

**COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE SECRETARY OF THE COMMONWEALTH  
SECURITIES DIVISION  
ONE ASHBURTON PLACE, ROOM 1701  
BOSTON, MASSACHUSETTS 02108**

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IN THE MATTER OF:	)	
	)	
CHARLES J. EVAN and	)	
CAPITAL PLANNING GROUP	)	
OF MASSACHUSETTS, INC.,	)	
	)	
RESPONDENTS.	)	Docket No. E-2020-0018

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**ADMINISTRATIVE COMPLAINT**

**I      PRELIMINARY STATEMENT**

The Enforcement Section of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth (the "Enforcement Section" and the "Division," respectively) files this Administrative Complaint (the "Complaint") to commence an adjudicatory proceeding against Charles J. Evan and Capital Planning Group of Massachusetts, Inc. (together, "Respondents") for violations of M.G.L. c. 110A, the Massachusetts Uniform Securities Act (the "Act"), and 950 Code Mass. Regs. 10.00 – 14.413 (the "Regulations"). The Enforcement Section alleges that Respondents engaged in acts and practices in violation of Sections 101 and 204 of the Act and Regulations by making material misrepresentations and unsuitable investment recommendations in connection with the sale of annuities and life insurance products to Massachusetts investors.

The Enforcement Section seeks an order: 1) finding as fact the allegations set forth below; 2) finding that all of the sanctions and remedies detailed herein are in the public interest

and necessary for the protection of Massachusetts investors; 3) requiring Respondents to permanently cease and desist from further conduct in violation of the Act and Regulations; 4) censuring Respondents; 5) permanently barring Respondent Charles J. Evan from associating with or acting as a registered investment adviser, an investment adviser required to be registered, an investment adviser exempted from registration, a person relying on an exclusion from the definition of investment adviser in any capacity, a broker-dealer, a broker-dealer agent, an issuer, an issuer agent, or a partner, officer, director, or control person of any of the above; 6) requiring Respondents to provide a verified accounting of all proceeds received as a result of the alleged wrongdoing; 7) requiring Respondents to pay restitution to compensate investors for those losses attributable to the alleged wrongdoing; 8) requiring Respondents to disgorge all profits and direct or indirect compensation and remuneration received in connection with the alleged wrongdoing; 9) imposing an administrative fine on Respondents in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and 10) taking any such further actions which may be necessary or appropriate in the public interest for the protection of Massachusetts investors.

## **II. SUMMARY**

For decades, Charles J. Evan ("Evan") has built and operated a practice selling securities and insurance products and providing investment advice to Massachusetts investors. Evan marketed himself to those close to him as a trustworthy friend and financial advisor, all while recommending that clients concentrate their investment portfolios in variable annuities and life insurance policies. Variable annuities are illiquid securities with multi-year surrender periods during which purchasers cannot withdraw money without

paying substantial surrender charges. Variable annuities are known for generating high commissions for selling agents such as Evan.

Evan perpetrated a deceptively simple scheme for almost 10 years by subjecting his clients to high-pressure boiler room sales tactics and outright fraudulent misstatements, misrepresentations, and omissions while advising those clients to purchase high commission products intended solely to generate large profits for himself. Many of these clients were close friends, one of whom even served as the officiant at his wedding. Over the last decade, Evan routinely pressured clients over the phone and in person to purchase, and invest additional premiums into, numerous illiquid variable annuities with high commissions, high annual fees, and long surrender periods, all while fraudulently misrepresenting that he would receive no commission on their purchases. Evan repeatedly urged clients to act quickly on purchases by misrepresenting that the products he offered were the result of special deals that were only available for a short time, often telling clients that they had as little as 24 hours to decide whether to invest. In reality, there were no special deals or such limited periods in which to purchase the products, and Evan received commissions on each purchase.

Evan also routinely pressured clients to purchase multiple life insurance policies on parents and loved ones as investment vehicles, often urging them to do so even though those parents already maintained pre-existing life insurance policies. While collecting annual advisory fees and masquerading as an investment adviser with only his clients' interests in mind, Evan completely disregarded his clients' financial wellbeing in favor of generating profits for himself through the solicitation of numerous unsuitable variable

Annuities and insurance products by nefarious means, often engaging in fraudulent and material omissions and outright misrepresentations.

Over the last decade, Evan has lined his own pockets, as well as the pockets of insurance companies, to the detriment of his clients. Throughout this period, Evan collected thousands of dollars in annual fees from his clients in exchange for his investment advice, financial planning, and consulting services while preying upon the trust that his clients placed in him. While collecting annual fees for his advice and consulting, Evan recommended that his clients concentrate their assets in numerous high commission variable annuities with high surrender charges and longtime horizons while Evan gave little or no regard for the clients' ages, investment goals, liquidity needs, or the products' tax consequences. Evan's clients relied entirely on him to disclose the general features of variable annuities, including their surrender periods and high commissions, but Evan routinely failed to disclose these features or even disclose that he made any commissions from their purchases. Evan repeatedly disguised his recommendations that clients purchase products as part of his investment advice and financial planning for the clients, but in reality Evan sought to generate profits for himself in his capacity as a broker-dealer agent by soliciting them to purchase illiquid products with large, undisclosed commissions. As part of this process, Evan also advised that clients liquidate assets from their retirement accounts in order to fund additional, unnecessary life insurance policy purchases as investment vehicles. On many occasions, Evan told his clients that he made no money in connection with their life insurance policies and often characterized the policies as easy to resell should they need additional assets in a timely manner.

