

BEFORE THE ARKANSAS SECURITIES COMMISSIONER

CASE NO. S-23-0007

ORDER NO. S-23-0007-24-OR01

IN THE MATTER OF:

ALTON B. RANEY II

RESPONDENT

CONSENT ORDER

This Consent Order (“Order”) is entered pursuant to the Arkansas Securities Act (“Act”), codified at Ark. Code Ann. §§ 23-42-101 to 23-42-509, the Rules of the Arkansas Securities Commissioner (“Rules”) promulgated under the Act, and the Arkansas Administrative Procedures Act, codified at Ark. Code Ann. §§ 25-15-101 to 25-15-221, in accordance with an agreement by and between the staff of the Arkansas Securities Department (“Staff”) and Respondent, Alton B. Raney II (CRD# 1497403) (“Raney”), in full and final settlement of all claims that could be brought against Raney by the Staff on the basis of the facts set forth herein.

Raney admits the jurisdiction of the Act and the Arkansas Securities Commissioner (“Commissioner”), waives his right to a formal hearing and appeal, and without admitting or denying the findings of fact or conclusions of law made herein, consents to the entry of this Order, and agrees to abide by its terms.

FINDINGS OF FACT

1. Raney was a registered broker-dealer agent (“Agent”) and investment adviser representative (“IAR”) of LPL Financial LLC (“LPL”) (CRD# 6413) from December 7, 2018, to April 27, 2023. Per a Form U5 (Uniform Termination Notice for Securities Industry Registration) filed on April 27, 2023, LPL discharged him for concerns regarding the appropriateness of his recommendations involving short-term mutual fund transactions.

2. On September 13, 2023, Raney applied for registration as an Agent of St. Bernard Financial Services, Inc. (CRD# 36956) (“St. Bernard”). Raney’s application remained pending during the pendency of the Staff’s investigation of the matter set forth herein.

3. In April 2023, the Staff received a vulnerable adult report on an 87-year-old Arkansas resident customer (“AR1”) from LPL for concerns that “[Raney’s] actions could be considered at the very least ‘wrongful use of funds or assets’” under the Act. After receiving the report, the Staff opened an investigation into Raney’s actions.

4. During January 2019, AR1, a long-time client of Raney’s, opened two non-retirement brokerage accounts at LPL and transferred their assets to these accounts. The stated objective for both accounts was long-term growth with little focus on generating income. After the transfer, each brokerage account held shares in eight to ten mutual funds.

5. There was little activity in either of AR1’s brokerage accounts from February 2019 to January 2022. However, starting in February 2022, Raney began to recommend and execute more trades to buy and sell mutual fund shares in one of AR1’s brokerage accounts than previous years and more than AR1’s other brokerage account. Throughout 2022, Raney recommended the purchase of Class A shares in twenty mutual funds and the sale of shares in eighteen mutual funds, fifteen of which had been held for less than one year.

February 2022

6. On February 15, 2022, Raney recommended and placed a trade to buy \$10,000.00 worth of Class A shares in JPMorgan Mid Cap Value Fund (“JAMCX”).

7. On February 16, 2022, Raney recommended and placed trades to buy and redeem \$11,137.24 worth of Class A shares in JAMCX and \$24,254.67 worth of Class A shares in Catalyst/Millburn Hedge Strategy Fund (“MBXAX”).

March 2022

8. On March 10, 2022, Raney recommended and placed trades to buy \$70,010.00 worth of Class A shares in two funds: MainGate Fund (“AMLPX”) and Vest US Large Cap 10% Buffer Strategies Fund (“BUAGX”).

- a. The trade to buy \$35,005.00 worth of shares in AMLPX generated a commission of \$1,750.00.
- b. The trade to buy \$35,005.00 worth of shares in BUAGX generated a commission of \$2,012.50.

