investment strategy may be unsuitable if it results in a customer's account being concentrated in a particular security or category of securities in a manner that is inconsistent with the customer's investment profile.

In October 2010, Customers A and B, a married and retired couple then in their sixties, opened retirement accounts at PFS Investments, with Donahue as their broker of record. Based on information provided by the customers at account opening, PFS Investments classified both customers as having an investment objective of "moderate growth." PFS Investments' portfolio guidelines provided that customers with that investment objective should not invest more than 17% of their portfolio into a single market sector. In January 2016, Customer B updated her account profile, which changed her investment objective to "conservative growth." According to PFS Investments' portfolio guidelines, customers with that objective should not invest more than 13% of their portfolio in a sector fund.

In the first quarter of 2016, Donahue recommended that Customers A and B invest 90 percent of their investments at PFS Investments into a single, non-diversified mutual fund. That recommendation was not consistent with the customers' investment profiles because the fund in question invested substantially all of its assets in companies in the energy sector and Donahue's recommendation therefore subjected the customers to substantial risk of loss. By first quarter 2020, the mutual fund's value decreased by more than 50%. In March 2020, after transferring their accounts to a different broker-dealer, Customers A and B sold their investments in the fund in question and realized a substantial loss.

Therefore, Donahue violated FINRA Rules 2111 and 2010.

B. Respondent also consents to the imposition of the following sanctions:

- a 30-day calendar day suspension from associating with any FINRA member in all capacities;
- a \$2,500 fine;² and
- a requirement that within 90 days of the Notice of Acceptance of this AWC is accepted, respondent will undertake to attend and satisfactorily complete ten (10) hours of continuing education concerning FINRA's suitability rule by a provider not unacceptance to FINRA. Within 30 days following completion of such training, respondent will submit written proof that this continuing education has

² Restitution is not ordered against Donahue because Customers A and B have settled an arbitration pertaining to Donahue's unsuitable recommendation.

been satisfactorily completed. Such proof shall be submitted by letter to FINRA's Department of Enforcement, Attn: Karen Daly, Principal Counsel, 1601 Market Street, Suite 2700, Philadelphia, PA 19103 and by email to karen.daly@finra.org. All correspondence must identify the Respondent and Matter No. 2020068544901.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which he proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim an inability to pay, now or at any time after the execution of this AWC, the monetary sanction imposed in this matter.

Respondent understands that if he is barred or suspended from associating with any FINRA member, he becomes 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, he 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 in this AWC shall be effective on a date set by FINRA.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a complaint issued specifying the allegations against him;
- 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, Respondent specifically and voluntarily waives 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 its acceptance or rejection.

Respondent further specifically and voluntarily waives 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

Respondent understands 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 Respondent; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
 - 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 its subject matter in accordance with FINRA Rule 8313; and
 - 4. Respondent 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. Respondent 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 Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.

- D. Respondent may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that he 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.

Respondent certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; Respondent has agreed to the AWC's provisions voluntarily; and no offer, threat, inducement, or promise of any kind, other than the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce him to submit this AWC.

July 29, 2022

Date

Phil Donahue

Phil Donahue
Respondent

Reviewed by:

Cory S. Zadanosky, Esq.

Cory S. Zadanosky, Esq.
Counsel for Respondent
Zadanosky & Associates, P.A.
1825 NW Corporate Blvd., Suite 110
Boca Raton, Florida 33431

Accepted by FINRA:

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

August 10, 2022

Date

Karen C. Daly

Karen C. Daly
Principal Counsel
FINRA
Department of Enforcement
1601 Market St., 27th Floor
Philadelphia, PA 19103-2339