During meetings and phone conversations over the span of many years, Evan used high-pressure sales tactics in connection with many of his recommendations to customers to purchase variable annuities and life insurance policies. Evan repeatedly called and met clients in person, utilizing angry and belligerent tones and language intended to overcome his clients' reluctance to purchase the products he recommended. On many occasions, Evan informed his clients that they had very little time to make their decisions, sometimes as little as one day. These discussions sometimes involved Evan meeting clients at their homes on or around holidays and angrily persuading them to purchase products with fabricated deadlines for discounts, often misrepresenting that he had waived commissions on the products in order to get the clients better deals. Evan regularly misinformed clients that he had obtained special privileges to offer certain variable annuities and that the variable annuities he recommended would not be available for sale in the near future. Further, Evan routinely provided clients with only the signature pages of the contracts, rather than allowing them to review the entire contract for products before signing, and he failed to utilize only approved sales materials or leave those materials with his clients as required.

During the course of his practice, Evan has been registered with several broker-dealers. Evan's high-pressure sales tactics, fraudulent misrepresentations, material omissions, and general sales practice violations occurred continuously throughout his tenure at each of these broker-dealers while he was registered in Massachusetts over the last decade. Evan received commissions in connection with his fraudulent sales practices dating back to at least 2012, and he received further undisclosed commissions in

connection with each additional premium payment he persuaded his clients to make until the termination of his registrations in 2019.

Evan's own client uncovered Evan's fraudulent practices after investigating Evan's claims related to an insurance policy recommendation. After the investor paid Evan annual fees for his advice and consulting services, she discovered that Evan deceived her by reporting that he waived his commissions to get her a better rate on a life insurance policy in exchange for her personally paying him half of the commission directly. The investor paid Evan \$33,500 via personal check, but Evan also received full commissions in connection with her purchase. Further, Evan later returned to the client and asked her to pay him the remaining fees that he alleged he had originally waived. In response to a related customer complaint, Evan's broker-dealer investigated the customer's allegations and terminated Evan's appointment and registration after substantiating the client's claims.

The Financial Industry Regulatory Authority ("FINRA") began investigating Evan on November 13, 2019, after the termination of Evan's registration. Evan refused to produce information and documents requested by FINRA pursuant to FINRA Rule 8210. On January 22, 2020, FINRA permanently banned Evan from registration in all capacities in accordance with his voluntary submission of a Letter of Acceptance, Waiver and Consent.

On November 19, 2020, the Enforcement Section sent a subpoena *ad testificandum* commanding Evan to appear at an on-the-record testimony before the Massachusetts Securities Division. On January 14, 2021, Evan appeared and invoked his rights under the United States Constitution, the Massachusetts Constitution and the Massachusetts

Declaration of Rights to decline to answer questions on the grounds that his answers might tend to incriminate him.

With this action, the Enforcement Section of the Division seeks to prevent Respondents from engaging in further conduct that violates Massachusetts securities laws and harms Massachusetts investors.

### **III. JURISDICTION AND AUTHORITY**

1. As provided for by the Act, the Division has jurisdiction over matters relating to securities pursuant to chapter 110A of Massachusetts General Laws.
2. The Enforcement Section brings this action pursuant to the authority conferred upon the Division by Section 407A of the Act, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act and the Regulations.
3. This proceeding is brought in accordance with Sections IO1 and 204 of the Act.
4. The Enforcement Section reserves the right to amend this Complaint and bring additional administrative complaints to reflect information developed during the current and ongoing investigation.

### **IV. RELEVANT TIME PERIOD**

5. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of January 1, 2010, to December 31, 2019 (the "Relevant Time Period").

### **V. RESPONDENTS**

6. Charles J. Evan ("Evan") is an individual with a last known address in Newton, Massachusetts. Evan has a FINRA CRD number of 836083. Evan was registered with

multiple firms as a broker-dealer agent in Massachusetts from J 999 to 2019. Most recently, Evan was registered as a broker-dealer agent with MML Investors Services, LLC in Massachusetts from March 25, 2017, until his discharge on or around October 28, 2019. Evan was an agent with Baystate Financial ("Baystate") from at least 2002 until his termination on or around October 28, 2019, an investment adviser representative of Baystate Wealth Management LLC from 2011 to 2018, and an investment adviser representative of Capital Planning Group of Massachusetts, Inc. from at least April 30, 2002, until December 31, 2019.

7. Capital Planning Group of Massachusetts, Inc. ("Capital Planning") was a corporation organized under the laws of Massachusetts with a principal place of business at 100 William Street, Suite 300, Wellesley, Massachusetts 02481. Evan was the sole owner and operator of Capital Planning from at least April 29, 2002, until its failure to renew its registration on December 31, 2019.

## **VI. STATEMENT OF FACTS**

### **A. Background**

8. Charles J. Evan was a registered investment adviser representative, as well as President and direct owner of Capital Planning throughout the Relevant Time Period.



9. Evan was also a broker-dealer agent of MML Investors Services, LLC (CRD No. 10409) ("MMLIS") from March 25, 2017, and agent of Baystate, a financial services agency, throughout the Relevant Time Period until his termination for cause on or around October 28, 2019.

10. Prior to his registration with MMLIS, Evan was registered with New England Securities Corporation (CRD No. 615) ("NES") from April 30, 2002, until its acquisition by MetLife Securities, Inc. (CRD No. 14251) ("MetLife Securities") on January 2, 2015.

