

STATE OF NEW JERSEY
BUREAU OF SECURITIES
P.O. Box 47029
Newark, New Jersey 07101
Telephone: (973) 504-3600

IN THE MATTER OF:

Ameriprise Financial Services, Inc.
(CRD# 6363)

Respondent.

CONSENT ORDER

BEFORE CHRISTOPHER W. GEROLD, BUREAU CHIEF

Pursuant to the authority granted to Christopher W. Gerold, Bureau Chief of the New Jersey Bureau of Securities ("Bureau Chief"), under the Uniform Securities Law (1997), N.J.S.A. 49:3-47 to -83 ("Securities Law"), and after investigation, careful review, and due consideration of the facts and statutory provisions set forth below, the Bureau Chief hereby finds that there is good cause, it is in the public interest, and it will preserve resources to enter into an Consent Order ("Consent Order") with Ameriprise Financial Services, Inc. ("Ameriprise"), and Ameriprise hereby agrees to resolve any and all issues in controversy regarding the specific conduct described herein on the terms set forth in this Consent Order.

WHEREAS, the New Jersey Bureau of Securities ("Bureau") is the State agency with the responsibility to administer and enforce the Securities Law;

WHEREAS, N.J.S.A. 49:3-67 authorizes the Bureau Chief from time to time to issue such Orders as are necessary to carry out the provisions of the Securities Law, upon a finding that the action is necessary and appropriate in the public interest or for the protection of investors or consistent with the purposes fairly intended by the provisions of the Securities Law;

WHEREAS, the Bureau has conducted an investigation into certain activities of Ameriprise as set forth in this Consent Order;

WHEREAS, Ameriprise has cooperated with the Bureau's investigation and has responded to inquiries, providing documentary evidence and other materials, and providing access to facts relating to the investigation;

WHEREAS, prior to the completion of the Bureau's investigation, Ameriprise voluntarily offered rescission to all affected New Jersey customers who were identified as having engaged in an unsuitable alternative investment transaction;

WHEREAS, Ameriprise and the Bureau Chief wish to resolve these issues without the expense and delay that formal proceedings would involve;

WHEREAS, this Consent Order concludes the investigation and action by the Bureau Chief and any civil or administrative action that could be commenced, pursuant to the Securities Law, on behalf of the Bureau Chief, as it relates to seeking civil monetary penalties or other relief against Ameriprise for the specific conduct described herein solely as it relates to Ameriprise; and

WHEREAS, Ameriprise does not admit or deny the findings of facts and conclusions of law contained herein, but does voluntary consent to the entry of this Consent Order and waives any right to a hearing or judicial review regarding this Consent Order;

The Bureau Chief makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

Respondent

1. Ameriprise Financial Services, Inc., CRD No. 6363, has been registered with the Bureau as a broker-dealer since July 13, 1983. Ameriprise is also an investment adviser registered with the Securities and Exchange Commission and notice filed in New Jersey. Ameriprise maintains a main address of 707 2nd Avenue South, Minneapolis, Minnesota 55474 and operates branch offices in New Jersey.

Background

2. As part of its business, Ameriprise agents sell non-traded alternative investments (each an "AI" and collectively "AIs") to Ameriprise customers. AIs include non-traded real estate investment trusts ("non-traded REITs"), and non-traded business development companies ("non-traded BDCs").

3. Between 2010 and 2015 ("Relevant Time Period"), Ameriprise sold securities in at least twenty-three (23) different AI offerings, including seventeen (17) non-traded REITs and six (6) non-traded BDCs, in approximately 8,147 transactions to New Jersey customers. The AI transactions were comprised of: 5,812 non-traded REIT transactions (71%); and 2,335 non-traded BDC transactions (28%).

4. These AI transactions represented approximately \$215,219,131 in sales to approximately 3,535 New Jersey customers. During the Relevant Time Period, Ameriprise received gross commissions of at least \$21 million from sales of AIs by Ameriprise agents to New Jersey customers.

5. The Bureau's investigation identified at least 65 AI transactions during the Relevant Time Period that were unsuitable for Ameriprise's New Jersey customers because the transactions violated either the securities' prospectus requirement and/or Ameriprise's own policies.

AI's Are Complex Illiquid Investment Products

6. A "REIT" is an entity that generally owns and often manages income-producing real estate.

7. A "BDC" is an entity that generally invests in small and mid-sized businesses.

8. REITs and BDCs are either listed and publicly traded on a public securities exchange, non-traded with limited disclosures, or entirely private offerings.

