

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2011027468102**

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

RE: James M. Culbertson, Respondent
CRD No. 1716829

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, James M. Culbertson ("Culbertson") or ("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

Culbertson's first and only employment in the securities industry began in June 2008 with Ameriprise Financial Services, Inc. ("Ameriprise" or the "Firm") where he became registered as a General Securities Representative and Investment Company Products/Variable Contracts Limited Representative. During his tenure at the Firm, Culbertson was located in the Firm's Minneapolis, Minnesota office.

On or about April 26, 2011, the Firm submitted a Uniform Termination Notice for Securities Industry Registration ("Form U-5") for Culbertson. The Form U-5 reported that Culbertson's April 19, 2011, discharge was the result of "Violation of sales practice policy – Disclosure and trade execution." Culbertson's employment termination was based on his alleged continued violations of various Firm sales practice and other policies.

Culbertson has not been employed in the securities industry since his employment with Ameriprise was terminated. However, he currently remains subject to FINRA's jurisdiction pursuant to FINRA By-law Article V, Section 4(a) of the By-Laws because the conduct that serves as the basis for this action commenced prior to his termination of registration from a FINRA-regulated broker-dealer and this AWC has been filed within two years after the effective date of Culbertson's termination of registration from a FINRA-regulated broker-dealer.

Culbertson has no prior disciplinary history.

OVERVIEW

From September 2008 to March 2011 (the Relevant Period) Culbertson, acting in the capacity of a registered representative with Ameriprise, omitted or misrepresented material information concerning securities transactions to four customers in violation of NASD Rule 2110 and FINRA Rule 2010. Culbertson also executed discretionary transactions in the non-discretionary accounts of three customers in violation of NASD Rule 2510(b) and FINRA Rule 2010. Culbertson also circumvented his Firm's procedures by effecting mutual fund transactions in the accounts of 12 customers without submitting the appropriate documentation or by submitting incomplete or inaccurate documentation for his Firm's review. In so doing, Culbertson prevented the Firm from reviewing the transactions for suitability. By virtue of this conduct, Culbertson violated NASD Rule 2110 and FINRA Rule 2010. By effecting an unsuitable annuity switch for a customer, Culbertson violated NASD Rule 2310 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

NASD Rule 2110 and FINRA Rule 2010¹ require every member, in the conduct of his business, to observe high standards of commercial honor and just and equitable principles of trade with regard to their business practices. The ethical and legal obligations set forth in NASD Rule 2110 and FINRA Rule 2010 encompass a wide range of unethical business-related conduct.

Omissions and Misrepresentations

During the Relevant Period, Culbertson had conversations with four of his customers concerning securities transactions he was recommending. During the course of these conversations Culbertson omitted or misrepresented material information to these customers concerning the transactions as follows:

LR

During September, 2008, Culbertson solicited the purchase of four mutual funds (Columbia Emerging Markets, Invesco Van Kampen Emerging Markets, Wells Fargo Advantage Emerging Markets and Wells Fargo Advantage Global Opportunities) in LR's IRA. At that time, these securities were valued at approximately \$8,523 and represented the only securities in LR's IRA. During his solicitation of these securities, Culbertson told LR that her portfolio would be diversified if she invested in these securities.

However, three of the four mutual funds Culbertson recommended and purchased for LR's account were emerging markets funds that invested 80% of their assets in emerging market equities while the fourth (Wells Fargo Advantage Global Opportunities) invested 20% of its assets in emerging market equities.

¹ On December 15, 2008, NASD Rule 2110 was replaced by FINRA Rule 2010.

Therefore, Culbertson misrepresented to LR that the four mutual funds he recommended would provide sufficient diversity for her IRA.

During his solicitation of these securities, Culbertson also failed to mention any information to LR related to the mutual funds' share classes, breakpoints, or the benefits of switching funds within the same family of funds.

JO

During October 2008, Culbertson and JO discussed switching her existing mutual funds to other mutual funds that were performing more satisfactorily. At that time, JO owned Dodge & Cox Balanced Fund and American Funds Bond Fund of America.

During these conversations, Culbertson failed to advise JO that her IRA could avoid sales charges by switching her existing funds within the same family of funds that she owned.

During October 2008, Culbertson liquidated the two existing mutual funds in JO's IRA for combined proceeds of \$48,414. The Dodge & Cox Balanced Fund and American Funds Bond Fund of America both had no deferred sales loads resulting in no charges to JO's IRA.

However, Culbertson used the proceeds of these sales to purchase PIMCO GNMA mutual fund valued at \$48,500. The new mutual fund had a 3.75% front-end sales charge resulting in a \$1,819 cost to JO's IRA. Culbertson failed to apprise JO of this charge prior to the transaction.

During their discussions in 2008, Culbertson and JO discussed the possibility of investing in Vanguard mutual funds. Culbertson misrepresented to JO that Vanguard mutual funds did not offer any intermediate bond funds, when it clearly offered such funds at the Firm.

CM

During July 2009, Culbertson and CM had conversations concerning alternative investments to CM's existing RiverSource Flexible variable annuity (the "Variable Annuity"). Culbertson suggested that CM switch his Variable Annuity for a RiverSource Rate Bonus 1 fixed annuity (the "Fixed Annuity") and CM agreed to do so. On July 16, 2009, Culbertson sold CM's Variable Annuity and used \$89,346 of the proceeds to purchase the Fixed Annuity.

However, Culbertson failed to disclose the guaranteed minimum interest rate of 4% on CM's existing Variable Annuity when he recommended replacing it with the Fixed Annuity, the latter having a 4.75% interest rate for the first year then dropping to a base rate of 1.5%.