11. Prior to January 2015, Baystate was an independent general agency of New England Financial ("NEF"), whose broker-dealer was NES, a subsidiary of MetLife. Baystate ceased to be a separate legal entity and became a branch office of MetLife and its broker-dealer.

12. On or about July 1, 2016, MassMutual acquired MetLife Securities and MetLife's retail distribution business and rebranded MetLife Securities as MSI Financial Services, Inc. ("MSI"). At that time, Baystate became an independent agency again and its registered representatives were affiliated with MSI.

13. Evan remained registered with MetLife Securities until MassMutual dissolved MSI and merged MSI's operations into MMLIS. Following the merger, Evan and other registered representatives in the Baystate agency became affiliated with MMLIS.

14. In his capacity as a broker-dealer agent in Massachusetts, Evan maintained outside business activities servicing Massachusetts investors through his registered investment adviser firm, Capital Planning, by providing fee-based investment advice, financial planning, and consulting services to clients.

15. Evan did not provide written advisory contracts to clients disclosing the services to be provided, the duration or terms of the contract, or the advisory fee.

16. On or around October 28, 2019, MMLIS terminated its relationship with Evan for cause. In a firm statement to FINRA sent on March 3, 2020, MMLIS informed FINRA that it's Special Investigations Unit's initial investigation substantiated Investor Eight's complaint."

17. Evan had been under internal review for "fraud or wrongful taking of property, or violating investment-related statutes, regulations, rules or industry standards of conduct [.]"

18. On November 19, 2020, the Enforcement Section sent a subpoena *ad testificandum* commanding Evan to appear at an on-the-record testimony before the Massachusetts Securities Division.

19. On January 14, 2021, Evan appeared before the Massachusetts Securities Division and invoked his rights under the Fifth Amendment to the United States Constitution, and Article Twelve of the Massachusetts Constitution and the Massachusetts Declaration of Rights and declined to answer questions on the grounds that his answers might tend to incriminate him.

**B. Evan's Sales Practice Violations Involving Recommendations to Advisory Clients to Purchase Variable Annuities and Life Insurance Policies Under the Guise of Investment Advice**

*I. Investor One and Investor Two*

20. Investors One and Two are a married couple who were residents of Massachusetts and clients of Evan and Capital Planning throughout the Relevant Time Period. Investors One and Two have always been dependent on their investment adviser for financial advice.

21. Evan was a close family friend of investors One and Two for many years. Investors One and Two first became clients of Evan and Capital Planning group in 2012.

22. Evan provided investment advice, financial planning, and consulting services to Investors One and Two until his termination from MMLIS and Capital Planning's failure to renew in 2019.

23. Evan charged Investors One and Two annual fees of \$5,000 for investment advice, but waived the annual fees for several of those years. For at least two years during the Relevant Time Period, Investors One and Two paid Evan and Capital Planning annual fees in connection with his investment advice, financial planning, and consulting.

24. Evan regularly recommended that Investors One and Two purchase variable annuities and other policies insuring their lives and those of their extended family. Evan often recommended that they liquidate shares of mutual funds or other securities, or rollover or directly transfer funds from preexisting retirement accounts, in order to fund the initial and subsequent premium payments for these purchases.

25. Evan told Investors One and Two on many occasions that he would not

receive any commissions on the variable annuities or life insurance policies that he recommended they purchase..

26. In 2015, Evan approached Investors One and Two to ask them to purchase a MassMutual Universal Life Insurance policy insuring Evan's own life (the "Evan Policy").

27. Investors One and Two purchased the Evan Policy on November 23, 2015. The policy insured Evan's life at a face amount of \$1,000,000 and required annual premium payments of approximately \$29,000. Evan advised Investors One and Two that they would be able to sell the Evan Policy in the future for a profit.

28. In 2015, Investors One and Two paid approximately \$58,000 to purchase the Evan Policy upon Evan's advice and recommendation.

29. Investors One and Two paid the annual premium of \$29,176 for the Evan Policy for approximately two years.

30. After approximately two years, Investors One and Two told Evan that they could not continue the payments. Despite their insistence, Evan attempted to convince them to keep the policy and continue paying the annual premiums.

31. On March 31, 2017, Evan personally purchased the Evan Policy from Investors One and Two for \$8,504.

32. Evan received at least approximately \$24,021.35 in commissions in connection with the purchase and premiums that Investors One and Two paid into the Evan Policy.

33. Evan recommended that Investors One and Two purchase and invest additional premiums into seven Jackson National Life Insurance Company ("Jackson") variable annuities between 2012 and 2018.

34. Evan told Investors One and Two that he would not receive commissions on any of the variable annuity purchases or additional premiums they paid into the variable annuity

accounts, and Investors One and Two believed that Evan was providing investment advice when recommending the products to them.

35. On July 26, 2012, Investor Two purchased a security described by Jackson as a National Perspective II Variable and Fixed Annuity ("Jackson Perspective II Variable Annuity") upon Evan's recommendation. The initial premium was \$10,000, and Investor Two invested an additional \$50,000 in premiums on October 17, 2012. Evan earned approximately \$7,208 in commissions in connection with the purchase and additional premium.

36. Evan recommended that Investor One purchase a Jackson Perspective II Variable Annuity on July 1, 2013. Investor One paid an initial premium of \$100,000 and the cash value was \$100,526.61 as of April 20, 2020. Evan earned approximately \$4,725 in commissions in connection with the purchase.

37. Evan recommended that Investor Two purchase another Jackson Perspective II Variable Annuity on July 31, 2012. The initial premium was approximately \$42,000 and the cash value of the product was \$44,819.11 as of April 20, 2020. Evan received approximately \$2,036 in connection with the purchase.