9. Non-traded REITs and non-traded BDCs, those which are not traded on public securities exchanges, have certain characteristics that make them riskier for investors. For instance:

- a. Non-traded REITs and non-traded BDCs are generally illiquid as they have no public trading market. A liquidity event typically occurs within five to seven years of an offering's inception. While the prospectuses contain repurchase provisions, the non-traded REIT or non-traded BDC may not be able to satisfy all repurchase requests, and typically, there is a limitation on the number of repurchases per year. Additionally, repurchase provisions are restrictive. Typically, there is a one-year holding period. Requests that are satisfied in the first several years are done so at a price below the original offering price, and repurchase programs can be suspended or terminated.
- b. Many non-traded REITs and non-traded BDCs pay distributions from invested capital back to investors, or from debt, as opposed to providing

distributions solely from earnings. Once an investor has invested, distributions commence, which some investors may confuse for a yield on the investment. These distributions are often a return of investor capital, which may reduce the investor's return on investment or borrowings, which must be repaid later.

10. Non-traded REITs and non-traded BDCs have sales commissions and offering fees that may add up to 15% of the offering proceeds.

Ameriprise Failed to Reasonably Supervise the Sale of AIs

(A) Ameriprise Agents Sold AIs in Violation of the New Jersey Prospectus Suitability Standards

11. At least fifteen (15) of the twenty-three (23) AI securities sold by Ameriprise during the Relevant Time Period were registered with the Bureau conditioned upon heightened suitability standards for sales to New Jersey residents ("New Jersey Prospectus Suitability Standards"). These New Jersey Prospectus Suitability Standards are required to be disclosed in, among other places, the prospectus and the subscription agreement. The New Jersey Prospectus Suitability Standards for each issuer were similar, but had some slight variations. Generally, the New Jersey Prospectus Suitability Standards restricted the sale of the AIs based on a customer's net worth or a combination of a customer's income and net worth and the total percentage of AIs that customer held or a customer's liquid net worth¹.

¹ Ameriprise's Written Supervisory Procedures 8.1 "Client information requirements, including Know Your Customer", state "Liquid Net Worth is defined as net worth excluding the value of the primary residence and other illiquid assets. Generally, this refers to the portion of net worth that can be readily converted into cash without penalty...[l]iquid net worth: [d]oes not include: [i]lliquid investments – generally these include insurance products and alternative investments such as non-traded real estate investment trusts (non-traded REITs) and non-traded business development companies (non-traded BDCs)."

12. For example, the New Jersey Prospectus Suitability Standard for Carey Watermark Investors 2 Incorporated, a non-traded REIT, that was declared effective by the Bureau on February 20, 2015, mandated the following:

New Jersey — New Jersey investors must have either, (a) a minimum liquid net worth of at least \$100,000 and a minimum annual gross income of not less than \$85,000, or (b) a liquid net worth of at least \$350,000. For these purposes, "liquid net worth" is defined as that portion of net worth (total assets exclusive of home, home furnishings and automobiles, minus total liabilities) that consists of cash, cash equivalents and readily marketable securities. In addition, a New Jersey investor's investment in CWI 2, our affiliates and other non-publicly traded direct investment programs (including real estate investment trusts, business development companies, oil and gas programs, equipment leasing programs and commodity pools, but excluding unregistered, federally and state exempt private offerings) may not exceed 10% of his or her liquid net worth.

13. Ameriprise Written Supervisory Procedures ("WSPs") 21.9.2 – Non-Exchange Traded REITs and BDCs (2010 and 2011) required that, "State laws prohibit customers in some states from investing in excess of 10 percent of their net worth or liquid net worth in REITs or BDCs. Ameriprise Financial will not make exceptions to state laws."

14. Between 2012 and 2014 the above language from the 2010 and 2011 WSPs was excluded from WSP 21.9.2. However, WSP 9.7.3 – Non-Exchange Traded REITs and BDCs, required that, "[c]umulative percentage for non-traded REIT and BDC purchases is determined by

dividing the purchase amount plus any other non-traded REIT or BDC holdings by the net worth (excluding primary residence, home furnishings and automobiles) listed on the application, unless the prospectus indicates otherwise for adherence to state suitability guidelines.”

15. WSP 9.7.3 – Non-traded REITs and non-traded BDCs, in effect throughout the Relevant Time Period, contained Ameriprise’s internal suitability standards for AI sales. It was amended in 2015 to state that the, “[c]umulative percentage for non-traded REIT and non-traded BDC purchases is determined by dividing the purchase amount plus any other non-traded REIT and non-traded BDC holdings by the net worth (excluding primary residence, home furnishings and automobiles) listed on the application, unless the prospectus indicates otherwise for adherence to state suitability guidelines. Ameriprise will not make exceptions to state laws.”

