

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2020066677701**

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

RE: Lowell Vincent Kruger (Respondent)  
Investment Company Shares and Variable Contracts Representative  
CRD No. 4183008

Pursuant to FINRA Rule 9216, Respondent Lowell Kruger 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 accepts and consents to the following findings by FINRA without admitting or denying them:

**BACKGROUND**

Kruger entered the securities industry in April 2000 when he became associated with a FINRA member firm. Between September 2016 and April 2020, Respondent was registered with FINRA as an Investment Company and Variable Contracts Products Representative (IR) through an association with Avantax Investment Services, Inc., a FINRA member firm. On April 24, 2020, Avantax filed a Uniform Termination Notice for Securities Industry Registration (Form U5) for Kruger terminating his association with the firm. On May 15, 2020, Avantax filed a Form U5 amendment that stated that Kruger had resigned while an “internal review of his alleged actions involving impersonating a client were ongoing.”

Since April 2020, Kruger has been registered as an IR through an association with another FINRA member.<sup>1</sup>

**OVERVIEW**

Between October 8 and November 20, 2019, Kruger impersonated an Avantax customer on five telephone calls to an annuity company in order to effectuate a surrender of the customer’s annuity, in violation of FINRA Rule 2010.

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<sup>1</sup> For more information about the respondent, visit BrokerCheck® at [www.finra.org/brokercheck](http://www.finra.org/brokercheck).

## **FACTS AND VIOLATIVE CONDUCT**

This matter originated from the Form U5 amendment that Avantax filed for Kruger.

FINRA Rule 2010 requires members and associated persons, in the conduct of their business, to “observe high standards of commercial honor and just and equitable principles of trade.” Impersonating a customer for the purpose of effecting a surrender of an annuity is inconsistent with this standard and constitutes a violation of Rule 2010.

Shortly before October 8, 2019, an Avantax customer requested that Kruger effectuate the surrender of an annuity. Between October 8 and November 20, 2019, Kruger impersonated the customer during five telephone calls with the annuity company. During each of the telephone calls, Kruger represented to the annuity company that he was the customer and provided the customer’s personal identifying information for authentication purposes. Through these calls, Kruger was successful in effectuating the surrender. Although the customer requested that Kruger effectuate the surrender of the annuity, he did not give Kruger permission to impersonate him with the annuity company.

Therefore, Respondent violated FINRA Rule 2010.

## **SANCTIONS CONSIDERATIONS**

In determining the appropriate sanctions in this matter, FINRA considered, among other factors, that on September 2, 2021, the State of Minnesota Department of Commerce entered a Consent Order that imposed a \$3,000 civil penalty on Kruger for violating Minnesota insurance laws by engaging in the misconduct at issue in this AWC.

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

- a 15 business-day suspension from associating with any FINRA member in all capacities and
- a \$2,500 fine.

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.

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.

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:

- 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 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 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 right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.
- 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.

12-22-21  
Date

Lowell Kruger  
Lowell Kruger  
Respondent

Reviewed by:

R. Craig Zafis  
R. Craig Zafis, Esq.  
Counsel for Respondent  
9 East 40th Street  
4th Floor  
New York, NY 10016

Accepted by FINRA:

12/29/2021  
Date

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

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