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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Securities Act of Washington by:

Mark Allan Miller,

Respondent.

Order No.: S-16-2105-18-FO01

ENTRY OF FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND FINAL ORDER TO
CEASE AND DESIST, TO DENY FUTURE
REGISTRATIONS, TO IMPOSE A FINE, AND TO
CHARGE COSTS

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

On January 23, 2018, the Securities Administrator of the State of Washington issued a Statement of Charges and Notice of Intent to Enter Order to Cease and Desist, Deny Future Registrations, and Impose Fines, Order No. S-16-2105-18-SC01 (hereinafter referred to as “Statement of Charges”) against Respondent Mark Allan Miller (“Miller”). The Statement of Charges, together with a Notice of Opportunity to Defend and Opportunity for Hearing, hereinafter referred to as “Notice of Opportunity for Hearing” and an Application for Adjudicative Hearing, hereinafter referred to as “Application for Hearing,” were served on Miller on or about February 2, 2018. Miller requested a hearing on the Statement of Charges, and the Securities Administrator subsequently referred the matter to the Office of Administrative Hearings (“OAH”). Because Miller was facing a pending criminal trial for defrauding an elderly client, he asked OAH to delay the hearing and related dates; OAH granted the request.

On August 28, 2018, a Clark County jury convicted Miller of first-degree theft, first-degree attempted theft, and first-degree criminal impersonation. The Securities Administrator subsequently moved with OAH to amend the Statement of Charges to reflect Miller’s felony convictions. Miller then notified the Securities Division and the Office of Administrative Hearings that he intended to withdraw request for a hearing on the

FINAL ORDER

**DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
360-902-8760**

1 Statement of Charges due to his incarceration. Due to Miller’s withdrawal, OAH dismissed the case. The
2 Securities Administrator therefore will adopt as final the following Findings of Fact and Conclusions of Law
3 as set forth in the Statement of Charges and subsequently amended to reflect Miller’s criminal conviction, and
4 will enter a final order against the Respondent to cease and desist from violations of the Securities Act, to
5 permanently deny the Respondent’s securities registrations, and to impose the fines and costs sought in the
6 Statement of Charges.

7 The Securities Administrator makes the following Findings of Fact and Conclusions of Law:

8 **FINDINGS OF FACT**

9 Respondent

10 1. Mark Allan Miller (“Miller”) is a Washington resident and former registered securities
11 salesperson and investment adviser representative with various financial firms in the Vancouver-Portland
12 metropolitan area. Miller has been registered to work in the securities industry at various points from 2000 to
13 2008, and again from 2014 to 2016. Miller’s Central Registration Depository (“CRD”) number is 4260127.
14 Miller has lived in Vancouver, Washington from at least August 2005 to the present.

15 Related Parties

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

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

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

3 Overview

4 5. In Washington and most other jurisdictions, securities laws require applicants for securities
5 salesperson or investment adviser representative licenses to disclose certain relevant information on Form U-
6 4 of their applications, and to update their Form U-4 filings within 30 days of any changes which cause a
7 previous filing to be inaccurate. In the “Disclosure Questions” section of their application, the applicant must
8 give yes-or-no answers to questions about various career-related and financial issues: for instance, whether
9 they have filed for bankruptcy within the last ten years, had any regulatory actions brought against them, or
10 been the subject of customer complaints involving certain types of allegations or above a certain dollar
11 threshold. The applicant may also disclose details such as the circumstances leading to the bankruptcy or the
12 allegations in the customer complaint. This information can be important to employers in making hiring
13 decisions, and to regulators in deciding whether to grant a license or request that the applicant’s employer use
14 a heightened supervision plan to help prevent future violations. The disclosed information is also made
15 publicly available online, through the Financial Industry Regulatory Authority’s BrokerCheck system, so
16 investors can evaluate the history of a financial professional before deciding whether to do business with
17 them. Applicants must also disclose any business activities outside of their affiliation with the financial firm,
18 which enables the both the financial firm and government regulators to evaluate any conflicts of interest and
19 determine whether any additional measures are necessary to ensure legal compliance.

20 6. In applying to the Securities Division for registration as an investment adviser representative
21 and securities salesperson with Ameriprise, and subsequently with JP Morgan, Miller falsely represented that
22 he had no civil judgments against him arising from consumer allegations of investment-related sales practice
23 violations. Miller also falsely represented that he had no outside business activities, when in fact he had an

1 outside business arrangement for insurance annuity referrals, which ultimately led to his resignation in lieu of
2 termination from JP Morgan. Finally, Miller unlawfully claimed to be the financial planner for an elderly
3 client while he was not licensed as an investment adviser or investment adviser representative.

4 Client Litigation & Judgment

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

1 and the court granted A.M. a judgment against Miller for \$282,607.83.² As of the date of this writing, Miller
2 has not satisfied the judgment.

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

15 Outside Business Activity

16 9. In addition to his false representations regarding the A.M. lawsuit and judgment, Miller falsely
17 claimed that he was not engaged in any outside business activities, when in fact he was engaged in an outside
18 arrangement for fixed annuity referrals. In mid-2015, Miller entered a referral arrangement with E.B., an
19 Oregon-based insurance agent licensed in both Oregon and Washington. Miller had been a colleague and
20 friend of E.B. at an insurance company several years prior, and told E.B. that he wanted to help him to learn
21 how to sell annuities and build an independent practice. Under the referral arrangement, Miller would conduct
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23 ² This figure was significantly higher than the amount A.M. had given Miller because it included treble damages under Oregon’s elder abuse statute.

