

**BEFORE THE INVESTOR PROTECTION DIRECTOR  
OF THE STATE OF DELAWARE**

IN THE MATTER OF:	)	
	)	
HORACE MANN INVESTORS, INC.	)	Investor Protection Case No. 16-8-4
AND DIETER HOFMANN	)	
	)	
Respondent.	)	

**ADMINISTRATIVE CONSENT ORDER AS TO DIETER HOFMANN**

WHEREAS, Horace Mann Investors, Inc. ("Horace Mann") is a broker-dealer registered in Delaware, with Central Registration Depository No. 11643;

WHEREAS, Dieter Hofmann ("Hofmann") was a registered broker-dealer agent with Horace Mann in Delaware from March 20, 2007 to April 1, 2019, with Central Registration Depository No. 5159726;

WHEREAS, the Delaware Investor Protection Unit of the Delaware Department of Justice (the "IPU") has conducted an investigation covering the sales practices of Horace Mann and Hofmann (as described herein) in response to the transition of the State of Delaware deferred compensation plans from numerous independent 403(b) service providers, including Horace Mann, to a sole provider, Voya Financial (the "Voya Transition");

WHEREAS, Hofmann has cooperated with IPU by providing testimony;

WHEREAS, Hofmann has agreed to resolve IPU's investigation pursuant to the terms specified in this administrative consent order (the "Consent Order");

WHEREAS, Hofmann neither admits nor denies any wrongdoing;

WHEREAS, Hofmann agrees (i) to the one-year suspension from conducting business as a broker-dealer agent and/or investment adviser representative in Delaware; and (ii) to make certain payments to IPU;

WHEREAS, Hofmann elects to waive permanently any right to a hearing and appeal of this Consent Order;

WHEREAS, Hofmann admits to the jurisdiction of IPU in this matter;

WHEREAS, Hofmann consents to the entry of this Consent Order;

NOW THEREFORE, the Investor Protection Director of the State of Delaware (the "Director"), as administrator of the Delaware Securities Act, 6 *Del. C.* § 73-101, *et seq.* ("Act"), on the basis of the Findings of Fact, Conclusions of Law, and Hofmann's consent to the entry of this Consent Order, finds the following relief appropriate and in the public interest, and hereby enters this Consent Order:

#### **FINDINGS OF FACTS**

1. On June 1, 2006, Hofmann became associated with and under the supervision of Horace Mann.
2. On February 1, 2010, Hofmann (d/b/a Dieter Hofmann LLC ("Hofmann LLC")) entered into an Exclusive Agent Agreement whereby Hofmann (d/b/a Hofmann LLC) was appointed as an exclusive agent to sell and service Horace Mann products and services.
3. Hofmann worked out of his office in Middletown, Delaware, servicing Delaware school district employees.
4. As of April 30, 2016, Hofmann serviced approximately 361 clients with Delaware 403(b) accounts through Horace Mann (the "403(b) Hofmann Clients" or "403(b) Clients").
5. On May 4, 2016, Horace Mann learned that the State of Delaware chose Voya as the sole provider for State of Delaware 403(b) savings plans for qualified individuals (collectively, the "403(b) Plans" and each a "403(b) Plan") as of September 16, 2016 (the "Deadline"). As part of the Voya Transition, the contributions of 403(b) Plan

participants would automatically continue after the Deadline unless those contributions were stopped; however, any such contributions would be serviced by Voya, the new provider. If a 403(b) Plan participant wanted to continue making contributions to a 403(b) Plan after the Deadline then the participant could no longer use Horace Mann as the service provider for any such post-Deadline contributions.

6. Hofmann made extensive efforts to retain his 403(b) Clients by meeting with those clients (in groups or individually) and by sending targeted emails. The meetings largely took place in May/June before the end of the 2016 school year. IPU alleges that Hofmann recommended that his 403(b) Clients open up an IRA account and stop contributions to his/her 403(b) Plan contributions in response to the Voya Transition. In June of 2016, Hofmann told his Horace Mann sales supervisors about the high volume of meetings he was having with his 403(b) Clients and informed his sales supervisors that he was opening up IRA accounts for many of those clients (mostly Roth IRA accounts and in some cases traditional IRA accounts) all funded with variable annuities.
7. Starting in May of 2016 through September of 2016, Hofmann sent targeted emails to hundreds of his 403(b) Clients regarding the Voya Transition. IPU alleges that many of those emails contained misleading or false information regarding the Voya Transition and the client's options in light of the Voya Transition. The targeted emails involved: (i) sending the same or substantially similar email to multiple 403(b) Clients at the same time or in close proximity and (ii) sending more than a few emails to the same 403(b) Clients over a duration of a few short months. Hofmann also informed his sales supervisors that he was sending email communications to his 403(b) Clients.



