BEFORE THE ARKANSAS SECURITIES COMMISSIONER
CASE NO. S-20-0046
ORDER NO. S-20-0046-22-OR02

IN THE MATTER OF:
DANIEL J. LAULETTA

RESPONDENT

CONSENT ORDER


Lauletta admits the jurisdiction of the Act and the Arkansas Securities Commissioner ("Commissioner"), waives his right to a formal hearing and appeal, consents to the entry of this Order without admitting or denying the findings of fact and conclusions of law made herein, and agrees to abide by its terms in full and final settlement of all claims that could be brought against Lauletta by the Staff on the basis of the facts set forth herein.

FINDINGS OF FACT

1. Daniel J. Lauletta ("Lauletta") (CRD No. 2659123), a resident of Cuyahoga Falls, Ohio, was registered as a broker-dealer agent ("agent") in Arkansas with the Arkansas Securities Department ("Department") from April 2011 until April 2022 and as an investment adviser representative in his home state of Ohio from January 2004 until April 2022.

   a. Lauletta was registered as an agent in Arkansas with Cetera Advisor Networks LLC ("Cetera") (CRD No. 13572) from September 3, 2013, through September 6, 2016.
b. Lauletta was most recently affiliated with MML Investors Services, Inc. ("MMLIS") (CRD No. 10409), a broker-dealer firm registered in Arkansas and an investment adviser firm notice filed in Arkansas and registered with the U.S. Securities and Exchange Commission ("SEC"), from March 2017 until April 2022.

c. Lauletta is not currently registered with the Department in any capacity.

2. Lauletta is a licensed insurance producer in Arkansas with the Arkansas Insurance Department, License/NPN No. 363899, and recently maintained a relationship with Massachusetts Mutual Life Insurance Company ("MMLIC," together with MMLIS, "Mass Mutual"), an affiliate of MMLIS.

3. Along with certain other financial professionals associated with Mass Mutual, during the time period set forth herein, Lauletta conducted securities, investment advisory, financial planning, and insurance services through Skylight Financial Group, LLC ("Skylight"), a limited liability company based in Cleveland, Ohio.

4. From September 6, 2016, to September 6, 2018, during Lauletta’s first two years with Mass Mutual, Lauletta was under a heightened supervision plan ("HSP") in response to an insurance-related client complaint. The HSP required Mass Mutual to provide certain increased supervision and scrutiny of Lauletta’s business practices. During the HSP period in July 2018, Lauletta was placed under a one-year special supervision agreement as a condition of maintaining his financial planner role with Skylight.

AR KANSAS CLIENT 1 ("AR1")

5. AR1 is a 78-year-old retired pharmacist in Arkansas. He owned and operated his own pharmacy starting in March 1970 and, for the next 46 years, worked alongside his family
operating the pharmacy and servicing the community. AR1 sold and relinquished control of the pharmacy to AR2 in 2016.

6. AR1 first met Lauletta in 2009 when Lauletta had a booth at an annual meeting of Arkansas pharmacists. During that meeting, Lauletta, as a financial professional, solicited potential pharmacist clients with an offer to provide investment advice and financial planning. Between 2011 and 2012, Lauletta became AR1’s investment adviser representative.

7. In their approximate age of mid-to-late 60’s, AR1 and AR1’s wife expressed certain goals they hoped to accomplish through Lauletta as their investment adviser representative and financial planner, including, but not limited to, the following: (1) Income and planning for retirement; (2) Development and maintenance of philanthropic goals; and (3) Estate planning. AR1 and AR1’s wife were high-net-worth individuals with expressed investment objectives of growth and income, moderate to aggressive risk tolerance, and long-term time horizon of ten or more years, with wealth accommodation and income as their investment purpose.

8. Lauletta was the agent and investment adviser representative for AR1’s accounts with Cetera. AR1 had an individual retirement account (“IRA”) and two other accounts for revocable trusts. AR1’s wife also had an IRA account with Lauletta.

9. As AR1’s investment adviser representative, Lauletta also created financial plans for AR1 and his wife. These financial plans contained strategies for AR1 and his wife regarding investing, retirement, and protection of assets related to their investment objectives and goals.