9. At the end of April 2022, AR1 held shares in nine different mutual fund families. Six of those mutual funds offered front-end sales charge discounts at every \$50,000.00 invested, up to \$1,000,000.00 through breakpoint discounts and rights of accumulation. One fund offered front-end sales charge discounts at every \$25,000.00 invested, up to \$1,000,000.00.

10. Both AMLPX and BUAGX offered breakpoint discount opportunities at every \$50,000.00 invested, up to \$1,000,000.00.

May 2022

11. On May 11, 2022, Raney recommended and placed trades to buy \$35,005.00 worth of Class A shares in each of the following four mutual funds (\$140,020.00 total): BlackRock Commodity Strategies Fund (“BCSAX”); Swan Defined Risk Growth Fund (“SDAAX”); Virtus Duff & Phelps Water Fund (“AWTAX”); and Allspring Diversified Income Builder Fund (“EKSAX”).

- a. The trade to buy \$35,005.00 worth of shares in BXSAX generated a commission of \$1,575.00.

- b. The trade to buy \$35,005.00 worth of shares in SDAAX generated a commission of \$1,750.00.
- c. The trade to buy \$35,005.00 worth of shares in AWTAX generated a commission of \$1,662.50.
- d. The trade to buy \$35,005.00 worth of shares in EFSAX generated a commission of \$1,750.00.

12. On May 20, 2022, Raney recommended and placed trades to buy \$30,005.00 worth of Class A shares in Delaware Hedged U.S. Equity Opportunities (“FHEJX”) and \$30,000.00 worth of Class A Shares in DWS Enhanced Commodity Strategy Fund (“SKNRX”).

- a. The trade to buy \$30,005.00 worth of shares in FHEJX generated a commission of \$1,500.00.
- b. The trade to buy \$30,000.00 worth of shares in SKNRX generated a commission of \$1,560.00.

13. On or about May 27, 2022, Raney met with AR1, AR1’s estate attorney, and AR1’s acquaintance who is involved with AR1’s personal finances to discuss AR1’s trust and investment portfolio. At that meeting, AR1 and AR1’s acquaintance expressed their concern about the market and the economy. Specifically, AR1 was concerned about losing the gains that their portfolio had made. When asked about this meeting by the Staff, Raney stated that he recommended that AR1 “lighten up on equities,” which he clarified in a later response to mean traditional mutual funds, not non-equities. Four days later on May 31, 2022, Raney recommended and placed trades to buy \$35,005.00 worth of Class A shares in each of the following four mutual funds (\$140,020.00 total): Guggenheim Risk Managed Real Estate Fund (“GURAX”); Columbia Global Technology Growth

Fund (“CTCAX”); Astor Sector Allocation Fund (“ASPGX”); and PGIM Jennison Utility Fund (“PRUAX”).

- a. The trade to buy \$35,005.00 worth of shares in GURAX generated a commission of \$1,400.00.
- b. The trade to buy \$35,005.00 worth of shares in CTCAX generated a commission of \$1,750.00.
- c. The trade to buy \$35,005.00 worth of shares in ASPGX generated a commission of \$1,400.00.
- d. The trade to buy \$35,005.00 worth of shares in PRUAX generated a commission of \$1,575.00.

July 2022

14. On July 18, 2022, Raney recommended and placed a trade to purchase \$30,005.00 worth of Class A shares in Gateway Fund (“GATEX”). This trade to buy generated a commission of \$1,500.00.

15. On July 18, 2022, Raney recommended and placed a trade to purchase \$27,005.00 worth of Class A shares in FS Multi-Strategy Alternatives Fund (“FSMMX”). This purchase, however, was cancelled on July 27, 2022.

16. On July 27, 2022, Raney recommended and placed a trade to purchase \$27,005.00 worth of Class A shares in FSMMX. This purchase generated a \$1,350.00.

17. At the end of July 2022, AR1 was invested twenty different mutual funds and Raney had generated a gross commission of \$22,535.00.

