

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2022073342401**

TO: Department of Enforcement  
Financial Industry Regulatory Authority (FINRA)

RE: AAG Capital, Inc. (Respondent)  
Member Firm  
CRD No. 188

Pursuant to FINRA Rule 9216, Respondent AAG Capital, Inc. submits this Letter of Acceptance, Waiver, and Consent (AWC) for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against Respondent alleging violations based on the same factual findings described in this AWC.

**I.**

**ACCEPTANCE AND CONSENT**

- A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

**BACKGROUND**

AAG Capital, Inc. has been a FINRA member since 1962. The firm sells private placement securities, mutual funds, and registered index-linked annuities to retail investors, is headquartered in Wesley Chapel, Florida, and has 35 registered representatives.<sup>1</sup>

**OVERVIEW**

From February 2021 through the present, AAG Capital failed to establish and maintain written policies and procedures and a supervisory system reasonably designed to comply with Securities Exchange Act of 1934 Rule 15c-1 (Regulation Best Interest or Reg BI) for recommendations to retail customers regarding registered index-linked annuities (RILAs). With respect to recommendations to exchange an existing investment into a RILA, the firm's supervisory system failed to ensure that the recommendations reasonably considered disadvantages from the exchange that arose from the customer's surrender of their existing investment. As a result, AAG Capital violated Exchange Act Rule 15c-1(a)(1) and FINRA Rules 3110 and 2010, and is censured, fined \$100,000, will undertake corrective action, and pay restitution of \$38,591.39.

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<sup>1</sup> For more information about the firm, visit BrokerCheck® at [www.finra.org/brokercheck](http://www.finra.org/brokercheck).

## **FACTS AND VIOLATIVE CONDUCT**

This matter originated from a FINRA examination of AAG Capital.

### **AAG Capital Failed to Have Written Policies and Procedures and a Supervisory System for RILA Recommendations Reasonably Designed to Achieve Compliance with Reg BI**

As of June 30, 2020, broker-dealers and their associated persons are required to comply with Reg BI under the Securities Exchange Act of 1934. Rule 15c-1(a)(1) of Reg BI requires a broker, dealer, or a natural person associated with a broker or dealer, when making a recommendation of any securities transaction or investment strategy involving securities (including account recommendations) to a retail customer, to act in the best interest of that retail customer at the time the recommendation is made, without placing the financial or other interest of the broker, dealer, or associated person ahead of the interest of the retail customer. Reg BI's Compliance Obligation, set forth at Exchange Act Rule 15c-1(a)(2)(iv), requires a broker-dealer to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Reg BI. Reg BI's Adopting Release provides that broker-dealers should consider the nature of that firm's operations and how to design such policies and procedures to prevent violations from occurring, detect violations that have occurred, and to correct promptly any violations that have occurred.<sup>2</sup>

FINRA Rule 3110 requires member firms to establish, maintain, and enforce a supervisory system, including written procedures, to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws, regulations, and FINRA rules.

Violations of Reg BI or FINRA Rule 3110 also are violations of FINRA Rule 2010, which requires member firms to "observe high standards of commercial honor and just and equitable principles of trade" in the conduct of their business.

A RILA is a specific type of annuity that relies on external market performance as measured by an index to determine return. RILAs can feature both upside limits and downside protection during a specified investment term and can have complex structures. From February 2021 through the present, the firm's annuity business exclusively involved the recommendation of RILAs from three issuers. Between February 2021 and April 2023, the firm recommended 479 RILA purchases, representing more than \$92 million in principal. Of these purchases, 41 were exchanges funded by the surrender of variable annuity, fixed index annuity, or life insurance policies, representing more than \$7.9 million in principal from exchanges.

From February 2021 through the present, AAG Capital's Reg BI-related written policies and procedures were not tailored to address recommendations of a complex product that comprised a significant component of its revenue and the entirety of its annuity business.

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<sup>2</sup> *Regulation Best Interest: The Broker-Dealer Standard of Conduct*, Exchange Act Release No. 86031, 84 FR 33318 at 33397 (July 12, 2019).

While the firm did have Reg BI-related written policies and procedures that provided general guidance on the best interest standard for recommendations, the firm did not have specific written policies or procedures or a supervisory system for recommending RILA purchases or exchanges to retail customers that were reasonably designed to achieve compliance with Reg BI's Care Obligation.

Some of the firm's RILA recommendations included recommendations that its retail customers exchange existing annuity and life insurance products for a RILA. Throughout this period, the firm's written policies or procedures and supervisory system for recommending and supervising RILA purchases or exchanges were not sufficiently specific. For example, the firm's written policies and procedures failed to reasonably describe the steps that supervisors must take to evaluate whether the registered representatives had a reasonable basis to believe that the RILA recommendations were in the customers' best interest, such as the identification of potential red flags that the recommendation was not consistent with the customer's investment profile. The firm's written policies and procedures also failed to describe the steps that supervisors must take when reviewing whether recommendations to exchange another insurance product for a RILA were in the customer's best interest, taking into consideration the disadvantages of the exchange, such as the loss of a living benefit or death benefit, or the imposition of surrender fees.

From February 2021 through the present, AAG Capital did not reasonably supervise recommendations that retail customers exchange insurance policies, fixed index annuities, and variable annuities for RILAs. In reviewing the recommendations, the firm failed to reasonably consider various disadvantages of the exchanges. Nineteen of 41 exchanges resulted in a customer giving up death and living benefits, or incurring a surrender charge from the exchange:

- six customers gave up life insurance policies with a death benefit valued more than the surrender value of the contract, in some cases by over \$100,000;
- fifteen customers relinquished fixed or variable annuities with optional death benefit riders or living benefit riders, some of which had accrued value exceeding the contract value;
- eight customers incurred surrender charges as a result of the exchange, which totaled \$38,591.39.

