

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2012033167601**

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

RE: Brian K. Nelson, Respondent
Former Registered Representative
CRD No. 5433967

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

From March 5, 2008 until to June 8, 2012, Brian K. Nelson was registered with NYLife Securities LLC ("NYLife") as an Investment Company and Variable Contracts Products Representative. Nelson is not currently registered with a FINRA member firm, but remains subject to FINRA's jurisdiction pursuant to Article V, Section 4(a) of FINRA's By-Laws of the Corporation.

OVERVIEW

In order to obtain a \$4,000 commission, Nelson falsely stated on a variable annuity application that the annuity would be funded with a \$200,000 rollover from a customer's 401(k) account. The actual value of the customer's 401(k) was just \$2,000. After paying Nelson the \$4,000 commission, NYLife rejected the variable annuity application because it never received the money to fund the premium. Nelson then forged the customer's signature on a second variable annuity application and resubmitted it with an even higher fictitious 401(k) balance. Nelson's forgery and falsification of information on customer variable annuity applications violated FINRA Rule 2010.

Nelson also failed to respond to five separate FINRA requests for documents and information. Nelson's failure to respond to FINRA's requests violated FINRA Rule 8210.

FACTS AND VIOLATIVE CONDUCT

Facts

In January 2012, Nelson met with customer DW and had him sign a variable annuity application, a rollover form, and an investor profile. The variable annuity application and rollover form falsely stated that the annuity would be funded with \$200,000 from DW's existing 401(k) account. Nelson had no reason to believe that DW actually possessed a 401(k) account worth \$200,000. Rather, Nelson intentionally inflated the value of the 401(k) account in order to obtain an advanced commission of \$4,000 from his employer, NYLife. The actual balance of DW's 401(k) account was only \$2,000.

On January 12, 2012, NYLife credited Nelson's personal ledger at the firm with \$4,000 from the purported sale of the \$200,000 annuity to DW. After paying certain expenses that he owed to the firm, Nelson withdrew the remainder of the \$4,000 commission and spent it. Because NYLife never received any money from the 401(k) rollover to fund the premium of the variable annuity, it subsequently rejected the application and issued an offsetting debit of \$4,000 to Nelson.

On April 12, 2012, one day after NYLife debited the \$4,000, Nelson forged DW's signature on a second variable annuity application that stated that the annuity would be funded with \$250,000. He also forged DW's signature on the accompanying rollover form and investor profile. Once again, Nelson had no reason to believe that DW possessed a 401(k) account worth \$250,000. Instead, Nelson forged and falsified the second variable annuity application to offset NYLife's reversal of the original \$4,000 commission. NYLife rejected the second application without issuing a commission because it detected irregularities in DW's signatures. Nelson never repaid NYLife the \$4,000 he received as a result of the original falsified annuity application.

Between July 12, 2012 and April 22, 2013, FINRA sent Nelson five separate letters requesting that he provide documents and information pursuant to FINRA Rule 8210. Although Nelson received the letters, he never provided any of the documents or information requested by FINRA.

Violations

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." A registered person's forgery of a customer's signature and preparation of false firm documents is conduct that is inconsistent with just and equitable principles of trade and violates the high standards of commercial honor to which FINRA holds registered individuals; therefore, such conduct violates FINRA Rule 2010. As a result of the

foregoing conduct, Nelson violated FINRA Rule 2010.

FINRA Rule 8210 authorizes FINRA, in the course of an investigation, to require members and persons subject to its jurisdiction to "provide information orally, in writing, or electronically." Rule 8210 further states that "[n]o . . . person shall fail to provide information . . . pursuant to this Rule." As described above, Nelson failed to respond to requests for documents and information and, therefore, he violated of FINRA Rule 8210. As a result of that violation, Nelson also violated FINRA Rule 2010.

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

A bar from associating with any FINRA member.

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 General Counsel, 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.

08/08/2013
Date (mm/dd/yyyy)

Brian K. Nelson
Brian K. Nelson, Respondent

Accepted by FINRA:

8/20/2013
Date

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

Thomas S. Kimbrell
Thomas S. Kimbrell
Senior Counsel
FINRA Department of Enforcement
15200 Omega Drive
Rockville, MD 20850-3241
Ph: 301-258-8550
Fax: 202-721-6515