

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2012031533801**

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

**RE: Eileen J. Fern, Respondent
Registered Representative
CRD No. 1068655**

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I 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

Eileen J. Fern ("Fern") entered the securities industry in December 1982 as an Investment Company/Variable Contracts Products Representative, and in May 1985 became registered as a Direct Participation Programs Representative, with a FINRA-registered firm. Between August 2011 and February 2012, Fern was registered in the same capacities with Independence Capital Co., Inc. ("Independence Capital"), a FINRA-registered firm. Fern is not currently registered in any capacity with any FINRA-registered firm.

RELEVANT DISCIPLINARY HISTORY

Fern has no disciplinary history.

OVERVIEW

In November 2011, Fern converted approximately \$10,986 from a customer by overcompensating herself for acting as a trustee for a trust, in violation of FINRA Rule 2010. In February 2012, in order to reimburse the customer, Fern borrowed \$35,000 from a different customer, in violation of FINRA Rules 3240 and 2010.

FACTS AND VIOLATIVE CONDUCT

Conversion

1. During all relevant times, D.L. was a public customer who maintained a securities account with Independence Capital that was serviced by Fern.
2. Between approximately 2001 and 2012, Fern served as a trustee of the D.L. Living Trust.
3. Throughout this time period, Fern caused funds to be withdrawn from D.L.'s fixed annuities to compensate Fern for acting as trustee for the D.L. Living Trust.
4. The trust agreement specifically provided that the maximum annual amount of compensation that Fern was entitled to was 2% of the total value of the trust corpus. However, in or about November and December 2011, without the knowledge or consent of D.L., Fern caused \$15,764 to be withdrawn from fixed annuities owned by D.L., as compensation for acting as trustee for the D.L. Living Trust. These withdrawals were \$10,986 more than Fern was entitled to receive in fees pursuant to the trust agreement. Fern directed the \$10,986 to a bank account that she controlled, and then converted the \$10,986 for her personal use or for some purpose other than the benefit of D.L. or the D.L. Living Trust.

By engaging in this conduct, Fern violated FINRA Rule 2010.

Borrowing from a Customer

5. In or about February 2012, Fern became aware that D.L. was questioning the trustee fees that Fern had paid herself in 2011.
6. In or about February 2012, Fern borrowed \$35,000 from A.S., another customer of Independence Capital whose securities account was serviced by Fern, and paid approximately \$31,764 to the D.L. Living Trust, so that it was more than reimbursed for the excess fees that Fern had charged the Trust in 2011.
7. Independence Capital's written supervisory procedures ("WSPs") provided that its representatives may be permitted to borrow from customers, and that the firm's compliance department would consider approval of such requests on a

case-by-case basis. The WSPs further provided that its representatives were not permitted to engage in a borrowing or lending arrangement until and unless the compliance department pre-approved the borrowing arrangement in writing.

8. Fern did not notify Independence Capital of the borrowing arrangement with A.S. prior to borrowing the \$35,000 from A.S., and Fern borrowed the \$35,000 from A.S. without obtaining the firm's written pre-approval. Fern did not discuss the borrowing arrangement with Independence Capital until the firm confronted her about it.

By engaging in this conduct, Fern violated FINRA Rules 3240 and 2010.

- B. I also consent to the imposition, at a maximum, of the sanction of a bar from association with any member of FINRA in any capacity.

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 Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. 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 Rules 8310 and 8311).

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

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

- A. To have a Complaint issued specifying the allegations against me;
- B. To be notified of the 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 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

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 8313; 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.

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 [the Firm] to submit it.

1/20/2013
Date

Eileen J. Fern
Eileen J. Fern, Respondent

Reviewed by:

Attorney Name
Counsel for Respondent
Firm Name
Address
City/State/Zip
Phone Number

Accepted by FINRA:

1/28/2013
Date

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

Dale A. Glanzman
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