10. In May 2012, Lauletta, as AR1’s investment adviser representative, advised and recommended that AR1 complete an application for a $5 million policy with Pacific Life
Insurance Company ("Pacific Life"). AR1 was able to pay for the Pacific Life policy through premium financing, which strategy was recommended by Lauletta to fund the purchase of the policy.

11. Premium financing requires the owner of an insurance policy to borrow money to pay premiums on a policy. However, this type of financing requires regular payments, including interest, to the lender. The cash surrender value of the insurance policy, which changes over time, typically serves as collateral for the financing, with the lender being authorized to liquidate the policy upon a default by the borrower under the terms of the loan.

12. In July 2013, Lauletta advised and recommended that AR1 liquidate certain securities and transfer the resultant $17,931 in cash from his Cetera IRA to Patelco Credit Union ("Patelco") in California. In return for the payment to Patelco along with guaranty agreements by AR1 and his wife to Patelco, Patelco made a loan to AR1 in the amount of $382,439. AR1 used the loan to make premium payments on the Pacific Life insurance policy.

13. In 2014, Lauletta also advised and recommended that AR1 purchase two fixed-index annuities through Allianz: one for AR1 with a premium of $100,000, and one for AR1’s wife with a premium of $30,000. AR1’s policy was funded by a transfer of $120,000 from his IRA account at Cetera based on Lauletta’s advice and recommendations. His wife’s policy was funded by a transfer of $86,532 from her IRA account at Cetera based on Lauletta’s advice and recommendations, as well.
14. Only a short time later, from 2016 to 2017, Lauletta advised AR1 and his wife to surrender these two annuities, causing both to pay additional income taxes and $20,439.58 in surrender penalties.

15. In 2016, AR1 retired from his job and sold his pharmacy to AR2. From the sale, AR1 sent approximately $1 million in proceeds to Lauletta for investment. Lauletta invested approximately $425,000 into a certificate of deposit at FNBC Bank in Arkansas as collateral for premium financing loans and approximately $500,000 into another Allianz fixed-index annuity.

16. Just like the prior Allianz fixed-index annuities, Lauletta advised AR1 to surrender this annuity early, as well. As with AR1’s prior two fixed-index annuities, surrendering early caused AR1 to pay income taxes on the withdrawals and a $39,950.50 surrender penalty.

17. Additionally, in 2016, as AR1’s investment adviser representative, Lauletta advised and recommended that AR1 purchase another $1 million life insurance policy through Pacific Life, which AR1 purchased using his business income.

18. In August 2017, only approximately five years after purchasing it, Lauletta advised and recommended that AR1 surrender the $5 million life insurance policy with Pacific Life, which had a surrender value of $1,135,153, causing AR1 to lose money on the policy.

19. Prior to surrendering the $5 million Pacific Life policy, Lauletta advised and recommended that AR1 purchase an additional $5 million life insurance policy through Mass Mutual. This policy would be the replacement for the surrendered Pacific Life policy.

20. In addition to the new $5 million Mass Mutual policy, Lauletta advised and recommended that AR1 purchase an additional $1.6 million life insurance policy through Mass Mutual.
21. AR1 was not prepared to pay for and could not afford the large premiums that came with these extensive policies. Lauletta told AR1 that these polices would become “self-funded” within three to five years and that AR1 would not have to pay anything. Despite these facts, as AR1’s investment adviser representative, Lauletta still advised and recommended that AR1 use premium financing to pay for the policies.

22. Furthermore, Lauletta advised AR1 that these new life insurance policies were also necessary for estate planning purposes. AR1 never understood why Lauletta repeatedly recommended AR1’s purchase and subsequent replacement of multiple life insurance policies.

23. AR1 faced financial troubles due to the repeated purchase and surrender or replacement of various insurance policies and fixed-index annuities. As AR1’s investment adviser representative, Lauletta continued to recommend and sell several insurance policies to AR1 and made recommendations of early withdrawal and risky financing, which placed AR1 further into a financial bind. With the insurance policies came high premiums, which AR1 could not afford given that AR1 had retired and sold his pharmacy.

