

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2018059666301**

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

**RE:** Kirk J. Bertsch, Respondent  
Former Investment Company Products/Variable Contracts Representative  
CRD No. 4132889

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Kirk J. Bertsch, 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**

Bertsch first became registered with FINRA in June 2000 as an Investment Company Products/Variable Contracts Representative ("IR") through his association with a FINRA member firm. From September 2000 through August 2018, Bertsch was registered with FINRA through his association with Farmers Financial Solutions, LLC (CRD No. 103863) (the "Firm") as an IR. In August 2018, the Firm filed a Uniform Termination Notice for Securities Industry Registration (Form U5) terminating Bertsch's employment because he "participated in the purchase and sale of private securities transactions involving unregistered promissory notes without prior notice or approval of the Broker-Dealer."

Although Bertsch is not currently registered with FINRA or associated with a FINRA member firm, FINRA retains jurisdiction over him under Article V, Section 4(a) of the FINRA By-Laws.

### **RELEVANT DISCIPLINARY HISTORY**

In November 2018, the South Dakota Department of Labor and Regulation, Division of Insurance, sanctioned Bertsch for allegedly failing to obtain proper written approval from his firm before engaging in outside business activities, engaging in private securities transactions without notifying his firm and engaging in securities transactions that were not recorded on his firm's regular books or records. Bertsch was fined \$5,000 and ordered to permanently cease and desist from offering and selling securities in and from the State of South Dakota.

### **OVERVIEW**

In October 2017, Bertsch engaged in an undisclosed and unapproved private securities transaction of selling a \$50,000 promissory note. Bertsch's conduct violated FINRA Rules 3280 and 2010.

### **FACTS AND VIOLATIVE CONDUCT**

FINRA Rule 3280(b) states that prior to participating in any private securities transaction, an associated person shall provide written notice to the member with which they are associated describing in detail the proposed transaction and their role therein and stating whether they have received or may receive selling compensation in connection with the transaction. A private securities transaction is defined generally as any securities transaction outside the regular scope of an associated person's employment with a member. FINRA Rule 2010 requires associated persons, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.

In October 2017, Bertsch solicited an investor to purchase a promissory note relating to the Woodbridge Group of Companies LLC ("Woodbridge"), a purported real estate investment fund. Bertsch sold a \$50,000 Woodbridge promissory note to this investor. Bertsch received \$1,500 in commissions in connection with the transaction. Bertsch also personally invested \$240,000 in Woodbridge promissory notes. In December 2017, Woodbridge filed a voluntary Chapter 11 bankruptcy petition. The Firm's written supervisory procedures specifically required registered representatives to request and obtain approval prior to engaging in private securities transactions. Bertsch did not provide notice to the Firm prior to participating in the private securities transaction, nor did he obtain approval from the Firm.

By virtue of the foregoing, Bertsch violated FINRA Rules 3280 and 2010.

B. I also consent to the imposition of the following sanctions:<sup>1</sup>

- A suspension from association with any FINRA member firm, in all capacities, for one month; and
- Disgorgement of commissions received, as described below.

Disgorgement of commissions received, which is ordered to be paid to FINRA in the amount of \$1,500, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621, from October 18, 2017 until the date this AWC is accepted by the NAC. Disgorgement 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 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

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<sup>1</sup> FINRA determined not to impose a fine after considering, among other things, the sanctions ordered against Bertsch by the South Dakota Department of Labor and Regulation, Division of Insurance for the same underlying conduct.

- 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.

01/25/2019  
Date (mm/dd/yyyy)

Kirk J. Bertsch  
Kirk J. Bertsch, Respondent

Accepted by FINRA:

02/15/2019  
Date

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

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