38. On April 27, 2014, Evan recommended that Investor One rollover a Roth IRA to fund the purchase of another Jackson Perspective II Variable Annuity. The initial premium was approximately \$12,297.69 and the cash value was \$10,645.56 as of April 20, 2020.

39. The account opening documents for the rollover indicate that shares of mutual funds were sold to finance the purchase and that the stated purpose of the annuity was "Wealth Accumulation - Primary purpose is long term accumulation of value without express desire for 'retirement income' or 'estate planning.'" The investment objective was

listed as "Growth - seeks capital appreciation over long term." Evan earned commissions of at least \$600 in connection with this purchase.

40. Investor One purchased a Jackson Perspective II Variable Annuity upon Evan's recommendation on April 13, 2015. The initial premium was \$48,985 and the cash value of the product was \$69,991.80 as of April 20, 2020. Contrary to Evan's assurances that he received no commissions on the product, Evan earned approximately \$2,708 in commissions in connection with Investor One's purchase.

41. Evan recommended that Investor Two purchase another Jackson Perspective II Variable Annuity on September 21, 2016. The initial premium was \$100,000 and the cash value was \$286,056.77 as of April 20, 2020. Evan received \$5,600 in commissions in connection with Investor Two's purchase.

42. On or around October 20, 2018, Evan recommended that Investors One and Two invest \$265,000 into two of their pre-existing Jackson Perspective II Variable Annuities. Investors One and Two paid \$200,000 and \$65,000, respectively, in additional premiums into the variable annuities based on Evan's recommendation.

43. Evan received approximately \$15,270 in commissions in connection with the additional premiums and did not disclose to Investors One and Two that he would receive commissions in connection with these additional premiums.

44. Further, rather than set up joint accounts in connection with the variable annuity purchases, Evan set up accounts in the name of Investor One or Investor Two individually and listed the other as the sole beneficiary. Evan did not create joint accounts for the variable annuities, nor did he list them both as joint annuitants or joint beneficiaries on the accounts.

45. Throughout the Relevant Time Period, Evan often called Investors One and Two to pressure them to purchase additional products or pay additional premiums into their variable annuities, even telling them that the products were "special deals" that were only available for short periods of time.

46. Evan did not obtain special deals with such limited times for Investors One and Two to purchase new variable annuities or invest additional premiums into their existing variable annuities.

47. Evan routinely told Investors One and Two that he made no profit on their purchases and that he waived commissions as a favor to them because they were like family to him.

48. Evan's repeated calls and misrepresentations to Investors One and Two regarding commissions, special deals, and limited duration products were intended to overcome their reluctance to purchase the products he recommended.

49. Evan's statements also served to disguise his solicited recommendations to purchase high commissions products as investment advice in the sole interests of Investors One and Two.

50. Similarly, Evan also recommended that Investors One and Two purchase two separate second-to-die policies insuring the lives of Investor One's parents, instructing Investors One and Two that these policies would be good investments and that they could sell one in order to fund the other, if necessary.

51. Investors One and Two purchased the two life insurance policies for \$112,639 and \$120,539. Despite his statements to the contrary, Evan earned commissions in connection with the sale of these policies.



52. Additionally, in November 2018, Evan approached Investors One and Two to ask them to pay him a fee to reimburse him for his professional business insurance payment for the year, informing them that his company no longer covered the costs and forwarding them an invoice. Investors One and Two paid Evan \$508 on November 23, 2018 in response to his request.

Evan received commissions in connection with all of the variable annuity and life insurance products he recommended to Investors One and Two.

54. Evan routinely failed to provide Investors One and Two with their policies after their purchases. Similarly, Evan also failed to provide policy receipts to Investors One and Two for them to review and sign.

55. For each product Evan recommended to Investors One and Two, Evan provided only the various signature pages for them to sign and did not provide the other pages of the contracts for them to review. Investors One and Two did not fill out the other information within the contracts for their purchases, nor did Evan give them a chance to review the other information present in the contracts.

56. Additionally, Evan did not leave the originals or copies of the contracts for their purchases, nor did he provide Investors One and Two with illustrations.

57. Evan did not utilize only approved Jackson products while presenting the Jackson Perspective II Variable Annuities to Investors One and Two. Further, Evan did not leave copies of the information from his presentations with them, despite indicating that he had on the acknowledgements pages of the contracts.

58. On January 22, 2020, Investor One signed two affidavits in connection with internal investigations by MassMutual into Evan's sales practices. Investor One affirmed that she

did not sign an application for life insurance dated April 9, 2014, and that the signature on the form was a forgery. She also affirmed that she did not sign multiple trust documents dated on or around July 11, 2014, and that the signatures on the trust documents were forged.

59. On January 30, 2020, Investor One signed another affidavit affirming that the signatures and initials on a life insurance account application and policy receipt did not match her signature or initials and were in fact forged. She also affirmed that while the life insurance policy was purchased in 2012, she never received the policy and the forged signature for the policy receipt was dated two years after the purchase.

*ii. Investors Three and Four*

60. Investors Three and Four are a married couple who reside in Massachusetts.

61. Investors One and Two introduced Evan to Investors Three and Four around early 2013. Evan held himself and Capital Planning out to Investors Three and Four as a fee-based adviser providing investment advice for a few select clients.

62. Evan told Investors Three and Four that he agreed to assist them with their investments because of their friendship with Investors One and Two.