24. During the approximate five-year professional relationship between Lauletta and AR1, Lauletta recommended liquidations of securities and subsequent sale of seven life insurance policies to AR1, while Lauletta acted as AR1’s investment adviser representative and financial planner. As a new retiree, AR1 struggled with the loss of assets and enormous amount of debt caused by these recommended actions.
ARKANSAS CLIENT 2 ("AR2")

25. AR2 is a 58-year-old pharmacist. He has owned and operated his own pharmacy in Arkansas since 2016, when he purchased AR1’s business. Prior to that, AR2 worked for many years as a pharmacist with Walmart Inc. ("Walmart").

26. While AR2 worked for Walmart, he invested in a company-sponsored 401(k) retirement plan that consisted of Walmart common stock and certain funds. Between May 1, 2017, and July 31, 2017, the 401(k) was valued at $595,241.50.

27. AR2 and AR2’s wife were high-net-worth individuals with expressed investment objectives of growth and income, moderate to aggressive risk tolerance, and long-term time horizon of ten or more years.

28. AR2 met Lauletta after he purchased the pharmacy from AR1 in 2016. In addition to this meeting, like AR1, AR2 had seen Lauletta at annual conventions for Arkansas pharmacists where Lauletta held himself out as a financial professional and solicited potential pharmacist clients with an offer to provide investment advice and financial planning.

29. At first, AR2 and his wife were not interested in Lauletta’s services. However, Lauletta told AR2’s wife that she and AR2 would need to protect their assets after purchasing the pharmacy and that he could assist with this goal. In 2017 after continuous advice, recommendations, and encouragement from Lauletta, AR2 transferred a total of $595,241.50 that had been invested in Walmart common stock and certain funds from his Walmart 401(k) to Lauletta to manage as his investment adviser representative. Lauletta told AR2 that he advised rolling over the 401(k) into a variable annuity through MMLIS and that there would be routine withdrawals taken from the variable annuity.
30. As AR2’s investment adviser representative, Lauletta recommended the purchase of a variable annuity that required AR2 to pay 3.47% in fees and expenses, an increase from the 1.30% fees he was paying for his 401(k).

31. When asked to provide a reason for making these recommendations in suitability documentation required to be completed by MMLIS regarding variable annuity sales, Lauletta explained his methodology and detailed analysis as to the sale and portions of the transaction as follows:

   [E]xisting 401(k) account will be closed to fund a new annuity contract in association with this annuity.

   ...

   Client has a 401(k) account currently held in a moderately aggressive portfolio. The client has indicated that they are using the funds in the existing account specifically for retirement income purposes 10 plus years from now and would like to protect their retirement income stream. The recommended product allows for the client to be exposed to similar investment options and at the same time protects their income with a guaranteed step-up provision that both meet the clients’ objective.

32. Lauletta also advised and recommended that AR2 purchase a $5 million premium-financed life insurance policy, much like AR1. The premiums required to maintain the policy were more than $200,600 per year.

33. AR2 could not afford the premiums to sustain the life insurance policy. At the advice and recommendation of Lauletta, AR2 turned to Wintrust Life Finance ("Wintrust") to obtain premium financing to make the annual premium payments on the $5 million life insurance policy.

34. Wintrust would pay the annual premium on the life insurance policy of over $200,600, but AR2 was required to pay the annual interest payment to Wintrust. AR2 was also required to provide either $147,400 in cash/cash equivalents or $294,800 in approved marketable
securities to Wintrust to secure the premium financing, based upon Wintrust’s view of the difference between the debt owed by AR2 and the cash surrender value of the life insurance policy.

35. AR2 did not have the funds to pay the annual interest and lacked additional collateral to secure the premium financing. Lauletta then advised and recommended that AR2 use withdrawals from the new variable annuity to pay the policy premiums. This resulted in AR2 being required to use his former Walmart 401(k) now in the form of a variable annuity investment to meet the premium demands of the $5 million life insurance policy. AR2’s variable annuity, with a value of approximately $595,000 at that time, effectively became collateral for the loan from Wintrust. AR2 paid annual interest of $27,000 in 2018; $46,000 in 2019; and $43,000 in 2020.