8. IPU alleges that Hofmann engaged in the following sales practices through his meetings, emails or other communications with his 403(b) Clients, which IPU further alleges were inadequate, misleading and constituted dishonest and unethical practices in violation of the Act, while Horace Mann does not agree it was aware of Hofmann's specific sales practices in his private meetings with his 403(b) Clients, or that any of these alleged sales practices took place:

- a. IPU alleges that, in certain instances, Hofmann directed many of his 403(b) Clients to stop his/her 403(b) Plan contributions in certain instances before he had a discussion with the client about the client's options in light of the Voya Transition.
- b. IPU alleges that Hofmann failed to explain to many of his 403(b) Clients the key features of the new IRA contract (i.e., a variable annuity (a contract between the individual and Horace Mann) is funding the IRA; the contributions are no longer in the participant's 403(b) Plan but now in an IRA with lower contribution limits than the 403(b) Plan; there is a surrender period during which you cannot withdraw funds without paying the surrender fees; there are various fees and charges associated with the variable annuity).
- c. IPU alleges that Hofmann provided the following false information to many of his 403(b) Clients regarding Voya and the Voya Transition: (i) the fees charged by Voya were higher than the fees charged by Horace Mann; (ii) Voya would charge a fee for advice in connection with the client's 403(b) Plan investments; (iii) there was no one at Voya to answer questions regarding the 403(b) Plan and (iv) the State of Delaware would be in control of your money if you invested with Voya.

- d. IPU alleges that Hofmann told many of his 403(b) Clients that he could still work with the client in light of the Voya Transition and that caused certain clients to believe that there was an opportunity to continue a 403(b) Plan investment with Horace Mann.
  - e. IPU alleges that, for many 403(b) Clients, Hofmann failed to explain and discuss the client's new IRA contract and corresponding client suitability profile. Instead, Hofmann simply took information from the client's previous 403(b) application and suitability profile to complete the new IRA contract.
  - f. IPU alleges that, for many 403(b) Clients, Hofmann failed to disclose the costs and benefits of stopping a customer's 403(b) Plan contributions and opening up an IRA account with Horace Mann, including comparing the option of a Horace Mann IRA funded with variable annuities with the option of a 403(b) Plan with Voya invested in mutual funds.
9. IPU alleges that Hofmann took unfair advantage of his 403(b) Clients who were confused about the Voya Transition by providing them with inadequate or inaccurate information, which was misleading. IPU alleges that Hofmann's recommendations to his 403(b) Clients to open up new IRA contracts funded with variable annuities in light of the Voya Transition were unsuitable, particularly because a 403(b) Plan has a higher yearly contribution limit and Voya charged less in fees for 403(b) Plans in Delaware than Horace Mann charged for the new IRA contracts.
10. IPU alleges that the majority of the new IRA contracts for Hofmann's 403(b) Clients contained a misleading provision in the special instructions section that said "flow change only due to not being able to continue 403b contributions." IPU alleges that at least one

member of the Horace Mann team that reviewed contracts for suitability was not aware of the Voya Transition. IPU further alleges that this provision made it appear that the client could no longer continue with any 403(b) Plan contributions with Horace Mann or otherwise.

11. Pursuant to Horace Mann's written policies and procedures in place at the time, Hofmann was responsible for making sure his clients received a prospectus at the time of, or prior to, entering into a contract. Contrary to Horace Mann policy and his Horace Mann training, Hofmann failed to provide a prospectus to numerous 403(b) Clients at the time they opened up their IRA even though he checked off on each of those client's applications that a prospectus had been provided. Hofmann later admitted to Horace Mann and to IPU that he had failed to provide these prospectuses at the time the accounts were opened.
12. Under the circumstances, Hofmann failed to keep adequate business records and/or discarded business records that IPU alleges he should have maintained in connection with the meetings he had with his 403(b) Clients in connection with the Voya Transition (*i.e.*, he threw out notes of meetings; he discarded signup sheets for the meetings and he used outdated risk tolerance and investor profile documents).
13. Hofmann opened at least 172 IRA/Roth IRA accounts for his 403(b) Clients during the period from May 2016 through December 31, 2017; the majority of those accounts were opened between May 2016 and September 2016. IPU alleges that Hofmann's sales supervisors at Horace Mann knew the high volume of IRA accounts he opened for his 403(b) Clients during the summer of 2016 (94 accounts from June to mid-September) and knew that he was advising his 403(b) Clients to stop his/her 403(b) contributions before



the Deadline. Despite the fact that Mr. Hofmann's sales supervisors had acknowledged prior to the summer of 2016 that Mr. Hofmann needed office assistance in his annual review, IPU alleges that none of his sales supervisors reviewed his new IRA contracts or looked into his sales practices in light of the substantial uptick in his meetings with 403(b) Clients, correspondence with those clients and new IRA contracts.

14. The Horace Mann compliance supervisor who conducted Mr. Hofmann's office inspection in September of 2016 did not question Mr. Hofmann regarding the uptick in his new accounts or otherwise explore how Mr. Hofmann handled his 403(b) Clients in light of the Voya Transition. In addition, the Horace Mann individual who conducted email surveillance did not question the emails that Hofmann sent to his 403(b) Clients during the summer of 2016.