63. Prior to working with Evan, Investors Three and Four were primarily invested in mutual funds and stocks.

64. Throughout the course of their relationship, Investors Three and Four paid Evan annual fees totaling approximately \$20,000 in exchange for his investment advice, financial planning, and consulting services.

65. Evan regularly pressured Investors Three and Four to purchase multiple high commission products during the Relevant Time Period, including variable annuities and insurance products that were not in line with their investment goals.
66. Evan misrepresented the features of variable annuity products to Investors Three and Four, explaining that they should purchase as many of them as possible before Jackson stops offering them because they were great deals that would soon be discontinued.
67. On July 1, 2013, Investor Four purchased a Jackson Perspective II Variable Annuity for \$96,910.56 based on Evan's recommendation. Evan earned approximately \$4,204 in commissions in connection with this purchase.
68. On July 1, 2013, Investor Four purchased another Jackson Perspective II Variable Annuity for \$2,000 based on Evan's recommendation. Evan earned approximately \$800 in commissions in connection with the purchase.
69. On July 2, 2013, Investor Three purchased a Jackson Perspective II Variable Annuity for \$149,600.87 based on Evan's recommendation. Evan earned approximately \$12,260 in commissions in connection with this purchase.
70. On July 2, 2013, Investor Three also purchased another Jackson Perspective II Variable Annuity for \$5,000 based on Evan's recommendation. Evan received \$1,530 in commission in connection with the initial premiums from this purchase.
71. On July 18, 2013, Investor Three purchased another Jackson National Life Perspective II Variable Annuity for \$181,660. Evan earned approximately \$12,260 in connection with this purchase and the additional premiums.

72. Evan told Investors Three and Four that he would rebalance their variable annuities throughout the Relevant Time Period, despite performing little to no active maintenance or rebalancing of the underlying assets within the variable annuities.

73. Evan also sold Investors Three and Four two second to die policies on Investor Three's parents as investments, assuring them that it would assist with their retirement income despite their young age and that they were getting a great deal because Evan earned no commissions on the policies. Evan, however, listed Investor One as the owner of at least one of the policies, rather than Investors Three and Four.

74. On January 30, 2020, Investor One signed an affidavit in connection with internal investigations by MassMutual into Evan's sales practices. Investor One affirmed that she did not know she was the owner of an insurance policy insuring the lives of Investor Three's parents until after Evan's termination; did not sign the insurance application for the policy; and did not receive a copy of the policy or sign a policy receipt.

75. Throughout the entirety of their relationship, Evan told Investors Three and Four that he did not earn commissions on their variable annuity purchases because he was obtaining an annual fee in exchange for his advice.

76. In fact, Evan generated tens of thousands of dollars in commissions for himself from his recommendations to Investors Three and Four without disclosing his conflicted interests in soliciting the initial purchases or the riders and attendant fees.

77. For each product Evan recommended to Investors Three and Four, Evan provided only the signature pages for them to sign and did not provide other pages of the contracts for them to review. Someone other than Investors Three and Four filled out the remainder of the contracts.

78. Evan also did not leave the originals or copies of the contracts for Investors Three and Four's purchases, nor did he provide them with illustrations.

79. Additionally, Evan did not utilize only approved Jackson products while presenting the Jackson Perspective II Variable Annuities to Investors Three and Four. Evan did not leave copies of the information from his presentations with Investors Three and Four despite indicating on the acknowledgements pages of the contracts that he had left copies with them.

***iii. Investor Five and Investor Six***

80. Investors Five and Six are a married couple and are residents of Massachusetts.

81. From 2015 to 2019, Investors Five and Six paid Evan and Capital Planning approximately \$2,000 to \$3,250 annually for financial planning services.

82. Evan told Investors Five and Six that he did not earn commissions or other compensation from the products they purchased through him.

83. Investors Five and Six paid a total of approximately \$10,000 in annual fees to Evan and Capital Planning in connection with Evan's investment advice and consulting services.

84. On March 17, 2017, Evan approached Investors Five and Six and persuaded them to purchase and take over premium payments for a policy insuring Evan's own life. The policy was the Evan Policy that Investors One and Two had owned for two years.

85. Evan promoted the Evan Policy to Investors Five and Six as an investment and part of their plan for retirement. In particular, Evan explained that he was old, had already suffered two heart attacks, and would likely be dead within five to ten years.

86. The Evan Policy, however, only provided a guaranteed payout until Evan was 77 years old, a fact that Evan did not disclose to Investors Five and Six. At the time that Investors Five and Six purchased the Evan Policy, Evan was already 72 years old.

87. On March 24, 2017, Investors Five and Six paid \$29,176 to Evan directly via personal check in order for him to pay the premium on the policy. Evan later changed the beneficiary from himself to Investor Five.

88. Following their purchase of the Evan Policy, Investors Five and Six paid annual premium payments of approximately \$29,000.

89. By late 2017, Investors Five and Six fell behind on the premium payments for the Evan Policy. Evan called Investors Five and Six multiple times and strongly urged them to bring the payments up to date.

90. In 2018, Evan urged Investors Five and Six on multiple occasions to contribute an additional \$50,000 to keep the policy in place.

91. In total, Investors Five and Six contributed \$87,301.66 into the Evan Policy before they stopped paying the premiums.

92. In 2015, Investors Five and Six purchased four Jackson Perspective II Variable Annuities upon Evan's recommendation. Investors Five and Six paid approximately \$78,000 in initial premiums for the purchases. MSI and Evan received approximately \$10,000 in commissions in connection with the purchases. Evan told Investors Five and Six that he did not receive commissions in connection with their purchases.