36. In addition to the above-referenced early withdrawals, AR2 further depleted his variable annuity to pay Wintrust for the premium financing, as follows:

a. 2017: $160,000 was withdrawn to pay Wintrust;

b. 2018: $161,111.27 was withdrawn to pay Wintrust;

c. 2019: $72,741.08 was withdrawn to pay Wintrust; and

d. 2020: The resultant variable annuity account value was $65,757.16.

37. Not only was AR2’s variable annuity value depleted by a significant amount, but AR2 was faced with additional financial struggles caused by the withdrawals. AR2 had to pay a federal and state tax penalty and federal and state income tax for each withdrawal. Lauletta kept reassuring AR2 that the life insurance policy would eventually become self-funded and that it would pay for itself.
38. In 2021, AR2 was still paying premiums on the $5 million life insurance policy. Over an approximate three-year period, Lauletta gave AR2 investment advice to liquidate securities or roll over assets, which ultimately resulted in AR2’s depletion of his previous approximately $600,000 Walmart retirement account. AR2 proceeded to have losses every time he was required to pay the next premium on the life insurance policy, as his withdrawals from the variable annuity caused additional federal and state tax penalties and income taxes.

39. Based on the above-referenced recommendations by Lauletta to AR1 and AR2 during the time period set forth herein, Lauletta received certain insurance commissions.

40. Due to the above-referenced activity, AR1 and AR2 reached separate monetary settlements with Mass Mutual in 2021.

APPLICABLE LAW

41. “Investment adviser” is defined as any person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or that, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. “Investment adviser” also includes a financial planner or other person that, as an integral component of other financially related services, provides or holds himself, herself, or itself out as providing investment advice to others for compensation and as part of a business. Ark. Code Ann. § 23-42-102(9)(A) and (B).

42. “Representative” is defined as an individual employed by or associated with an investment adviser who for compensation makes any recommendation or otherwise renders advice regarding securities, manages accounts or portfolios of clients, or determines which
recommendation or advice regarding securities should be given. Ark. Code Ann. § 23-42-102(14)(A) through (D).

43. An investment adviser is a fiduciary, and as such owes the highest standard of care at law to its clients. SEC v. Capital Gains Research Bureau, Inc. 375 U.S. 180, 194 (1963). Investment advisers have a duty to act primarily for the benefit of their clients. All investment advisers and representatives shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Certain conduct shall constitute fraudulent or deceptive practices and shall be considered grounds for denial, suspension, or revocation of an investment adviser or investment adviser representative registration, or for the issuance of a cease and desist order or other action under Section 23-42-209 of the Act, in addition to other dishonest or unethical practices within the meaning of Sections 23-42-307 and 23-42-308 of the Act. Rule 308.02 (Introduction) of the Rules.

a. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client’s investment objectives, financial situation and needs, risk tolerance, and any other information known or acquired by the investment adviser after reasonable analysis of the client’s information and records as may be provided to the investment adviser shall constitute fraudulent or deceptive practices and shall be considered grounds for suspension or revocation of an investment adviser or representative registration. Rule 308.02(a) of the Rules.
b. The activities set forth in Rule 308.02(a) through (z) are not all inclusive. Any other activities employing any device, scheme or artifice to defraud or engaging in any act, practice or course of business that operates or would operate as a fraud or deceit shall constitute grounds for denial, suspension or revocation under Section 23-42-308 of the Act, or for the institution of a cease and desist order or other action under Section 23-42-209 of the Act. Rule 308.02(a)(a) of the Rules.

