

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2016050901101**

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

RE: Charles Cumber, Respondent  
Registered Representative  
CRD No. 2514669

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**

Charles Cumber entered the securities industry in July 1994 as an Investment Company Shares and Variable Contracts Representative. From October 2011 to March 2016, he was registered with U.S. Bancorp Investments, Inc. (“USBI”) as a General Securities Representative. Thereafter, he was registered with another FINRA member firm from April 2016 until March 2017, when he was discharged in connection with the discovery of the conduct described in this AWC. Since April 20, 2017, Cumber has been registered with another FINRA member firm. Cumber has no disciplinary history.

**OVERVIEW**

Cumber violated FINRA Rules 3270 and 2010 by conducting insurance sales through an LLC he formed without disclosing the activity or the entity to his employing firm, USBI, as an outside business activity.

## FACTS AND VIOLATIVE CONDUCT

FINRA Rule 3270 prohibits registered persons from engaging in outside business activities, including the sale of non-securities products such as equity-indexed annuities or other insurance products, unless “he or she has provided prior written notice to the member, in such form as specified by the member.” A violation of FINRA Rule 3270 also violates FINRA Rule 2010.

Between January 2015 and March 2016, Cumber engaged in twenty-four equity-indexed annuity sales to twenty individuals (thirteen of whom were USBI customers). The sales totaled approximately \$2.63 million, and Cumber earned approximately \$125,000 in commissions from the associated insurance company. Also during this period, Cumber received approximately \$27,000 in trailing compensation in connection with previous sales of insurance products. These payments were received by Cumber’s entity, Cumber & Associates LLC. While associated with USBI, Cumber received approximately \$345,000 in payments from the insurance company for sales of equity-indexed annuities and other insurance products.

Cumber did not disclose any of the insurance business, residual commissions, or the existence of Cumber & Associates LLC to USBI. Moreover, between October 2011 and March 2016, he falsely attested to USBI that he was not involved in any outside business activities and repeatedly acknowledged his understanding that the receipt of residual commissions should be disclosed to the firm through an outside business activity disclosure. On two occasions, Cumber also explicitly agreed that he would not sell insurance products for any entity other than USBI without prior notice and approval.

By virtue of the foregoing, Cumber violated FINRA Rules 3270 and 2010.

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

- A suspension of four months from association with any FINRA registered broker-dealer in any capacity;
- A fine in the amount of \$7,500.

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

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

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.

## 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 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 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 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.

7/17/2017  
Date (mm/dd/yyyy)

  
\_\_\_\_\_  
Charles Cumber, Respondent

Reviewed by:

  
\_\_\_\_\_  
Clinton W. Marrs, Esq.  
Counsel for Respondent  
Marrs Griebel Law Ltd.  
1000 Gold Avenue S.W.  
Albuquerque, NM 87102  
(505) 433-3926

Accepted by FINRA:

9/29/17  
Date

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

  
\_\_\_\_\_  
Heather L. Freiburger  
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FINRA Department of Enforcement  
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