September 2022

18. On or about September 28, 2022, Raney met with AR1 and AR1's acquaintance to discuss the market and economic conditions as well as the overall direction of AR1's portfolio. At that meeting Raney, AR1, AR1's acquaintance discussed how the market conditions from the first of the year had changed and that it felt like the investments AR1 held and had purchased throughout 2022, based off of Raney's recommendations, "no longer made [sense]." Therefore, it was Raney's recommendation to liquidate the funds that were incurring losses and reinvest the proceeds into large cap mutual funds, short term notes, and real estate investment trusts ("REITs"). When Raney was questioned by his LPL supervisor about whether he explained the possibility of using free exchange privileges to the customer, he admitted he did not. Moreover, Raney was asked by the Staff if any other options other than liquidation were presented to AR and he failed to state that other options were presented.

19. On September 29, 2022, Raney placed trades to sell all of the shares AR1 held in eighteen mutual funds. Fifteen of those funds had been owned for less than a year. The liquidation of those mutual fund shares created \$522,089.63 of proceeds.

October 2022

20. On October 24, 2022, Raney placed trades to buy: \$33,333.00 worth of Class A shares in American Beacon Large Cap Value ("ALVAX"); \$33,333.00 worth of Class A shares in Clearbridge Large Cap Growth ("SBLGX"); and \$33,338.00 worth of Class A shares in Eventide Gilead ("ETAGX"). These trades generated a commission of \$4,916.72.

- a. The trade to buy \$33,333.00 worth of shares in ALVAX generated a commission of \$1,666.65.

b. The trade to buy \$33,333.00 worth of shares in SBLGX generated a commission of \$1,583.32.

c. The trade to buy \$33,338.00 worth of shares in ETAGX generated a commission of \$1,666.65.

21. In 2022, the account suffered a loss of \$74,631.28 in 2022, but generated a commission of \$27,451.62.

Multi-Class Mutual Funds, Breakpoints, Rights of Accumulation, and Exchange Privileges

22. Mutual funds are a type of investment vehicle that pools money from many individuals to purchase stocks, bonds, or other securities. Like individual stocks, mutual funds are equity investments. A mutual fund may offer more than one “class” of shares to investors. Each class represents a similar interest in the mutual fund’s portfolio with the fees and expenses charged to the investors being the principal difference among the classes.

23. Class A and Class C shares are two of the most common share classes offered to investors. Class A shares typically impose a front-end sales charge, meaning the investor is charged a commission at the time the shares are purchased. Whereas Class C shares charge a sales commission at the time the shares are sold. Which class an investor should invest with depends on the particular investor, the investor’s investment profile, and how long the investor intends to hold the shares. Class A shares are viewed as best for long term investors—those holding the shares for five to ten or more years. Class C shares are viewed as best for short term investors—those holding for a year but no more than three years. Additionally, because Class A shares are intended to be held for a long period of time, mutual funds that sell Class A shares with front-end sales charges usually offer discounts at certain pre-determined levels of investment, known as breakpoints. For example, a fund might charge an investor 4.5% of the sale price for a purchase of shares of less

than \$50,000 but reduce it to 4% if the investor invests between \$50,000 and \$99,999. When breakpoints are utilized, the commission generated from the sale is also reduced. In addition to breakpoints, investors can also exercise a right of accumulation to benefit from breakpoints. A right of accumulation allows investors to aggregate their own holdings as well as the holdings of defined related parties to meet the investment thresholds for front-end sales charge discounts.

24. Raney only recommended Class A shares to AR1 as well as his other clients. When questioned by his LPL supervisor about the use of Class A shares over Class C shares, Raney stated that he had “never used C share[s] before. When we went in, [he] assumed [AR1] would hold the funds until the market conditions changed in a couple of three years.”

25. Moreover, Raney stated that he could not recall whether he explained how utilizing breakpoints impacted his commission. He also admitted that he made recommendations to AR1 without considering whether they would benefit from breakpoints.

