

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2016049233701**

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

RE: William Roy Kimberlin, Respondent
Former Limited Registered Representative
CRD No. 2242040

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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

Kimberlin entered the securities industry in February 1992 as an Investment Company Products/Variable Contracts Limited Representative pre-appointment trainee with MetLife Securities, Inc. (the “Firm”), a FINRA-regulated broker-dealer and remained registered with the Firm until his termination in February 2016. He was contemporaneously employed by the Metropolitan Life Insurance Company.

Kimberlin obtained his Series 6 (Investment Company and Variable Contracts Product Representative) and Series 63 (Uniform Securities Agent State Law) securities licenses in June 1992. During his tenure with the Firm, he was also employed by the Metropolitan Life Insurance Company, the Firm’s insurance affiliate.

On March 11, 2016, the Firm filed a Form U5 reporting Kimberlin’s February 24, 2016 termination for failing to follow firm policy with respect to loans from customers. Kimberlin is not presently associated with a FINRA member, but he remains subject to FINRA’s jurisdiction pursuant to Article V, Section 4 of the FINRA By-Laws.

RELEVANT DISCIPLINARY HISTORY

Kimberlin has no prior disciplinary history in the securities industry.

OVERVIEW

In October 2013, Respondent solicited and accepted a total of \$30,000 in loans from two of his Firm customers in violation of the Firm's procedures which prohibited accepting or giving loans to customers under all circumstances. By the foregoing, Respondent violated FINRA Rule 3240 and 2010.

Kimberlin misrepresented in his 2013, 2014 and 2015 Field Annual Certification Statements (the "Annual Certifications") that he had not engaged in the practice of borrowing securities or money from a client, which was not true, in violation of FINRA Rule 2010.

Kimberlin also failed to disclose to the Firm two outside business activities in which he participated – one involving real estate investments and the other sports officiating – in violation of FINRA Rules 3270 and 2010 (from November 2013 through February 2016) and NASD Rules 3030 (from February 1992 through August 2008) and 2110 (from at least July 1996 through August 2008).

FACTS AND VIOLATIVE CONDUCT

Borrowing from Customers

FINRA Rule 3240 provides in relevant part, "No person associated with a member in any registered capacity may borrow money from or lend money to any customer of such person unless: (1) the member has written procedures allowing the borrowing and lending of money between such registered persons and customers of the member..."

Rule 3240 allows registered persons to borrow money from or lend money to their customers only in specific limited circumstances and only if the FINRA-registered member Firm has written procedures allowing such lending arrangements. FINRA Rule 2010 requires members, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade. Conduct that violates FINRA Rule 3240 also violates FINRA Rule 2010.

The Firm's written policies, in effect since September 2013, specifically prohibited its representatives from borrowing money or securities from a client. These policies did not provide exceptions for clients who were also family members or personal friends of the Firm's representatives.

Customer SW

In October 2013, Respondent solicited Customer SW, a 71-year-old Firm customer unsophisticated in financial matters, to loan him \$20,000. The stated purpose of the loan

was to finance a real estate investment business begun by Respondent. Kimberlin assisted Customer SW in arranging an early withdrawal from her annuity policy, causing her to incur surrender charges and tax penalties totaling approximately \$4,400. Customer SW wrote a check to Respondent in the amount of \$20,000. To document the \$20,000 loan, Respondent provided Customer SW with a loan document dated October 21, 2013 that he signed calling for the loan to be repaid over 24 months and for the payment of interest at rates ranging from 20% to 5% depending on how long the loan was outstanding.

Customer VI

In October 2013, Respondent also solicited 76-year-old Firm Customer VI to loan him \$10,000. Once again, the stated purpose of the loan was to finance Respondent's real estate investment business. Customer VI agreed and provided Respondent with a \$10,000 check made payable to him. To document the \$10,000 loan, Respondent prepared a loan document dated October 21, 2013 that was signed by Kimberlin and his wife and Customer VI calling for the loan to be repaid in six months and interest payments at a rate of 20%.

Respondent subsequently used the \$30,000 he received from Customers SW and VI to pay down the balance on his credit cards. Respondent has not repaid either of these loans.

