

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2008015068501**

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

RE: Brecek & Young Advisors, Inc., Respondent
(CRD No. 40395 / BDW filed on July 6, 2010)

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Brecek & Young Advisors, Inc. ("BYA" or the "Firm") 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 BYA alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. BYA 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

BYA became a FINRA member on April 26, 1996. The Firm was headquartered in Folsom, California and had approximately 420 registered representatives, who were either employees of the Firm or independent contractors. On January 23, 2009, BYA ceased all retail broker-dealer operations. In July 2010, BYA filed a BDW with FINRA.

OVERVIEW

Between January 1, 2007 and December 1, 2008 (the "Relevant Period"), BYA failed to establish and maintain an adequate supervisory system for the review of variable annuity ("VA") replacement transactions. BYA's supervisory system allowed producing Office of Supervisory Jurisdiction ("OSJ") Principals to self-approve their variable annuity transactions. BYA's written supervisory procedures ("WSPs") also failed to provide its supervisors adequate guidance on what to review with respect to VA switch transactions, and failed to provide registered representatives with adequate guidance on recommending VA switch transactions. In addition, BYA failed to reasonably supervise the "Happiness Letters" that the Firm required OSJ Principals to send to certain customers. Although

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broker-dealers are not required to use Happiness Letter, BYA used these letters to confirm that the customer was satisfied with their VA switch transactions, but the letters at times did not accurately describe the transactions. The Firm also did not reasonably enforce its procedures that required OSJ principals to review the subaccount allocations of the entering contract to ensure that they met the customers' investment objectives. By virtue of this conduct, BYA violated NASD Rules 3010 and 2110.

FACTS AND VIOLATIVE CONDUCT

BYA Failed to Establish and Maintain an Adequate Supervisory System, Including Written Procedures, Reasonably Designed to Achieve Compliance With Applicable Securities Laws and Regulations and NASD Rules With Respect to its Variable Annuity Exchange Business

NASD Rule 3010 requires firms to establish and maintain a supervisory system, including WSPs, to supervise the activities of its registered representatives and associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations and NASD Rules.

During the Relevant Period, BYA failed to establish and maintain a supervisory system, including WSPs, to supervise the activities of its registered representatives and associated persons that was reasonably designed to achieve compliance with applicable securities laws and regulations and NASD Rules with respect to its variable annuity business.

1. BYA's Supervisory System

During the Relevant Period, the Firm had registered representatives and principals who were employees of the Firm and others who were independent contractors. The Firm's approach to supervision of its registered persons differed based upon whether the registered person was an employee of BYA or an independent contractor.

Under BYA's supervisory system, variable annuity transactions for customers of registered persons who were BYA employees were sent for review to one of two corporate OSJ office locations where a principal conducted a suitability review before the application was submitted to the applicable insurance company. The principal reviewer was required to evidence his approval of the transaction by signing the BYA Variable Annuity Form and BYA Switch Form.

Registered representatives who were independent contractors submitted their variable annuity transactions to either their specified independent contractor OSJ principal or one of the two corporate OSJ office locations for a suitability review before the application was submitted to the applicable insurance company. There were approximately eleven independent contractor OSJ branches. The independent contractor OSJ principals supervised registered representatives in their office, as well as other independent contractor registered representatives within their designated area. Similar to the corporate OSJs, independent contractor OSJ principals evidenced their approval of the

transaction by signing the BYA Variable Annuity Form and BYA Switch Form. After approving the transaction, the independent contractor OSJ principal forwarded the application to the insurance carrier and retained a copy of the application and supporting documentation.

Under the Firm's supervisory system, producing independent contractor OSJ principals were able to review their own variable annuity transactions and submit the applications directly to the insurance company. They also were required to send copies of all of the paperwork they sent to the insurance company to the Firm's OSJ Supervision Manager for his review and approval. The OSJ Supervision Manager was required to evidence his approval of the transaction by signing the BYA Variable Annuity Form and BYA Switch Form.