26. Raney did not consider exercising rights of accumulation in the funds AR1 held because he stated to the Staff that the funds AR1 was invested in did not have offer those privileges. The Staff during its investigation discovered that most of AR1’s funds offered the ability to exercise rights of accumulation.

Interactions with Non-customers

27. AR1 has a non-relative acquaintance who assists them with their finances. The acquaintance allegedly has a springing power of attorney for AR1. The power of attorney was not effective at the time of the recommended transactions and actions at issue. Furthermore, LPL was not informed by Raney or AR1 of any power of attorney for AR1’s accounts. Raney communicated with the acquaintance about recommendations for AR1’s portfolio, including the decision to purchase Class A shares in mutual funds. Raney admitted to the Staff that part of the reason Class

A shares were chosen over Class C shares was because the beneficiaries of AR1's estate, the acquaintance and another individual, "would have no plans to liquidate [the shares]" upon inheriting them. Moreover, Raney changed the address of record for AR1 to the acquaintance knowing the acquaintance was not an accountholder and without following LPL's procedures for changing customer addresses of record. This resulted in the acquaintance being the sole recipient of AR1's account statements, trade confirmations, and other account communications from LPL.

Staff Complaint to Retroactively Revoke and Deny Registration

28. On May 14, 2024, the Staff filed a Complaint to Retroactively Revoke and Deny Registration ("Complaint") against Raney with the Commissioner regarding the Findings of Fact and Conclusions of law herein and requesting a hearing to be scheduled on the merits pursuant to Rule 607.01(b).

29. The Staff requested that upon a final hearing the Deputy Commissioner retroactively revoke Raney's prior registrations as an Agent and IAR in Arkansas as of April 27, 2023, the last date on which Raney's registrations were effective in Arkansas and deny Raney's current application for registration as an Agent, impose an appropriate fine, and impose any other relief appropriate in accordance with Ark. Code Ann. § 23-42-308.

Termination by St. Bernard

30. On May 16, 2024, St. Bernard filed a Form U5 terminating Raney's employment and registration application in Arkansas with St. Bernard because of the Staff's Complaint against Raney.

31. As of the date of this Order, Raney has no pending applications for registration with the Department and is not registered with the Department in any capacity.

APPLICABLE LAW

32. Under the Act, the Commissioner may by order deny, suspend, make conditional or probationary, or revoke any registration if he or she finds that the order is in the public interest and the applicant or registrant has willfully violated or willfully failed to comply with certain provisions of the Act or Rules and has engaged in dishonest or unethical practices in the securities business. Ark. Code Ann. § 23-42-308(a)(1), (2)(B), and (a)(2)(G).

33. Rule 308.01(d) states, in part, that it is unethical to recommend to a customer the purchase, sale, or exchange of any security when an Agent does not have reasonable grounds for believing that the recommendation is suitable for the customer upon the basis of the facts, if any, disclosed by the customer as to their other security holdings and as to their financial situation and needs.

34. Rule 308.01(e) states that it is unethical to induce trading in a customer's account that is excessive in size or frequency in view of the financial resources and character of the account exclusively for the purpose of accumulating profits.

35. The Act and Rules incorporate federal securities laws and rules, such as those promulgated by the U.S. Securities and Exchange Commission ("SEC"), as well as rules promulgated by any self-regulatory organization, such as the Financial Industry Regulatory Authority ("FINRA"). Rule 308.01(x)

a. Regulation Best Interest ("Reg BI"), promulgated by the SEC, requires that an Agent when making a recommendation to a retail customer act in the best interest of the retail customer at the time the recommendation is made, without placing the financial or other interest of the Agent ahead of the interest of the retail customer. 17 CFR § 240.151-1(a)(1). The obligation to act in the best interest of the retail customer is satisfied when the

