

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20140413516 01**

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

RE: Clark Smith Gardner, Respondent
CRD No. 2930356

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

Clark Smith Gardner ("Gardner") first entered the securities industry in July 1997 with FINRA member firm WS. He remained with WS until February 2002. During that time he passed the Investment Company and Variable Contracts Products Representative Examination (Series 6 license) and the Uniform Securities Agent State Law Examination (Series 63 license). In February 2002, Gardner joined SSC and remained employed there until December 2013. During that time he passed the General Securities Representative Examination (Series 7 license). On December 16, 2013, Gardner became associated with Cetera Advisors, LLC ("Cetera" or the "Firm").

On May 22, 2014, Cetera filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") disclosing that Gardner was discharged from employment on May 9, 2014 due to allegations that he engaged in an "undisclosed outside business activity and sales of an unapproved product."

Gardner is not currently employed by a FINRA member firm, but remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

Gardner has no prior relevant disciplinary history.

OVERVIEW

Gardner converted customer funds for his own use and benefit and engaged in an outside business activity without his Firm's permission.

FACTS AND VIOLATIVE CONDUCT

1. Gardner Converts Customer RK's Funds

On or about April 23, 2014, Customer RK provided Gardner with a check for \$243,000 for another "investment opportunity." Gardner deposited the check directly into his personal bank account. Gardner failed to invest any of the \$243,000 on Customer RK's behalf. Instead, over the next month, Gardner proceeded to use Customer RK's funds for his own personal use, including repaying funds Gardner owed to other individuals.

2. Customer RK's Real Estate Transaction Through Gardner's Outside Business

While Gardner was employed by the Firm, he served as an agent of a real estate investment company AE ("AE") without the Firm's knowledge or consent. The Firm's policies and procedures stated that no associated person may participate in an outside business activity without prior approval from the Firm. However, in or around January 2014, Gardner facilitated Firm Customer RK's \$150,000 real property investment through AE, without the Firm's permission. Gardner received \$20,000 from AE for facilitating the transaction.

FINRA Rule 2150(a) states that "[n]o member or person associated with a member shall make improper use of a customer's securities or funds."

FINRA Rule 3270 states that "[n]o registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member."

FINRA Rule 2010 provides that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."

Because Gardner converted \$243,000 of Customer RK's funds for his own use and benefit without the Customer's knowledge or consent, he violated FINRA Rules 2150(a) and 2010. In addition, because Gardner engaged in an outside business activity without the Firm's knowledge or permission, he violated FINRA Rules 3270 and 2010.

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

A bar from associating with any FINRA member firm 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 Chief Legal Officer, 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.

9-4-2014

Clark Smith Gardner

Date

Clark Smith Gardner, Respondent

Reviewed by:

Stephen K. Christiansen

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Accepted by FINRA:

9-26-14

Date

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

Susan Schroeder

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