

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2019062428401**

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

RE: Bradley Scott Kyburz, Respondent
Investment Company and Variable Contracts Product Representative
CRD No. 2969350

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Bradley Scott Kyburz ("Kyburz" 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

Kyburz entered the securities industry in October 1997 and, since then, has been associated with five FINRA-regulated broker-dealers. In July 2011, Kyburz became associated with Capital Financial Services, Inc. (BD No. 8408), a FINRA-regulated broker-dealer ("CFS" or the "Firm"), as an Investment Company and Variable Contracts Product Representative. In a Uniform Termination Notice for Securities Industry Registration ("Form U5") dated April 25, 2019, CFS reported Kyburz's termination for "[f]ailure to report reportable events."

Although Kyburz is not currently associated with a FINRA-regulated broker-dealer, he remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

Kyburz does not have any disciplinary history with the Securities and Exchange Commission, any state securities regulators, FINRA, or any other self-regulatory organization.

OVERVIEW

Kyburz willfully failed to disclose that he had been charged with, pleaded guilty to, and convicted of, a felony offense through the timely filing of an amended Uniform Application for Securities Industry Registration or Transfer ("Form U4"). Kyburz also failed to amend his Form U4 to disclose two tax liens and four civil judgments entered against him and totaling \$133,379. By virtue of the foregoing, Kyburz violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

FACTS AND VIOLATIVE CONDUCT

Article V, Section 2(c) of FINRA's By-Laws requires that registered representatives keep their Form U4 "current at all times," and that amendments to a Form U4 must be filed with FINRA "not later than 30 days of learning of the facts and circumstances giving rise to the amendment." However, where an amendment results in statutory disqualification, it must be filed within ten days after the disqualifying event occurs. A person is subject to statutory disqualification, among other reasons, if the person has been convicted of any felony.

FINRA Rule 1122 prohibits registered representatives from filing with FINRA information regarding registration that is "incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail[ing] to correct such filing after notice thereof." A violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rule 1122 also constitutes a violation of FINRA Rule 2010, which requires registered representatives to observe high standards of commercial honor and just and equitable principles of trade.

Kyburz's Willful Failure to Disclose His Felony Charge and Conviction

Registered representatives are required to disclose on their Form U4 if they have been charged with, or pleaded guilty to, a felony within 30 days of the filing of charges or guilty plea, and if they have been convicted of a felony within ten days of entry of judgment. Specifically, Question 14A of the Form U4 requires registrants to disclose whether they have "ever been convicted of or pled guilty or nolo contendere ('no contest') in a domestic, foreign, or military court to any felony." Question 14A also requires registrants to disclose whether they have "been charged with any felony." If a registered representative answers the question in the affirmative, then he or she is required to provide detailed information about the charge, including where the action was brought, its current status and disposition, and to submit copies of the complaint, information or indictment, and judgment.

Kyburz was arrested on February 12, 2017, while associated with CFS, for driving under the influence. He was charged on March 5, 2017, in South Dakota Fifth Judicial Circuit Court with, among other things, felony driving under the influence. Although Kyburz was required to update his response to Question 14A within 30 days, or by April 4, 2017, he did not amend his Form U4 or report the charge to the Firm.

On October 30, 2017, Kyburz pleaded guilty to the felony driving under the influence charge. Kyburz was sentenced the same day, and the felony conviction made him statutorily disqualified from associating with a member firm. Although Kyburz was required to update his response to Question 14A within ten days, or by November 9, 2017, he did not amend his Form U4 or report the conviction to the Firm.

In 2017 and 2018, while completing CFS's annual compliance questionnaires, Kyburz also falsely stated that he had not been charged with, convicted of, or pled guilty to any felony.

By willfully failing to disclose his felony charge, guilty plea, and conviction, Kyburz violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

Kyburz's Failure to Disclose Tax Liens and Civil Judgments

Registered representatives are required to disclose unsatisfied liens and judgments on their Form U4. Specifically, Question 14M of the Form U4 asks registered representatives, "Do you have any unsatisfied judgments or liens against you?" If a registered representative answers the question in the affirmative, then he or she is required to provide detailed information about each unsatisfied judgment or lien, including the amount and filing date of the lien or judgment.

Between March 2013 and August 2018, Kyburz learned of the following liens and judgments (collectively, the "Reportable Events") entered against him:

- a March 7, 2013 judgment in the amount of \$1,396;
- a March 14, 2014 judgment in the amount of \$26,323;
- an October 5, 2016 judgment in the amount of \$19,820;
- an October 17, 2016 judgment in the amount of \$481;
- an August 30, 2016 Internal Revenue Service ("IRS") tax lien in the amount of \$17,748; and
- an August 7, 2018 IRS tax lien in the amount of \$67,611.

Kyburz was required to disclose the Reportable Events via the filing of an amended Form U4 within 30 days of receiving notice of their existence, but did not. Kyburz also did not disclose the Reportable Events to the Firm, and falsely stated on two annual compliance questionnaires that he did not have any unsatisfied liens or judgments other than those previously disclosed on his Form U4.

By failing to disclose the Reportable Events, Kyburz violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

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

1. a ten-month suspension from associating with any FINRA member in any capacity;
and
2. a fine in the amount of \$10,000.

The fine shall be due and payable either immediately upon reassociation with a member Firm, 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 an inability to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

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

Respondent understands that this settlement includes a finding that he willfully omitted to state a material fact on a Form U4, and that under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 and Article III, Section 4 of FINRA's By-Laws, this omission makes him subject to a statutory disqualification with respect to association with a member.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II. WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against him;
- 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, Respondent specifically and voluntarily waives 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.

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:

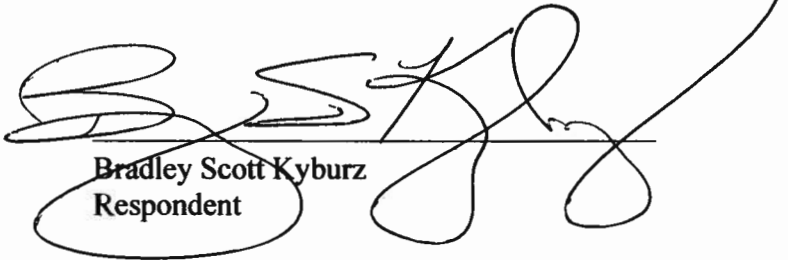
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
 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.

- 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; Respondent understands and acknowledges that FINRA does not represent or advise him and Respondent cannot rely on FINRA or FINRA staff members for legal advice. Respondent has agreed to the AWC's provisions voluntarily; and 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 this AWC.

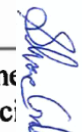
5/22/2020
Date


Bradley Scott Kyburz
Respondent

Accepted by FINRA:

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

6/10/2020
Date


Shane G. Gable
Principal Counsel
FINRA Department of Enforcement
15200 Omega Drive, Third Floor
Rockville, MD 20850