four obligations—the disclosure obligation, the care obligation, the conflict of interest obligation, and the compliance obligation—of paragraph (a)(2) are met. *Id* § 240.15-1(a)(2). The care obligation, in particular, is satisfied when the Agent has a reasonable basis to believe that the recommendation is in the best interest of a particular retail customer based on the customer’s investment profile and the potential risk, rewards, and costs associated with the recommendation and does not place their own financial interest ahead of the retail customer. *Id* § 240.15-1(a)(2)(ii)(A). The obligation is also satisfied when the Agent has a reasonable basis to believe that a series of transactions, even if in the retail customer’s best interest when viewed in isolation, is not excessive and is in the retail customer’s best interest when taken together in light of the customer’s investment profile and does not place the financial interest of the Agent or broker-dealer ahead of the customer. *Id* § 240.15-1(a)(2)(ii)(C).

b. FINRA Rule 2342 prohibits an Agent from selling investment company shares in dollar amounts just below the point at which the sales charge is reduced on quantity transactions so as to share in the higher sales charges applicable on sales below the breakpoint.

c. FINRA Rule 2010 states that an Agent in the conduct of their business shall observe high standards of commercial honor and just and equitable principles of trade.

36. Rule 308.01(y) explains that the unfair, misleading, or unethical practices outlined in Rule 308.01 are not exclusive of other activities, such as forgery, embezzlement, non-disclosure or misstatement of material facts, manipulations and various deception, which shall be considered grounds for suspension or revocation and the Commissioner may suspend or revoke a registration when necessary or appropriate in the public interest.

37. 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.

CONCLUSIONS OF LAW

38. Raney violated Rule 308.01(d) when he recommended the purchase of Class A shares to AR1 even though AR1 was concerned about a short-term economic downturn and was seeking recommendations to conserve the growth the account had made in recent years. . Moreover, Raney did not have reasonable grounds to only recommend the purchase of shares in multiple non-familial funds. Raney could have informed the customer of breakpoints and rights of accumulation, which would have benefitted the customer, but he did not. Furthermore, Raney's recommendation to liquidate most of AR1's holdings instead of recommending the use of free exchange privileges, offered by some of AR1's funds, into more conservative funds, given the customer's economic concerns, was unsuitable, unethical, and a willful violation of Rule 308.01(d).

39. The recommendations to purchase approximately \$400,0000 worth of shares in 14 non-familial mutual funds within a six-month period is excessive trading. The account had a long-term growth objective and there was little previous activity in the account before 2022. It was out of character for the investment objective of the account, the account's previous trading activity, and the share class type to recommend the purchase of long-holding securities products to then recommend their sale a few months later. Additionally, AR1's account suffered a loss of \$74,631.28 in 2022, whereas the same account generated a commission of \$27,451.62. These actions by Raney violate Rule 308.01(e).

40. Raney failed to act in the best interest of AR1 when he made the recommendations to purchase Class A shares in multiple non-familial mutual funds. Specifically, Raney did not

fulfill his care obligation when he failed to consider the customer's age, investing time horizon, and economic concerns. The failure to fulfill his care obligations is particularly evident when he explained the decision to select Class A shares. Raney, when questioned by the Staff for the rationale behind recommending Class A shares, stated that Class A shares were recommended, in part, because if AR1 died that the beneficiaries of AR1's estate had "no plans to liquidate [the shares]" upon inheriting them. Furthermore, Raney failed to discuss the option of Class C shares with AR1. By failing to inform the customer of all aspects of a securities purchase and by recommending products that did not fit AR1's needs, Raney willfully violated Rule 308.01(x) by not complying with Reg BI.

