

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20080115744-01**

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

RE: Brecek & Young Advisors, Inc., Respondent
Member Firm
CRD No. 40395

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FINRA
SAN FRANCISCO DISTRICT OFFICE

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Brecek & Young Advisors, Inc. 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 the firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The firm hereby accepts and consents, 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

Breckek had been a FINRA member firm since April 26, 1996. In or around June 2008 the firm was headquartered in Folsom, California, and had approximately 212 branches located throughout the United States, of which approximately 155 were offices of supervisory jurisdiction (OSJ), with approximately 390 registered representatives. At that time, the firm's revenues were primarily derived from retailing variable annuity products and mutual fund products and from the investment advisory business. In October of 2008 Brecek was sold to a non-member firm and in January 2009 the bulk of Brecek's assets and a majority of Brecek's registered representatives were transferred to the acquiring firm's wholly owned affiliate, which is a FINRA member firm. Brecek's registration with FINRA was terminated on or about July 9, 2010.

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OVERVIEW

From November 7, 2007, through October 30, 2008, Brecek failed to have a supervisory system, including written supervisory procedures, reasonably designed to ensure that its registered representatives charged its customers reasonable markups or markdowns and commissions on equity securities transactions.

FACTS AND VIOLATIVE CONDUCT

Background

From June 2005 through November 6, 2007, Brecek's written supervisory procedures (WSPs) regarding markups, markdowns, and commissions on equity securities transactions (Commission Policy) stated that "all customers shall receive fair prices and are not to be charged unfair or unreasonable commissions or service charges, taking into consideration all relevant circumstances." The WSPs went on to note that "no more than 5% of a transaction can be charged for commissions on agency trades or markups and markdowns on principal transactions." The firm did not provide sufficient training or guidance to its trading department or its OSJ managers to detect violations of the firm's Commission Policy, nor did it provide adequately for the use of exception reports to conduct a review of commission charges being assessed by its registered representatives. The firm also failed to establish adequate processes or have documented WSPs as to how it would handle a violation of the Commission Policy.

Violation

On November 7, 2007, the firm revised its Commission Policy to include an enumeration of the factors listed in NASD Interpretive Material (IM) 2440. IM-2440 addresses the general considerations and relevant factors that should be considered in determining whether markups, markdowns and commissions on securities transactions are fair and reasonable. Notwithstanding these revisions, the firm's supervisory system and WSPs were not reasonably designed to achieve compliance with Rule 2440 because they still failed to provide sufficient direction or guidance as to how the enumerated considerations and factors should be applied to determining appropriate sales charges on the firm's equity transactions. Further, the firm did not provide sufficient training to its registered representatives, its trading department, or its OSJ managers regarding the IM-2440 considerations and factors that it added to the Commission Policy. Brecek implemented an automated enhancement for the purpose of reducing to 5% any sales charge greater than 5%; however, the WSPs did not provide for a review of any charge less than 5% to determine the fairness thereof.

As described above, Brecek & Young's supervisory system and WSPs were not reasonably designed to achieve compliance with rules applicable to fair sales charges on customer transactions. This constituted a violation of NASD Conduct Rules 3010(a), 3010(b) and 2110 by Respondent Brecek & Young Advisors, Inc.

- B. Brecek & Young also consents to the imposition of the following sanctions:

Censure and a \$25,000 fine.

Breck & Young agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. The firm has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Breck & Young specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

Breck & Young specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against the firm;
- 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, Breck & Young specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, 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.

Breck & Young 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

Breck & Young 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 the firm; and
- C. If accepted:
 - 1. This AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
 - 2. This AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. Breck & Young 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. The firm 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 the

firm's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. Brecek & Young may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm understands that it 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.

The undersigned, on behalf of Brecek & Young, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that the firm has 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 the firm to submit it.

9/2/2010
Date (mm/dd/yyyy)

Terrance DeWald
Brecek & Young Advisors, Inc.

By: Terrance DeWald
(Please print name and title) General Counsel for B44

Reviewed by:

Terrance DeWald
Terrance (Tracy) DeWald, Counsel for Respondent
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Accepted by FINRA:

10/29/2010
Date

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

A handwritten signature in black ink, appearing to read "Mark A. Graves", is written over a horizontal line.

Mark A. Graves
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