The documentation for these exchanges submitted for supervisory review, which included some comparative disclosures that were limited in scope, did not include information sufficient to determine why the customers would benefit from the recommended RILA despite certain disadvantages arising from the surrender of the customer's existing investment, including the relinquishment of death benefits or income riders, or the incurrence of surrender charges. By not requiring that sufficient information about these exchanges be included in the documentation submitted for supervisory review, the firm and its supervisors were unable to reasonably assess whether the exchanges were in the customers' best interest. Moreover, the firm's written procedures and supervisory system were not reasonably designed to ensure that the firm's

supervisors would conduct reasonable follow-up before approving the exchanges. Finally, the firm's supervisory system also failed to ensure that the firm and its supervisors reasonably identified and followed up on red flags, such as patterns of customers relinquishing riders and benefits and incurring surrender charges as a result of exchange recommendations.

Therefore, AAG Capital violated Exchange Act Rule 15c-1(a)(1) and FINRA Rules 3110 and 2010.

B. Respondent also consents to the imposition of the following sanctions:

- a censure
- a \$100,000 fine
- restitution in the amount of \$38,591.39 plus interest as described below
- an undertaking that, within 180 days of the date of the notice of acceptance of this AWC, a member of Respondent's senior management who is a registered principal of the firm shall certify in writing that, as of the date of the certification, the firm has remediated the issues identified in this AWC and implemented a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with Exchange Act Rule 15c-1(a)(1) regarding the issues identified in this AWC. The certification shall include a narrative description and supporting exhibits sufficient to demonstrate Respondent's remediation and implementation. FINRA staff may request further evidence of Respondent's remediation and implementation, and Respondent agrees to provide such evidence. Respondent shall submit the certification to Catherine Hoge, Counsel, 200 Liberty Street, New York, NY 10281, catherine.hoge@finra.org, with a copy to EnforcementNotice@finra.org. Upon written request showing good cause, FINRA staff may extend this deadline.

Respondent agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Restitution is ordered to be paid to the customers listed on Attachment A to this AWC (Eligible Customers) in the total amount of \$38,591.39, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), from the date of the transaction until the date this AWC is accepted by the National Adjudicatory Council (NAC).

A registered principal on behalf of Respondent shall submit satisfactory proof of payment of restitution and interest (separately specifying the date and amount of each paid to each Eligible Customer) or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted by email to EnforcementNotice@FINRA.org from a work-related account of the registered principal of Respondent. The email must

identify Respondent and the case number and include a copy of the check, money order, or other method of payment. This proof shall be provided by email to EnforcementNotice@FINRA.org no later than 120 days after the date of the notice of acceptance of the AWC.

The restitution amount plus interest to be paid to each Eligible Customer shall be treated by the Respondent as the Eligible Customer's property for purposes of state escheatment, unclaimed property, abandoned property, and similar laws. If after reasonable and documented efforts undertaken to effect restitution Respondent is unable to pay all Eligible Customers within 120 days after the date of the notice of acceptance of the AWC, Respondent shall submit to FINRA in the manner described above a list of the unpaid Eligible Customers and a description of Respondent's plan, not unacceptable to FINRA, to comply with the applicable escheatment, unclaimed property, abandoned property, or similar laws for each such Eligible Customer.

Respondent specifically and voluntarily waives any right to claim an inability to pay, now or at any time after the execution of this AWC, the monetary sanction or sanctions imposed in this matter.

The imposition of a restitution order or any other monetary sanction in this AWC, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

Restitution payments to customers shall be preceded or accompanied by a letter, not unacceptable to FINRA, describing the reason for the payment and the fact that the payment is being made pursuant to a settlement with FINRA and as a term of this AWC.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

## **II.**

### **WAIVER OF PROCEDURAL RIGHTS**

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a complaint issued specifying the allegations against it;
- B. To be notified of the complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made, and to have a written decision issued; and
- D. To appeal any such decision to the NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

### **III.**

#### **OTHER MATTERS**

Respondent understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
  - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
  - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
  - 3. FINRA may make a public announcement concerning this agreement and its subject matter in accordance with FINRA Rule 8313; and
  - 4. Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.

- D. Respondent may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this statement. This statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Respondent has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

May 9, 2025

Date

*Gregg Guinta*

AAG Capital, Inc.  
Respondent

Print Name: Gregg Guinta

Title: President

Reviewed by:

*Howard Fischer*

Howard Fischer  
Counsel for Respondent  
Moses Singer  
405 Lexington Avenue  
New York, NY 10174

Accepted by FINRA:

Signed on behalf of the  
Director of ODA, by delegated authority

May 20, 2025

Date

*Catherine Hoge*

Catherine Hoge  
Principal Counsel  
FINRA  
Department of Enforcement  
Brookfield Place  
200 Liberty Street  
New York, NY 10281

**ATTACHMENT A**  
**TO LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**MATTER NO. 2022073342401**

**SCHEDULE OF RESTITUTION**

<b>Customer</b>	<b>Transaction Date</b>	<b>Restitution Exclusive of Interest</b>
Customer 1	September 7, 2021	\$4,855.00
Customer 2	September 10, 2021	\$273.00
Customer 3	January 7, 2022	\$2,531.86
Customer 4	June 30, 2022	\$22,077.00
Customer 5	September 6, 2022	\$312.00
Customer 6	November 7, 2022	\$439.15
Customer 7	January 20, 2023	\$3,163.38
Customer 8	March 16, 2023	\$4,940.00
<b>TOTAL:</b>		<b>\$38,591.39</b>