41. Many of the trades to purchase mutual fund shares were purchased at dollar amounts below the point at which sales charges and commissions would be reduced. That conduct is particularly evident from the buy trades in May 2022. On May 11, 2022, Raney recommended the purchase of \$35,005.00 worth of shares in four non-familial mutual funds for a total of \$140,020.00 worth of shares purchased. All four mutual funds offered breakpoints at every \$50,000 worth of shares purchased. On May 31, 2022, Raney, again, recommended the purchase of \$35,005.00 worth of shares in four non-familial mutual funds for a total of \$140,020.00 worth of shares purchased. All four mutual funds offered breakpoints at every \$50,000 worth of shares purchased. By purchasing shares in multiple funds just below the breakpoints and failing to utilize breakpoints, Raney willfully violated 308.01(d) and (x) by violating FINRA Rule 2342 and making unsuitable recommendations to AR1.

42. Raney's actions of communicating with and through AR1's acquaintance, who allegedly had a springing power of attorney, and changing the address of record on AR1's accounts

to the acquaintance without reason to do so are unethical and a willful violation of Rule 308.01(x) and (y) by not complying with FINRA Rule 2010.

43. Raney desires the informal disposition of the allegations in the Complaint by consent in lieu of the Staff's requested hearing before the Deputy Commissioner pursuant to Ark. Code Ann. § 23-42-308(h).

UNDERTAKINGS

In settlement of this matter, Raney agrees to a revocation of his registrations as a broker-dealer agent and investment adviser representative. Raney agrees he will not reapply for registration with the Department in any capacity for a period of five years from the date of the entry of this Order, including, but not limited to, as an investment adviser, investment adviser representative, broker-dealer, broker-dealer agent, or agent of an issuer. If Raney reapplies with the Department after the five-year period, Raney agrees that he must affiliate with a broker-dealer or investment adviser firm that will provide him with direct supervision by a supervisor other than himself and that will implement a heightened supervision plan for Raney prior to any reapplication with the Department. In consideration of Raney's employment status and financial condition, the Staff will not pursue a fine.

OPINION

This Order is in the public interest. The facts set forth in paragraphs one through 31 support the violations of the Act as set forth in paragraphs 32 through 42.

ORDER

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

1. Raney's registrations as a broker-dealer agent and investment adviser representative in Arkansas shall be revoked as of April 27, 2023, the last date on which Raney's registrations were effective in Arkansas.
2. Raney shall not reapply for registration with the Department in any capacity for five years from the date of the entry of this Order, including, but not limited to, as an investment adviser, investment adviser representative, broker-dealer, broker-dealer agent, or agent of an issuer.

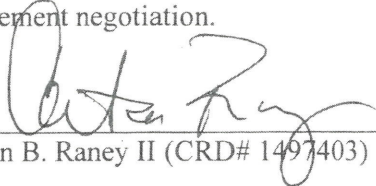
WITNESS MY HAND this the 30th day of December, 2024.

SUSANNAH T. MARSHALL
ARKANSAS SECURITIES COMMISSIONER


By: 

J. Campbell McLaurin
Deputy Commissioner
Arkansas Securities Department
1 Commerce Way, Suite 402
Little Rock, Arkansas 72202

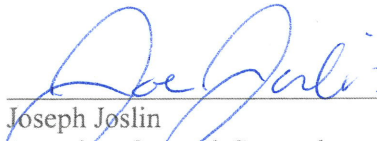
Alton B. Raney II hereby acknowledges that he has been served with a copy of this Consent Order to settle the allegations in the Complaint, has read it, is aware of his right to a hearing on the Complaint, and has waived his right to a hearing on the Complaint. Raney acknowledges that he is consenting to the entry of this Consent Order voluntarily; consents to all terms, conditions, and orders contained therein; and waives any right to an appeal from this Consent Order. Raney acknowledges that he is self-represented, was recommended to and given an opportunity to retain counsel by the Staff, and voluntarily chose not to retain counsel in this matter and for this settlement negotiation.


Alton B. Raney II (CRD# 1497403) 12/23/24

Approved as to Form and Content:


Christina Redmann
Staff Attorney
Arkansas Securities Department

12/30/24
Date


Joseph Joslin
Associate General Counsel
Arkansas Securities Department

12/30/24
Date