STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION

IN THE MATTER OF DETERMINING registration under the Securities Act of Washington of: DAVID SNAVELY (CRD 2030866), Respondent.	Order Number S-20-2957-21-SC01 STATEMENT OF CHARGES AND NOTICE OF INTENT TO ENTER AN ORDER TO DENY REGISTRATIONS, IMPOSE A FINE, AND RECOVER COSTS

THE STATE OF WASHINGTON TO: DAVID SNAVELY (CRD 2030866)

STATEMENT OF CHARGES

Pursuant to the Securities Act of Washington, Chapter 21.20 RCW, the Securities Administrator of the Department of Financial Institutions, Securities Division believe that the Respondent, David Snavely, has violated the Securities Act of Washington. The Securities Administrator believes those violations justify the entry of an order against the Respondent to deny registrations, to impose a fine, and to recover costs. The Securities Administrator finds as follows:

TENTATIVE FINDINGS OF FACT

Respondent

1. Between April 2011 and March 2020 David Snavely was employed at Cetera Advisors, LLC. His employment at Cetera was terminated due to allegations that he sold unsuitable annuities as part of replacement transactions. His Central Registration Depository (CRD) number is 2030866.

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Nature of the Conduct

2. Snavely's securities business was focused on variable annuity sales and exchanges. From February 2017 to September 2019, while employed at Cetera, Snavely recommended that 25 Washington residents purchase or exchange 36 variable annuities. Snavely's customers were seniors and ranged in age from 61 to 80. Some of Snavely's variable annuity recommendations were unsuitable. In some transactions Snavely failed to disclose material information and in some transactions he provided materially inaccurate information. Snavely received approximately $373,862 in commissions as a result of these transactions.

Suitability

3. Because of the cost and complexity associated with a variable annuity, a securities salesperson must exercise particular care to ensure that the purchase or exchange of one is suitable for a customer before recommending it. FINRA rule 2111 requires a salesperson to have a reasonable basis to believe that a transaction is suitable for a customer. To fulfill the suitability obligation, the representative must understand the potential risks and rewards associated with the recommended security or strategy and how they impact the customer. In at least two of the transactions, Snavely did not understand the recommended variable annuity. In one situation a customer planned to annuitize his existing annuity in a year when its surrender period ended. At the end of the surrender period, the customer could annuitize or withdraw cash without penalty. Notwithstanding the customer's intention to annuitize his annuity, Snavely recommended the customer exchange that annuity for another one that could not be annuitized for two years. However, Snavely did not inquire as to annuitizing the recommended annuity until after the customer completed the exchange and paid a $70,482 penalty. In another situation, Snavely placed a customer's funds in a fixed account and later learned that funds could not be switched out of the fixed account for a year.

4. A factor to be considered in determining the suitability of a variable annuity is whether the customer has a need for liquidity. Variable annuities are considered long-term investments with limited liquidity. They have a deferred sales charge, also known as a surrender fee, which penalizes the customer for making withdrawals or surrendering the policy during the surrender period except in limited circumstances. The surrender period usually ranges from 5 to 10 years.

5. In at least two instances, customers needed liquidity to pay living expenses. Snavely ignored the customers need for liquidity and instead recommended the customers purchase a variable annuity with an income rider that further limited the amount the customers could withdraw each year. When the customers' liquidity needs increased to an amount greater than that allowed by the rider, these customers had to surrender the variable annuities and incurred a penalty. When this happened, Snavely nonetheless recommended that they exchange their annuities for another annuity with a longer surrender period instead of a more liquid investment product.

6. Other suitability considerations under FINRA rule 2330(b)(1)(B)(i) are whether a customer would incur a new surrender charge, be subject to a new surrender period, lose existing benefits, or be subject to increased fees. Snavely had a pattern of recommending his customers surrender a variable annuity that he sold to the customer to purchase another variable annuity. In total, twenty-three exchanges Snavely recommended involved variable annuities that were still in the surrender period. In these 23 transactions, customers paid $222,179 for surrendering the variable annuities prematurely. In 15 transactions, Snavely customers were subject to a surrender charge, an increased surrender period, and higher fees. Four of these customers paid a surrender fee of 5% or more. Two customers paid a surrender fee to exchange their annuities when there was only about a year left in the surrender period.

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7. In some cases, Snavely recommended a series of transaction, which resulted in customers incurring more than one surrender fee on the same money. There were six customers who paid more than one surrender fee on the same money.

8. In addition, FINRA Rule 2330(b)(1)(A)(iii) requires that the particular variable annuity as a whole, the underlying subaccounts to which funds are allocated at the time of the purchase or exchange are suitable. Despite the customer's stated risk tolerance and account objective, in at least 14 of the transactions Snavely placed his customers in a conservative subaccount, such as a money market subaccount, within the variable annuity at the time of purchase and not the subaccount that matched the customer's stated risk tolerance and investment goals.