16. The Bureau found that Ameriprise agents effected sales to New Jersey customers in violation of the New Jersey Prospectus Suitability Standards and/or the issuers’ prospectus standards.

17. Of the AI transactions reviewed by the Bureau, Ameriprise agents effected at least sixty-five (65) sales to New Jersey customers in violation of the New Jersey Prospectus Suitability Standards and/or the issuers’ prospectus standard. Ameriprise self-identified at least fifty-three (53) of these instances after the transaction was completed and voluntarily offered rescission based on a determination that the sale of the AI was in excess of the New Jersey Prospectus Suitability Standards or the issuers’ prospectus standard. Not all rescission offers were accepted. The Bureau identified twelve (12) additional transactions not already identified by Ameriprise, for which Ameriprise also offered rescission.

(B) **Ameriprise Failed to Follow its Own Supervisory Procedures Regarding the Offer and Sale of AIs**

18. Ameriprise maintained written policies governing all aspects of the offer and sale of AIs during the Relevant Time Period. The WSPs provided specific guidelines for the sale of alternative investments (“AI Guidelines”). The WSPs were amended and updated over time, but generally provided similar mandates, principally that:

- a. “The recommended age [*sic*] of all clients investing in non-traded REITs and non-traded BDCs is less than 70 years of age. If a client is aged 70 and older, the client must offer an explanation of why the investment is suitable on the application.”
- b. “It is recommended that a client’s cumulative investment in non-traded REITs and non-traded BDCs not exceed 10% of the client’s net worth...”
- c. “Ameriprise limits cumulative non-traded REIT and non-traded BDC investments to 20% of a client’s net worth...”
- d. “A client is limited to 10% of their net worth...if they are age 80 or older.”

19. The AI Guidelines within the WSPs required the completion of two forms, the Direct Investment Application and the Subscription Agreement. The two forms required the customers to provide and the representative to complete material information such as, a customer’s net worth, liquid net worth, percentage of AI holdings, and product(s) purchased. The forms also disclosed to the customer the New Jersey Prospectus Suitability Standard, and Ameriprise AI Guidelines.

20. Despite the existence of the internal AI Guidelines, the Bureau identified sales of AIs during the Relevant Time Period that were made in violation of the AI Guidelines.

Ameriprise Failed to Make and Keep Adequate Books and Records

(A) Liquid Net Worth on Certain Direct Investment Applications Did Not Account For Prior Holdings

21. The Ameriprise Compliance Manual defines net worth as, “the difference between the total value of the assets and the total value of the liabilities attributed solely to the individual” and liquid net worth as “net worth excluding the value of the primary residence and other illiquid assets.” Generally, this refers to the portion of net worth that can be readily converted into cash without penalty... [I]liquid net worth: [d]oes not include: [i]lliquid investments – generally these include insurance products and alternative investments such as non-traded real estate investment trusts (non-traded REITs) and non-traded business development companies (non-traded BDCs).”

22. The Bureau identified two hundred and ninety-eight (298) instances during the Relevant Time Period in which Direct Investment Applications completed on behalf of their customers’ accounts failed to account properly for existing AI holdings.

23. Because of the illiquid nature of AIs, if a customer had previously purchased AIs, the liquid net worth and net worth could not be the same at the time of both the prior purchase and the current purchase.

(B) Ameriprise Failed to Verify Changes to Customer Financial Records that Enabled AI Transactions

24. On at least twelve (12) occasions in the customer accounts reviewed by the Bureau, Ameriprise agents modified the customer financial information on forms for AI sales that contained customer financial information that did not comply with the WSPs for the sale of AIs.

25. In these instances, after a transaction was rejected by an Ameriprise registered principal, the form would be resubmitted with changed information that complied with

Ameriprise's WSPs. After resubmission with the changed information, the sales were approved by an Ameriprise registered principal. Many of the changed forms were apparently initialed by the customer, but Ameriprise did not attempt to further verify the change.

(C) Incomplete or Incorrect Documentation

26. The Bureau identified one hundred and eighty-six (186) instances during the Relevant Time Period in which Ameriprise agents did not fully document certain aspects of AI transactions. For example, information that could affect the determination of the suitability of the transaction was not completed, completed incorrectly or completed inconsistently. Such categories of information included the customers' income, liquid net worth, net worth, calculation of cumulative AI holdings, and calculation of the percentage of liquid net worth of the individual AI.

CONCLUSIONS OF LAW

27. Ameriprise's failure to ensure that its customers investing in AIs satisfied the New Jersey Prospectus Suitability Requirements constitutes a failure to reasonably supervise pursuant to N.J.S.A. 49:3-58(a)(2)(xi).

