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REGISTRATION & DISCLOSURE

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20070108894**

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

RE: Ryan Kimura, Respondent
Registered Representative
CRD No. 2974352

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent 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 herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent hereby accepts and consents, 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

Ryan Kimura ("Kimura") became registered with FINRA in August 1999 while he was employed as a registered representative at ABC, a broker-dealer and investment advisor. In September 1999, Kimura joined Morgan Stanley & Co., Inc ("Morgan Stanley") as a registered representative in its Honolulu, Hawaii office. He left its employ in April 2006 and joined Sun Life Financial Distributors U.S. ("Sun Life"), an international financial services organization, in May 2006 as a registered representative.

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Kimura has not been associated with a member firm since he left the employ of Sun Life in November 2007. FINRA retains jurisdiction over Kimura pursuant to Article V, Section 4(a) of the NASD By-laws because the conduct that serves the basis for this action commenced prior to his termination of registration from a member firm and this proposed Settlement has been filed within two years after the effective date of Kimura's termination of registration from a member firm.

OVERVIEW

Between September 13, 1999 and September 2007 ("the relevant period"), while registered with Morgan Stanley and Sun Life, Kimura stole \$1.29 million from five of the eight accounts he managed of his son, RK; his wife, YK; her sister, KS; her mother, NK; and her grandmother, TM. Moreover, between October 2007 and March 2008, Kimura failed to respond to FINRA's requests for information. Kimura's misappropriation of his son's and his wife's money and the money of her sister, parents and grandmother constitutes a violation of NASD Conduct Rules 2330 and 2110. Kimura's failure to respond to FINRA's information requests constitutes a violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

FACTS AND VIOLATIVE CONDUCT

Kimura left the employ of Morgan Stanley in April 2006. On September 22, 2007, Kimura's estranged wife and her family members contacted Morgan Stanley to express concerns that Kimura may have misappropriated funds from their accounts at Morgan Stanley both while he was employed at Morgan Stanley and after he left to join Sun Life. Morgan Stanley immediately commenced an internal review.

Kimura misappropriated a total of \$1.29 million from five accounts by intercepting checkbooks linked to the five accounts and forging checks to himself and his creditors.

Kimura concealed his activity by fabricating account statements and diverting the actual statements to a mailbox he maintained at a local Honolulu business center.

Forged Checks

During the relevant period, Kimura forged approximately 204 checks, totaling approximately \$1.29 million and made these checks payable to himself or third parties for his benefit as follows:

From Account	Forged Check Amounts
NK	\$261,000
TM	\$521,000
RK	\$20,000
KS and YK	\$310,000
KS and YK ¹	<u>\$178,000</u>
	\$1.29 million

For example, in March 2004 Kimura wrote two checks from the TM account one for \$13,000 to the Las Vegas Hilton and another for \$10,000 to the Golden Nugget. The signatures on these checks were forged by Kimura.

While employed at Sun Life, Kimura continued to misappropriate monies from these five accounts. For example, in April 2006, the month he left the employ of Morgan Stanley, Kimura wrote a \$25,000 check to himself from the KS and YK account. In May 2006, the month he started at Sun Life, Kimura wrote a second check for \$25,000 to himself from the KS and YK account. Kimura did not have authorization to write these checks.

Based on the foregoing, Kimura violated NASD Conduct Rule 2330 and 2110 by misappropriating his customers funds.

¹ Kimura misappropriated these funds while employed at Sun Life.

A. Failure to Respond to FINRA's Requests for Information

By letter dated October 31, 2007, FINRA notified Kimura of its investigation and requested, pursuant to NASD Procedural Rule 8210, that he provide a written statement addressing the internal investigation conducted by his *former member firm* employer. The request was sent by certified mail (return receipt requested) and regular first class mail to Kimura's last known residential address as reflected in the Central Records Depository (the "CRD Address"). The certified letter was signed for by Ryan Kimura yet he provided no response to FINRA's request.

By letter dated December 4, 2007, FINRA again requested, pursuant to NASD Procedural Rule 8210, that Kimura provide information regarding the internal investigation conducted by his member firm employer. The request was sent by certified mail (return receipt requested) and regular first class mail to Kimura's CRD Address. The certified letter was signed for by Merle Kimura yet Kimura provided no response to our request.

By letters dated March 7, 2008 and March 14, 2008, sent first class mail, Kimura was requested to submit a written statement and requested to contact the staff to arrange a date for an on-the-record interview. The first class letters were never returned to FINRA. By letter dated May 15, 2008, Kimura's attorney advised FINRA that Kimura would not be providing a statement in response to FINRA's investigation.

By failing to respond to FINRA's requests for information dated October 31, 2007, December 4, 2007, March 7, 2008 and March 14, 2008, Kimura violated NASD Conduct Rule 2110 and NASD Procedural Rule 8210.

Based on the foregoing, Kimura violated NASD Conduct Rules 2330 and 2110 by misappropriating his customers' funds for his own use and Rules 8210 and 2110 by failing to cooperate with FINRA's investigation.

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

A bar from association with any member of FINRA in any capacity.

Pursuant to FINRA Rule 8313(e), a bar or expulsion shall become effective upon approval or acceptance of this AWC.

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a *Formal Complaint* issued specifying the allegations against Respondent;
- 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 the 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 prejudice 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 the AWC.

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 or FINRA Rule 9144, in conjunction 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 it; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Respondent.
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondent's disciplinary record;

3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
4. Respondent may not take any action or make or permit any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in the 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 the provision affects my right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

Respondent certifies that it has read and understands all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that Respondent has 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 Respondent to submit it.

May 8, 2009
Date

Ryan Kimura
Ryan Kimura
Respondent

Reviewed by:

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Howard K.K. Luke
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Suite 2022
841 Bishop Street
Honolulu, Hawaii 96813
(808) 545-5000

Accepted by FINRA:

June 8, 2009
Date

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

Susan Light
Susan Light
Senior Vice President and Chief Counsel
FINRA Department of Enforcement
14 Wall Street - 14th Floor
New York, New York 10005