

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION

IN THE MATTER OF DETERMINING) Order No.: S-16-2105-17-SC01
Whether there has been a violation of the)
Securities Act of Washington by:) STATEMENT OF CHARGES AND NOTICE OF INTENT
Mark Allan Miller,) TO ENTER ORDER TO CEASE AND DESIST, DENY
Respondents.) FUTURE REGISTRATIONS, AND IMPOSE FINES

THE STATE OF WASHINGTON TO: Mark Allan Miller (CRD #4260127)

STATEMENT OF CHARGES

Please take notice that the Securities Administrator of the state of Washington has reason to believe that Respondent Mark Allan Miller has violated the Securities Act of Washington. The Securities Administrator believes these violations justify the entry of an order of the Securities Administrator against Mark Allan Miller to cease and desist from such violations pursuant to RCW 21.20.390, to deny Mark Allan Miller's future securities registration applications pursuant to RCW 21.20.110(1), to impose a fine pursuant to RCW 21.20.395, and to charge costs pursuant to RCW 21.20.390. The Securities Administrator finds as follows:

TENTATIVE FINDINGS OF FACT

Respondent

1. Mark Allan Miller ("Miller") is a Washington resident and former registered securities salesperson and investment adviser representative with various financial firms in the Vancouver-Portland metropolitan area. Miller has been registered to work in the securities industry at various points from 2000 to 2008, and again from 2014 to 2016. Miller's Central Registration Depository ("CRD") number is 4260127. Miller has lived in Vancouver, Washington from at least August 2005 to the present.

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Related Parties

2. JP Morgan Securities LLC (“JP Morgan”) is a registered broker-dealer and investment adviser (CRD #79). Miller worked as an investment adviser representative and securities salesperson for JP Morgan from May 2015 until his termination from the firm in June 2016.

3. Ameriprise Financial Services, Inc. (“Ameriprise”) is a registered broker-dealer and investment adviser (CRD #6363). Miller worked as an investment adviser representative and securities salesperson for Ameriprise, originally from August 2000 until April 2006 and more recently from May 2014 until March 2015.

4. Allstate Financial Services, LLC (“Allstate”) is a registered broker-dealer. Miller worked as a securities salesperson for Allstate from March 2007 to April 2008.

Overview

5. In Washington and most other jurisdictions, securities laws require applicants for securities salesperson or investment adviser representative licenses to disclose certain relevant information on Form U-4 of their applications, and to update their Form U-4 filings within 30 days of any changes which cause a previous filing to be inaccurate. In the “Disclosure Questions” section of their application, the applicant must give yes-or-no answers to questions about various career-related and financial issues: for instance, whether they have filed for bankruptcy within the last ten years, had any regulatory actions brought against them, or been the subject of customer complaints involving certain types of allegations or above a certain dollar threshold. The applicant may also disclose details such as the circumstances leading to the bankruptcy or the allegations in the customer complaint. This information can be important to employers in making hiring decisions, and to regulators in deciding whether to grant a license or request that the applicant’s employer use a heightened supervision plan to help prevent future violations. The disclosed information is also made publicly available online, through the Financial Industry Regulatory Authority’s BrokerCheck system, so investors can evaluate the history of a financial professional before deciding whether to do business with them. Applicants must also disclose any business activities outside of their affiliation with the financial firm, which enables the both the financial firm and

1 government regulators to evaluate any conflicts of interest and determine whether any additional measures are necessary
2 to ensure legal compliance.

3 6. In applying to the Securities Division for registration as an investment adviser representative and
4 securities salesperson with Ameriprise, and subsequently with JP Morgan, Miller falsely represented that he had no civil
5 judgments against him arising from consumer allegations of investment-related sales practice violations. Miller also
6 falsely represented that he had no outside business activities, when in fact he had an outside business arrangement for
7 insurance annuity referrals, which ultimately led to his resignation in lieu of termination from JP Morgan. Finally, Miller
8 unlawfully claimed to be the financial planner for an elderly client while he was not licensed as an investment adviser
9 or investment adviser representative.