44. It is well-settled that recommendations by dually registered investment adviser representatives and insurance producers to replace securities such as mutual funds, stocks, bonds, and various other investment vehicles defined as securities under the Act is the offering of investment advice, including, but not limited to, under both the definitions of investment adviser and investment adviser representative in the Act cited herein and in specific guidance issued by commissioners of the Department and the Arkansas Insurance Department. The commonality between certain securities and insurance products and between industries creates potential pitfalls for such dual registrants when they do not consider their ongoing fiduciary duty to their clients during and after recommending that a client liquidate securities to purchase insurance products. See Ark. Ins. Dep't & Ark. Sec. Dep't, Bulletin No. 14-2009, Joint Bulletin – Sales or Inv. Advice Related to Sec. Prods. by Ins. Producers (2009).

45. It is unlawful for any investment adviser or investment adviser representative to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading. Ark. Code Ann. § 23-42-307(a)(3) (emphasis added). Similarly, it is unlawful for any person, in connection with offer, sale, or purchase of any security, directly or
indirectly, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading. Ark. Code Ann. § 23-42-507(2) (emphasis added).

46. The Commissioner may by order suspend, make conditional or probationary, or revoke any registration if it is found that the investment adviser representative has willfully violated or willfully failed to comply with any provision of the Act or Rules or has engaged in dishonest or unethical practices in the securities business. Ark. Code Ann. § 23-42-308(a)(2)(B) and (G).

47. The Commissioner may for each violation of the Act and Rules fine any investment adviser representative not to exceed ten thousand dollars ($10,000) or an amount equal to the total amount of money received in connection with each separate violation, or if a victim of a violation is sixty-five (65) years of age or older, twenty thousand dollars ($20,000) for each violation or two times the amount of money received in connection with each violation. Ark. Code Ann. § 23-42-308(g)(1) and (2).

48. Whenever it appears to the Commissioner, upon sufficient grounds or evidence satisfactory to the Commissioner, that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of the Act or Rules, except the provisions of Ark. Code Ann. § 23-42-509, order under this chapter, including any order issued under Ark. Code Ann. § 23-42-509, the Commissioner may summarily order the person to cease and desist from the act or practice. Ark. Code Ann. § 23-42-209(a)(1)(A).

49. Ark. Code Ann. § 23-42-308(h) provides for the informal disposition of allegations which may give rise to a proceeding by consent in lieu of a formal proceeding.
50. The Commissioner may apply to the Pulaski County Circuit Court, Pulaski County, Arkansas, to temporarily or permanently enjoin an act or practice that violates the Act or Rules and to enforce compliance with the Act or Rules or order under the Act or Rules. Ark. Code Ann. § 24-42-209(b)(1).

CONCLUSIONS OF LAW

51. During the time period set forth herein, Lauletta acted as an investment adviser representative through his securities-business and financial planning activities in Arkansas, investment adviser representative registration in the state of Ohio, and affiliation with an SEC-registered investment adviser firm notice filed in Arkansas, pursuant to Ark. Code Ann. § 23-42-102(9)(A) and (B) and Ark. Code Ann. § 23-42-102(14)(A) through (D). More specifically, Lauletta acted as an investment adviser representative when, for compensation, he advised and recommended that AR1 and AR2 liquidate securities to purchase insurance products. Additionally, Lauletta acted as an investment adviser when, as an integral component of other financially-related services provided to AR1, he served as AR1’s financial planner.

52. As an investment adviser representative, Lauletta breached his fiduciary duty to AR1 and AR2 by advising them to liquidate securities invested for retirement to purchase unsuitable insurance products and annuities. Lauletta did not have reasonable grounds for believing any of the advice and recommendations described herein were suitable for AR1 or AR2 based on information furnished by the clients after reasonable inquiry concerning the clients’ stated investment objectives. These recommendations constituted fraudulent, deceptive, dishonest, or unethical practices of an investment adviser in violation of Ark. Code Ann. § 23-42-308(a)(2)(B) and (G), and Rule 308.02(a) of the Rules.
Lauletta violated Ark. Code Ann. §§ 23-42-307(a)(3), and 23-42-507(2), and Rule 308.02(aa) of the Rules, when he failed to disclose the risks associated with liquidating securities and transferring funds from the retirement accounts of AR1 and AR2 into insurance products, failed to disclose the risks of and certain penalties for his planned recommendations to AR1 and AR2 of early withdrawals and surrenders of insurance policies, failed to disclose the risks associated with premium financing to both AR1 and AR2, failed to disclose the high commissions resulting from his sales of the insurance products, and stated that the purpose for the life insurance products was for estate taxes while knowing this was unnecessary. By failing to disclose such information and making untrue statements to AR1 and AR2, Lauletta omitted material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and proceeded with a course of business that operated as other fraudulent, deceptive, dishonest, or unethical practices of an investment adviser.

