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VIA ELECTRONIC MAIL

Vanessa A. Countryman
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**RE: In the Matter of the Application for Review of Curtis Richard Edmark
Administrative Proceeding No. 3-19594**

Dear Ms. Countryman:

Enclosed please find FINRA's Brief in Opposition to the Application for Review for the above-referenced matter.

Sincerely,

/s/Megan Rauch
Megan Rauch

Enclosure

cc: Owen Harnett, Esq.
Erica J. Harris, Esq.

**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.**

In the Matter of the Application of

CURTIS RICHARD EDMARK

For Review of Action Taken by

FINRA

Administrative Proceeding No. 3-19594

FINRA'S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW

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November 9, 2020

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**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.**

In the Matter of the Application of

CURTIS RICHARD EDMARK

For Review of Action Taken by

FINRA

Administrative Proceeding No. 3-19594

FINRA’S BRIEF IN OPPOSITION TO APPLICATION FOR REVIEW

This matter concerns Curtis Richard Edmark’s attempt to commence a proceeding in FINRA’s arbitration forum to expunge disclosures from FINRA’s Central Registration Depository (“CRD”[®]) of a customer complaint that arose from the same facts and circumstances as a regulatory action. Under FINRA rules, a claimant may not expunge a regulatory action. The Director of FINRA’s Office of Dispute Resolution (the “Director”) denied Edmark’s attempt to seek expungement in FINRA’s arbitration forum because the customer complaint and resulting customer restitution were intrinsically linked with a state regulatory action. FINRA explained the Director’s decision in letters sent to Edmark in October 2019 and November 2019. The Commission should dismiss Edmark’s application for review because FINRA acted in accordance with its rules, and it applied those rules in a manner consistent with the purposes of the Securities Exchange Act of 1934 (the “Exchange Act”).

I. FACTUAL BACKGROUND

A. Edmark

Edmark entered the securities industry in 1986. RP 20.¹ In March 2017, Edmark associated with Centaurus Financial, Inc. (“Centaurus Financial”) where he is currently registered. RP 20.

B. The Customer’s Complaint and Regulatory Action

In February 2005, Betty Wishau, the surviving spouse of Edmark’s deceased customer, Arkley Wishau, filed a written complaint alleging that Edmark failed to disclose all the features of a fixed annuity contract to her husband.² RP 32. A few months later, Mrs. Wishau filed a complaint against Edmark with the State of Wisconsin Office of the Commissioner of Insurance (“OCI”) in connection with the fixed annuity. RP 33. Centaurus Financial reported in CRD Mrs. Wishau’s complaint against Edmark.³ In response to the question about the date the complaint was received, Centaurus Financial provided a two-part answer: “Company complaint in 2/05. Regulatory complaint in 5/05.” RP 33. Centaurus Financial reported that Mrs. Wishau’s complaint was settled on January 12, 2009, for \$5,000, all of which was paid by Edmark. RP 33.

¹ “RP ___” refers to the page numbers in the certified record filed by FINRA on November 15, 2019.

² Mrs. Wishau’s complaint is disclosed in occurrence number 1926461 in CRD. RP 32-33. The occurrence number is FINRA’s internal number used in CRD to identify each disclosure. Occurrence numbers do not appear in the publicly-available BrokerCheck report.

³ Centaurus Financial reported in CRD Mrs. Wishau’s complaint against Edmark in a disclosure occurrence composite form. The Commission may take official notice of information in CRD. *See* Commission Rule of Practice 323; *see also* *Aliza A. Manzella*, Exchange Act Release No. 77084, 2016 SEC LEXIS 464, *2 (Feb. 8, 2016). Attached as Exhibit 1 is a courtesy copy of the occurrence number 1926461 composite form.

Centaurus Financial separately reported in CRD the Wisconsin OCI's regulatory action against Edmark.⁴ RP 30-32. OCI alleged that Edmark engaged in unfair market practices and deceptive practices in sale of life insurance annuities in violation of state statutes. RP 31. Specifically, OCI alleged that Edmark, in a meeting with the Wishaus, "used misleading advertisements, representations and solicitations to present and recommend to the Wishaus that they invest their IRA funds...in certain annuities." Exhibit 2 (Notice of Hearing p. 2). OCI further alleged that Edmark used "deceptive words, phrases and illustrations" when presenting to the Wishaus and the models Edmark presented to them "were either false or were formulated using false and misleading, assumptions and representations." *Id.*

On January 12, 2009, Edmark entered into a Stipulation and Order with the Wisconsin OCI (the "Order"). RP 31; Exhibit 2 (Order); *see also* Exhibit A to FINRA's Motion to Adduce Additional Evidence filed November 26, 2019 (hereinafter "Motion to Adduce Ex. A.>"). Under the terms of the Order, Edmark did not admit or deny the facts alleged in the Notice of Hearing, but agreed that "the alleged violations may be deemed to have occurred for the purposes of determining the penalty and restitution." Edmark also agreed that the "allegations in the Notice of Hearing may be used as a factual basis for [OCI] to determine restitution to the consumers." Exhibit 2 (Order). Pursuant to the Order, Edmark agreed to pay Mrs. Wishau \$5,000 in restitution, settling both the regulatory action and Wishau's customer complaint. RP 31-32; Exhibit 2 (Order); *see also* Motion to Adduce Ex. A. Edmark also agreed to pay a \$5,000 forfeiture to Wisconsin. RP 31-32; Exhibit 2; *see also* Motion to Adduce Ex. A. The

⁴ The Wisconsin OCI regulatory action against Edmark is disclosed in occurrence number 1933453 in CRD. Centaurus Financial also reported in CRD the Wisconsin OCI's regulatory action against Edmark in a disclosure occurrence composite form. Attached as Exhibit 2 is a courtesy copy of the occurrence number 1933543 composite form.

accompanying Notice of Hearing and Order indicate that the Wisconsin OCI regulatory action is associated with the customer complaint—they both involve the sale of annuities to Mr. Wishau.⁵

C. Edmark Files a Statement of Claim with FINRA’s Office of Dispute Resolution

In September 2019, Edmark filed a statement of claim with FINRA’s Office of Dispute Resolution⁶ seeking to expunge disclosures about Mrs. Wishau’s customer complaint (i.e., occurrence number 1926461). RP 1-5. In his statement of claim, Edmark contended that the Mrs. Wishau’s complaint is clearly erroneous, factually impossible, or false, and therefore should be expunged pursuant to FINRA Rule 2080. The respondent in Edmark’s statement of claim was his current firm, Centaurus Financial. Despite the fact that the Order and Mrs. Wishau’s complaint involved identical facts and circumstances (and Edmark paid Mrs. Wishau \$5,000 in restitution to settle her complaint pursuant to the terms of the Order), Edmark’s statement of claim did not mention the Order or regulatory action. Nor did Edmark’s statement of claim on its face seek expungement of the disclosures related to the regulatory action (i.e., occurrence number 1933543).

Within weeks of receiving Edmark’s statement of claim, on October 4, 2019, FINRA sent written notice to Edmark that FINRA had determined that Edmark’s claim was not eligible for arbitration and, pursuant to FINRA Rule 12203(a) or FINRA Rule 13203(a), declined to accept his claim (the “October 4, 2019 letter”).

⁵ Both the Notice of Hearing and Order are attached to Centaurus Financial’s disclosure occurrence composite form for the Wisconsin OCI action. *See* Exhibit 2.

⁶ FINRA has since changed the name of the Office of Dispute Resolution to FINRA Dispute Resolution Services.

D. Edmark Files Application for Review

On November 1, 2019, Edmark filed an application with the Commission asking it to review the Director's determination that his claim was not eligible for arbitration. RP 9-11.

On November 26, 2019, FINRA filed a motion to adduce a November 25, 2019 letter from FINRA's Office of Dispute Resolution to Edmark's counsel "to further explain FINRA's decision" denying Edmark access to its arbitration forum (the "November 25, 2019 letter").

Motion to Adduce Ex. A. In the November 25, 2019 letter, FINRA wrote that Edmark's statement of claim requested that an arbitrator recommend expungement of disclosures of a written customer complaint made by Mrs. Wishau that Edmark failed to disclose all features of a variable annuity (occurrence number 1926461). *Id.* FINRA noted that "Mr. Edmark's comment [in CRD] for Occurrence Number 1926461 stated that the complaint resulted in '\$5,000.00 restitution for the customer.'" FINRA continued that, in accordance with its regular procedures, FINRA staff reviewed Edmark's CRD records, and "CRD indicates that the State of Wisconsin initiated a regulatory action against Mr. Edmark on May 2005, which is reflected in Occurrence Number 1933543." FINRA wrote, "[t]he underlying Notice of Hearing referred to a complaint by Betty Wishau alleging that Mr. Edmark made a number of false statements and misleading communications regarding his solicitation and sale of annuities to her husband, Arkley Wishau" and the regulatory action resulted in a "stipulated order for restitution in the amount of \$5,000.00 and a monetary sanction of \$5,000.00." *Id.*

In conclusion, FINRA wrote: "the regulatory complaint and resulting restitution reported in Occurrence Number 1933543 arise from the same circumstances giving rise to the customer complaint sought to be expunged in this case. Given that regulatory actions are ineligible for expungement, we were unable to accept the claim for arbitration." The final sentence provided

the name and telephone number of an associate director in FINRA's Office of Dispute Resolution for Edmark to contact with any questions. The letter enclosed a copy of the Order. FINRA's motion to adduce the November 25, 2019 letter remains pending.