28. Ameriprise's failure to ensure that its customers investing in AIs satisfied the issuers' prospectus suitability standards constitutes a failure to reasonably supervise pursuant to N.J.S.A. 49:3-58(a)(2)(xi).

29. Ameriprise's failure to ensure that its customers investing in AIs satisfied Ameriprise's WSPs constitutes a failure to reasonably supervise pursuant to N.J.S.A. 49:3-58(a)(2)(xi).

30. Ameriprise's failure to calculate correctly customer's liquid net worth constitutes a failure to make and keep accurate books and records pursuant to N.J.S.A. 49:3-59(b).

31. Ameriprise's failure to verify changes in customers' financial information that enabled AI transactions to be completed constitutes a failure to make and keep accurate books and records pursuant to N.J.S.A. 49:3-59(b).

32. Ameriprise's failure to document accurately AI transactions constitutes a failure to make and keep accurate books and records pursuant to N.J.S.A. 49:3-59(b).

33. Pursuant to N.J.S.A. 49:3-70.1, each violation of the Securities Law described above constitutes a basis for the assessment of a civil monetary penalty against Ameriprise.

34. The Bureau Chief finds the following relief appropriate and in the public interest. **THEREFORE**, it is on this 5th day of October 2018, **ORDERED** and **AGREED** that:

35. Ameriprise cease and desist from further violations of N.J.S.A. 49:3-58(a)(2)(xi) and N.J.S.A. 49:3-59(b).

36. Ameriprise shall pay Three Hundred and Seventy-Five Thousand dollars (\$375,000.00) to the Bureau upon execution of this Consent Order for the following:

- a. Ameriprise is assessed a civil monetary penalty in the amount of One Hundred and Fifty Thousand dollars (\$150,000.00), which shall be deposited in the Securities Enforcement Fund, pursuant to N.J.S.A. 49:3-66.1;
- b. Ameriprise is assessed One Hundred and Fifty Thousand dollars (\$150,000.00) in costs; and

- c. Ameriprise shall pay Seventy-Five Thousand dollars (\$75,000.00), which shall be placed in a fund to be used for the Bureau's investor education program.

37. Payment shall be made by attorney trust fund account check, certified check or other guaranteed funds, to "State of New Jersey, Bureau of Securities" and delivered to New Jersey Bureau of Securities, 153 Halsey Street, 6th Floor, Newark, New Jersey 07102, or mailed to "New Jersey Bureau of Securities", P.O. Box 47029, Newark, New Jersey 07101. Upon payment Ameriprise relinquishes all rights to the funds used to pay the civil monetary penalty notwithstanding any other provision in this Consent Order.

ADDITIONAL PROVISIONS

38. This Consent Order shall not bind any person not a party hereto, except as provided herein.

39. Each of the undersigned has read this Consent Order, understands it, and agrees to be bound by its terms.

40. This Consent Order is not intended to subject any Covered Person (defined below) to any disqualifications under the laws of the United States, any state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands including, without limitation, any disqualification from relying upon the state or federal registration exemptions or safe harbor provisions. "Covered Person," means Ameriprise or any of its affiliates and their current or former officers or former officers, directors, employees, or other persons that would otherwise be disqualified as a result of this Consent Order.

41. Ameriprise has read this Consent Order, understands it, and agrees to be bound by its terms. Ameriprise understands that they had the right and opportunity to consult with an attorney regarding this Consent Order.

42. No employee, official or person representing the Bureau or the State of New Jersey has made any additional promise or representation to Ameriprise regarding this Consent Order. Nothing contained herein shall in any manner be construed to limit or affect any position that the Bureau, any other government, or any person, including investors, may take in any future or pending action not specifically encompassed herein.

43. Ameriprise consents to the form, content, and entry of this Consent Order. Accordingly, Ameriprise waives the following rights:

- a. To be afforded an opportunity for hearing on the Bureau Chief's findings of fact and conclusions of law in this Consent Order; and
- b. To seek judicial review of, or otherwise challenge or contend, the validity of this Consent Order.

44. This Consent Order shall be deemed a final order and have the same effect as if proven and ordered after a full hearing held pursuant to N.J.S.A. 52:14B-1 to -31.

45. In the event that Ameriprise violates this Consent Order, the Bureau Chief may vacate this Consent Order and take further action against Ameriprise under the Securities Law.

NEW JERSEY BUREAU OF SECURITIES

By: 

CHRISTOPHER W. GEROLD
BUREAU CHIEF

AMERIPRISE FINANCIAL SERVICES, LLC

DATED: 9/24, 2018

By: 

Name: Christopher R. Long

Title: VP & Chief Counsel, Regulatory Affairs