Failure to Disclose Material Information or Providing Inaccurate Information

9. FINRA rule 2330(b)(1)(A)(i) requires that customer to be informed of various features of the variable annuity such as the potential for surrender charges, mortality and expense fees, and potential charges for and features of riders. In at least 22 transactions Snavely recommended a bonus annuity without providing customers the material information necessary for understanding it. In each of the 22 transactions, Snavely failed to disclose in writing on the firm's disclosure forms the risk the bonus could be forfeited or that the customers could purchase a variable annuity with a shorter surrender period and lower fees that did not have a bonus. In many, if not all, of these transactions, he told the customer that the bonus would offset the surrender fee, a practice that was prohibited by his firm.

10. In addition, in September 2018 Cetera imposed a requirement on Snavely that he provide material information to his customers necessary for understanding the impact of the transactions. However, Snavely did not provide the customers the required information. Cetera required that Snavely's customers create and sign "comfort letters" evidencing the customer understood certain terms for

transactions that involved an asset transfer greater than $50,000, a surrender charge greater than 2%, or when variable annuities comprised 50% or more of the customer's liquid net worth. The comfort letters were supposed to detail the financial accounting of the transaction and disclose any concentration issues that would result from the transactions. There were 10 transactions after the requirement was implemented. Nine transactions met at least one of these criteria. However, Snavely only obtained a comfort letter for three of these transactions and the letters did not contained the required information.

11. In at least two instances, Snavely submitted paperwork to Cetera containing incorrect suitability or transaction information making it more likely that Cetera would approve the transactions than if Cetera knew the true information.

CONCLUSIONS OF LAW

1. The offer and sale of variable annuities constitute the offer and sale of a security as defined in RCW 21.20.005(10) and (12).

2. The offer and sale of said securities were a dishonest or unethical business practice under RCW 21.20.110(1)(g) and WAC 460-22B-090(19) because, as set forth above, in connection with the offer or sale of a security Respondent failed to comply with FINRA rules 2111, 2330(b)(1)(A)(i), 2330(b)(1)(A)(iii), and 2330(b)(1)(B)(i). Such conduct is grounds for a denying registration as a securities salesperson and an investment adviser representative, imposing a fine, and charging costs.

3. The offer and sale of said securities were made in violation of RCW 21.20.010 and was a dishonest or unethical business practice under RCW 21.20.110(1)(g) and WAC 460-22B-090 because, as set forth above, in connection with the offer or sale of a security Respondent omitted to state material facts necessary in order to make the statements made, in light of the circumstances they were made, not

misleading. Such conduct is grounds for a denying registration as a securities salesperson and an investment adviser representative, imposing a fine, and charging costs.

4. The offer and sale of said securities were made in violation of RCW 21.20.010 and was a dishonest or unethical business practice under RCW 21.20.110(1)(g) and WAC 460-22B-090(3) because, as set forth above, in connection with the offer or sale of a security Respondent established or maintained an account containing fictitious information in order to execute transactions that would otherwise be prohibited. Such conduct is grounds for a denying registration as a securities salesperson and an investment adviser representative, imposing a fine, and charging costs.

5. The offer and sale of said securities were made in violation of RCW 21.20.702 and was a dishonest or unethical business practice under RCW 21.20.110(1)(g) and WAC 460-22B-090(7) because, as set forth above, Respondent recommended the purchase, sale, or exchange of a security without reasonable grounds to believe that the recommendation was suitable. Such conduct is grounds for a denying registration as a securities salesperson and an investment adviser representative, imposing a fine, and charging costs.

NOTICE OF INTENT TO DENY FUTURE REGISTRATIONS

Pursuant to RCW 21.20.110(1)(b), and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to deny any applications for registration filed by Respondent for a period of 2 years.

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NOTICE OF INTENT TO IMPOSE FINES

Pursuant to RCW 21.20.395, and based upon the Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondent shall be liable for and pay a fine of at least $30,000.

NOTICE OF INTENT TO RECOVER COSTS

Pursuant to RCW 21.20.390, and based upon the Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondent shall be liable for and pay the costs, fees, and other expenses in the amount of at least $2,000.

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 21.20 RCW and 34.05 RCW. The Respondents 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 request a hearing, the Securities Administrator intends to adopt the foregoing Tentative Findings of Fact and Conclusions of Law as final as to that respondent, and enter an order to cease and desist, impose fines, and recover costs of that respondent.

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DATED and ENTERED this _7th____ day of December, 2021.

WILLIAM M. BEATTY
Securities Administrator

Approved by:

Brian J. Guerard
Acting Chief of Enforcement

Presented by:

Kristen Standifer
Financial Legal Examiner

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