FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2020065527102

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

RE: Darrell A. Smith, Jr. (Respondent)
Former Investment Company and Variable Contracts Products Representative
CRD No. 6774881

Pursuant to FINRA Rule 9216, Respondent Darrell A. Smith, Jr. 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 in this AWC.

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

Smith registered as an investment company and variable contracts products representative through an association with Wells Fargo Clearing Services, LLC (WFCS) in June 2017. On February 5, 2020, WFCS filed a Uniform Termination Notice for Securities Industry Registration (Form U5) stating that Smith had "resigned after allegations that he initiated payments and other transactions out of two separate customer bank accounts, some of which the customers subsequently disputed as unauthorized." Smith is not currently associated with a FINRA member firm, but he remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws. Smith does not have any relevant disciplinary history.

OVERVIEW

Smith refused to provide on-the-record testimony as requested by FINRA staff pursuant to FINRA Rule 8210. As a result, he violated FINRA Rules 8210 and 2010.

FACTS AND VIOLATIVE CONDUCT

FINRA Rule 8210 states that FINRA staff may require persons subject to its jurisdiction to "testify at a location specified by FINRA staff, under oath or affirmation … with respect to any matter involved in [an] investigation" authorized by the FINRA By-Laws or rules. Rule 8210(c) further states that "[n]o … person shall fail to provide … testimony … pursuant to this Rule." A violation of Rule 8210 is also a violation of FINRA Rule 2010, which provides that associated persons, in the conduct of their business, shall observe high standards of commercial honor and just and equitable principles of trade.

This matter originated with the Form U5 filed by WFCS on February 5, 2020. On January 25, 2021, FINRA sent a request to Smith for on-the-record testimony pursuant to FINRA Rule 8210. As stated in his email to FINRA on January 26, 2021, and by this agreement, Smith acknowledges that he received FINRA's request and will not appear for on-the-record testimony at any time. By refusing to appear for on-the-record testimony as requested pursuant to FINRA Rule 8210, Respondent violated FINRA Rules 8210 and 2010.

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

- a bar from associating with any FINRA member in all capacities.

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.

The sanctions imposed in this AWC shall be effective on a date set by FINRA. 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 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 its acceptance or rejection.

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 its subject matter 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 testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

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 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 in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce him to submit this AWC.

2/10/21
Date

Darrell A. Smith, Jr.
Respondent

Accepted by FINRA:

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

2/24/2021
Date

Jennifer M. Klein
Counsel
FINRA
Department of Enforcement
Brookfield Place, 200 Liberty Street
New York, NY 10006