1 annuity transactions through E.B. when clients wanted to buy annuities. Miller would generally pitch the
2 client on the annuity and would be the main point of contact if the client had any issues, while E.B. would fill
3 out the paperwork and would sometimes participate in the final meeting with the client to complete the
4 transaction. The insurance company would send commission payments to E.B., and E.B. would pay Miller
5 his share of the commission in cash. Miller never disclosed this arrangement to his employer, and falsely
6 represented in at least one Form U-4 filing with Washington State that he had no such arrangements.

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

14 Deceptive Practices as Investment Adviser

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

1 received approximately \$20,000 through E.B. from the sale of the annuity, but did not tell T.W. anything
2 about the specifics of his referral arrangement with E.B., or the compensation he would receive.

3 Holding Out as Financial Planner

4 12. After his resignation from JP Morgan, Miller continued to work with at least one former client
5 from JP Morgan, and held himself out as a financial planner. The client, L.M., was elderly and was in a skilled
6 nursing facility in the Vancouver area from August 9, 2016 to September 12, 2016. During L.M.'s stay at the
7 facility, Miller visited the client approximately 18 times, and told staff at the facility that he was L.M.'s
8 financial planner. Miller's registration as an investment adviser representative had ended when he resigned
9 from JP Morgan approximately two months earlier and was no longer affiliated with any registered investment
10 adviser. Miller was not licensed with the Securities Division in Washington in any capacity during this time.

11 13. On June 5, 2017, the Vancouver Police Department arrested Miller for one count of first-degree
12 theft, one count of attempted first-degree theft, and two counts of first-degree criminal impersonation (one
13 count later dropped), related to his relationship with L.M. On August 28, 2018, a Clark County jury found
14 Miller guilty of first-degree theft, attempted first-degree theft, and first-degree criminal impersonation. The
15 jury further found that Miller knew or should have known that L.M. was particularly vulnerable or incapable
16 of resistance; that the theft and attempted theft were major economic offenses; and that Miller used his position
17 of trust, confidence, or fiduciary responsibility to facilitate the theft and first-degree theft.

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

19 **CONCLUSIONS OF LAW**

20 **I.**

21 1. Mark Allan Miller, as described above, filed a false, misleading, or materially incomplete
22 application for registration as a securities salesperson and investment adviser representative with the
23 Securities Division by failing to disclose the Madson adversary proceeding and resulting judgment. This filing

1 violates RCW 21.20.350, and is grounds for the denial of his securities salesperson and investment adviser
2 representative registration, pursuant to RCW 21.20.110(1)(a), and for the imposition of fines and costs of
3 investigation under RCW 21.20.110(1), RCW 21.20.110(7), and RCW 21.20.390.

4 2. As described above, while registered with JP Morgan Securities LLC, Mark Allan Miller failed
5 to update his Form U-4 to disclose his referral arrangement with E.B. As a registered securities salesperson
6 and investment adviser representative Mark Allan Miller violated WAC 460-22B-060 and WAC 460-24A-
7 205(2) by failing to update his registration application within 30 days of an event which caused his previous
8 application to be inaccurate.

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

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

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

5 Based upon the foregoing and finding it in the public interest:

6 **FINAL ORDER**

7 IT IS HEREBY ORDERED that Respondent Mark Allan Miller shall cease and desist from making
8 false, misleading, or materially incomplete applications for registration with the Securities Division in
9 violation of RCW 21.20.350.

10 IT IS FURTHER ORDERED that Respondent Mark Allan Miller shall cease and desist from violating
11 WAC 460-22B-060 and WAC 460-24A-205(2) by failing to update his registration application within 30 days
12 of an event which causes his previous application to be inaccurate.

13 IT IS FURTHER ORDERED that Respondent Mark Allan Miller shall cease and desist from engaging
14 in dishonest and unethical business practices, in violation of FINRA Rule 3270 and WAC 460-22B-090(19),
15 by receiving compensation for business activities outside the scope of his relationship with his firm without
16 providing the firm with prior written notice.

17 IT IS FURTHER ORDERED that any future applications by Respondent Mark Allan Miller as a
18 securities salesperson, broker-dealer, investment adviser, or investment adviser representative shall be denied.

19 IT IS FURTHER ORDERED that Respondent Mark Allan Miller shall cease and desist from engaging
20 in acts, practices, or courses of business which operate as a fraud on a client, in violation of RCW 21.20.020.

21 IT IS FURTHER ORDERED that Respondent Mark Allan Miller shall be liable for and shall pay a
22 fine in the amount of \$40,000.

23 **FINAL ORDER**

DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
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IT IS FURTHER ORDERED that Respondent Mark Allan Miller shall be liable for and shall pay costs in the amount of \$6,000.

AUTHORITY AND PROCEDURE

This FINAL ORDER is entered pursuant to the provisions of RCW 21.20.390 and RCW 21.20.110, and is subject to the provisions of RCW 21.20.440 and Chapter 34.05 RCW. The Respondent has the right to petition the superior court for judicial review of this agency action under the provisions of RCW 34.05. For the requirements for Judicial Review, see RCW 34.05.510 and sections following. Pursuant to RCW 21.20.395, a certified copy of this Order may be filed in Superior Court. If so filed, the clerk shall treat the Order in the same manner as a Superior Court judgment as to the fine, and the fine may be recorded, enforced, or satisfied in like manner.

WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

1 SIGNED and ENTERED this 22nd day of October, 2018.

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William M. Beatty
Securities Administrator

7 Approved by:

Presented by:

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Suzanne Sarason
Chief of Enforcement

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Adam N. Yeaton
Financial Legal Examiner

12 Reviewed by:

13 

14

Jack McClellan
Financial Legal Examiner Supervisor