

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20110291629**

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

RE: David Lloyd Barber, Respondent
General Securities Representative
CRD No. 1165082

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, David Lloyd Barber ("Barber") 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 Barber alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Barber 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

Barber entered the securities industry in 1987 with a FINRA registered broker-dealer as a non-registered employee. He left that broker-dealer in June 1994 and worked for three other FINRA registered broker-dealers as a general securities representative. In August 2007, Barber joined Raymond James & Associates, Inc. ("Raymond James" or the "Firm"), also a FINRA registered broker-dealer. While at Raymond James, Barber worked as a general securities representative at the Firm's branch office in Newport Beach, California. Barber was terminated from Raymond James on September 12, 2011 for borrowing funds from Firm customers and maintaining an undisclosed outside business activity.

Barber has no disciplinary history and is currently employed in the securities industry with FINRA member First Midwest Securities, Inc. as a general securities representative. FINRA currently retains jurisdiction over Barber.

RELEVANT DISCIPLINARY HISTORY

Barber has no prior disciplinary history in the securities industry.

OVERVIEW

Between January 2009 and September 2011 (the "Relevant Period"), Barber improperly received five loans totaling \$867,000 from three Firm customers, in violation of NASD Rule 2370 and FINRA Rules 3240¹ and 2010. The three customers were Barber's personal friends before they established securities accounts with him at Raymond James. Barber concealed these improper loans by receiving them through a bank account linked to Glenbrook Avocados, LLC ("Glenbrook Avocados"), an undisclosed outside business entity owned by Barber. By failing to disclose his ownership of Glenbrook Avocados to Raymond James, Barber also violated NASD Rule 3030 and FINRA Rules 3270² and 2010.

FACTS AND VIOLATIVE CONDUCT

Improper Loans from Customers

NASD Rule 2370 and FINRA Rule 3240 prohibit associated persons from borrowing money from or lending any money to any customer unless the employing member firm has written procedures allowing such activity. Raymond James prohibited its employees from borrowing funds from customers.

FINRA Rule 2010 requires all associated individuals to observe high standards of commercial honor and equitable principles of trade.

Between January 2009 and July 2011, Barber received five loans from three Firm customers (collectively, the "Customers"), totaling \$867,000. Barber had been personal friends with the Customers before they opened their accounts with Barber at Raymond James.

On January 28, 2009 and June 1, 2011, Barber borrowed \$460,000 from Customer 1 and \$45,000 from Customer 2, respectively. Barber borrowed a total of \$362,000 from the Customer 3 between December 11, 2009 and July 22, 2011. Specifically, Customer 3 originally loaned \$225,000 to Barber on December 11, 2009; then Customer 3 loaned an additional \$92,000 on February 24, 2010; and finally, Customer 3 loaned \$45,000 on July 22, 2011 to Barber.

¹ FINRA Rule 3240 superseded and replaced NASD Rule 2370 on June 14, 2010.

² FINRA Rule 3270 superseded and replaced NASD Rule 3030 on December 15, 2010.

The Customers provided the loans to Barber by transferring their monies via wire transfer from their brokerage accounts at the Firm to a checking account in the name of Glenbrook Avocados, a business entity owned by Barber that had not been disclosed to the Firm. In doing so, Barber concealed the five loans from Raymond James. Barber then moved the Customers' monies via electronic funds transfers to his personal checking account and used the monies to pay personal expenses.

Barber repaid Customer 1's loan on September 1, 2011, and repaid Customer 2 and Customer 3's loans on January 5, 2012.

By obtaining loans from Firm customers, Barber violated NASD Rule 2370 and FINRA Rules 3240 and 2010.

Undisclosed Outside Business Activity

NASD Rule 3030 prohibits associated persons from being employed by, or accepting compensation from, any other person as a result of any business activity, other than a passive investment, outside the scope of the associated person's employment relationship with the member firm, unless the associated person has provided prompt written notice to the member firm. Rule 3030 requires prompt disclosure at the time when steps are taken to commence a business activity.

FINRA Rule 3270 prohibits associated persons from being an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member.

On January 12, 2009, Barber filed articles of organization with the California Secretary of State to form Glenbrook Avocados, a California limited liability company. The purpose of Glenbrook Avocados was "to sell fresh produce and to provide consulting services." Barber was the sole manager and had the exclusive right to manage the business of Glenbrook Avocados. Barber also established a business checking account in the name of Glenbrook Avocados and obtained a federal tax identification number for the entity.

By failing to provide prompt written notice to Raymond James of his involvement in Glenbrook Avocados, Barber violated NASD Rule 3030 and FINRA Rules 3270 and 2010.

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

- Four month suspension from association with any FINRA member in any capacity, and
- \$25,000 fine.

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

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

Barber 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, Barber 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 herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

Barber 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, Barber 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.

Barber 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

Barber 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 him; and**
- C. If accepted:**
 - 1. this AWC will become part of Barber's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against him;**
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Barber'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. Barber 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. Barber may not take any position in any**

Barber 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; that he 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 him to submit it.

12-5-12
Date

David Lloyd Barber
David Lloyd Barber

Reviewed by:

David Schindler
David Schindler
Counsel for Respondent
Latham & Watkins, LLP
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Los Angeles, California 90071-1560
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Accepted by FINRA:

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

2/4/13
Date

Susan Light
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