Pursuant to Ark. Code Ann. § 23-42-209(a)(1)(A), Lauletta should be ordered to cease and desist from further violations of the Act or Rules.

Pursuant to Ark. Code Ann. § 23-42-308(g), Lauletta should be fined at least $10,000 for each violation or at least an amount equal to the total amount of money received in connection with each separate violation of the Act or Rules.

**UNDERTAKINGS**

In settlement of this matter pursuant to Ark. Code Ann. § 23-42-308(h), Lauletta agrees to pay a fine to the Department in the amount of $10,000. Lauletta voluntarily agrees not to reapply for a minimum of five (5) years for registration with the Department in any
capacity, including, but not limited to, as a broker-dealer agent, an investment adviser representative, or an agent of an issuer.

OPINION

57. This Order is in the public interest. The facts set forth in paragraphs 1 through 40 support the violations of the Act and Rules as set forth in paragraphs 41 through 55.

ORDER

By agreement and with consent of the Staff and Lauletta, in accordance with Lauletta’s undertakings, IT IS HEREBY ORDERED:

1. Lauletta shall cease and desist from further violations of the Act and Rules;

2. Lauletta’s registration as a broker-dealer agent in Arkansas shall be revoked as of April 12, 2022, the last date on which Lauletta’s registration was effective in Arkansas;

3. Lauletta voluntarily agrees not to reapply for a minimum of five (5) years for registration with the Department in any capacity, including, but not limited to, as a broker-dealer agent, an investment adviser representative, or an agent of an issuer, on or after the entry of this Order;

4. Lauletta shall pay a fine to the Department in the amount of $10,000 immediately upon entry of this Order; and

5. Any failure by Lauletta to adhere to this Order shall be considered a violation of this Order authorizing the Commissioner to apply to the Pulaski County Circuit Court, Pulaski County, Arkansas, to enforce compliance with this Order, pursuant to Ark. Code Ann. § 23-42-209(b)(1).
WITNESS MY HAND AND SEAL on this 1st day of September, 2022.

J. Campbell McLaurin
Arkansas Securities Commissioner

I hereby agree to the entry of this Consent Order, and consent to all terms, conditions, and orders contained therein, and waive any right to an appeal from this order.

Daniel J. Lauletta (CRD No. 2659123)

________________________
Date

APPROVED AS TO FORM:

Victoria H. Buter
Partner
Kutak Rock LLP
Attorney for Mr. Lauletta

September 1, 2022
Date

Ryan J. Little
Staff Attorney
Arkansas Securities Department

________________________
Date

APPROVED AS TO FORM AND CONTENT:

Edward M. Fox II
Partner
Kutak Rock LLP
Attorney for Mr. Lauletta

September 1, 2022
Date

Amber E. Crouch
General Counsel
Arkansas Securities Department

________________________
Date
WITNESS MY HAND AND SEAL on this ___ day of _____________, 2022.

__________________________
J. Campbell McLaurin
Arkansas Securities Commissioner

I hereby agree to the entry of this Consent Order, and consent to all terms, conditions, and orders contained therein, and waive any right to an appeal from this order.

__________________________
Daniel J. Lauletta (CRD No. 2659123)

08/30/2022
Date

APPROVED AS TO FORM:

__________________________  APPROVED AS TO FORM
Victoria H. Buter
Partner
Kutak Rock LLP
Attorney for Mr. Lauletta

Date

Ryan J. Little
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Edward M. Fox II
Partner
Kutak Rock LLP
Attorney for Mr. Lauletta

Date

Amber E. Crouch
General Counsel
Arkansas Securities Department

Date