

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2021071670001**

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

RE: Marianne O'Shee Smith
Former General Securities Representative
CRD No. 1587765

Pursuant to FINRA Rule 9216, Respondent Marianne O'Shee Smith 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 accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

Smith first registered with FINRA in 1987 as a General Securities Representative. Smith was associated with Cetera Advisors LLC from October 2016, until her involuntary termination in June 2021. In a Uniform Termination Notice for Securities Registration (Form U5), Cetera Advisors reported Smith had been discharged in connection with its investigation of her deposit of customer checks into accounts maintained by a third party. Although Smith is no longer registered with FINRA or associated with a FINRA member, she remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws.

OVERVIEW

Between February 2018 and April 2021, Smith converted \$45,100 from three senior firm customers in violation of FINRA Rules 2150(a) and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from an examination by FINRA's National Cause Program.

FINRA Rule 2150(a) states that no "person associated with a member shall make improper use of a customer's securities or funds." FINRA Rule 2010 requires associated persons, in the conduct of their business, to observe "high standards of commercial honor and just and equitable

principles of trade.” An associated person who engages in conversion, *i.e.*, an intentional and unauthorized taking of and/or exercise of ownership of customer funds by a person who does not own them, violates FINRA Rule 2150(a) and Rule 2010.

Between January 31, 2018, and February 27, 2021, three Cetera Advisors customers gave Smith ten checks totaling \$45,100 made payable to a mutual fund company affiliated with the firm. The customers, all of whom were senior citizens, directed Smith to use the checks to fund their mutual fund investments. Smith instead used the customer checks, without their prior knowledge or consent, to purchase mutual fund shares for a family member of Smith. On each customer check, Smith wrote her family member’s mutual fund account number and the fund ticker symbol and sent the check to the mutual fund company to be credited to the family member’s account. After discovery of Smith’s misconduct, the customers were reimbursed in full.

By converting funds from three firm customers, Smith violated FINRA Rules 2150(a) 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 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 sanction imposed in this AWC shall be effective on a date set by FINRA. A bar 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 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 right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.

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

4/1/2022
Date

Marian O'Shee Smith
Marian O'Shee Smith
Respondent

Reviewed by:

Vander Beatty
Vander Beatty
Counsel for Respondent
Mound, Cotton, Wollan and Greengrass LLP
One New York Plaza
New York, N.Y. 10004

Accepted by FINRA:

April 5, 2022
Date

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

Kevin E. Pogue
Kevin E. Pogue
Senior Counsel
FINRA
Department of Enforcement
Two Jericho Plaza
Jericho, New York 11753