

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2018060409301**

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

RE: Barry John Hartwyk, Respondent
Former General Securities Representative
CRD No. 1527583

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Barry John Hartwyk, 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 herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent 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

Hartwyk entered the securities industry in 1989 and from that time until August 2003, he was registered as a General Securities Representative through his association with four separate FINRA member firms. In August 2003, Hartwyk associated with RBC Capital Markets, LLC ("RBC" or the "Firm"), and became registered as a General Securities Representative. On November 6, 2018, the Firm filed a Form U5 notice of termination for Hartwyk disclosing that he had been discharged for violating Firm policies related to, among other things, the conduct described herein.

Hartwyk is no longer associated with a FINRA member, but FINRA retains jurisdiction over him pursuant to Article V, Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

Respondent does not have any disciplinary history with the Securities and Exchange Commission, any state securities regulators, FINRA, or any other self-regulatory organization.

OVERVIEW

From March 21, 2018 to October 15, 2018, (the “Relevant Period”), Hartwyk exercised discretion without written authorization for 208 trades in eight customer accounts, thereby violating NASD Rule 2510(b) and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

FINRA began its investigation after receiving the November 2018 Form U5 filed by RBC described above.

NASD Rule 2510(b) prohibits registered representatives from “exercis[ing] any discretionary power in a customer’s account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the member.”¹

During the Relevant Period, Hartwyk placed a total of 208 discretionary trades in eight customers’ accounts. Although these customers verbally authorized Hartwyk to exercise discretion, Hartwyk did not have their written authorization to exercise discretion nor did he request or obtain RBC’s approval to exercise discretion in their accounts.²

By virtue of the foregoing, Hartwyk violated NASD Rule 2510(b) and FINRA Rule 2010.

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

1. A 15 business day suspension from association with any FINRA member in any capacity; and
2. A fine of \$5,000.

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.

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.

¹ Subsequent to the Relevant Period, NASD Rule 2510 was superseded by FINRA Rule 3260 (effective May 8, 2019).

² RBC’s policies during the Relevant Period prohibited the Firm’s representatives from exercising discretion except in limited circumstances not present here.

Respondent specifically and voluntarily waives any right to claim an inability to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

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

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 acceptance or rejection of this AWC.

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

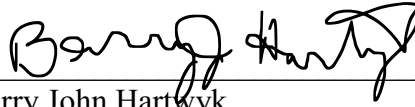
9216;

- 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 the subject matter thereof 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: (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.
- 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 or its staff.

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 herein and the prospect of avoiding the issuance of a Complaint, has been made to induce him to submit this AWC.

June 10, 2020

Date



Barry John Hartwyk
Respondent

Reviewed by:

/s/ Patrick R. Mahoney

Patrick R. Mahoney

Counsel for Respondent

The Law Offices of Patrick R. Mahoney, P.C.

9454 Wilshire Blvd., Suite 303

Beverly Hills, CA 90212

Accepted by FINRA:

June 18, 2020

Date

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



Joshua I. Sherman

Senior Counsel

FINRA

Department of Enforcement

Brookfield Place

200 Liberty Street, 11th Floor

New York, New York 10281