By the foregoing, Respondent violated FINRA Rules 3240 and 2010.

Misrepresentations

FINRA Rule 2010 applies broadly to all business-related misconduct that reflects on an associated person's ability to comply with regulatory requirements necessary to the proper function of the securities industry and protection of the public. False statements made on firm compliance documents are inconsistent with just and equitable principles of trade.

From 2013 through 2016, the Firm required its registered representatives to complete Annual Certifications. Among other things, the Annual Certifications required registered representatives to certify their understanding of certain prohibited practices and their agreement that they had not and would not engage in those practices.

On October 22, 2013 – one day after soliciting and accepting \$30,000 in loans from two Firm customers – Respondent certified on the 2013 Annual Certification that he had not and would not engage in the prohibited practice of borrowing money or securities from a client. Respondent's certification was not true. Respondent made the same false certification on the 2014 and 2015 Annual Certifications.

By the foregoing, Respondent violated FINRA Rule 2010.

Undisclosed Outside Business Activities

NASD Rule 3030, effective from October 13, 1988 through December 14, 2010, provides that no person registered with a member “shall be employed by or accept compensation from, any other person as a result of any business activity . . . outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member.”

Effective December 15, 2010, FINRA adopted Rule 3270 which provides in relevant part, that, “No registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member.”

NASD Rule 2110 (in effect since at least July 1996 through December 14, 2008), the predecessor to FINRA Rule 2010, also required members, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.

Kimberlin N Vest RS LLC

In or about November 2013, Respondent established a limited liability company in the State of Texas called Kimberlin N Vest RS LLC. Respondent was a Director and Manager for this entity. The Kimberlin N Vest RS LLC entity remains active to date.

For tax years 2013 and 2014, Respondent listed Kimberlin N Vest RS LLC on a Schedule C Form filed with his IRS Form 1040. The Schedule C Forms, entitled “Profit or Loss for Business (Sole Proprietorship),” filed by Respondent during this two-year period reported losses incurred in connection with Kimberlin N Vest RS LLC of \$24,096 in 2013 and \$16,910 in 2014.

Respondent failed to disclose his participation in the Kimberlin N Vest RS LLC outside business activity to the Firm from November 2013, when it was created, through February 2016 when his employment was terminated by the Firm, in violation of FINRA Rules 3270 and 2010.

Sports Officiating

Respondent participated in a business involving sports officiating since 1969 and continues to participate in those activities to date. He failed to disclose his participation in this outside business activity when he first joined the Firm in 1992 or at any time prior to August 2008. Respondent listed his sports officiating activities on a Schedule C filed with his IRS Form 1040 since at least 2013 through 2016. The sports officiating-related Schedule C Forms filed by Respondent during this three-year period reported profits

ranging from approximately \$1,300 to \$1,800.

By the foregoing, Respondent violated NASD Rules 3030 (from February 1992 through August 2008) and 2110 (since at least July 1996 through August 2008).

- B. I also consent to the imposition of the following sanctions:
- a. an 18 month suspension from association with any FINRA member broker-dealer in any capacity; and
 - b. a \$15,000 fine.

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.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

I understand that if I am barred or suspended from associating with any FINRA member, I 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, 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.

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 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.

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:

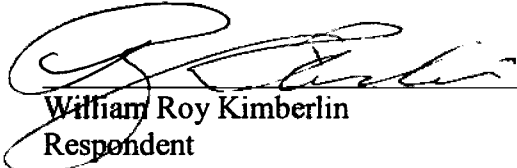
- A. **Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;**
- B. **If this AWC is not accepted, its submission 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 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. **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.

- D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I 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.

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 understand and acknowledge that FINRA does not represent or advise me and I cannot rely on FINRA or FINRA staff members for legal advice; 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.


8-11-2017
Date


William Roy Kimberlin
Respondent

Accepted by FINRA:

8/31/17
Date

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


Richard Chin
Chief Counsel
FINRA Department of Enforcement
Brookfield Place
200 Liberty Street
New York, NY 10281
(646) 315-7322
Address
City/State/Zip
Phone Number; Fax Number