In August 2020, after it determined that it has jurisdiction to consider Edmark's appeal, the Commission issued an order requesting written submissions from the parties. *See Curtis Richard Edmark*, Exchange Act Release No. 89613, 2020 SEC LEXIS 3727(Aug. 19, 2020).

II. ARGUMENT

The Commission should dismiss Edmark's application for review because the grounds on which FINRA based its decision exist in fact, FINRA's decision was in accordance with its rules, and FINRA applied those rules in a manner consistent with the purposes of the Exchange Act. *See* 15 U.S.C. § 78s(f).

A. FINRA Properly Prohibited Edmark Access to Its Arbitration Forum

FINRA rules contemplate the use of its arbitration forum to expunge disclosures of customer dispute information in certain narrow circumstances. FINRA Rule 2080 governs the expungement of customer dispute information from CRD.⁷ The rule identifies three narrow circumstances that serve as an appropriate basis for the expungement of customer dispute information from CRD in FINRA's arbitration forum:

- the claim, allegation or information is factually impossible or clearly erroneous;
- the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; or
- the claim, allegation or information is false.

⁷ CRD is the central licensing and registration system used by the U.S. securities industry and its regulators. In general, the information in the CRD system is submitted by registered securities firms, brokers, and regulatory authorities in response to questions on uniform registration forms. FINRA makes specific CRD publicly available through BrokerCheck.

FINRA Rule 2080(b)(1). The standards imposed by FINRA Rule 2080 are intended to promote the common interest of public investors, broker-dealers and their associated persons, and regulators in “a CRD system that contains accurate and meaningful information” and maintains the “integrity of the arbitration process.” *NASD Notice to Members 04-16*, 2004 NASD LEXIS 18 (Mar. 2004). FINRA’s Code of Arbitration Procedure requires arbitrators to make an affirmative finding that one of the standards in FINRA Rule 2080 has been proven before recommending expungement of customer dispute information. *See* FINRA Rules 12805, 13805.

FINRA rules do not permit the expungement of disclosures about regulatory actions. *See* FINRA Rules 2080, 12805, 13805; *see also* *FINRA Office of Dispute Resolution Expungement Training*, <https://www.finra.org/sites/default/files/FINRA-Expungement-Training.pdf>, at *21-22 (last visited Nov. 2, 2020) (stating that regulatory actions “are ineligible for arbitration”). Regulatory actions are not customer dispute information, and thus expungements of regulatory actions are not permitted under FINRA rules. *See* FINRA Rule 2080.

FINRA Rules 12203(a) and 13203(a) establish a gatekeeper role for the Director by authorizing him to exclude inappropriate arbitration claims from the FINRA arbitration forum.

The rules are identical and provide:

The Director may decline to permit the use of the FINRA arbitration forum if the Director determines that, given the purposes of FINRA and the intent of the Code, the subject matter of the dispute is inappropriate, or that accepting the matter would pose a risk to the health or safety of arbitrators, staff, or parties or their representatives.

FINRA Rules 12203(a), 13203(a).

In its approval order for FINRA Rules 12203 and 13203, the Commission underscored that the rules empowered the Director to act to preserve the arbitration forum for claims that are consistent with the purpose of the forum. Specifically, the Commission noted that Rules 12203

and 13203 would “facilitate excluding cases from the [FINRA] arbitration forum that are beyond its mandate, allowing it to focus on the cases that are appropriately in the forum.” *Order Approving Proposed Rule Change and Amendments 1, 2, 3, and 4 to Amend NASD Arbitration Rules for Customer Disputes and Notice of Filing and Order Granting Accelerated Approval of Amendments 5, 6, and 7 Thereto*, 72 Fed. Reg. 4574, 4602 (Jan. 31, 2007) (hereinafter “*Order Approving Proposed Rule Change and Amendments 1, 2, 3, and 4 to Amend NASD Arbitration Rules*”). At the time of these statements, the Commission was approving the *expansion* of the Director’s discretionary authority under FINRA Rules 12203 and 13203.

In this case, the Director properly exercised his authority under FINRA Rules 12203 and 13203 to deny Edmark access to FINRA’s arbitration forum because Edmark’s request for expungement was inappropriate. An attempt to use FINRA’s arbitration forum to expunge a customer complaint that arose from the same facts and circumstances as a regulatory action that resulted in a restitution order to pay that customer is not consistent with “the purposes of FINRA and the intent of the Code” of Arbitration Procedure. *See* FINRA Rules 12203(a), 13203(a); *see also* FINRA Rules 2080, 12805, 13805.

Mrs. Wishau’s complaint and the Wisconsin OCI regulatory action arise from the same facts and circumstances and are intrinsically linked. The Wisconsin OCI Notice of Hearing and Order indicate that the regulatory action is associated with Mrs. Wishau’s customer complaint because they both involve the sale of annuities to Mr. Wishau. *See* Exhibit 2. Centaurus Financial reported in CRD that Mrs. Wishau’s complaint was settled on January 12, 2009, for \$5,000, all of which was paid by Edmark. RP 33. Centaurus Financial also reported in CRD that Edmark settled the Wisconsin OCI regulatory action on January 12, 2009, and paid \$5,000 in

restitution to Mrs. Wishau and a \$5,000 monetary penalty. RP 31; Exhibit 2 (Order). In other words, Edmark settled Mrs. Wishau's complaint in accordance with the Wisconsin OCI Order.

The Director properly excluded Edmark's claim because it is beyond the mandate of the arbitration forum. The Director denied Edmark access to FINRA's arbitration forum to prevent expungement of a customer complaint which allegations Edmark agreed, under the terms of the Order, may be used as a factual basis to determine restitution to the customer. Edmark argues that he, in the Order, did not admit or deny the facts alleged in the Notice of Hearing, and agreed to the violations "for purposes of disposition only." Br. at 5. The Order's neither- admit- nor- deny language, however, does not preclude the Order from having collateral consequences. *Cf. Nicholas S. Savva*, Exchange Act Release No. 72485, 2014 SEC LEXIS 5100, at *32 (June 26, 2014) (holding that a consent order with "neither admit nor deny" language can serve as the basis for a statutory disqualification). Regardless of whether Edmark settled the Wisconsin OCI regulatory action or it was adjudicated, regulatory actions cannot be expunged under FINRA rules. Due to the potentially incompatibility of allowing of allowing the expungement of the customer's complaint while the disclosures about the regulatory action remain, FINRA properly denied Edmark access to its arbitration forum in this instance.

Moreover, Edmark's statement of claim, which omitted any reference to the Wisconsin OCI regulatory action or Order, was deficient under FINRA Rules. Edmark was required to "specify[] the relevant facts" in his initial statement of claim seeking expungement. *See* FINRA Rule 13302(a)(2). Under the Order, the Wisconsin OCI ordered Edmark to pay \$5,000 in restitution to Mrs. Wishau, settling her customer complaint. By failing to raise in his statement of claim the regulatory action and the Order requiring Edmark to pay \$5,000 in restitution to

Mrs. Wishau, Edmark failed to specify the relevant facts in his statement of claim, as required by FINRA Rule 13302.

The fact that the Wisconsin OCI determined that Mrs. Wishau's complaint sufficiently alleged misconduct against Edmark, such that restitution was appropriate, is highly relevant and should have been specified in the statement of claim. Indeed, this fact precludes Edmark from demonstrating any of the narrow grounds for expungement under FINRA Rule 2080—i.e., that Mrs. Wishau's complaint is clearly erroneous, factually impossible, or false—without undermining and collaterally attacking the regulatory action, which is impermissible. Moreover, by not including all relevant facts about the related regulatory action in his statement of claim, the arbitrator would not have all necessary information to decide whether Edmark met the standards in FINRA Rule 2080 for expungement.

In sum, the Director's determination that Edmark's expungement request was inappropriate for the arbitration forum was proper and consistent with FINRA's rules. Edmark did not satisfy FINRA Rule 13302 requiring that he specify relevant facts in his statement of claim because he omitted any reference to the Order and Wisconsin OCI regulatory action. The existence of the Order precludes Edmark from satisfying the narrow standards for expungement under FINRA Rule 2080 because expunging the Mrs. Wishau's complaint would collaterally attack and undermine the Order, which is intrinsically linked with the Mrs. Wishau's complaint. Therefore, the Director's denial of forum was proper.

B. FINRA's Letters Accurately Informed Edmark of the Director's Decision

Section 15A(h)(2) provides that national securities associations are required to keep a record and to provide notice, an opportunity to be heard, and a "statement setting forth the specific grounds" on which its denial is based. 15 U.S.C. § 78o-3(h)(2). By requiring FINRA to

provide notice of the specific grounds for limiting access to services, an applicant is not impaired in his ability to challenge FINRA's determination before the Commission, and allows the Commission to discharge its review function. *See Kimberly Springsteen-Abbott*, Exchange Act Release No. 80360, 2017 SEC LEXIS 1068, at *13 (Mar. 31, 2017).

In this case, FINRA complied with its obligations under the Exchange Act. FINRA issued two letters to Edmark explaining the Director's denial of access to FINRA's arbitration forum. In the October 4, 2019 letter, FINRA stated that Edmark's request for expungement was not eligible for arbitration pursuant to FINRA rules granting the Director the discretion to decline to permit the use of FINRA's arbitration forum if he determines that the subject matter of the dispute is inappropriate. RP 7. In the November 25, 2019 letter sent seven weeks later, FINRA provided additional information further explaining the Director's decision denying Edmark access to the forum. Motion to Adduce Ex. A. In that letter, FINRA explained that Edmark's claims were not eligible for arbitration, as set forth in the first letter, because FINRA in its review of CRD discovered the Wisconsin OCI regulatory action and resulting restitution arise from the same facts and circumstances giving rise to the customer complaint that Edmark sought to expunge, and regulatory actions are ineligible for expungement. *Id.* Together, the first and second letters provide a statement setting forth the specific grounds for FINRA's decision.

Edmark erroneously argues that the Commission cannot consider the November 25, 2019 letter because it was not "provided contemporaneously with the denial of access of services." Br. at 3. In the analogous context of a judicial proceeding to review an agency's action, however, an agency, when needed, may provide additional information explaining its decision, even after litigation has begun. *Bolden v. Blue Cross & Blue Shield Ass'n.*, 669 F. Supp. 1096, 1102 (D.D.C. 1986), *aff'd*, 848 F.2d 201 (D.C. Cir. 1988) ("But where the bare administrative

record does not fully disclose the factors the agency considered, it is proper to require the agency to provide a more adequate explanation of its reasons, even though litigation has commenced.”); *see also Airport Impact Relief, Inc. v. Wykle*, 192 F.3d 197, 209 (1st Cir. 1999) (“So long as the new material is explanatory of the decisionmakers’ action at the time it occurred (which we are convinced that it is) and does not contain post-hoc rationalizations for the agency’s decision (which we are convinced that it does not), the new material may be considered.”).

Prior to the Commission’s order on August 6, 2020, *see Consolidated Arbitration*, Exchange Act Release No. 89495, 2020WL 4569083 (Aug. 6, 2020), FINRA did not believe it was obligated to comply with Exchange Act Section 15A(h)(2) because it did not believe access to its arbitration forum for expungement was an essential service subject to the Commission’s jurisdiction under Exchange Act Section 19(d)(2). While these applications for review (including Edmark’s) were pending, FINRA sent an additional supporting statement to certain claimants to further explain FINRA’s prior decision denying the claimants access to the forum. FINRA did so to assist the Commission, permit the parties to be able to address more fully FINRA’s actions in briefs before the Commission, and out of an abundance of caution should the Commission find that it had jurisdiction.

In other words, at the time FINRA sent Edmark the initial letter denying access to the arbitration forum, FINRA did not believe it would be subject to Commission review under the Exchange Act.⁸ Both letters are from FINRA’s Office of Dispute Resolution, and both

⁸ FINRA’s failure to state with specificity its reasoning for denying Edmark forum was not the result of negligence, but a reasonable belief that its denial of arbitration forum would not be subject to Commission review. Br. at 7. The November 25, 2019 letter should not be excluded from the record because FINRA failed to predict the Commission’s determination on a novel issue of jurisdiction, especially when FINRA took proactive, corrective steps as a precaution nine months before the Commission even ruled on the issue.

communicate why the Director found that Edmark’s expungement request was ineligible for arbitration. Therefore, the Commission should consider both letters when determining whether FINRA complied with requirements of Exchange Act Section 15A(h)(2). *Cf. Rhea Lana, Inc.*, 925 F.3d 521, 525 (D.C. Cir. 2019) (accepting a later-created document explaining an agency determination because, when the agency made its determination, it was unaware the decision would be deemed final agency subject to judicial review).

The Commission should grant FINRA’s motion to adduce because the evidence is material and there were reasonable grounds for failing to adduce it previously. *See* Commission Rule of Practice 452. The November 25, 2019 letter is material because it “further explains FINRA’s decision” to deny Edmark access to its arbitration forum to expunge Mrs. Wishau’s complaint—i.e., the dispositive decision by FINRA of which Edmark seeks Commission review. *See* Motion to Adduce Ex. A. FINRA did not previously seek to introduce the November 25, 2019 letter because it did not exist at the time. It is therefore reasonable that FINRA failed to adduce such evidence previously because Dispute Resolution mailed it to Edmark on November 25, 2019. Further, there is no indication that Edmark was unfairly prejudiced by the Director’s submission of a second letter on November 25, 2019. FINRA sent the November 25, 2019 letter to Edmark nine months before Edmark’s opening brief on the merits was due.

Contrary to Edmark’s argument, the November 25, 2019 letter is not a “post hoc rationalization.” Indeed, there is no evidence that the November 25, 2019 letter presented a new theory for the Director’s determination. To the contrary, the November 25, 2019 letter simply further explained the grounds for the Director’s November 25 decision denying Edmark access to the forum. *See Rhea Lana*, 925 F.3d at 525 (“[W]hen an agency believes it ‘had no obligation to explain its actions contemporaneously,’ it is common for ‘the entire record, or a good part of

it, [to be] actually created for the sole purpose of judicial review.”) (citing *Women Involved in Farm Econ. v. U.S. Dep’t of Agric.*, 876 F.2d 994, 999, (D.C. Cir. 1989)); *Ardila Oliveras v. Transportation Sec. Admin.*, 819 F.3d 454, 463-64 (D.C. Cir. 2016) (accepting a post hoc declaration, explaining that it “furnishes an explanation of the administrative action that is necessary to facilitate effective judicial review” and further explained that because it did not offer any new rationalizations it was “thus admissible for [the court’s] review.”). The October 4, 2019 letter and the November 25, 2019 letter are entirely consistent. And the November 25, 2019 letter is “material” despite being sent after Edmark’s appeal to the Commission. Br. at 7.

Edmark argues that the Commission should deny FINRA’s motion to adduce because the “[November 25, 2019 letter] stated no specific facts as to why the *customer dispute* disclosure expungement (the only expungement requested) was denied, so [Edmark] is forced to speculate.” Edmark is incorrect. The October 4, 2019 letter cites to FINRA Rule 12203 or 13303, which grants the Director the discretion to deny FINRA’s arbitration forum if he determines that the subject matter of the dispute is inappropriate. The November 25, 2019 letter explained why Edmark’s claim was inappropriate under FINRA Rule 12203 or 13203—because the regulatory complaint and resulting restitution reported in occurrence number 1933543 arise from the same facts and circumstances giving rise Mrs. Wishau’s complaint that Edmark seeks to expunge.

Edmark makes various arguments in his brief that, even in receipt of the November 25, 2019 letter, he does not understand the specific grounds for FINRA’s denial of access to the forum. *See* Br. at 4. As an initial matter, the November 25, 2019 letter sufficiently explains the ground for its denial of forum as explained herein. But if Edmark had any questions about the denial, the letter explicitly invited Edmark to contact an associate director in FINRA’s Office of Dispute Resolution, providing both his direct telephone number and email address. Edmark,

however, did not do so, causing his claims about his lack of understanding to ring hollow.⁹ Indeed, Edmark did not need to “speculate” anything after receiving the November 25, 2019 letter. Br. at 4. He knew Mrs. Wishau’s complaint and the Order were connected because he paid Mrs. Wishau \$5,000 in restitution under the terms of the Order. Edmark therefore reasonably should have known that he could not expunge Mrs. Wishau’s complaint under FINRA rules.

Edmark further argues that the Order should not have a preclusive effect with respect to his expungement request of Mrs. Wishau’s complaint. FINRA disagrees. Mrs. Wishau’s customer complaint and the Wisconsin OCI regulatory action are intrinsically linked. Indeed, as part of its settlement, the Wisconsin OCI ordered Edmark to pay Mrs. Wishau \$5,000 in restitution, which settled her customer complaint against Edmark. Despite these relevant facts, Edmark did not even mention the regulatory action in his expungement request. *See* FINRA Rule 13302(a).

Edmark incorrectly asserts that “FINRA is extending its authority by denying forum based upon facts which do not apply to a customer dispute disclosure.” Br. at 6. The Director is authorized to deny the arbitration forum when “the subject matter of the dispute is

⁹ Edmark also argues that neither the October 4, 2019 nor November 25, 2019 letters offered Edmark “a hearing” or an “opportunity to be heard.” Br. at 8. Edmark, however, was provided an “opportunity to be heard.” As previously explained, prior to the Commission’s August 6, 2020 order in the *Consolidated Arbitrations Applications*, FINRA was operating under the assumption that the denial of forum on the ground that an expungement claim was ineligible was not subject to Commission review, and thus would not be required to comply with Exchange Action Section 15A(h)(2). Nonetheless, Edmark was permitted to file a five-page statement of claim presenting his reasoning as to why he should be granted access to FINRA’s arbitration forum to argue why disclosures about Mrs. Wishau’s complaint should be expunged from his CRD record. Further, the November 25, 2019 letter explicitly gave Edmark both a direct telephone number and email address for an associate director in Dispute Resolution to contact with any questions.

inappropriate.” FINRA Rules 12203(a) and 13203(a). Rather than providing a list of each subject matter that is inappropriate, the rule allows the Director to address new or novel arbitration claims that are inappropriate. Indeed, the Commission considered the advantages of having the Director act as a gatekeeper to the forum and concluded that FINRA Rules 12203 and 13203 “allow[ed] [the forum] to focus on the cases that are appropriately in the forum” which “in turn, should promote the efficacy and efficiency of the arbitration.” *Order Approving Proposed Rule Change and Amendments 1, 2, 3, and 4 to Amend NASD Arbitration Rules*, 72 Fed. Reg. at 4602. The Director properly exercised his authority denying Edmark access to the forum in this instance considering the intrinsic link between Mrs. Wishau’s complaint and the Wisconsin regulatory action.

In sum, FINRA’s October 4, 2019 letter and November 25, 2019 letter sufficiently set forth the specific grounds for the Director’s denial of access to Edmark, in accordance with Exchange Act Section 15A(h)(2).

C. The Record Is Sufficient for the Commission to Discharge Its Review Function

If the Commission grants FINRA’s motion to adduce, and considers FINRA’s November 25, 2019 letter further explaining the Director’s denial of forum to Edmark, the record is sufficient for the Commission to discharge its review function. Remanding this matter back to FINRA to issue another supporting statement for its decision would serve no purpose because FINRA simply would provide another letter stating it cannot accept Edmark’s statement of claim. *See Tourus Records, Inc. v. DEA*, 259 F.3d 731, 739 (D.C. Cir. 2001) (“Indeed, a remand to correct the initial notice would serve no purpose, as the agency could and no doubt would simply retransmit its internal memoranda to petitioner.”).

III. CONCLUSION

The Director properly exercised his discretion by denying FINRA's arbitration forum to Edmark. The Director's decision was consistent with FINRA's rules, and Edmark had notice of the specific reasons underlying the Director's denial as required by the Exchange Act.

Accordingly, the Commission should dismiss Edmark's application for review.

Respectfully submitted,

/s/ Megan Rauch

Megan Rauch
Alan Lawhead
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8863

November 9, 2020

Exhibit 1

Disclosure Occurrence Composite

Individual CRD#: [1596961](#)

Individual Name: EDMARK, CURTIS R

Occurrence:	1926461				
Disclosure:	Customer Complaint				
Publicly Disclosable:	No				
Reportable:	Reportable Reason No CC - filed more than 24 months ago and did not settle for \$10,000 or more No Arb/Civil Litigation - settled for less than \$10,000 Yes				
Material Difference in Disclosure:	No				
Latest Filings:	Filing U4-AMENDMENT Customer Complaint 12/15/2017 CENTAURUS FINANCIAL, INC. (30833)	Event Date 02/01/2005	First Reported 03/17/2017	Questions Answered 14I(3)(a)	Last Review
Last Review:	BTHAKER 12/18/2017				
Comments:					

CUSTOMER COMPLAINT/ARBITRATION/CIVIL LITIGATION DRP

U4 - AMENDMENT
12/15/2017
CENTAURUS FINANCIAL, INC. (30833)

Rev. Form U4 (05/2009)

This Disclosure Reporting Page is an INITIAL or AMENDED response to report details for affirmative response(s) to Question 14I on Form U4

Check the question(s) you are responding to, regardless of whether you are answering the question(s) "yes" or amending the answer(s) to "no":

Customer Complaint/Arbitration/Civil Litigation					Rev. DRP (05/2009)
<input type="checkbox"/> 14I (1)(a)	<input type="checkbox"/> 14I (2)(a)	<input checked="" type="checkbox"/> 14I (3)(a)	<input type="checkbox"/> 14I (4)(a)	<input type="checkbox"/> 14I (5)(a)	
<input type="checkbox"/> 14I (1)(b)	<input type="checkbox"/> 14I (2)(b)	<input type="checkbox"/> 14I (3)(b)	<input type="checkbox"/> 14I (4)(b)	<input type="checkbox"/> 14I (5)(b)	
<input type="checkbox"/> 14I (1)(c)					
<input type="checkbox"/> 14I (1)(d)					

[Click here to view question text](#)

By selecting this box, I hereby request that the data on this Form U4 filing be used to satisfy my firm's reporting obligation pursuant to the applicable provision of FINRA Rule [4530\(a\)\(1\)](#).

One matter may result in more than one affirmative answer to the above items. Use a single DRP to report details relating to a particular matter (i.e., a customer complaint/arbitration/CFTC reparation/civil litigation). Use a separate DRP for each matter.

DRP Instructions:

- Complete items 1-6 for all matters (i.e., customer complaints, arbitrations/CFTC reparations and civil litigation in which a customer alleges that you were *involved* in *sales practice violations* and you are not named as a party, as well as arbitrations/CFTC reparations and civil litigation in which you are named as a party).
- If the matter involves a customer complaint, or an arbitration/CFTC reparation or civil litigation in which a customer alleges that you were *involved* in *sales practice violations* and you are not named as a party, complete items 7-11 as appropriate.
- If a customer complaint has evolved into an arbitration/CFTC reparation or civil litigation, amend the existing DRP by completing items 9 and 10.
- If the matter involves an arbitration/CFTC reparation in which you are a named party, complete items 12-16, as appropriate.
- If the matter involves a civil litigation in which you are a named party, complete items 17-23.
- Item 24 is an optional field and applies to all event types (i.e., customer complaint, arbitration/CFTC reparation, civil litigation).

Complete items 1-6 for all matters (i.e., customer complaints, arbitrations/CFTC reparations, civil litigation).

1. Customer Name(s):

ARKLEY E. WISHAU (DECEASED)

2. A. Customer(s) State of Residence (select "not on list" when the customer's residence is a foreign address):

Wisconsin

B. Other state(s) of residence/detail:

3. Employing *Firm* when activities occurred which led to the customer complaint, arbitration, CFTC reparation or civil litigation:

None. Not securities licensed at the time.

4. Allegation(s) and a brief summary of events related to the allegation(s) including dates when activities leading to the allegation(s) occurred:

Allegation: Did not disclose all features of a fixed annuity contract. Explanation: Wife of [customer] wished to liquidate his annuity at his death to transfer to another company. The contract would not allow her to do this without penalty. The contract did allow her to do a spousal continuation or 5 year payout without penalty. She opted to surrender the contract for a penalty and then filed a complaint.

5. Product Type(s): (select all that apply)

- | | | |
|---|---|--------------------------------------|
| <input type="checkbox"/> No Product | <input type="checkbox"/> Derivative | <input type="checkbox"/> Mutual Fund |
| <input type="checkbox"/> Annuity-Charitable | <input type="checkbox"/> Direct Investment-DPP & LP Interests | <input type="checkbox"/> Oil & Gas |
| <input checked="" type="checkbox"/> Annuity-Fixed | <input type="checkbox"/> Equipment Leasing | <input type="checkbox"/> Options |
| <input type="checkbox"/> Annuity-Variable | <input type="checkbox"/> Equity Listed (Common & Preferred Stock) | <input type="checkbox"/> Penny Stock |

- | | | |
|--|--|--|
| <input type="checkbox"/> Banking Products (other than CDs) | <input type="checkbox"/> Equity-OTC | <input type="checkbox"/> Prime Bank Instrument |
| <input type="checkbox"/> CD | <input type="checkbox"/> Futures Commodity | <input type="checkbox"/> Promissory Note |
| <input type="checkbox"/> Commodity Option | <input type="checkbox"/> Futures-Financial | <input type="checkbox"/> Real Estate Security |
| <input type="checkbox"/> Debt-Asset Backed | <input type="checkbox"/> Index Option | <input type="checkbox"/> Security Futures |
| <input type="checkbox"/> Debt-Corporate | <input type="checkbox"/> Insurance | <input type="checkbox"/> Unit Investment Trust |
| <input type="checkbox"/> Debt-Government | <input type="checkbox"/> Investment Contract | <input type="checkbox"/> Viatical Settlement |
| <input type="checkbox"/> Debt-Municipal | <input type="checkbox"/> Money Market Fund | <input type="checkbox"/> Other: |

6. Alleged Compensatory Damage Amount:

\$ 10,000.00

- Exact Explanation (If no damage amount is alleged, the complaint must be reported unless the *firm* has made a good faith determination that the damages from the alleged conduct would be less than \$5,000):

If the matter involves a customer complaint, arbitration/CFTC reparation or civil litigation in which a customer alleges that you were *involved* in *sales practice violations* and you are not named as a party, complete items 7-11 as appropriate.

Note: Report in Items 12-16, or 17-23, as appropriate, only arbitrations/CFTC reparations or civil litigation in which you are named as a party.

7. A. Is this an oral complaint?

- Yes No

B. Is this a written complaint?

- Yes No

C. Is this an arbitration/CFTC reparation or civil litigation?

- Yes No

If yes, provide:

i. Arbitration/reparation forum or court name and location:

ii. Docket/Case#:

iii. Filing date of arbitration/CFTC reparation or civil litigation (MM/DD/YYYY):

D. Date received by/served on *firm* (MM/DD/YYYY):

02/01/2005 Exact Explanation

If not exact, provide explanation:

Company complaint in 2/05. Regulatory complaint in 5/05.

8. Is the complaint, arbitration/CFTC reparation or civil litigation pending?

- Yes No

If "No", complete item 9.

9. If the complaint, arbitration/CFTC reparation or civil litigation is not pending, provide status:

- Closed/No Action Withdrawn Denied Settled

- Arbitration Award/Monetary Judgment (for claimants/plaintiffs)
- Arbitration Award/Monetary Judgment (for respondents/defendants)
- Evolved into Arbitration/CFTC reparation (you are a named party)
- Evolved into Civil litigation (you are a named party)

If status is arbitration/CFTC reparation in which you are not a named party, provide details in item 7C.

If status is arbitration/CFTC reparation in which you are a named party, complete items 12-16.

If status is civil litigation in which you are a named party, complete items 17-23.

10. Status Date (MM/DD/YYYY):

01/12/2009 Exact Explanation

If not exact, provide explanation:

11. Settlement/Award/Monetary Judgment:

A. Settlement/Award/Monetary Judgment amount:

\$ 5,000.00

B. Your Contribution Amount:

\$ 5,000.00

If the matter involves arbitration or CFTC reparation in which you are a named respondent, complete items 12-16, as appropriate.

12. A. Arbitration/CFTC reparation claim filed with (FINRA, AAA, CFTC, etc.):

B. Docket/Case#:

C. Date notice/process was served (MM/DD/YYYY):

Exact Explanation

If not exact, provide explanation:

13. Is arbitration/ CFTC reparation pending?

Yes No

If "No", complete item 14.

14. If the arbitration/CFTC reparation is not pending, what was the disposition?

- | | | | |
|---|---|----------------------------------|------------------------------------|
| <input type="checkbox"/> Award to Applicant
(Agent/Representative) | <input type="checkbox"/> Award to
Customer | <input type="checkbox"/> Denied | <input type="checkbox"/> Dismissed |
| <input type="checkbox"/> Judgment (other than monetary) | <input type="checkbox"/> No Action | <input type="checkbox"/> Settled | <input type="checkbox"/> Withdrawn |
| <input type="checkbox"/> Other : | | | |

15. Disposition Date (MM/DD/YYYY):

Exact Explanation

If not exact, provide explanation:

16. Monetary Compensation Details (award, settlement, reparation amount):

A. Total Amount:

\$

B. Your Contribution Amount:

\$

If the matter involves a civil litigation in which you are a defendant, complete items 17-23.

17. Court in which case was filed:

Federal Court State Court Foreign Court Military Court Other :

A. Name of Court:

B. Location of Court (City or County and State or Country):

C. Docket/Case#:

18. Date notice/process was served (MM/DD/YYYY):

Exact Explanation

If not exact, provide explanation:

19. Is the civil litigation pending?

Yes No

If "No", complete item 20.

20. If the civil litigation is not pending, what was the disposition?

Denied

Dismissed

Judgment (other than monetary)

Monetary Judgment to Applicant (Agent/Representative)

Monetary Judgment to Customer

No Action

Settled

Withdrawn

Other :

21. Disposition Date (MM/DD/YYYY):

Exact Explanation

If not exact, provide explanation:

22. Monetary Compensation Details (judgment, restitution, settlement amount):

A. Total Amount:

\$

B. Your Contribution Amount:

\$

23. If action is currently on appeal:

A. Enter date appeal filed (MM/DD/YYYY):

Exact Explanation

If not exact, provide explanation:

B. Court appeal filed in:

Federal Court State Court Foreign Court Military Court Other :

i. Name of Court:

ii. Location of Court (City or County and State or Country):

iii. Docket/Case#:

24. Comment (Optional). You may use this field to provide a brief summary of the circumstances leading to the customer complaint, arbitration/CFTC reparation and/or civil litigation as well as the current status or final disposition(s). Your information must fit within the space provided. This consumer-initiated complaint resulted in a \$5,000.00 restitution for the consumer, not \$10,000.00 as previously denoted. Therefore, it does not meet the criteria as set forth in disclosure question 14I(2)(1). Complaint was initiated by competing broker who wished to have money transferred to his company without penalty. The insurance company rejected his complaint request, explaining that the client could do a spousal continuation or request a 5 year payout without penalty. Instead of advising her to take one of these 2 options, he advised her to proceed with the surrender, pay the penalty, and then transfer to his company. He then helped her file the complaint to the state.

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[Privacy](#) | [Legal](#) | [Terms & Conditions](#)

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Exhibit 2

Disclosure Occurrence Composite

Individual CRD#: [1596961](#)

Individual Name: EDMARK, CURTIS R

Occurrence:	1933543				
Disclosure:	Regulatory Action				
Publicly Disclosable:	Yes				
Reportable:	Reportable		Reason		
	Yes				
Material Difference in Disclosure:	No				
Latest Filings:	Filing	Event Date	First Reported	Questions Answered	Last Review
	U4-AMENDMENT Regulatory Action 11/30/2017 CENTAURUS FINANCIAL, INC. (30833)	01/12/2009	11/30/2017	14D(1)(b),14D(1)(d)	
Last Review:	RWARD 12/11/2017				
Comments:					

REGULATORY ACTION DRP

U4 - AMENDMENT
11/30/2017
CENTAURUS FINANCIAL, INC. (30833)

Rev. Form U4 (05/2009)

This Disclosure Reporting Page is an **INITIAL** or **AMENDED** response to report details for affirmative response(s) to **Question(s) 14C, 14D, 14E, 14F and 14G(1)** on Form U4;

Regulatory Action

Rev. DRP (05/2009)

Check the question(s) you are responding to, regardless of whether you are answering the question(s) "yes" or amending the answer(s) to "no":

- | | | | |
|---------------------------------|---|---------------------------------|---------------------------------|
| <input type="checkbox"/> 14C(1) | <input type="checkbox"/> 14D(1)(a) | <input type="checkbox"/> 14E(1) | <input type="checkbox"/> 14F |
| <input type="checkbox"/> 14C(2) | <input checked="" type="checkbox"/> 14D(1)(b) | <input type="checkbox"/> 14E(2) | |
| <input type="checkbox"/> 14C(3) | <input type="checkbox"/> 14D(1)(c) | <input type="checkbox"/> 14E(3) | <input type="checkbox"/> 14G(1) |
| <input type="checkbox"/> 14C(4) | <input checked="" type="checkbox"/> 14D(1)(d) | <input type="checkbox"/> 14E(4) | |
| <input type="checkbox"/> 14C(5) | <input type="checkbox"/> 14D(1)(e) | <input type="checkbox"/> 14E(5) | |
| <input type="checkbox"/> 14C(6) | <input type="checkbox"/> 14D(2)(a) | <input type="checkbox"/> 14E(6) | |
| <input type="checkbox"/> 14C(7) | <input type="checkbox"/> 14D(2)(b) | <input type="checkbox"/> 14E(7) | |
| <input type="checkbox"/> 14C(8) | | | |

[Click here to view question text](#)

By selecting this box, I hereby request that the data on this Form U4 filing be used to satisfy my firm's reporting obligation pursuant to the applicable provision of FINRA Rule [4530\(a\)\(1\)](#).

One event may result in more than one affirmative answer to the above items. Use only one DRP to report details

related to the same event. If an event gives rise to actions by more than one regulator, provide details to each action on a separate DRP.

1. Regulatory Action initiated by:

A. (Select appropriate item):

- SEC
 Other Federal Agency
 Jurisdiction
 SRO
 CFTC
 Foreign Financial Regulatory Authority
 Federal Banking Agency
 National Credit Union
 Administration
 Other

B. Full name of regulator (if other than the SEC) that initiated the action:

STATE OF WISCONSIN OFFICE OF THE COMMISSIONER OF INSURANCE

2. Sanction(s) Sought (select all that apply):

- | | | |
|--|---|---------------------------------------|
| <input type="checkbox"/> Bar | <input type="checkbox"/> Cease and Desist | <input type="checkbox"/> Censure |
| <input type="checkbox"/> Civil and Administrative Penalty(ies)/Fine(s) | <input type="checkbox"/> Denial | <input type="checkbox"/> Disgorgement |
| <input type="checkbox"/> Expulsion | <input checked="" type="checkbox"/> Monetary Penalty other than Fines | <input type="checkbox"/> Prohibition |
| <input type="checkbox"/> Reprimand | <input type="checkbox"/> Requalification | <input type="checkbox"/> Rescission |
| <input checked="" type="checkbox"/> Restitution | <input type="checkbox"/> Revocation | <input type="checkbox"/> Suspension |
| <input type="checkbox"/> Undertaking | | |
| <input type="checkbox"/> Other: | | |

3. Date Initiated (MM/DD/YYYY):

01/12/2009 Exact Explanation

If not exact, provide explanation:

4. Docket/Case Number:

05-C29817

5. Employing Firm when activity occurred which led to the regulatory action:

NONE

6. Product Type(s) (select all that apply):

- | | | |
|--|---|--|
| <input type="checkbox"/> No Product | <input type="checkbox"/> Derivative | <input type="checkbox"/> Mutual Fund |
| <input type="checkbox"/> Annuity-Charitable | <input type="checkbox"/> Direct Investment-DPP & LP Interests | <input type="checkbox"/> Oil & Gas |
| <input checked="" type="checkbox"/> Annuity-Fixed | <input type="checkbox"/> Equipment Leasing | <input type="checkbox"/> Options |
| <input checked="" type="checkbox"/> Annuity-Variable | <input type="checkbox"/> Equity Listed (Common & Preferred Stock) | <input type="checkbox"/> Penny Stock |
| <input type="checkbox"/> Banking Products (other than CDs) | <input type="checkbox"/> Equity-OTC | <input type="checkbox"/> Prime Bank Instrument |
| <input type="checkbox"/> CD | <input type="checkbox"/> Futures Commodity | <input type="checkbox"/> Promissory Note |
| <input type="checkbox"/> Commodity Option | <input type="checkbox"/> Futures-Financial | <input type="checkbox"/> Real Estate Security |
| <input type="checkbox"/> Debt-Asset Backed | <input type="checkbox"/> Index Option | <input type="checkbox"/> Security Futures |
| <input type="checkbox"/> Debt-Corporate | <input type="checkbox"/> Insurance | <input type="checkbox"/> Unit Investment Trust |
| <input type="checkbox"/> Debt-Government | <input type="checkbox"/> Investment Contract | <input type="checkbox"/> Viatical Settlement |
| <input type="checkbox"/> Debt-Municipal | <input type="checkbox"/> Money Market Fund | <input type="checkbox"/> Other: |

7. Describe the allegations related to this regulatory action. (Your information must fit within the space provided.):

THE COMMISSIONER OF INSURANCE ALLEGED VIOLATIONS OF STATE STATUTE 628.34 (UNFAIR MARKETING PRACTICES) AND ADMINISTRATIVE CODE 2.16 (ADVERTISEMENTS OF AND DECEPTIVE PRACTICES IN LIFE INSURANCE AND ANNUITIES).

Current Status?

8. Pending On Appeal Final

9. If pending, are there any limitations or restrictions currently in effect?

- Yes No

If the answer is 'yes', provide details:

10. If on appeal:

A. Action appealed to:

- SEC SRO CFTC Federal Court State Agency or Commission State Court Other:

B. Date appeal filed (MM/DD/YYYY):

- Exact Explanation

If not exact, provide explanation:

C. Are there any limitations or restrictions currently in effect while on appeal?

- Yes No

If the answer is 'yes', provide details:

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 14 only.

11. Resolution Detail:

A. How was matter resolved? (select appropriate item):

- | | | |
|---|--|--------------------------------|
| <input type="radio"/> Acceptance, Waiver & Consent (AWC) | <input type="radio"/> Consent | <input type="radio"/> Decision |
| <input type="radio"/> Decision & Order of Offer of Settlement | <input type="radio"/> Dismissed | <input type="radio"/> Order |
| <input type="radio"/> Settled | <input checked="" type="radio"/> Stipulation and Consent | <input type="radio"/> Vacated |
| <input type="radio"/> Vacated Nunc Pro Tunc/ab initio | <input type="radio"/> Withdrawn | |
| <input type="radio"/> Other: | | |

B. Resolution Date (MM/DD/YYYY):

01/12/2009 Exact Explanation

If not exact, provide explanation:

12. Does the order constitute a *final order* based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?

- Yes No

13. Sanction Detail:

A. Were any of the following sanctions ordered? (Select all appropriate items):

- | | | |
|---|--|--|
| <input type="checkbox"/> Bar (Permanent) | <input type="checkbox"/> Bar (Temporary/Time Limited) | <input type="checkbox"/> Cease and Desist |
| <input type="checkbox"/> Censure | <input type="checkbox"/> Civil and Administrative Penalty(ies)/Fine(s) | <input type="checkbox"/> Denial |
| <input type="checkbox"/> Disgorgement | <input type="checkbox"/> Expulsion | <input type="checkbox"/> Letter of Reprimand |
| <input checked="" type="checkbox"/> Monetary Penalty other than Fines | <input type="checkbox"/> Prohibition | <input type="checkbox"/> Requalification |
| <input type="checkbox"/> Rescission | <input checked="" type="checkbox"/> Restitution | <input type="checkbox"/> Revocation |
| <input type="checkbox"/> Suspension | <input type="checkbox"/> Undertaking | |

B. Other sanctions ordered:

C. If suspended or barred, provide:

No Information Filed.

D. If requalification by exam/retraining was a condition of the sanction, provide:

No Information Filed.

E. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide:

Monetary Sanction Details

If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide:

Monetary Related Sanction Type: Restitution

Total Amount:

\$ 5,000.00

Portion Levied against you:

\$ 5,000.00

Payment Plan:

Is Payment Plan Current? Yes No

Date Paid by you (MM/DD/YYYY):

02/01/2009 Exact Explanation

If not exact, provide explanation:

Was any portion of penalty waived? Yes No

If yes, amount:

\$

Monetary Sanction Details

If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide:

Monetary Related Sanction Type: Monetary Penalty other than Fines

Total Amount:

\$ 5,000.00

Portion Levied against you:

\$ 5,000.00

Payment Plan:

Is Payment Plan Current? Yes No

Date Paid by you (MM/DD/YYYY):

11/01/2013 Exact Explanation

If not exact, provide explanation:

Was any portion of penalty waived? Yes No

If yes, amount:

\$

14. Comment (Optional). You may use this field to provide a brief summary of the circumstances leading to the action as well as the current status or disposition and/or finding(s). Your information must fit within the space provided.



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Sean Dilweg, Commissioner

Wisconsin.gov

March 3, 2008

Legal Unit
125 South Webster Street • P.O. Box 7873
Madison, Wisconsin 53707-7873
Phone: (608) 287-9586 • Fax: (608) 264-6228
Web Address: oci.wi.gov

MR CURTIS R EDMARK

KENOSHA WI

Re: Case No. 05-C29817
Notice of Hearing

Dear Mr. Edmark:

Enclosed is a Notice of Hearing. Since an administrative action has been commenced, you should direct all communications regarding this matter to the undersigned OCI attorney.

If you have any questions or wish to request that the prehearing conference be held by telephone, please call me at (608) 261-8283 or e-mail me at holly.strop@wisconsin.gov.

Sincerely,

Holly L. Strop
Attorney
Office of the Commissioner of Insurance

Enclosure

cc: Attorney JoAnne M Breese-Jaeck
Hostak, Henzl & Bichler
840 Lake Avenue
P O box 516
Racine wi 53401-0516

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OFFICE OF THE COMMISSIONER OF INSURANCE (OCI) STATE OF WISCONSIN

In the Matter of
Curtis R. Edmark,
Respondent

NOTICE OF HEARING

Case No. **05-C29817**

*** ANSWER is due on:	DATE: March 18, 2008
*** PREHEARING CONFERENCE is scheduled:	DATE: April 9, 2008, at 9:00 a.m. PLACE: OCI, 125 S. Webster St., Madison, WI
*** HEARING is scheduled:	DATE: May 12, 2008, at 9:00 a.m. PLACE: OCI, 125 S. Webster St., Madison, WI

***** PLEASE READ THIS CAREFULLY *****

If you have questions, please call the attorney signing this Notice of Hearing.

You are required by s. Ins 5.13, Wis. Adm. Code, to furnish a written answer to this Notice of Hearing so that OCI receives it by the date specified above. The answer need not be in any particular form, but should briefly state whether you admit or deny each allegation listed below and any defenses you will be raising.

You are required by s. 227.44 (4) (a), Wis. Stat., to appear at the pre-hearing conference scheduled at the time and place stated above. If you are not able to appear, you must contact the attorney who signed this Notice of Hearing.

A class 2 hearing under ch. 227, Wis. Stat., will be held before Anne Debevoise Ostby, duly appointed Administrative Law Judge, at the time and place stated above, to be continued at any time and place the Administrative Law Judge considers necessary, to consider the matters set forth in this Notice of Hearing.

If you do not answer by the specified date or appear at the pre-hearing conference or hearing, the Commissioner of Insurance ("Commissioner") may issue an order of forfeiture, suspension or revocation of your insurance license, or other order based on the stated allegations without further notice. This means that you will not be able to contest or challenge the order of the Commissioner.

As a foundation for this proceeding, OCI alleges that:

(1) Curtis R. Edmark ("Respondent"), [REDACTED], Kenosha, Wisconsin [REDACTED], at all material time periods was a licensed Wisconsin intermediary agent (License No. 885749) and subject to the jurisdiction and control of the Commissioner.

(2) On or about July 27, 2005 the OCI received a complaint against Respondent Edmark from Betty Wishau, alleging that the Respondent made a

number of false statements and misleading communications, including statements misleading by omission, regarding his solicitation and sale of five annuities to her and her late husband Arkley Wishau back in 2003.

(3) After investigating this complaint the Office of the Commissioner of Insurance discovered the following facts:

(4) Betty and Arkley Wishau attended a Senior Financial Survival Workshop presented by the Respondent in January, 2003.

(5) The Respondent met the Wishaus in their home on or about January 29, 2003 after they attended his workshop.

(6) Betty and Arkley Wishau were approximately 72 and 79 respectively when they met the Respondent in 2003. Both were retired.

(7) In January 2003, during this initial meeting, the Wishaus conveyed their [REDACTED] and issues to Respondent Edmark as follows:

- a. [REDACTED]
- [REDACTED];
- c. [REDACTED]
- [REDACTED]

(8) During their meeting on or about January 30, 2003, the Respondent used misleading advertisements, representations and solicitations to present and recommend to the Wishaus that they invest their IRA funds in what the Respondent referred to as "The GenIRational System SM" (TGS), which envisioned the Wishaus investing their IRA monies in certain annuities the Respondent recommended to obtain a future percentage of return.

(9) When presenting the TGS system to the Wishaus the Respondent used deceptive words, phrases and illustrations in the form of verbal representations of the products, as well as charts and graphs that exaggerated the rate of return the Wishaus would receive, and over-estimated the value their funds would grow to in a certain amount of time.

(10) The TGS model created by the Respondent for the Wishaus, represented certain figures and calculations of the Wishau's asset appreciation, life expectancies, income rates and taxation assumptions which were either false or were formulated using false and misleading, assumptions and representations.

