

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2006005927801**

RECEIVED
2007 AUG 30 P 3:46
REGISTRATION & DISCLOSURE

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

RE: James Clayborn, Respondent
Investment Company Products/Variable Contracts Representative
CRD No. 4844986

Pursuant to Rule 9216 of FINRA Code of Procedure, I, James Clayborn, submit 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 me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. I hereby accept and consent, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

On November 17, 2004, Clayborn became registered as an Investment Company Products/Variable Contracts Representative with a member of FINRA (f/k/a National Association of Securities Dealers or NASD). Between the dates of August 16, 2004 and July 27, 2006, he was associated and registered in this capacity with PFS Investments, Inc. Clayborn is not currently registered with any FINRA members but FINRA retain jurisdiction over him until July 27, 2008. Clayborn does not have disciplinary history.

000041243 2007

OVERVIEW

Clayborn misused customer funds and created and distributed a false account statement purportedly showing at least some of the funds were safely invested with his firm.

FACTS AND VIOLATIVE CONDUCT BY RESPONDENT

Misuse of Customer Funds

Between the dates of September 2004 and December 2005, Clayborn misused approximately \$150,000 from two public customers, SM and WM. Clayborn used these funds for his personal expenses and not for the benefit of the customers. Clayborn has started to repay customers SM and WM, and as of January 2006, SM and WM agreed with Clayborn that the amount that was still unpaid was \$118,287.39.

Submitting a False Account Statement to Customers

On December 28, 2005, Clayborn created and distributed a false account statement that purportedly verified that approximately \$80,000 for two public customers, SM and WM, was invested with his broker-dealer. Clayborn created this false document to conceal from the customers that he misappropriated their funds.

Clayborn's misuse of customer funds violates NASD Conduct Rules 2110 and 2330(a) and his submission of a false account statement to customers constitute a violation of NASD Conduct Rule 2110.

B. I also consent to the imposition of the following sanctions:

A bar from association with any FINRA member and restitution to the customers.

An order to pay restitution to Customers SM and WM (actual names and addresses are listed in Attachment A) in the total amount of \$118,287.39, 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 January 2006, until the date of payment. Restitution amounts ordered, pursuant to this disciplinary action, are due and payable immediately upon reassociation with a member firm following the suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier. The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies. If for any reason Respondent cannot locate any customers identified in Attachment A after reasonable and documented efforts within such period, or such additional period

agreed to by the staff, Respondent shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property, or abandoned property fund for the state in which the customer is last known to have resided.

I understand that if I am barred or suspended from associating with any FINRA member, I become subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. (See FINRA Rule 8310 and IM-8310-1.)

The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to IM-8310-2(f), a bar or expulsion shall become effective upon approval or acceptance of this AWC.

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against me;
- B. To be notified of the Formal 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 National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, I specifically and voluntarily waive any right to claim bias or prejudgment of the General Counsel, 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 acceptance or rejection of this AWC.

I further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of 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

I understand 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 me; and
- C. If accepted:
 - 1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8310 and IM-8310-2; and
 - 4. I 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. I 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 my right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

< Remainder of Page Left Intentionally Blank >

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

8/22/07
Date

James R. Clay
James Clayborn

Reviewed by:

Christopher Petersen, Esq.
314 West High Street
Elkhart, IN 46516
(574) 295-6366

Accepted by FINRA:

8/29/07
Date

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

UnHo Chung
UnHo Chung
Senior Regional Attorney
FINRA Department of Enforcement
55 West Monroe Street, Suite 2700
Chicago, IL 60603-5052
(312) 899-4641
Fax (312) 899-4600

This Corrective Action Statement is submitted by the Respondent. It does not constitute factual or legal findings by FIRNA nor does it reflect the views of FIRNA or its staff.

[REDACTED] have verbally accepted repayment of the funds due them according to the attached Amortization Schedule. As of August 1, 2007, the balance due them is \$89,687.67.

I am currently cooperating with the State of Indiana Securities Division in formulating a Consent Decree which will satisfy all parties involved. In the future it is my intention to more studiously learn the provisions and requirements of FIRNA and steadfastly apply them to all my business practices.

It is hoped that FIRNA will accept this Corrective Action Statement along with the attached Mitigation Statement as evidence of my intention to repay these funds.

Sincerely,

James R. Clayborn