

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
MATTER NO. 2015048347401**

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

**RE: Jerry McCutchen
General Securities Representative
CRD No.: 1076678**

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

In January 1983, Jerry McCutchen entered the securities industry as a General Securities Representative with a FINRA-registered firm. In May 1987, McCutchen also became registered as a General Securities Principal with another FINRA-registered firm. In January 2007, McCutchen became registered in both capacities with Berthel, Fisher & Company Financial Services, Inc. In December 2014, the firm terminated his registration. Although McCutchen is not currently registered with a FINRA firm, he remains subject to FINRA's jurisdiction. McCutchen has no disciplinary history.

OVERVIEW

FINRA requested that McCutchen appear and provide on-the-record testimony pursuant to a FINRA Rule 8210 request that was issued in connection with an ongoing FINRA examination. McCutchen has declined to appear for his testimony, in violation of FINRA Rules 8210 and 2010.

FACTS AND VIOLATIVE CONDUCT

On July 22, 2016, FINRA staff sent a written request to Jerry McCutchen to appear for on-the-record testimony pursuant to FINRA Rule 8210. The request was sent in connection with an investigation into allegations by certain customers that McCutchen made unsuitable recommendations to them with regard to the purchase of certain alternative investments. The request required that McCutchen appear in Chicago and provide sworn testimony on August 17 and 18, 2016.

As stated in his email to FINRA staff on August 10, 2016, and by this agreement, Jerry McCutchen acknowledges that he received FINRA's request and will not appear for on-the-record testimony.

By refusing to appear for on-the-record testimony as requested pursuant to FINRA Rule 8210, McCutchen violates FINRA Rules 8210 and 2010.

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

A bar from associating with any FINRA member firm, in any capacity.

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. 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 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