(11) Based on his deceptive charts and presentations, Respondent recommended that the Wishaus move their IRA accounts into deferred annuities, falsely informing them that there would be tax benefits, where no added benefits existed, and made the following false statements and misrepresentations to them;

- a. The Respondent falsely informed the Wishaus that tax deferral status of their IRAs would be lost if they didn't purchase the TGS;
- b. Used charts that demonstrate the TGS growth at 6%, when the TGS is actually funded with annuities earning 3% guaranteed;

(12) The Respondent did not make the necessary inquiries to determine whether the five annuities he recommended and sold to the Wishaus in early 2003 were not unsuitable.

(13) The misrepresentations and misleading statements Respondent made to the Wishaus resulted in the following unsuitable replacement recommendations when he solicited and sold them the TGS:

- a. Rolled @ \$26,364 from Betty Wishau's Charles Schwab IRA to Transamerica Life and Annuity policy #TAR0063474;
- b. Rolled @ \$25,544.62 from Jackson National Life deferred fixed annuity contract #0002786040 to the same Transamerica policy #TAR0063474;
- c. Rolled \$79,670.14 from Arkley Wishau's Charles Schwab IRA (Acct # 9504-3120) to Transamerica Life and Annuity deferred policy #TAR0063475,
- d. Rolled \$25,964.04 from Arkley Wishau's Merrill Lynch variable annuity contract J011873810 to the same Transamerica policy #TAR0063475;
- e. Rolled Betty Wishau's \$86,882.86 Wisconsin Deferred Compensation account into Amerus Life deferred annuity contract #23795;
- f. Sold to Betty Wishau an Allianz deferred annuity contract #70107228 with a \$70,000 cash premium;
- g. Rolled \$53,000 from Arkley Wishau's Merrill Lynch variable annuity contract J011870572 to an Allianz deferred annuity contract #70107234;

(14) Respondent made the following false and misleading representations to the insurers regarding these transactions:

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- a. Respondent drafted a Do Not Call letter and sent it to Jackson National Life, had Betty Wishau sign it, and then had her signature stamped with a Medallion Signature Guarantee, falsely representing to the insurer that a registered representative had actually witnessed Mrs. Wishau's signature.
- b. Respondent drafted a Do Not Call letter to Charles Schwab and Merrill Lynch, had Arkley Wishau sign it, and then had his signature stamped with a Medallion Signature Guarantee, falsely representing to the insurer that a registered representative had actually witnessed Mr. Wishau's signature.

(15) Arkley Wishau passed away November 23, 2004;

(16) During an interview held on February 2, 2006 the OCI determined, based on the following observations, that the Respondent was being intentionally misleading and evasive to the consumer and to the OCI, that he did not ensure that the recommendations he made to the Wishaus were suitable, and that the Respondent, in general, uses misleading and deceptive business practices to solicit and sell insurance:

- a. Respondent was asked by the OCI to bring his complete client file regarding Betty and Arkley Wishau to the interview, but did not do so;
- b. Respondent markets himself as a Certified Elder Planning Specialist, for the sole purpose of selling insurance products, and uses brochures and pamphlets that do not indicate that he is actually an insurance agent selling insurance;
- c. The Respondent misleadingly told the OCI that he was no longer securities licensed because he voluntarily let his license lapse. However, the OCI learned that on December 23, 2005, DFI issued a Consent Order of Probation to the Respondent for soliciting and selling unregistered securities in the form of viatical settlement contracts. The Order stated that the Respondent must satisfy all civil liabilities in that case to be reinstated as a registered securities representative.
- d. The Respondent falsely told the OCI that he was not aware of the Wishau's health issues and that the subject of their health did not arise during his conversation with them.
- e. When asked how many annuities he sold to the Wishaus he admitted to selling them three annuities, then confessed to the additional sales when OCI brought them to his attention;

- f. Respondent admitted that he sells long-term deferred annuity products to consumers who need liquidity by advising them to take advantage of free withdrawal provisions;
- g. When asked what the Wishaus had for liquid assets Respondent referred to Betty Wishau's \$80,000 Deferred Compensation fund, admitting when pressed that he had actually moved that account into an annuity.
- h. Respondent stated that he did not take notes or document important financial information about the Wishaus including other investments, liquidity of their funds and long and short term financial goals;
- i. He admitted that when giving sales presentations he refers to the TGS and to the annuities he sells as a "plan." Respondent also stated that he may not use the word annuity when describing his "plan" to the consumer;
- j. Respondent could not explain why Mrs. Wishau received a 13% reduction in the lump sum death benefit on Arkley's Transamerica policy;

Count Two - Ken Borkowitz

(17) On or about September 6, 2006, the OCI received a complaint from Ken Borkowitz alleging that the Respondent made a number of false statements and misleading communications, including statements misleading by omission, to him regarding his solicitation and sale of an annuity to him in 2004.

(18) Mr. Borkowitz maintained approximately \$262,000.00 in a diversified General Electric (G.E.) 401k plan that he contributed to while working as a manufacturer of G.E. MRI machines. G.E. provided seminars for retirees to keep them informed about their 401k funds. These seminars stopped in approximately 2000.

(19) G.E. also provided a financial advisor for retirees, who categorized Mr. Borkowitz as ultra conservative.

(20) Mr. Borkowitz' G.E. 401K reduced to @\$213,000.00 after September 11, 2001 and climbed back to @\$240,000.00 in 2003 and remained at that approximate level for several years.

(21) In July, 2004 Helen and Kenneth Borkowitz received a letter in the mail inviting them to a seminar presented by the Respondent. They attended.

(22) Shortly after the seminar, the Respondent visited Mr. and Mrs. Borkowitz in their home.

(23) The Respondent introduced himself at the seminar and to Mr. and Mrs. Borkowitz as an agent from Pioneer Financial Group.

(24) The Respondent viewed a list of Mr. and Mrs. Borkowitz's total assets and learned that Mr. Borkowitz's investment objective was to achieve growth of his funds at least 3% per annum.

(25) The Respondent marketed, recommended and sold ING Selectra Multi-Strategy annuity contract #90163841 to Mr. Borkowitz. During his presentation of this product to Mr. and Mrs. Borkowitz, the Respondent called the product a "strategy." He never used the word annuity.

(26) ING Selectra Multi-Strategy annuity contract #90163841 is a fixed annuity offering three different investment strategies: Total Return Strategy; Equity Index Strategy and One-Year Fixed Rate Strategy. All of these strategies maintain a minimum guaranteed annual return of 1.5%.

(27) The Respondent repeatedly and falsely represented to Mr. and Mrs. Borkowitz that ING contract #90163841 would earn 3% interest or more annually, but the annual interest would never fall below 3%.

(28) Mr. Borkowitz did not understand that he purchased an annuity until well after the Respondent made the recommendation and the sale of ING contract #90163841.

(29) Mr. Borkowitz informed the Respondent he may want to withdraw funds to purchase a new car. The Respondent falsely informed Mr. Borkowitz that he could obtain a penalty-free withdrawal after one year.

(30) Mr. Borkowitz requested a 10% penalty free withdrawal in the amount of \$26,025.70 on or about May 2, 2006 and was assessed a surrender charge or Total Return Adjustment (TRA) of \$784.03. Mr. Borkowitz immediately returned the funds to ING so as to not incur a penalty.

(31) When money in the TRS is accessed, a Total Return Adjustment (TRA) passes along the performance of the assets backing the strategy resulting (including capital gains/losses) in an adjustment of the withdrawal positive or negative. The TRA is applied to all redistributions, withdrawals, surrenders and annuitization.

(32) Contract #90163841 is an IRA. Mr. Borkowitz will be required to take Required Minimum Distributions (RMD) at age 70.5. The RMDs are subject to the TRA adjustment, positive or negative.

(33) The Selecta Multi-Strategy has two other possible fund allocations: the Equity Index Strategy and the One-Year fixed rate strategy. The TRA is not applied to these strategies.

(34) A Market Value Adjustment which can be positive or negative is applied to these two strategies, though the Respondent inaccurately stated to OCI that penalty free withdrawals could be taken at any time.

(35) The Total Return Strategy involves more risk than the other two strategies and may gain or lose more after the TRA is applied.

(36) Respondent Edmark admitted in his agent statement that in the two years he had been selling the ING Multi-Strategy annuity product, he had never seen a positive TRA. Respondent did not disclose this to Mr. Borkowitz when he recommended the product to him.

(37) Mr. Borkowitz told the Respondent he did not understand 90% of the contract language or the Total Return Strategy or the Total Return Adjustment. In response, the Respondent told Mr. Borkowitz that the TRA is very complex and without explaining the TRA told Mr. Borkowitz everything would be alright.

(38) On March 22, 2007 the OCI interviewed the Respondent and asked him to explain the mechanics of the Total Return Adjustment; he did not understand the TRA and could not explain it.

(39) When asked about the suitability of his recommendation of the ING Selectra contract #90163841 to Mr. Borkowitz, Respondent Edmark told the OCI that he had performed a suitability analysis, but he did not keep notes or records in his client file.

(40) After many calls to ING, Mr. Borkowitz became aware of many misrepresentations made by the Respondent and requested ING to change his agent of record in May of 2006.

(41) After being made aware that he was no longer Mr. Borkowitz's agent of Record, the Respondent contacted Mr. Borkowitz to review his contract.

(42) The Respondent told Mr. Borkowitz that his commission on the product he sold was no more than 3%. The Respondent made a commission of \$17,197.02 (7%) and his broker, Broker's Choice of America earned a commission of \$3,685.08 on the sale of ING contract #90163841.