During the Relevant Period, six producing independent contractor OSJ principals self-approved 27 of their own variable annuity exchanges. In each instance, these OSJ principals signed as both the registered representative of record and as the approving OSJ principal and to the extent there was any secondary review, there was no other signature or electronic stamp evidencing such review by the OSJ Supervision Manager. In addition, the Firm's blotter identifies that the same person was the registered representative and supervising principal for each transaction. By allowing these producing OSJ principals to self-approve their variable annuity transactions without review by the OSJ the supervisory review by the OSJ Supervision Manager, BYA violated NASD Rules 3010 and 2110.

2. BYA's Inadequate Written Supervisory Procedures

During the Relevant Period, BYA failed to maintain written supervisory procedures that were reasonably designed to provide adequate guidance to the Firm's registered representatives and supervisors when making suitability determinations regarding variable annuity transactions.¹ In the case of a variable annuity exchange, Firms must take into consideration whether the customer would incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living, or other contractual benefits), or be subject to increased fees or charges (such as mortality and expense fees, investment advisory fees or charges for riders and similar product enhancements), and whether the customer would benefit from product enhancements and improvements.

During the Relevant Period, BYA's written supervisory procedures required Principals to "closely review all available data, to make an effective determination if the VA purchase is suitable." BYA's WSPs, however, failed to set forth sufficient factors the registered representatives should consider in recommending a VA exchange, or provide adequate guidance to the OSJ Principal as to the factors they should consider when reviewing VA

¹ A broker who makes a recommendation to a customer is required by NASD Rule 2310(a) to have "reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs."

replacement transactions for suitability. Indeed, BYA's WSPs failed to provide any specific guidance, stating: "The firm does not provide specific parameters for Principals, as a suitability review is subject to Principals discretion and every client's needs and situation are unique."

Following certain VA exchange transactions the OSJ principal approved in any given month, the OSJ principal sent the customer a letter to follow up on their VA exchange transaction ("Happiness Letters"). Although broker-dealers are not required to use Happiness Letters, these letters were intended to confirm that the customer had exchanged their VAs for the reasons specified on the VA exchange forms submitted to the OSJ principal by the registered representative. When sent, BYA required the OSJ principals to send the letters shortly after the transaction during the 30-day free-look period. Because the Firm WSPs did not provide specific guidance on suitability of VA replacement transactions, there was inadequate guidance with respect to the content of the Happiness Letters. As a result, certain BYA OSJ principals sent customers Happiness Letters that at times did not accurately specify the customers' reasons for their VA exchange.

By virtue of this conduct, BYA violated NASD Rules 3010(b) and 2110.

3. Failure to Enforce the Firm's Written Supervisory Procedures

During the Relevant Period, BYA failed to fully implement its WSPs with respect to the review of variable annuity exchange transactions. BYA's OSJ Guide required OSJ principals to review the subaccount allocations of the entering contract to ensure that they met the customer's investment objectives. When customers chose to use a third-party to manage their VAs, however, the registered representative submitted VA forms for review that left the allocations section blank, or set forth only a temporary selection for the allocation because the allocation would vary depending on both the date when the transaction was executed and which of the investment strategies applied under the third party manager's model at that time. While the registered representatives and reviewing principals understood that these initial allocations were temporary, would depend on the transaction execution date and the investment strategies that applied on that date of execution, and did not reflect the intended allocations for the VA, the Firm did not require OSJ principals to conduct a supplemental review of the subsequently selected subaccount allocations, nor did the OSJ principals always conduct such a supplemental review.

By virtue of this conduct, BYA violated NASD Rules 3010(b) and 2110.

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

1. A censure; and

2. A fine of \$125,000.

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

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

BYA 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.

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against it;
- 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, BYA 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.

BYA 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

BYA 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 me; 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 BYA;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about BYA'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. BYA 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. BYA 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 BYA's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. BYA 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 the Firm, 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.

2/22/11
Date

Breck & Young Advisors, Inc.
Respondent

By: Terrance A. Weld

Reviewed by:

B. B. Asbill

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Accepted by FINRA:

3/10/11
Date

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

Julie H. Broderick
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