

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2022077257801**

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

RE: Malay Kumar (Respondent)  
Former Investment Company and Variable Contracts Products Representative  
CRD No. 2482909

Pursuant to FINRA Rule 9216, Respondent Malay Kumar 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**

Kumar first became registered with FINRA as an Investment Company and Variable Contracts Products Representative through an association with a FINRA member firm in 1996. Kumar became registered as an Investment Company and Variable Contracts Product Representative through an association with Cambridge Investment Research, Inc. (CRD No. 39543) in January 2018. On December 21, 2021, Cambridge filed a Uniform Termination Notice for Securities Industry Registration (Form U5), disclosing that Kumar had been discharged from the firm. Although Kumar is not currently associated with a FINRA member, he remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.<sup>1</sup>

**OVERVIEW**

Between June 2018 and October 2021, Kumar recommended that seven of his customers exchange variable annuities without reasonably considering the impact of the substantial surrender fees and the loss of benefits and liquidity caused by the exchanges. As a result, Kumar did not have a reasonable basis to believe that his recommendations were suitable or, after June 30, 2020, in his customers' best interest. By this conduct, Kumar willfully violated the Care Obligation of Rule 15l-1 of the Securities Exchange Act of 1934 (Regulation BI or Reg BI), and violated FINRA Rules 2111, 2330, and 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).

Between May 2018 and October 2021, Kumar provided inaccurate information about the source of funds on the transaction documents he submitted to the firm and the annuity issuers. Specifically, Kumar failed to identify and submit eighteen variable annuity purchases as exchanges even though each purchase was funded by the sale of another variable annuity. In doing so, Kumar caused his firm to create and maintain inaccurate books and records. As such, Kumar violated FINRA Rule 2010 by falsifying documents and making false statements and he separately violated FINRA Rules 4511 and 2010 by causing his firm to maintain inaccurate books and records.

## **FACTS AND VIOLATIVE CONDUCT**

### *Regulation Best Interest and FINRA Suitability Rules*

As of June 30, 2020, broker-dealers and their associated persons are required to comply with Regulation BI under the Securities Exchange Act of 1934. Reg BI requires a broker, dealer, or a natural person associated with a broker or dealer, when making a recommendation of any securities transaction or investment strategy involving securities (including account recommendations) to a retail customer, to act in the best interest of that retail customer at the time the recommendation is made, without placing the financial or other interest of the broker, dealer, or associated person ahead of the interest of the retail customer.

Reg BI's Care Obligation, set forth at Exchange Act Rule 151-1(a)(2)(ii), requires broker-dealers and their associated persons to exercise reasonable diligence, care, and skill to, among other things, have a reasonable basis to believe that the recommendation is in the best interest of a particular retail customer based on that retail customer's investment profile and the potential risks, rewards, and costs associated with the recommendation. Regulation BI defines a "retail customer investment profile" to include, but not be limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the member or associated person in connection with such recommendation.

Prior to June 30, 2020, FINRA Rule 2111 required members and associated persons to have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer's investment profile. FINRA Rule 2111 defined a customer's investment profile to include the same information as under the Care Obligation.

FINRA Rule 2330(b) imposes additional requirements that apply to recommendations to purchase or exchange deferred variable annuities. When recommending a deferred variable annuity, a registered representative must have a reasonable basis to believe that "the particular deferred variable annuity as a whole, the underlying subaccounts to which funds are allocated at the time of the purchase or exchange of the deferred variable annuity, and riders and similar product enhancements, if any, are suitable (and, in the

case of an exchange, the transaction as a whole also is suitable) for the particular customer.” For exchanges of deferred variable annuities, the suitability determination also must take into consideration whether, among other things, the customer would incur a surrender charge, be subject to a new surrender period, lose existing benefits, or be subject to increased fees or charges.

Violations of Reg BI and FINRA Rules 2111 and 2330 also constitute violations of FINRA Rule 2010, which requires associated persons to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

*Kumar Made Unsuitable Recommendations That Were Not in His Customers’ Best Interest*

Between June 2018 and October 2021, Kumar recommended deferred variable annuity exchanges to seven firm customers without having a reasonable basis to believe the recommendations were suitable or in his customer’s best interest. Significantly, Kumar recommended that his customers surrender, in full or in part, their existing variable annuity directly with the insurance company. As a result of these transactions, each of the seven customers incurred surrender fees. All seven of these customers relinquished living benefit riders (several of which had a benefit base that substantially exceeded the contract value), and five of them also relinquished an enhanced death benefit.

Kumar then separately recommended, shortly after they had received the proceeds of these surrenders, that these customers purchase a new variable annuity without ever considering and evaluating the two contracts as an exchange as required by FINRA Rule 2330(b). Specifically, when submitting transaction paperwork for the new variable annuity purchases, Kumar treated each purchase as a new purchase in the application and disclosure paperwork and conducted no comparison of the existing or new contracts. Moreover, when making these recommendations, Kumar was aware that at least three of his customers were facing significant liquidity issues.

Kumar did not reasonably consider any of the disadvantages of these exchanges, including surrender fees, the imposition of new, lengthier surrender periods, and the loss of valuable existing benefits, when recommending that his customers liquidate their existing contracts to purchase new variable annuities, and he did not document any of these disadvantages in the transaction paperwork. Kumar also did not conduct a comparative analysis of the advantages and disadvantages of the existing and new variable annuities or make a determination that the customers would benefit from the exchanges. Kumar thus lacked a reasonable basis to believe that the recommendations were suitable and in the best interest of his customers based on their investment profile and the potential risks, rewards, and costs associated with his recommendations.

