

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2020067764002**

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

RE: LPL Financial LLC (Respondent)
Member Firm
CRD No. 6413

Pursuant to FINRA Rule 9216, Respondent LPL Financial LLC 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 in this AWC.

I.

ACCEPTANCE AND CONSENT

- A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

LPL has been a FINRA member since February 1973. The firm conducts a general securities business and maintains its headquarters in Fort Mill, South Carolina. The firm has approximately 26,000 registered representatives located in more than 16,000 branches.¹

OVERVIEW

From September 2018 through August 2019, LPL failed to investigate red flags related to a registered representative's (the Representative) undisclosed outside business activities, and as a result, the firm failed to reasonably supervise transfers of funds by the Representative's LPL customers to third parties, including a purported investment advisory firm (the Entity), after which the customers' funds were converted by a third party.

As a result, LPL violated FINRA Rules 3110 and 2010.

¹ For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA’s review of an amended Uniform Termination Notice for Securities Industry Registration (Form U5) filed by LPL in August 2019 concerning the Representative. The amended Form U5 disclosed that the Representative had been identified in an arbitration alleging that he “moved [a customer’s individual retirement account] to a different administrator and used forged documentation to invest [the customer’s] money in a Ponzi scheme.”²

A. Applicable Rules

FINRA Rule 3110 requires that each member firm establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. The duty to supervise imposed by Rule 3110 also includes the responsibility to reasonably investigate red flags that suggest that misconduct may be occurring and act upon the results of such investigation. A violation of FINRA Rule 3110 also constitutes a violation of FINRA Rule 2010, which requires FINRA members to “observe high standards of commercial honor and just and equitable principles of trade” in the conduct of their business.

FINRA Rule 3270 prohibits registered 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, in such form as specified by the member.”

B. LPL Ignored Red Flags that the Representative Was Conducting Undisclosed Outside Business Activities

While associated with LPL, the Representative caused five LPL customers to transfer funds from their LPL accounts, or from annuity contracts that the customers held, directly to the Entity or to accounts held at a third-party custodian for which the Entity was the advisor. The transferred funds were ultimately converted by a third party. From September 2018 through August 2019, LPL failed to investigate red flags that the Representative was conducting undisclosed, investment-related business activities through the Entity.

First, LPL knew that the Representative conducted minimal business through LPL. In September 2018, the Representative – who had earned less than \$900 in annual compensation from LPL that year – stopped working for the investment advisory firm that was his primary source of income. The following month, the Representative’s branch office supervisor informed the firm that he would no longer supervise the Representative due to his low production. LPL therefore instructed the Representative that it would

² FINRA barred the Representative from associating with any FINRA member firm in March 2021.

terminate his registration unless he joined a new branch office or submitted a written request to remain under home office supervision by November 2018. The Representative did not join a new branch office or request to remain under home office supervision at any time prior to his resignation in August 2019. Nonetheless, LPL did not take reasonable steps to investigate whether the Representative was conducting outside business activities.

Second, in October 2018, the Representative disclosed in an annual firm compliance questionnaire that he used a social media networking website for business purposes without obtaining LPL's approval to do so. Despite such notice, LPL never reviewed the Representative's account on the social media networking website. Had LPL done so, the firm would have learned that the Representative identified himself on his account profile as "Vice President, Investor Relations" for the Entity and that he failed to disclose to LPL his affiliation with an investment-related outside business activity.

Third, LPL failed to identify or investigate red flags contained in emails sent to and from the Representative's LPL email address. For example, the firm failed to identify that, from February through July 2019, the Representative's LPL email account received approximately 40 emails from the social media networking website reflecting that the Representative had updated his profile to include references to work he performed on behalf of the Entity. LPL also failed to identify that beginning in February 2019, the Representative sent multiple emails from his LPL email account to an email address associated with the Entity, including one email to which Representative attached paperwork concerning an LPL customer. Likewise, LPL failed to identify that in February 2019, the Representative received an email from an outside annuity company indicating that Representative had changed his contact email address from his LPL email address to an email address associated with the Entity.

In February 2019, the Representative caused three LPL customers to surrender variable and fixed annuities and to send the proceeds via check to the Entity. In addition, for one of the customers, the Representative requested LPL send the total value of the customer's accounts held at LPL via check to the Entity. Because LPL had failed to identify the red flags that the Representative conducted outside business activities on behalf of the Entity, the firm did not take reasonable steps to investigate the Representative's transfer of customer funds to the Entity..

In total, the Representative caused five LPL customers to transfer over \$650,000 to the Entity or to accounts held at a third-party custodian for which the Entity was the advisor, after which the funds were converted by a third party.³

By failing to reasonably supervise the Representative, LPL violated FINRA Rules 3110 and 2010.

³ Two customers independently recovered their funds; LPL provided restitution to three customers.

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

- a censure and
- a \$150,000 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 it proposes to pay the fine imposed.

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

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

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 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, 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 its acceptance or rejection.

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 its subject matter 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 right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.
- 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 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.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's 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 Respondent has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

December 1, 2022

Date



LPL Financial LLC
Respondent

Print Name: Matthew Morningstar

Title: Executive Vice President

Reviewed by:



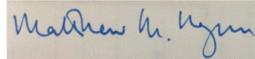
Paul M. Tyrrell
Counsel for Respondent
Sidley Austin LLP
60 State St., 36th Floor
Boston, MA 02109

Accepted by FINRA:

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

December 7, 2022

Date



Matthew M. Ryan
Principal Counsel
FINRA
Department of Enforcement
1601 Market St., Suite 2700
Philadelphia, PA 19103-2339