

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
20130354585-01**

TO: Office of Fraud Detection and Market Intelligence
Financial Industry Regulatory Authority ("FINRA")

RE: Michelle Lee Kern, Respondent
CRD No. 4528809

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Michelle Lee Kern ("Kern" or "Respondent"), 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

Kern was registered with FINRA from April 2002 through January 4, 2013, when her most recent employer firm filed a Form U5 terminating her registration. This FINRA member firm filed several amended Form U5s that disclosed that Kern may have engaged in conduct actionable under any applicable statute, rule, or regulation, with the latest amended Form U5 filed on April 17, 2013. Kern is not currently associated with a FINRA member firm but remains subject to FINRA's jurisdiction pursuant to Article V, Section 4, of FINRA's By-Laws. Kern has no disciplinary history.

SUMMARY

Between approximately June 2010 and December 2012, while registered with a FINRA member firm, Kern converted approximately \$669,000 in customer funds for her own use, including the payment of her credit card bills and other personal expenses.

FACTS AND VIOLATIVE CONDUCT

1. From April 2002 through December 26, 2012, Kern was employed at a FINRA member firm where she served as a General Securities Registered Representative.
2. Between approximately June 2010 and December 2012, Kern unlawfully converted to her own personal use approximately \$569,000 from 22 brokerage accounts of customers through unauthorized electronic withdraws from their brokerage accounts, and Kern used the funds to pay for her personal credit card bills. In addition, Kern unlawfully converted to her own personal use approximately \$100,000 from two customers by using their checkbooks to write unauthorized checks to herself, and Kern used the funds to pay for her personal credit card bills. Kern's customer victims ranged in age from 24 years old to 76 years old, with nine of the customers being at least 60 years old. By engaging in the foregoing conduct, Kern violated FINRA Rule 2150.
3. Kern's improper use and conversion of her customer's funds also constituted a failure in the conduct of her business to observe high standards of commercial honor and just and equitable principles of trade in violation of FINRA Rule 2010.
4. Kern also accepted checkbooks from two customers – one of whom was 63 years old – to destroy, and instead of destroying the check books as she indicated, Kern forged customer signatures and wrote personal checks to herself for approximately \$100,000 and deposited the funds into her personal checking account. Kern forged the customer signatures to create the false impression that the customers had authorized the deposit of checks into her personal checking account. Kern's forgery of her customers' signatures constituted a failure in the conduct of her business to observe high standards of commercial honor and just and equitable principles of trade in violation of FINRA Rule 2010.

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

A bar in all capacities from associating with any FINRA member.

I understand that if I am barred 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 (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 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 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 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: (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.

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.

Date

11/7/13

Michelle Lee Kern

Michelle Lee Kern

Accepted by FINRA:

Date

1/7/14

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

Cameron K. Funkhouser

Cameron K. Funkhouser
Executive Vice President
Office of Fraud Detection and
Market Intelligence