#### **CONCLUSIONS OF LAW**

15. IPU has jurisdiction over this matter pursuant to Section 73-501 of the Act.
16. IPU concludes that Hofmann, in his efforts to retain his 403(b) Clients in light of the Voya Transition, engaged in the following dishonest and unethical practices: (i) Hofmann's sales practices were inadequate and misleading for many of his 403(b) Clients; (ii) Hofmann failed to provide a prospectus to many of his 403(b) Clients; (iii) certain of Hofmann's business records were deficient; and (iv) Hofmann recommended unsuitable investments for many of his 403(b) Clients. Hofmann's conduct was in violation of Section 73-304(a)(7) of the Act.
17. IPU concludes that, pursuant to Section 73-601(a) of the Act, the violations described above constitute justification for the Director to issue an order providing for "fines, assessment of costs, restitution to investors, conditional or probationary registration,

censure or reprimand, special reporting requirements, or other remedies which the Director determines to be in the public interest.”

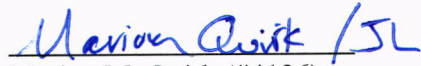
### **ORDER**

18. This Consent Order concludes the investigation of Hofmann by IPU and any other action that IPU could commence against Hofmann under applicable Delaware law regarding the sales practices of Horace Mann and Hofmann in connection with the Voya Transition (the “Matter”). IPU agrees to refrain from taking any administrative or civil action against Hofmann covering the Matter provided that Hofmann fully complies with the terms and conditions of this Consent Order. Failure to comply with any term of this Consent Order shall be a basis for further action by the Director.
19. Hofmann acknowledges that IPU is taking action against Horace Mann associated with the Matter and that Horace Mann consents to the terms of a separate administrative consent order (the “Horace Mann Consent Order”) providing for the following: (i) a fine of \$250,000; and (ii) payment in the amount of \$50,000 for investor education.
20. Hofmann shall be suspended from conducting business as a broker-deal agent and/or investment adviser representative in Delaware for a period of one year from the date of entry of this Consent Order.
21. Hofmann is ordered to pay the sum of \$300,000 consisting of a fine in the amount of \$250,000 and \$50,000 for investor education (the “Funds”) to IPU within 5 days of the date of this Consent Order, such payment to be made by (i) certified check or bank cashier’s check, made payable to “Delaware Investor Protection Fund” and mailed to Investor Protection Unit, 820 N. French Street, 5<sup>th</sup> Floor, DE 19081, Attn: Marion Quirk; or (ii) by ACH transfer. The monies received by IPU pursuant to this paragraph may be used by IPU in accordance with Section 73-703 of the Act.



22. Hofmann is ordered to refrain from committing any future violations of the Act.
23. This Consent Order shall be binding upon Hofmann and his successors and assigns with respect to all conduct subject to the provisions above and all future obligations, responsibilities, undertakings, commitments, limitations, restrictions, events and conditions.
24. Hofmann waives any right or ability to seek judicial review with respect to the terms of this Consent Order, except to the extent there is a dispute concerning the terms, interpretation, or enforcement of the order and only to the extent permitted by the Act and the rules promulgated thereunder.
25. The IPU maintains jurisdiction over Hofmann for the purposes of monitoring compliance with the provisions herein.
26. Any failure by Hofmann to make the payments to the IPU when due, or any other default of the obligations set forth in this Consent Order, shall be considered a violation of this Consent Order authorizing the IPU to apply to the Delaware Court of Chancery to enforce compliance pursuant to Section 73-602 of the Act.
27. This Consent Order and any dispute related thereto shall be construed and enforced in accordance with, and governed by, the laws of Delaware without regard to any choice of law principles. The exclusive venue for any litigation related to this Consent Order shall be in New Castle County, Delaware.

28. This Consent Order shall not limit the rights any of the 403(b) Hofmann Clients to pursue relief related to his/her accounts with Horace Mann.

Handwritten signature of Marion M. Quirk in blue ink.

Marion M. Quirk (#4136)  
Assistant Director of Investor Protection  
Delaware Department of Justice  
820 North French Street  
Wilmington, DE 19801

IT IS HEREBY ORDERED on this 30 day of Dec., 2019

Handwritten signature of Jillian Lazar in blue ink.

Jillian Lazar  
Director of Investor Protection

### CONSENT TO ENTRY OF THIS CONSENT ORDER

Dieter Hofmann (i) admits to the jurisdiction of the Delaware Investor Protection Unit of the Delaware Department of Justice; (ii) admits to the jurisdiction of IPU and/or the Delaware Court of Chancery for any matters related to the enforcement of this Consent Order; (iii) neither admits nor denies the Findings of Fact and Conclusions of Law set forth above; (iv) acknowledges he has been served a copy of this Consent Order and has read it; (v) agrees to entry of this Consent Order as a settlement of the issues addressed in this Consent Order; (vi) acknowledges he is aware of his right to a hearing and appeal in this matter under Sections 73-304, 73-502 or 73-601 of the Delaware Securities Act, and waives this right; (vii) states that no promise of any kind or nature whatsoever that is not reflected in this Consent Order was made in order to induce him to enter into this Consent Order and (viii) that he enters into this Consent Order voluntarily.



Dieter Hofmann

12-28-19  
Date: