

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2019063955801**

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

RE: Thomas Clark Cleary  
General Securities Representative  
CRD No. 2221383

Pursuant to FINRA Rule 9216, Respondent Thomas Clark Cleary 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**

Cleary entered the securities industry in June 1992 when he became registered as an Investment Company and Variable Contracts Products Representative through an association with a FINRA member. After leaving that firm in August 1992, Cleary was registered as a General Securities Representative (GSR) through associations with five different FINRA members between approximately March 1995 to December 2011. From approximately December 2011 to February 2019, Cleary was registered as a GSR through an association with UBS Financial Services Inc., a FINRA member.

After Cleary left UBS, he was registered as a GSR through an association with RBC Capital Markets, a FINRA member, from approximately January to September 2019. On September 17, 2019, RBC filed a Form U5 reporting the termination of Cleary's employment due to "difference in business philosophy."

From October 2019 to the present, Cleary has been registered as a GSR through an association with another FINRA member.

Cleary does not have any relevant disciplinary history.

## OVERVIEW

From July 2017 through August 2019, while associated with UBS and RBC, Cleary engaged in an outside business activity by serving as the executor of his customer's estate without providing prior written notice to either UBS or RBC. As a result, Cleary violated FINRA Rules 3270 and 2010.

In addition, during the period from July 2017 through January 2019, Cleary circumvented UBS policy by failing to notify the firm that he was beneficiary of the same customer's estate and taking steps to conceal from UBS his beneficiary status. As a result, Cleary violated FINRA Rule 2010.

## FACTS AND VIOLATIVE CONDUCT

This matter originated from the Form U5 filed by RBC on September 17, 2019.

### **A. Cleary violated FINRA Rules 3270 and 2010 by engaging in an outside business activity without providing prior written notice to UBS or RBC.**

FINRA Rule 3270 provides, in relevant part,

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.

FINRA Rule 2010 requires associated persons to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

A violation of FINRA Rule 3270 is also a violation of FINRA Rule 2010.

After Cleary joined UBS in December 2011, Customer A, a senior customer, transferred her accounts to UBS, where Cleary handled her investments.

In July 2017, Customer A executed her Last Will and Testament. Under Customer A's will, Cleary was appointed as executor of Customer A's estate, and Cleary served as executor of Customer A's estate while he was associated with UBS and RBC. Cleary assisted Customer A in preparing the will and, at the time the will was executed, knew he was named as executor under the will. He had a reasonable expectation of compensation for serving as executor because the laws of the District of Columbia, which governed Customer A's will, entitled him to "reasonable compensation for services."

Customer A died in October 2018, and Cleary probated Customer A's will the following month.

During the relevant period, UBS's written supervisory procedures regarding outside business activities prohibited registered representatives from serving as an executor for a non-family member without prior disclosure to and approval from the firm. Similarly, RBC's policies required employees to obtain prior written approval from firm management before engaging in any outside business activity. In addition, RBC's policies specifically prohibited employees from being fiduciaries of non-family members, including serving as an executor.

Cleary was appointed and then served as executor of Customer A's estate while associated with UBS. During his association with UBS, however, Cleary never notified UBS of his appointment or service as executor of Customer A's estate. Cleary also inaccurately reported in a UBS annual compliance questionnaire, completed in February 2018, that he was not named an executor for a client who was not a family member.

After joining RBC in January 2019, Cleary continued to serve as executor of Customer A's estate. Cleary, however, failed to disclose this fact to RBC until August 2019, after an anonymous letter was sent to his managers stating that Cleary was executor and beneficiary of a customer's estate. In addition, Cleary inaccurately reported on an RBC annual compliance questionnaire in March 2019 by representing he was not an executor for any non-family member.

Therefore, Cleary violated FINRA Rules 3270 and 2010.

**B. Cleary violated FINRA Rule 2010 by circumventing firm policy in becoming a beneficiary of Customer A's estate.**

FINRA Rule 2010 requires associated persons to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. An associated person's intentional circumvention of firm policies, particularly policies designed to protect customers, is conduct not consistent with the high standards of commercial honor and just and equitable principles of trade.

In addition to being executor of Customer A's estate, Cleary was also a beneficiary of Customer A's estate. Specifically, Customer A's will made bequests to friends, neighbors, and charities and named Cleary as the residual beneficiary of Customer A's estate. As residual beneficiary, Cleary was entitled to assets in Customer A's estate worth over \$4 million. Cleary was aware, at the time Customer A's will was executed, that he was a beneficiary of Customer A's estate.

While Cleary was associated with UBS, firm policy required all employees to immediately notify their line manager once they know they were named a beneficiary of any non-family member.

Cleary circumvented UBS policy by becoming the beneficiary of Customer A's estate without disclosure to his UBS manager or anyone else at UBS. In addition, Cleary took steps to conceal from UBS that he was beneficiary of Customer A's estate. Specifically, after Customer A's death, Cleary contacted insurance companies to "de-link" certain annuities, held by Customer A outside of UBS, from her UBS account statements, which meant that UBS was not informed when Cleary terminated the policies after inheriting them from Customer A. Cleary inaccurately reported on his February 2018 UBS annual compliance questionnaire that he was not named as a beneficiary for a client who was not a family member.

Therefore, Cleary violated FINRA Rule 2010.

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

- a one-year suspension from associating with any FINRA member in all capacities and
- a \$10,000 fine.<sup>1</sup>

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.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which he proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim an inability to pay, now or at any time after the execution of this AWC, the monetary sanction imposed in this matter.

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

## II.

### **WAIVER OF PROCEDURAL RIGHTS**

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

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<sup>1</sup> The Division of Securities and Retail Franchising of the Virginia State Corporation Commission has previously fined Cleary \$35,000 for the same misconduct at issue in this AWC.

- 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 prejudice 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:

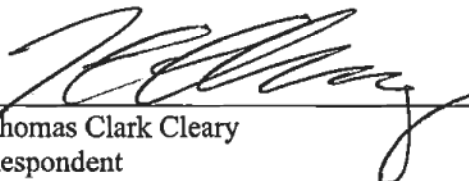
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not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

D. Respondent may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that he 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.

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 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.

5/14/21  
Date

  
Thomas Clark Cleary  
Respondent

Reviewed by: 

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Counsel for Respondent  
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Accepted by FINRA:

June 7, 2021

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Date

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

*Adeline Liu*

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