(43) AT that time, the Respondent also recommended that Mr. and Mrs. Borkowitz roll their other IRA accounts totaling @ \$27,000.00 into ING contract #90163841. They declined.

policy, the Respondent had Ms. Harrits sign a letter addressed to AXA Equitable requesting the transfer and asking AXA Equitable not to contact her regarding the transaction. Respondent caused a third party to sign a Medallion Signature Guarantee on this document, falsely representing to AXA Equitable that the third party had witnessed Mrs. Harrits' signature.

(52) During the solicitation and sale of the Transamerica annuity to Mrs. Harrits, Respondent Edmark made the following misrepresentations either by omission or through false statements:

(44) After learning more about the features of the TRA strategy with ING contract #90163841, in September 2006, Mr. Borkowitz surrendered the contract, suffering a \$36,280.50 surrender fee.

Count Three – Inga Harrits

(45) On June 15, 2007 the OCI received a complaint filed by insurance agent Kurt Roemer on behalf of Inga Harrits regarding the solicitation and sale of insurance products to s by Respondent Edmark.

(46) The Office of the Commissioner of Insurance conducted an investigation of this complaint and discovered the following fact:

(47) Mrs. Harrits attended a free dinner seminar conducted by Respondent Edmark.

(48) Mrs. Harrits recalled that Respondent Edmark stated in his presentation that he could get a \$6,200 bonus for everyone.

(49) After the seminar, Respondent took names and addresses of people who wanted more information; Ms. Harrits gave her name, and the Respondent called her shortly thereafter and made an appointment to meet Mrs. Harrits at her home.

(50) On or about May 16, 2003, the Respondent met with Mrs. Harrits at her home and recommended that she transfer \$155,000.00 from her AXA Equitable IRA annuity policy #082950380, into Transamerica Life Flexible Premium deferred annuity policy # TAR0066394. Mrs. Harrits had held the AXA policy since 1982. Lynn Svendson, Ms. Harrits' daughter, was present when Respondent met with Mrs. Harrits and made this recommendation.

(51) On May 16, 2003, when he recommended and sold the TAR0066394 policy, the Respondent had Ms. Harrits sign a letter addressed to AXA Equitable requesting the transfer and asking AXA Equitable not to contact her regarding the transaction. Respondent caused a third party to sign a Medallion Signature Guarantee on this document, falsely representing to AXA Equitable that the third party had witnessed Mrs. Harrits' signature.

(52) During the solicitation and sale of the Transamerica annuity to Mrs. Harrits, Respondent Edmark made the following misrepresentations either by omission or through false statements:

- a. He stated that policy #TAR0066394 would perform a lot better than the AXA Equitable policy, without explaining to Mrs. Harrits exactly what he meant;

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- b. He stated that policy #TAR0066394 was guaranteed to earn no less than 3%;
- c. He did not explain the difference between the cash value and the surrender value of the Transamerica policy;
- d. He did not explain the 10-year surrender period or the surrender charges that also applied to the death benefit of the Transamerica policy;
- e. He did not discuss or explain the different Crediting Rate Strategies associated with the Transamerica policy, and selected the Total Return Strategy for Ms. Harrits without explaining his reasoning;
- f. He did not explain the Total Return Adjustment and the negative impact it could have on any withdrawal, including Mrs. Harrits' Required Minimum Distribution.
- g. The Respondent did not leave a Wisconsin Buyer's Guide to Annuities and failed to leave a Preliminary Contract Summary prior to accepting initial consideration for the annuity contract.

(53) The allegations as set forth in paragraph (2)-(52) constitute repeated violations of §628.34(1), Wis. Stat.

(54) The allegations as set forth in paragraph (2)-(52) constitute repeated violations of § Ins 2.16 (5), (6) and (7), Wis. Adm. Code.

(55) The allegations as set forth in paragraph (52)g constitute violations of § Ins 2.16 (8) Wis. Adm. Code.

The acts of the Respondent as set forth in paragraphs (2)-(52) above indicate that the Respondent is unqualified as an intermediary, or that the Respondent is not of good character, or that the Respondent repeatedly or knowingly violated an insurance statute or rule or valid order of the commissioner, or that the Respondent's methods and practices in the conduct of business endanger, or Respondent's financial resources are inadequate to safeguard, the legitimate interests of the Respondent's customers and the public, and thereby constitute sufficient grounds to: revoke, suspend, or limit in whole or in part the Respondent's permanent insurance intermediary agent license pursuant to s. 628.10, Wis. Stat.; order a forfeiture pursuant to s. 601.64 (3), Wis. Stat., in the amount of twice the profit gained from the violations plus a forfeiture of up to \$1,000 per violation of a statute or order and issue remedial orders pursuant to s. 601.41 (4), Wis. Stat.

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Dated at Madison, Wisconsin, on February 29, 2008.



Holly L. Strop, Attorney
Office of the Commissioner of Insurance
State Bar No. 1038009

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CRD # 159696

OFFICE OF THE COMMISSIONER OF INSURANCE (OCI) STATE OF WISCONSIN

In the Matter of
Curtis R. Edmark,
Respondent

STIPULATION and ORDER

Case No. **05-C29817**

Edmark, Curtis R
05-C29817
Ex: Fabry, Renee Atty: Strop, Holly L
Closed: 01-13-2009

WHEREAS, Respondent, Curtis R. Edmark, 3911 45th Avenue, Kenosha, Wisconsin 53144, (License No. 885749) is subject to the jurisdiction and control of the Commissioner of Insurance in the State of Wisconsin; and

WHEREAS, The Office of the Commissioner of Insurance (hereinafter the "Commissioner") conducted an investigation of Respondent; and

WHEREAS, the Commissioner made the following allegations that:

(A) The Respondent did what is described in the attached Notice of Hearing in this matter.

WHEREAS, the Respondent does not admit or deny the facts alleged in the attached Notice of Hearing. However, for purposes of disposition only, the Respondent agrees that the alleged violations may be deemed to have occurred for the purposes of determining the penalty and restitution.

WHEREAS, the Respondent admits that there is a sufficient factual basis to warrant limitation of his intermediary insurance license as set forth below.

WHEREAS, the Respondent agrees that the allegations contained in the Notice of Hearing may be used as a factual basis for the Office of the Commissioner of Insurance to determine restitution to the consumers.

NOW, THEREFORE, Respondent and the Commissioner do agree and stipulate to the following terms and conditions:

1. The Respondent agrees to the imposition of a forfeiture of five thousand dollars (\$5,000.00) payable to the state of Wisconsin. This forfeiture shall be paid in installments of \$1,000.00 per year. Payments must be completed on or before November 1, 2013.
2. The Respondent agrees to pay \$5,000.00 in restitution to Betty Wishau by February 1, 2009.
3. The Respondent and the Commissioner agree that as of the date of this Stipulation, complete restitution has been made to the consumers by the insurers involved in this matter.
4. Respondent agrees that any violation of the Stipulation and Order will result in immediate revocation of Respondent's Wisconsin intermediary license.
5. Both parties agree that on the effective date of this Stipulation and Order, this proceeding is dismissed with prejudice and without costs against either party.
6. This Stipulation is effective on the date OCI mails a signed copy of the Stipulation and Order to the Respondent or the Respondent's Attorney.

The Respondent agrees this Stipulation is made without reservation and constitutes a waiver of valuable rights including a hearing, confrontation and cross-examination of witnesses, production of evidence, making a motion for costs, and

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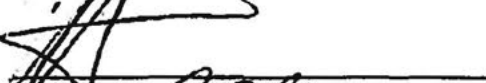
judicial review. The Commissioner agrees to not impose any additional administrative action for any allegation noted in this Stipulation. The Commissioner may enforce this Stipulation and Order. In addition, if the Respondent is involved in a future administrative action, this Stipulation may be considered in determining the appropriate action and penalty.

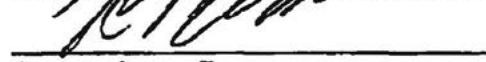
11/30/2008
Date

2-2-09
Date

1/7/09
Date


Curtis R. Edmark


Holly L. Stupp, Attorney
Office of the Commissioner of Insurance


Approved as to Form
Michael Crooks, Attorney for Respondent

ORDER

NOW THEREFORE, based upon the consideration of this Stipulation, I hereby Order, pursuant to s. 601.41 (4), Wis. Stat., that:

1. The Respondent shall pay a forfeiture of five thousand dollars (\$5,000.00) to the order of the state of Wisconsin. This forfeiture shall be paid in installments of \$1,000.00 per year. Payments must be completed on or before November 1, 2013.
2. The Respondent agrees to pay \$5,000.00 in restitution to Betty Wishau by February 1, 2009.
3. Respondent shall comply with all agreements made in this Stipulation and Order.

Dated at Madison, Wisconsin, this 12 day of ^{January 2009} ~~November~~, 2008.


Susan Ezalarah, Director
Bureau of Market Regulation

CERTIFICATE OF SERVICE

I, Megan Rauch, certify that on this 9th day of November 2020, I caused a copy of the foregoing FINRA's Brief in Opposition to Application for Review, Administrative Proceeding File No. 3-19594, to be served by via email on:

Vanessa Countryman, Secretary
Securities and Exchange Commission
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Due to office closures related to COVID-19, the parties were served via electronic mail.

/s/Megan Rauch

Megan Rauch
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