JS

On March 28, 2011, JS verbally complained to the Firm that Culbertson had failed to advise him that his IRA would be charged a commission with respect to a mutual fund purchase JS had authorized. Specifically, Culbertson failed to advise JS that his March 21, 2011, purchase of Blackrock Global Allocation mutual fund valued at \$22,000 would incur a commission of \$1,159. At JS's request, the Firm reversed the transaction at no cost to the customer.

Circumvention of Firm Supervisory Review

During the Relevant Period, Culbertson circumvented the Firm's supervisory review with respect to mutual fund transactions he effected by failing to submit the appropriate documentation or by submitting incomplete or inaccurate documentation to the Firm for review. This activity related to 12 customers' accounts.

Ameriprise required its registered representatives, including Culbertson, to complete and submit documentation relating to certain mutual fund transactions. The Firm implemented these procedures in order to ensure that it reviewed the proposed transactions for suitability and to ascertain that the registered representative recommended the appropriate share class for purchases.

The three forms required relevant for Culbertson's mutual fund transactions were Mutual Fund Switch Forms ("Switch Forms") that provided an explanation for the switch; Mutual Fund Share Class Analyzer forms ("SCA Forms") that determined the appropriate share class for the customer; and SCA Exception Forms that were used when the registered representative and/or the customer chose to invest in a share class that was not recommended by the SCA system. All three documents contained relevant customer information. Upon their receipt, Ameriprise reviewed the transactions for suitability.

From October 22, 2008 to February 24, 2010 Culbertson failed to submit or submitted incomplete or inaccurate SCA Forms or SCA Exception Forms for four customers' (JO, SS, LK and CA) purchases of a total of 14 mutual funds. These mutual funds were cumulatively valued at \$235,528. By failing to submit or by submitting incomplete or inaccurate SCA Forms or SCA Exception Forms Culbertson prevented the Firm from reviewing the proposed transactions for suitability.

Similarly, from October 19, 2008 to July 22, 2009 Culbertson failed to submit or submitted incomplete or inaccurate Switch Forms for nine customers' (JK, LR, MS, ES, LK, BG and MG and SF and DF) accounts. The transactions involved sales of 15 mutual funds (cumulatively valued at \$261,061) and purchases of 24 mutual funds (of approximately the same value). By failing to submit or by submitting incomplete or inaccurate Switch Forms Culbertson prevented the Firm from reviewing the proposed transactions for suitability.

In view of the foregoing, Culbertson violated NASD Rule 2110 and FINRA Rule 2010.

Discretionary Trading In Non-Discretionary Customers' Accounts

NASD Conduct Rule 2510(b) states: No member or registered representative shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the member, as evidenced in writing by the member or the partner, officer or manager, duly designated by the member, in accordance with Rule 3010.

During the Relevant Period, Culbertson serviced the non-discretionary accounts of three customers. He received orders from these customers but failed to timely enter the orders for transactions in the customers' accounts. Instead, without re-confirming the trades with the customers, Culbertson entered the orders in their accounts on a discretionary basis as follows:

DS

On December 9, 2009, DS gave Culbertson an order to purchase John Hancock Balanced Fund. However, Culbertson failed to timely enter DS's order. He did not re-confirm the trade with DS when he discovered his oversight on January 7, 2010, when he entered the order.

SF

On February 3, 2010, SF gave orders to Culbertson to purchase two mutual funds - John Hancock Balanced Fund and Blackrock Health Science Opportunities Fund. However, Culbertson failed to timely enter these orders. When he discovered his oversight, Culbertson failed to re-confirm the trades with SF when he entered the orders on February 17 and 19, 2010 respectively.

JC

On February 24, 2010, Culbertson recommended and JC agreed to sell her Riversource Balanced Fund and use the proceeds to purchase Eaton Vance Government Obligation fund. Although Culbertson timely sold the account's Riversource Balanced Fund, he neglected to re-confirm the purchase of the Eaton Vance Government Obligation fund when he entered the order two months later on April 24, 2010.

Unsuitable Trade

As described above, based on Culbertson's recommendation, on July 16, 2009, CM agreed to surrender his Variable Annuity and with the proceeds of approximately \$89,346, purchase the Fixed Annuity. The transactions were unsuitable for CM due to the following:

- 1) CM could withdraw the funds from the Variable Annuity at any time because the period for contingent deferred sales charge (CDSC) had expired while the Fixed Annuity had a six-year CDSC;
- 2) The Variable Annuity had a guaranteed fixed rate of 4% as compared to a 1.5% rate for the Fixed Annuity after one year;
- 3) The Variable Annuity had a guaranteed death benefit of \$116,618 compared to \$85,993 for the Fixed Annuity; and
- 4) The various fees and charges associated with the Variable Annuity were less than those associated with the Fixed Annuity.

- B. Culbertson also consents to the imposition of the following sanction:

1. A suspension from association with any FINRA member in any capacity for 12 months; and
2. A fine of \$20,000.

Respondent understands that if he is barred or suspended from associating with any FINRA member, he becomes 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, Respondent 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 Rules 8310 and 8311).

The fine shall be due and payable either immediately upon reassociation with a member firm following the 12 month 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.

Respondent specifically and voluntarily waives any right to claim that he is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff. 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 him;
- 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, Respondent specifically and voluntarily waives 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.

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

III.

OTHER MATTERS

Respondent understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against him; 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 him;
 - 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 to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondent's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party; and
- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that he may not deny the charges or make any statement that is inconsistent with the AWC in this

Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

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

3/8/2013
Date

James M. Culbertson
James M. Culbertson
Respondent

Accepted by FINRA:

April 8, 2013
Date

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

Susan Light
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