

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2019064265601**

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

RE: Melissa A. Niederhauser, Respondent
Former Associated Person
CRD No. 6380536

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Melissa A. Niederhauser 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

On August 4, 2014, Horace Mann Investors, Inc. (CRD No. 11643) ("Horace Mann" or the "Firm") filed an initial non-registered fingerprint form for Niederhauser identifying her position at the Firm as "back office." At Horace Mann, Niederhauser was licensed to sell insurance and acted as an office manager and administrative assistant. Niederhauser supported the Firm's brokerage business by, among other things, responding to customer service inquiries, facilitating the completion of forms related to brokerage accounts and securities (including variable annuities), accepting checks from customers and other clerical duties. By virtue of her activities in the securities industry, Niederhauser is an Associated Person as that term is defined by FINRA By-Laws.

On August 29, 2019, the Firm filed a non-registered fingerprint amendment form disclosing that it terminated Niederhauser's employment on August 27, 2019. Niederhauser is not currently registered or associated with a FINRA member firm. However, she remains subject to FINRA's jurisdiction pursuant to Article I, Section (rr) and Article V, Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

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

OVERVIEW

Between January 2016 and August 2017 (the "Relevant Period"), while she was associated with Horace Mann, Niederhauser converted \$73,618.41 from two Firm customers, RC and LC. In a series of 20 transactions, she withdrew the funds from variable annuities held by RC and LC without the customers' authorization, knowledge, or approval. Following all but one of those transactions, Niederhauser cashed the withdrawal checks and used the funds for her own personal use. By virtue of the foregoing, Niederhauser violated FINRA Rules 2150(a) and 2010.

FACTS AND VIOLATIVE CONDUCT

FINRA Rule 2150(a) provides that "[n]o member or person associated with a member shall make improper use of a customer's securities or funds." FINRA Rule 2010 requires that associated persons, in the conduct of their business, "shall observe high standards of commercial honor and just and equitable principles of trade." Conversion is an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it. Conversion of customer funds is a violation of FINRA Rules 2150(a) and 2010.

Between January 2016 and August 2017, Niederhauser converted \$73,618.41 from Firm customers RC and LC, who are Niederhauser's family members. Both RC and LC owned individual deferred variable annuities issued to them by the Firm in December 2014 and March 2015, respectively. While the customers were out of the country during the Relevant Period, Niederhauser withdrew funds from the variable annuities held by RC and LC by forging their signatures on Horace Mann Annuity Surrender/Withdrawal Request forms ("Withdrawal Forms") that she then submitted to the Firm. On the Withdrawal Forms, Niederhauser directed that the withdrawal checks be mailed to an address where she knew she could obtain them. After retrieving the checks, she deposited them into a joint bank account that she owned with RC and LC and withdrew the funds for her own personal use. In order to cash the checks, Niederhauser forged both RC's and LC's endorsement signatures. Niederhauser made the withdrawals from RC's and LC's variable annuities without RC's and LC's authorization.

Niederhauser made a total of 13 separate withdrawals from RC's variable annuity totaling \$47,618.37, not including withheld federal and state income taxes. She made a total of seven separate withdrawals from LC's variable annuity totaling \$30,368.04, not including withheld federal and state income taxes, although Niederhauser did not subsequently cash and convert a check for one of the withdrawals in the amount of \$4,368. Neither RC nor LC authorized, knew of, or consented to the withdrawals from their variable annuities.

Nor did the customers receive any of the aforementioned checks or receive any money or other benefits from the checks after Niederhauser cashed them.¹

By virtue of the foregoing, Niederhauser converted \$73,618.41 of customer funds, thereby violating FINRA Rule 2010.

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

- A bar from association with any FINRA member in any capacity.

Respondent understands that if she is barred or suspended from associating with any FINRA member, she 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, she 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. 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 Complaint issued specifying the allegations against her;
- 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.

¹ Horace Mann reimbursed RC and LC to make them whole by restoring their respective annuity positions in the amounts that Niederhauser improperly withdrew.

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.

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

3/4/2020
Date

Melissa Niederhauser
Melissa A. Niederhauser
Respondent

Reviewed by:

E. E. Byington
Erin E. Byington, Esq.
Counsel for Respondent
Byington & Goble, PLLC
105 W. 200 N.
Logan, UT 84321

Accepted by FINRA:

4/10/2020
Date

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

Adam Balin/sb
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Counsel
FINRA
Department of Enforcement
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