93. Evan promoted these variable Annuity purchases as the best way for Investors Five and Six to save for retirement, though they were still relatively young, had young children,

and had substantial projected life expenses before retirement. Investors Five and Six also told Evan they were interested in liquidity rather than retirement income.

Since 2015, Investors Five and Six have contributed approximately \$167,000 in premiums into four Jackson Perspective II Variable Annuities. The annuities showed no considerable appreciation in value throughout the Relevant Time Period, and Evan regularly attempted to persuade Investors Five and Six to increase their premium contributions.

95. On June 18, 2018, Investors Five and Six invested an additional \$10,000 in premiums into one of their Jackson Perspective II Variable Annuities. Evan earned commissions of at least \$577 in connection with the purchase.

96. Evan also recommended that Investor Five purchase a Jackson Perspective II Variable Annuity on May 5, 2015. Investor Five paid an initial premium of \$50,000 to purchase the variable annuity. Evan earned commissions of approximately \$2,485 in connection with the purchase.

97. On June 18, 2015, Evan advised Investor Five to rollover an IRA to fund the \$26,072.99 purchase of another Jackson Perspective II Variable Annuity. On the variable annuity application, Evan stated that Investor Five did not have preexisting life insurance or annuities despite the policy Investor Five purchased a month prior. Evan earned commissions of approximately \$1,296 in connection with this purchase.

Since 2015 and throughout the Relevant Time Period, Evan repeatedly urged Investors Five and Six to increase their contributions to their variable annuities in spite of their young ages and their interest in maintaining access to liquid funds.

99. Evan even advised Investors Five and Six to withdraw from a home equity line of credit in order to fund additional premiums for the products he recommended.

100. In 2017, Investors Five and Six reached out to Evan with the goal of purchasing term life insurance policies. Evan instead strongly urged Investors Five and Six to purchase a whole life insurance policy to "avoid taxes." In 2017, Investors Five and Six purchased the whole life insurance policy based on Evan's recommendation.

101. Since 2017, Investors Five and Six have contributed approximately \$133,168.18 in premiums to the whole life policy without appreciation, and the cash value of the policy as of January 25, 2021, was approximately \$86,000.

102. Investors Five and Six stopped making payments in the whole life policy and the policy has been surrendering approximately \$10,000 of its cash value each quarter since then.

103. Investors Five and Six approached Evan with the goal of investing in a 529 plan for their child's future education. Evan refused to assist them with setting up a 529 plan, instead insisting that they invest in the variable annuities listed above despite his knowledge of their investment's goals.

104. For each product that Evan recommended Investors Five and Six purchase, Evan set artificial time restrictions and continuously pressured them to ensure that they made the decisions quickly. Evan also informed them on each occasion that he did not receive commissions from the products they purchased, insisting that the annual fees they paid to him for his services were his only compensation.



105. Evan did not provide regular maintenance to the allocation of assets within the variable annuities that he sold to Investors Five and Six despite collecting annual fees from them.

106. Evan received commissions in connection with the variable annuity and life insurance products he recommended to Investors Five and Six.

107. Evan routinely failed to provide Investors Five and Six with their policies after their purchases. Similarly, Evan also failed to provide policy receipts for them to review and sign.

108. For each product Evan recommended to Investors Five and Six, Evan provided only the various signature pages for them to sign and did not provide the other pages of the contracts for them to review. Investors Five and Six did not fill out the other information within the contracts for their purchases, nor did Evan give them a chance to review the other information listed in the contracts.

109. Additionally, Evan did not leave the originals or copies of the contracts for their purchases, nor did he provide Investors Five and Six with illustrations.

110. Further, Evan did not utilize only approved Jackson products while presenting the Jackson Perspective II Variable Annuities to Investors Five and Six. Evan did not leave copies of the information from his presentations with them, despite his signature indicating so on the acknowledgements pages for each of the contracts.

*iv. Investor Seven*

111. Investor Seven is 73 years old and was a close family friend of Evan and his former wife for many years.

112. Investor Seven was a client of Evan and Capital Planning from 2013 until Evan's termination in 2019.

113. Investor Seven paid Evan \$22,000 in annual fees for his investment advice, financial planning, and consulting services between 2013 and 2019. Evan assured Investor Seven that the fee was a large discount compared to the fees that her prior advisor charged.

114. Evan informed Investor Seven on multiple occasions that he received no compensation outside of the annual fees she paid him, even once informing Investor Seven that he advised her at a heavily discounted rate because they were such good friends.

115. Evan also told Investor Seven that he waived commissions on the products he recommended to her and obtained special rates for her on products.

116. In August 2019, Evan invoiced Investor Seven a forward-looking annual fee for the next year. In October 2019, Investor Seven wrote a check to Evan for \$22,000. Later that year, Evan returned \$16,000 to Investor Seven as the remainder of her "unused fee."

117. Evan recommended that Investor Seven purchase a John Hancock Life Insurance policy (the "Hancock Policy") even though Investor Seven reported that she had no beneficiary in need of financial support. The Hancock Policy contained a heightened annual premium of \$26,000 due to Investor Seven's health condition.

118. Evan recommended that Investor Seven purchase the Hancock Policy as an investment and as an alternative to long term care insurance, telling Investor Seven that she could "easily sell the policy" for sufficient funds to pay for long term care if necessary.

