

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2022073754401**

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

RE: Kimberly E. Nuessmann (Respondent)
Former Investment Company and Variable Contracts Products Representative
CRD No. 1596560

Pursuant to FINRA Rule 9216, Respondent Kimberly E. Nuessmann 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

Nuessmann entered the securities industry in December 1987 when she became associated with a FINRA member firm. From November 2011 to January 2022, Nuessmann was registered with FINRA as an Investment Company and Variable Contracts Products Representative through an association with Securities America, Inc.

On January 3, 2022, Securities America filed a Uniform Termination Notice for Securities Industry Registration (Form U5) stating that Nuessmann had been terminated on December 17, 2021, for “[f]ailure to disclose accurate information regarding a relative who was a client during an operational inquiry from the home office.”

Although Nuessmann is not currently associated with a FINRA member, FINRA retains jurisdiction over Nuessmann pursuant to Article V, Section 4 of FINRA’s By-Laws.¹

OVERVIEW

In December 2021, Nuessmann impersonated a Securities America customer who was her deceased relative in a telephone call with Securities America. As a result of this conduct, Nuessmann violated FINRA Rule 2010.

¹ For more information about the respondent, visit BrokerCheck® at www.finra.org/brokercheck.

FACTS AND VIOLATIVE CONDUCT

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 transferring funds without proper authorization is inconsistent with this standard and thus constitutes a violation of FINRA Rule 2010.

In December 2021, Nuessmann submitted a distribution request to Securities America to transfer the proceeds of her deceased relative’s IRA account to an account controlled by two of Nuessmann’s other relatives (Relatives A and B). Securities America did not know the customer was deceased. Several days later, a firm employee called the customer to verify the distribution request. Nuessmann answered, impersonated the deceased customer and verified the request. The employee discovered that the customer was reported deceased and called the registered representative for the customer’s account for further verification. Nuessmann, who worked with the registered representative, spoke with the employee and indicated that the customer was not deceased. Ultimately, Securities America determined that the customer was deceased and canceled the distribution.

By impersonating a former customer, Nuessmann violated FINRA Rule 2010.²

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

- A 30 calendar-day suspension from associating with any FINRA member in all capacities; and
- a \$5,000 fine.

The fine 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.

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:

² In February and March 2022, pursuant to proper instructions, the proceeds of the IRA account were transferred to the two relatives’ account.

- A. To have a complaint issued specifying the allegations against her;
- 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 she 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 she has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; Respondent understands and acknowledges that FINRA does not represent or advise her and Respondent cannot rely on FINRA for legal advice. 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 her to submit this AWC.

December 14, 2022

Date



Kimberly E. Nuessmann

Respondent

Accepted by FINRA:

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

December 21, 2022

Date

Kevin M. McGee

Kevin M. McGee, Esq.

Senior Counsel

FINRA

Department of Enforcement

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