Collectively, these exchange recommendations caused Kumar’s customers to incur \$50,103.43 in surrender fees. By recommending variable annuity exchanges without having a reasonable basis to conclude that the transactions were suitable or in the

customers' best interest, Kumar willfully violated Exchange Act Rule 15l-1 (for exchanges on and after June 30, 2020), violated FINRA Rule 2111 (for exchanges prior to June 30, 2020), and violated FINRA Rules 2330 and 2010 (for all exchanges).

*Kumar Falsified Documents and Made False Statements About Variable Annuity Transactions*

FINRA Rule 2010 requires associated persons to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Falsifying documents occurs when a person creates a document or entry in a firm's system that creates a false appearance by including altered or untrue information. Falsifying documents is inconsistent with just and equitable principles of trade and violates FINRA Rule 2010.

FINRA Rule 4511 requires member firms to make and preserve books and records in conformity with FINRA rules and Rules 17a-3 and 17a-4 of the Securities Exchange Act. Inherent in the obligation to make and preserve books and records is the requirement that they be accurate. A registered representative who enters inaccurate information into a firm's books and records violates FINRA Rules 4511 and 2010.

Cambridge's compliance procedures mandated that registered representatives fully document "annuity replacement transactions," which were defined as a transaction where an annuity is sold and the proceeds used to fund the purchase of another annuity. These procedures were designed to provide customers with the information necessary to compare the relative costs and benefits of the annuities being replaced and purchased, allow customers to make an informed investment decision, and to allow the firm the opportunity to perform a supervisory review of the suitability of the replacement transaction.

Between May 2018 and October 2021, Kumar failed to identify and submit eighteen variable annuity purchases as annuity replacements, even though each purchase was funded by the sale of another variable annuity. For sixteen of the purchases, Kumar signed and submitted the required disclosure forms to his firm stating that the customer had not surrendered or exchanged any variable annuity in the past 36 months even though Kumar had assisted the customer in surrendering another variable annuity less than sixty days prior to the purchase. Kumar left this question blank for two purchases. For each purchase, the forms falsely stated that the source of funds for the new purchase was a qualified retirement plan, CD, or savings from earned income. Kumar also signed and submitted rationales for twelve of the new purchases which stated a false source of income. Kumar signed and submitted application paperwork to the annuity issuer in connection with these transactions that falsely stated the transaction was not funded by another variable annuity.

By submitting false statements on firm and issuer paperwork used for the purchase and supervision of variable annuities, Kumar violated FINRA Rule 2010. Moreover, Kumar violated FINRA Rules 4511 and 2010 by causing the firm to maintain inaccurate books and records.

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

- a twelve-month suspension from associating with any FINRA member in all capacities;
- a \$10,000 fine; and
- restitution of \$50,103.43 plus interest as described below.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

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.

Restitution is ordered to be paid to the customers listed on Attachment A to this AWC (Eligible Customers) in the total amount of \$50,103.43, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), from date of the surrender until the date the restitution plus interest are due and payable.

Restitution plus interest ordered pursuant to this disciplinary action are due and payable immediately upon reassociation with a member firm or upon submission of any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

Respondent shall submit satisfactory proof of payment of restitution and interest (separately specifying the date and amount of each paid to each Eligible Customer) or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted by email to EnforcementNotice@FINRA.org. The email must identify Respondent and the case number and include a copy of the check, money order, or other method of payment. This proof shall be provided by email to EnforcementNotice@FINRA.org no later than 120 days after the date the restitution plus interest are due and payable.

The restitution amount plus interest to be paid to each Eligible Customer shall be treated by the Respondent as the Eligible Customer's property for purposes of state escheatment, unclaimed property, abandoned property, and similar laws. If after reasonable and documented efforts undertaken to effect restitution Respondent is unable to pay all Eligible Customers within 120 days after the restitution and interest are due and payable, Respondent shall submit to FINRA in the manner described above a list of the unpaid Eligible Customers and a description of Respondent's plan, not unacceptable to FINRA,

to comply with the applicable escheatment, unclaimed property, abandoned property, or similar laws for each such Eligible Customer.

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 sanctions imposed in this matter.

The imposition of a restitution order or any other monetary sanctions in this AWC, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

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.

Respondent understands that this settlement includes a finding that he willfully violated Rule 15l-1 of the Securities Exchange Act of 1934 and that under Article III, Section 4 of FINRA's By-Laws, this makes him subject to statutory disqualification with respect to association with a member.

## 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.

November 28, 2023

\_\_\_\_\_  
Date



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Malay Kumar  
Respondent

Reviewed by:

*Alina Veneziano*

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Alina Veneziano  
Counsel for Respondent  
Oberheiden P.C.  
30 Wall St., 8th Floor  
New York, NY 10005

Accepted by FINRA:

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

November 30, 2023

\_\_\_\_\_  
Date

*Catherine Hoge*

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Catherine L. Hoge  
Counsel  
FINRA  
Department of Enforcement  
Brookfield Place  
200 Liberty Street  
New York, NY 10281



**ATTACHMENT A  
TO LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
MATTER NO. 2022077257801**

**SCHEDULE OF RESTITUTION**

<b>Customer</b>	<b>Restitution Exclusive of Interest</b>
Customer 1	\$5,785.37
Customers 1 and 2	\$20,136.62
Customer 3	\$3,501.73
Customer 4	\$9,789.37
Customer 5	\$5,874.62
Customer 6	\$1,415.72
Customer 7	\$3,600.00
<b>TOTAL:</b>	\$50,103.43