10 Client Litigation & Judgment

11 7. In two registration applications with the Securities Division in 2014 and 2015, Miller gave false or
12 misleading answers to questions regarding investment-related client lawsuits and outstanding judgments. In December
13 2010, Miller filed for Chapter 7 bankruptcy in the Western District of Washington. In February 2011, a former client of
14 Miller, A.M., filed an adversary proceeding¹ against Miller. In the adversary proceeding, A.M. alleged that Miller had
15 told her that he was a financial advisor, and that he had convinced her to liquidate her 401(k) to invest \$40,000 in an
16 Alaska company and \$40,000 in Miller's financial services business, for a guaranteed \$1,000 per month in interest
17 payments. A.M. claimed that Miller had violated federal securities laws and Oregon's elder abuse statute by deceiving
18 her about the investments, using the \$80,000 for his personal expenses rather than for investing in the purported
19 businesses, and failing to tell her that he was not licensed as an investment adviser in Oregon, where A.M. resided. In
20 his answer to the complaint, Miller claimed that the \$80,000 he received from A.M. was a personal loan, and provided
21 copies of a document styled as a "PROMISSORRY NOTE" [sic] with Miller as the borrower and A.M. as the lender.
22 The note was dated May 12, 2008, approximately two weeks after Miller's resignation from Allstate. In response, A.M.
23 claimed that she had never seen that document, and provided a copy of a May 2008 check with "Business Venture"

24 ¹ In a bankruptcy adversary proceeding, a creditor will ask the bankruptcy court not to discharge a debt owed to the creditor on
25 certain grounds specified in bankruptcy law, including that the debtor defrauded the creditor to obtain money.

1 written in the memo line. Miller subsequently defaulted in the adversary proceeding, and the court granted A.M. a
2 judgment against Miller for \$282,607.83.² As of the date of this writing, Miller has not satisfied the judgment.

3 8. In May 2014, approximately six years after his last securities industry registration, Miller filed an
4 application to register with Washington State as a securities salesperson and investment adviser representative for
5 Ameriprise. Miller filed another application in June 2015, in the course of his move to JP Morgan. In both applications,
6 the Form U-4 asked whether the applicant had “ever been named as a respondent/defendant in an *investment-related*,
7 consumer-initiated arbitration or civil litigation which alleged that you were *involved* in one or more *sales practice*
8 *violations* and which . . . resulted in an arbitration award or civil judgment against you, regardless of amount.” The
9 Form U-4 also asked whether the applicant had “any unsatisfied judgments or liens against [them].” In both the 2014
10 and 2015 applications, Miller stated that he had not been involved in such litigation and did not have any unsatisfied
11 judgments or liens. Both of Miller’s claims were false. As detailed above, A.M. had sued Miller for investment-related
12 sales practice violations and obtained a civil judgment against him, and the judgment was outstanding as of the date of
13 Miller’s applications.

14 Outside Business Activity

15 9. In addition to his false representations regarding the A.M. lawsuit and judgment, Miller falsely claimed
16 that he was not engaged in any outside business activities, when in fact he was engaged in an outside arrangement for
17 fixed annuity referrals. In mid-2015, Miller entered a referral arrangement with E.B., an Oregon-based insurance agent
18 licensed in both Oregon and Washington. Miller had been a colleague and friend of E.B. at an insurance company
19 several years prior, and told E.B. that he wanted to help him to learn how to sell annuities and build an independent
20 practice. Under the referral arrangement, Miller would conduct annuity transactions through E.B. when clients wanted
21 to buy annuities. Miller would generally pitch the client on the annuity and would be the main point of contact if the
22 client had any issues, while E.B. would fill out the paperwork and would sometimes participate in the final meeting
23 with the client to complete the transaction. The insurance company would send commission payments to E.B., and E.B.

24 ² This figure was significantly higher than the amount A.M. had given Miller because it included treble damages under Oregon’s
25 elder abuse statute.

1 would pay Miller his share of the commission in cash. Miller never disclosed this arrangement to his employer, and
2 falsely represented in at least one Form U-4 filing with Washington State that he had no such arrangements.

3 10. Miller referred six Washington-resident clients to E.B. between October 2015 and April 2016, while
4 Miller was working for JP Morgan. Miller did not provide JP Morgan with notice of, or receive the firm's authorization
5 for, these referrals. Miller obtained approximately \$98,726 as a result of his referrals (slightly over 70% of the total
6 commission payments to E.B.), dealing exclusively in cash to avoid scrutiny of the transactions. In April 2016, JP
7 Morgan began an internal investigation of Miller after learning about Miller's annuity referral practices from one of the
8 clients. Miller resigned from the firm while under internal investigation, on June 1, 2016.

9 Deceptive Practices as Investment Adviser

10 11. Of Miller's six referrals to E.B., at least two were JP Morgan clients. One of the clients, T.W., was an
11 investment advisory client. In approximately March 2016, Miller met with T.W. and gave T.W. a financial plan which
12 involved liquidating some assets to purchase an annuity through JP Morgan. Although T.W. agreed to this plan, the
13 proposed transaction was not processed. Miller told T.W. that JP Morgan had found a suitability issue, and that JP
14 Morgan was not actively involved in annuity sales at that time. According to JP Morgan, both statements were false:
15 the transaction was not processed because Miller had not properly completed the paperwork, and JP Morgan was selling
16 annuities at that time. Rather than completing the paperwork or selling T.W. an annuity through JP Morgan, Miller
17 referred T.W. to E.B. to buy an annuity. T.W. liquidated his managed JP Morgan account and bought an annuity through
18 E.B. for \$324,343.79. Miller received approximately \$20,000 through E.B. from the sale of the annuity, but did not tell
19 T.W. anything about the specifics of his referral arrangement with E.B., or the compensation he would receive.

20 Holding Out as Financial Planner

21 12. After his resignation from JP Morgan, Miller continued to work with at least one former client from JP
22 Morgan, and held himself out as a financial planner. The client, L.M., was elderly and was in a skilled nursing facility
23 in the Vancouver area from August 9, 2016 to September 12, 2016. During L.M.'s stay at the facility, Miller visited the
24 client approximately 18 times, and told staff at the facility that he was L.M.'s financial planner. Miller's registration as
25 an investment adviser representative had ended when he resigned from JP Morgan approximately two months earlier

1 and was no longer affiliated with any registered investment adviser. Miller was not licensed with the Securities Division
2 in Washington in any capacity during this time.

3 13. On June 5, 2017, the Vancouver Police Department arrested Miller for one count of first-degree theft,
4 one count of attempted first-degree theft, and two counts of first-degree criminal impersonation related to his
5 relationship with L.M. Miller is out on bail; his trial is currently scheduled for March 2018.

6 Based upon the above Findings of Fact, the following Conclusions of Law are made:

7 **CONCLUSIONS OF LAW**

8 **I.**

9 1. Mark Allan Miller, as described above, filed a false, misleading, or materially incomplete application
10 for registration as a securities salesperson and investment adviser representative with the Securities Division by failing
11 to disclose the Madson adversary proceeding and resulting judgment. This filing violates RCW 21.20.350, and is
12 grounds for the denial of his securities salesperson and investment adviser representative registration, pursuant to RCW
13 21.20.110(1)(a), and for the imposition of fines and costs of investigation under RCW 21.20.110(1), RCW 21.20.110(7),
14 and RCW 21.20.390.

15 2. As described above, while registered with JP Morgan Securities LLC, Mark Allan Miller failed to
16 update his Form U-4 to disclose his referral arrangement with E.B. As a registered securities salesperson and investment
17 adviser representative Mark Allan Miller violated WAC 460-22B-060 and WAC 460-24A-205(2) by failing to update
18 his registration application within 30 days of an event which caused his previous application to be inaccurate.

19 3. Mark Allan Miller, as described above, engaged in dishonest and unethical business practices by
20 receiving compensation for business activities outside the scope of his relationship with JP Morgan Securities LLC,
21 without providing the firm with prior written notice. Such practice violates FINRA Rule 3270 (incorporated as
22 Washington law by WAC 460-22B-090(19)), and is grounds for the denial of his securities salesperson and investment
23 adviser representative registration, pursuant to RCW 21.20.110(1)(g), for the imposition of fines pursuant to RCW
24 21.20.110(1), and for the charging of investigative costs pursuant to RCW 21.20.110(7).

1 4. Mark Allan Miller, as a registered investment adviser representative, received consideration from
2 clients for advising them as to the value of securities or their purchase or sale. As described above, by recommending
3 that T.W. sell securities from their retirement account to purchase an annuity, misrepresenting the availability of
4 annuities through JP Morgan, and failing to disclose the compensation that he would receive from T.W.'s purchase of
5 the annuity, Mark Allan Miller engaged in an act, practice, or course of business which operated as a fraud on a client,
6 in violation of RCW 21.20.020. Such practice is grounds for the denial of his securities salesperson or investment
7 adviser representative registration, pursuant to RCW 21.20.110(1)(b), for the imposition of fines pursuant to RCW
8 21.20.110(1), and for the charging of investigative costs pursuant to RCW 21.20.110(7).

9 5. Mark Allan Miller violated RCW 21.20.040 by holding himself out as a financial planner without being
10 registered as an investment adviser or exempt from registration, as described above.

11 **NOTICE OF INTENT TO DENY FUTURE REGISTRATION**

12 Pursuant to RCW 21.20.110(1) and based upon the above Tentative Findings of Fact and Conclusions of Law,
13 the Securities Administrator intends to order that any future broker-dealer, securities salesperson, investment adviser,
14 or investment adviser representative registration applications of Respondent Mark Allan Miller shall be denied.

15 **NOTICE OF INTENT TO IMPOSE FINES**

16 Pursuant to RCW 21.20.110(1) and RCW 21.20.395, and based upon the above Tentative Findings of Fact and
17 Conclusions of Law, the Securities Administrator intends to order that Respondent Mark Allan Miller shall be liable for
18 and pay a fine of \$40,000.

19 **NOTICE OF INTENT TO CHARGE COSTS**

20 Pursuant to RCW 21.20.110(7) and RCW 21.20.390, and based upon the above Tentative Findings of Fact and
21 Conclusions of Law, the Securities Administrator intends to order that Respondent Mark Allan Miller shall be liable for
22 and shall pay the costs, fees, and other expenses incurred in the administrative investigation and hearing of this matter,
23 in an amount not less than \$6,000.

24 **NOTICE OF INTENT TO ORDER THE RESPONDENT TO CEASE AND DESIST**

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Pursuant to RCW 21.20.390(1) and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondent Mark Allan Miller shall cease and desist from violations of RCW 21.20.040 and WAC 460-22B-090.

AUTHORITY AND PROCEDURE

This Statement of Charges is entered pursuant to the provisions of Chapter 21.20 RCW and is subject to the provisions of Chapter 34.05 RCW. Respondent Mark Allan Miller may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Order. If a respondent does not make a hearing request in the time allowed, the Securities Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final and to enter a permanent order to cease and desist as to that respondent, to impose any fines sought against that respondent, and to charge any costs sought against that respondent.

Signed and Entered this 23rd day of January, 2018.



William M. Beatty

William M. Beatty
Securities Administrator

Presented by:

Adam N. Yeaton

Adam N. Yeaton
Financial Legal Examiner

Approved by:

Suzanne Sarason

Suzanne Sarason
Chief of Enforcement

Reviewed by:

Jack McClellan

Jack McClellan
Financial Legal Examiner Supervisor

