

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015048141701**

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

RE: Michael Babyak, Jr. II, Respondent
CRD No. 2376943

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Michael Babyak, Jr. II ("Babyak" or "Respondent"), 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 me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. I hereby accept and consent, 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

From 1994 to November 2015, Babyak was registered as a general securities agent, and from 1996 to November 2015 as a general securities principal, with LPL Financial LLC ("LPL"). In 2002, he also registered as an investment advisor representative with the State of New Jersey. Babyak was registered as a general securities representative with another FINRA member from December 2015 until September 19, 2016. He is not currently registered with a FINRA member, but remains subject to FINRA jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

Respondent has no disciplinary history.

OVERVIEW

From 2012 to 2016, Babyak participated in private securities transactions involving four LPL customers without first providing LPL notice of his activities. In 2012, Babyak had the four customers invest a total of \$4,250,000 into a limited liability company ("LLC") that he set up.

He then caused the LLC to loan the \$4.25 million to a third party for the benefit of his customers. In 2014 and 2015, Babyak arranged for the LLC to use funds repaid from the \$4.25 million loan to extend loans on behalf of the customers to two additional borrowers. One borrower received a total of \$1,045,862.40, and another a total of \$984,804.22. Again, Babyak did not notify LPL that he was participating in these additional transactions. By participating in these transactions, Babyak participated in private securities transactions without providing prior written notice to his employer, in violation of NASD Rule 3040, and FINRA Rules 3280 and 2010.

FACTS AND VIOLATIVE CONDUCT

In late 2011, a customer asked Babyak to assist one of its executive officers with real estate debt refinancing. Without providing any written or oral notice to LPL, over the next several months Babyak assisted the executive with debt restructuring by, among other things, soliciting certain LPL customers to lend money to the executive. Four of those customers agreed to lend a total of \$4.25 million to the executive.

In order to facilitate the lending, Babyak established an LLC in which the investor funds were pooled; the LLC, using the funds provided by the customers, extended a \$4.25 million loan to the executive. Babyak was listed on the Certificate of Formation as the LLC's registered agent and authorized representative. He also obtained a tax identification number for the LLC, arranged for legal representation for the LLC, assisted in wiring funds from LPL accounts to the borrower and the LLC's bank account, and signed the loan agreement and related security agreement on behalf of the LLC.

By November 2014, the LLC had received repayment with interest of approximately \$2.9 million from the initial \$4.25 million loan and disbursed approximately \$2.8 million of those payments to the four investors in the LLC.¹ In November 2014, at Babyak's suggestion, the customers who had invested in the LLC agreed to lend funds generated from future repayments on the \$4.25 million loan to two additional borrowers. From March 27, 2015 to October 6, 2015, therefore, Babyak caused the LLC to loan a total of \$1,045,862.48, in five separate installments, to one of the additional borrowers. This borrower has made all interest and principal payments due on the loan. Babyak caused the LLC to lend a total of \$984,804.22, \$50,000 on May 1, 2015 and \$934,804.22 on August 31, 2015, to the third borrower. The third borrower has fully repaid the loan. At no time did Babyak notify LPL of his participation in these transactions.

As a result of the conduct described above, Babyak participated in private securities transactions without providing prior written notice to his employer, in violation of NASD Rule 3040, and FINRA Rules 3280 and 2010.

¹The remaining \$100,000 of the \$2.9 million was reserved to pay expenses associated with operating the LLC. By September 2015, the borrower had repaid all interest and principal owing to the LLC.

B. I also consent to the imposition of the following sanctions:

A bar from associating with any FINRA member in any capacity.

I understand that if I am barred or suspended from associating with any FINRA member, I become 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, I 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. A bar or expulsion shall become effective upon approval or acceptance of this AWC.

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against me;
- 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, I specifically and voluntarily waive 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 acceptance or rejection of this AWC.

I further specifically and voluntarily waive 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.

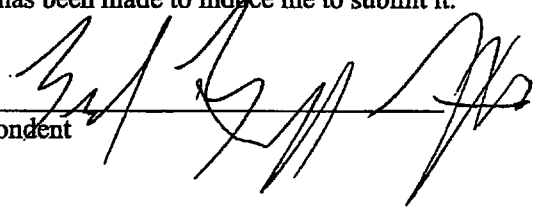
OTHER MATTERS

I understand 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 my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;**
 - 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 the subject matter thereof in accordance with FINRA Rule 8313; and**
 - 4. I 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. I 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 my: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.**

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have 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 me to submit it.

10/19/2016
Date (mm/dd/yyyy)


Respondent

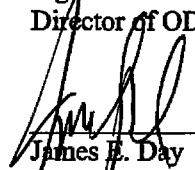
Reviewed by:

Sharron E. Ash, Esq.
Hamburger Law Firm, LLC
Counsel for Respondent
61 W. Palisade Ave
Englewood, NJ 07631
(201) 705-1200

Accepted by FINRA:

10/31/16
Date

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



James E. Day
Vice President & Chief Counsel
FINRA Department of Enforcement
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