119. Investor Seven cancelled the Hancock Policy within three years because of the high annual premium, but Evan repeatedly urged her to maintain the Hancock Policy throughout her ownership of the policy.

120. Evan also recommended that Investor Seven purchase multiple separate Jackson Perspective II Variable Annuities totaling approximately \$1,800,000, in spite of her age and health conditions. Evan assured Investor Seven that these purchases would benefit her financially because he "made no money" on her purchases.

121. On August 12, 2013, Investor Seven purchased a Jackson Life Perspective L Series Variable Annuity upon Evan's recommendation, listing her trust as the owner. The policy was issued as a non-tax qualified product and Investor Seven was 65 years old at the time of the purchase. Investor Seven paid an initial premium of \$300,000 and the cash value was \$247,237.37 as of April 20, 2020. Evan earned approximately \$10,080 in commissions in connection with her purchase.

122. Evan also recommended that Investor Seven transfer funds from two pre-existing IRAs on August 12, 2013, to fund two \$500,000 purchases of a Jackson Perspective II Variable Annuity and a Jackson Perspective L Series Variable Annuity. Investor Seven was 65 years old at the time of the purchases. Evan earned commissions of approximately \$38,126 in connection with these purchases.

123. On July 30, 2014, Investor Seven purchased a Jackson Perspective II Variable Annuity upon Evan's recommendation, listing a trust in her name as the owner. Investor Seven was 66 years old at the time she purchased the policy. The initial premium was \$261,922.29. Despite his statements to the contrary, Evan earned commissions of \$11,928 in commissions in connection with her purchase.

124. On July 30, 2014, Investor Seven purchased another Jackson Perspective II Variable Annuity upon Evan's recommendation, listing a trust in her name as the owner.

The initial premium was \$238,077.71 and Evan earned commissions of approximately \$10,833 in connection with her purchase.

125. Evan personally earned at least approximately \$71,000 in commissions from Investor Seven's purchases despite Evan's statements indicating that he would not receive commissions in connection with his recommendations.

*v. Investor Eight*

126. Investor Eight is a 73 year old resident of Massachusetts. She was a client of Evan and Capitol Planning as far back as 2008.

127. Between 2012 and 2019, Investor Eight, her husband, and her mother-in-law paid up to approximately \$70,000 to Evan for his investment advice, financial planning, and consulting services.

128. On July 16, 2019, Evan recommended that Investor Eight purchase a life insurance policy. Evan told Investor Eight that he would waive his commission on the policy in order to get her a better rate on the purchase. In connection with this discounted rate, Evan asked that Investor Eight personally pay him half of the commission in the form of fees via personal check.

129. Investor Eight paid Evan \$33,500 in the form of a personal check in connection with the purchase of her life insurance policy. Evan later approached Investor Eight to request that she pay the remaining half of the "fees" that he had originally "waived."

130. In reality, Investor Eight's purchase of the life insurance policy resulted in commissions of \$38,446, including approximately \$15,885 for Evan.

13 L Investor Eight investigated and learned that Evan actually collected the full amount of commissions from her purchase of the policy and complained to Evan. Evan refunded Investor Eight the full \$33,500 via check from the account of Capital Planning.

132. Evan was registered with MMLIS at the time of this sale. Upon receipt of a customer complaint from Investor Eight, MMLIS initiated an investigation and substantiated the allegations in Investor Eight's complaint. MMLIS terminated Evan on or around October 28, 2019.

133. Evan did not fairly or completely disclose the relevant facts surrounding variable annuities and insurance products that he recommended to clients. He did not ensure that clients fully understood the long-term nature of the products, the surrender fees, the annual expenses, or the tax consequences of early withdrawals.

134. Similarly, Evan did not carefully consider the merits of placing variable annuity contracts in tax-qualified retirement plans and did not explain to clients that no additional tax-deferred treatment of earnings would occur in such accounts.

135: Additionally, policies require the prompt delivery of a policy or contract to the client because it begins the "free look" time period for all policies and contracts. Representatives were required to deliver the insurance policy and obtain policy receipts promptly upon the policy's arrival. Evan, however, did not provide policies or contracts to a number of his clients at any point.

136. Evan's broker-dealer also required that he "provide a *Compensation Disclosure Notice* to all clients in all states and other jurisdiction where they conduct business as a 'leave behind' document when the new insurance business application is written and submitted."

Evan did not provide written disclosure of his commissions to his clients despite indicating that he had delivered the required disclosure notices at the times that the clients signed their applications. In fact, as discussed above, Evan assured many clients that he did not receive commissions in connection with their purchases, or that he was waiving such commissions, and instead asked the clients to sign the contracts' signature pages without providing the other pages of the contracts.

138. Evan routinely failed to provide variable annuity contracts and policies to his clients within 30 days of their issuance. In fact, Evan routinely failed to provide the policies to his clients at all.

139. Evan systematically failed to follow procedures with regard to recommendations to purchase and contribute additional premiums to variable annuities.

140. Evan repeatedly violated broker-dealer disclosure requirements related to customer variable annuity purchases.

141. Evan routinely failed to ensure that clients understood: the general features of variable annuities; that the products would generate large commissions for him; and whether clients could withdraw funds from the variable annuities without additional fees or tax consequences.

142. Rather than act in compliance his broker-dealer's policies, Evan instead recommended a large number of high commission products to customers, who were also his clients at Capital Planning, while telling them that he would receive no commissions or other compensation in connection with their purchases.

143. Evan consistently recommended the same high commission variable annuities to his customers and allocated the funds in many of these variable annuities to the same or very similar sub-accounts.

