

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2017054722701**

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

RE: Andrew J. LeBlanc II, Respondent  
General Securities Representative  
CRD No. 2607117

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Andrew J. LeBlanc II 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**

LeBlanc first became registered with FINRA in 1995 as a General Securities Representative (GSR) through Merrill Lynch, Pierce, Fenner & Smith Inc. LeBlanc voluntarily resigned from Merrill Lynch on March 31, 2017. Merrill Lynch submitted a Form U5 terminating his registration on April 4, 2017. LeBlanc became registered with FINRA as a GSR through another FINRA member on April 7, 2017. In June 2017, Merrill Lynch amended LeBlanc's Form U5 to disclose that it had received a complaint from one of LeBlanc's customers.

**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**

Between January 2012 and August 2013, while associated with Merrill Lynch, LeBlanc participated in two private securities transactions involving \$1.75 million in sales to three

customers without providing written notice to the firm. Accordingly, LeBlanc violated NASD Rule 3040 and FINRA Rule 2010.

### **FACTS AND VIOLATIVE CONDUCT**

FINRA began an investigation into this matter in June 2017 after receiving notice of the firm's amended Form U5 described above.

NASD Rule 3040 prohibits any person associated with a member from "participat[ing] in any manner in a private securities transaction" without first providing written notice to his member firm.<sup>1</sup> NASD Rule 3040(e) defines a private securities transaction as any securities transaction outside of the regular course or scope of an associated person's employment with a member. Participation in a private securities transaction includes not only making the sale, but also, for example, "referring customers, introducing customers to the issuer, [and] arranging and/or participating in meetings between customers and the issuer."<sup>2</sup> A violation of NASD Rule 3040 is also a violation of FINRA Rule 2010.

Between January 2012 and August 2013, LeBlanc participated in two private securities transactions involving \$1.75 million in securities. First, LeBlanc participated in the purchase by a customer of a \$500,000 membership interest in a closely held film company organized as an LLC. Second, LeBlanc participated in the sale of \$1.25 million in preferred stock in a closely held men's apparel company to an investor group consisting of the first customer and two other customers. He used the firm's email system to participate in these transactions.

LeBlanc neither originated the customers' investments nor did he recommend that the customers purchase the securities. However, he participated in the purchases by arranging for and attending a meeting between the first customer and the president of the closely held LLC, and by attending a meeting between the two other customers and a major shareholder of the second company. He received legal documentation from the customers' attorney and forwarded that documentation to his clients. He was instructed by two of his clients to pay for the investments from their firm accounts. He also discussed the investments with executives of both companies; the customers; and the customers' attorney. Although the companies are still operating, the three customers are unlikely to receive any return on these investments.

All three customers were pre-existing customers of the firm at the time of the sales; were experienced investors, had a high net worth, and, in connection with these investments, were represented by counsel. LeBlanc received no compensation for his participation in the transactions.

LeBlanc did not provide written notice to the firm prior to his participation in the private securities transactions, as required by NASD Rule 3040 and the firm's written

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<sup>1</sup> NASD Rule 3040 was superseded by FINRA Rule 3280 effective September 21, 2015, after the relevant period herein.

<sup>2</sup> See NASD Notice to Members 01-79 at 4 n.7 (Dec. 2001).

supervisory procedures. During June 2013 and May 2014, LeBlanc also failed to list his involvement with these private investments on Firm annual certifications calling for him to disclose his involvement with securities transactions away from the firm.

By virtue of the foregoing, LeBlanc violated NASD Rule 3040 and FINRA Rule 2010.

### **SANCTIONS CONSIDERATIONS**

In determining the appropriate sanction in this matter, FINRA considered, among other factors, that (1) the customers were each experienced investors, had a high net worth, and were represented by counsel in these transactions; (2) LeBlanc did not recommend the investments, but rather facilitated transactions that the customers themselves wanted to make; and (3) LeBlanc was not compensated for his role in the transactions.

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

- A suspension from association with any FINRA member, in all capacities, for 6 months; and
- A \$20,000 fine.

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

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.

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 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 prejudice 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(s); 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.

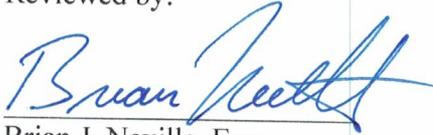
D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that he may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement 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.

10/20/2020  
Date

Andrew J. LeBlanc  
Andrew J. LeBlanc II  
Respondent

Reviewed by:



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Accepted by FINRA:

10/28/2020

Date

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



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