144. Evan did not make individual customer or client-specific recommendations when he recommended the purchase of variable annuities to many customers. Instead, Evan solicited many of his customers to purchase these variable annuities in order to generate high commissions for himself.

145. Evan failed to ensure that his customers understood the surrender charges and the tax implications of withdrawals of funds from the variable annuities in certain accounts prior to age 59 ½.

146. Evan also failed to ensure that his customers understood, or even knew about, the additional riders and the annual fees for the variable annuities they purchased.

147. Additionally, Evan did not use only Jackson-approved sales materials during his presentations of Jackson Perspective II Variable Annuities to customers. Further, he did not leave copies of any materials he used during his presentations with the customers despite indicating that he had in the acknowledgements on the customer's purchase applications.

148. On information and belief, Evan's sales practice violations described above extended to other investors beyond those specifically listed in this complaint.

149. Evan systematically failed to follow disclosure requirements and written procedures while registered as a broker-dealer agent during the Relevant Time Period.

**D. Other Regulatory Actions**

150. FINRA began investigating Evan on November 13, 2019.

151. On December 4, 2019, FINRA sent a request to Evan for production of documents and information pursuant to FINRA Rule 8210. Evan acknowledged receipt of the request and refused to produce the information and documents requested by FINRA.

152. On January 22, 2020, FINRA permanently banned Evan from registration in all capacities in accordance with his voluntary submission of a Letter of Acceptance, Waiver and Consent ("AWC").

153. By voluntarily accepting the AWC, Evan acknowledged that the AWC would become part of his permanent disciplinary record and that it may be considered in any future action brought by FINRA or any other regulator.

154. Evan's list of disclosures on the CRD contains ten separate customer complaints related to his annuity and insurance sales practices.

## **VII. VIOLATIONS OF LAW**

### **Count I- Violations of M.G.L. c. 110A, §101(2)**

155. Section 101 of the Act provides:

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly

[.. .]

(2) to make any untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading [.]

M.G.L. c. 110A, § 101(2).

156. The Enforcement Section herein re-alleges and re-states the allegations of fact set forth in Section VI above.

157. .The conduct of Respondents Charles J. Evan and Capital Planning Group of Massachusetts, Inc., as described above, constitutes violations of M.G.L. c. 110A, § 101(2).



**Count II - Violations of M.G.L. c. 110A, §101(3)**

158. Section 101 of the Act provides in part:

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly

[...]

(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

M.G.L. c. 110A, § 101(3).

159. The Enforcement Section herein re-alleges and re-states the allegations of fact set forth in Section VI above.

160. The conduct of Respondents Charles J. Evan and Capital Planning Group of Massachusetts, Inc., as described above, constitutes violations of M.G.L. c. 110A, § 101(3).

**Count III - Violations of M.G.L. c. 110A, § 204(a)(2)(G)**

161. Section 204 of the Act provides:

The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

[...]

(G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business[.]

M.G.L. c. 110A, § 204(a)(2)(G).

162. The Enforcement Section herein re-alleges and restates the allegations of fact set forth in Section VI above.

163. The conduct of Respondents Charles J. Evan and Capital Planning Group of Massachusetts, Inc., as described above, constitutes violations of M.G.L. c. 11 OA, § 204(a)(2)(G).

### **VIII. STATUTORY BASIS FOR RELIEF**

Section 407A of the Act provides, in pertinent part:

(a) If the secretary determines, after notice and opportunity for hearing, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order issued thereunder, he may order such person to cease and desist from such unlawful act or practice and may take such affirmative action, including the imposition of an administrative fine, the issuance of an order for an accounting, disgorgement or rescission or any other such relief as in his judgment may be necessary to carry out the purposes of [the Act].

M.G.L. c. 11 OA, § 407A.

### **IX. PUBLIC INTEREST**

For any and all of the reasons set forth above, it is in the public interest and will protect Massachusetts investors for the Director to enter an order finding that such "action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter [M.G.L. c. 11 OA]."

*[Remainder of page intentionally left blank]*

## **X. RELIEF REQUESTED**

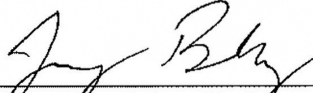
The Enforcement Section of the Division requests that an order be entered:

- A. Finding as fact all allegations set forth in Section VI of the Complaint;
- B. Finding that all of the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors;
- C. Requiring Respondents to permanently cease and desist from further conduct in violation of the Act and Regulations;
- D. Censuring Respondents;
- E. Permanently barring Respondent Charles J. Evan from associating with or acting as a registered investment adviser, an investment adviser required to be registered, an investment adviser exempted from registration, a person relying on an exclusion from the definition of investment adviser in any capacity, a broker-dealer, a broker-dealer agent, an issuer, an issuer agent, or a partner, officer, director, or control person of any of the above;
- F. Requiring Respondents to provide a verified accounting of all proceeds received as a result of the alleged wrongdoing;
- G. Requiring Respondents to pay restitution to compensate investors for those losses attributable to the alleged wrongdoing;
- H. Requiring Respondents to disgorge all profits and direct or indirect compensation and remuneration received in connection with the alleged wrongdoing;
- I. Imposing an administrative fine on Respondents in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and

- J. Taking any such further actions which may be necessary or appropriate in the public interest for the protection of Massachusetts investors.

**MASSACHUSETTS SECURITIES DIVISION  
ENFORCEMENT SECTION**

By and through its attorneys,

—  


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Dated: August 16, 2022