

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2018057457401**

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

RE: Blake Adam Levy (Respondent)
Former General Securities Representative
CRD No. 4593636

Pursuant to FINRA Rule 9216, Respondent Blake Adam Levy 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

Levy first registered with FINRA in 2003. From August 2016 through September 2019, he was associated with Westpark Capital, Inc. and registered with FINRA as a General Securities Representative. He was registered with FINRA through an association with another member firm from September 2019 through June 2022. He is not currently registered or associated with a FINRA member. However, he remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.¹

OVERVIEW

Between August 2016 and July 2017, Levy recommended that 20 customers purchase membership interests in two funds (the Funds) for \$2,260,299 through two private placement offerings, without having a reasonable basis to make those recommendations, in violation of FINRA Rules 2111 and 2010. In addition, Levy made negligent omissions in connection with the sale of membership interests in the Funds, in violation of FINRA Rule 2010, both independently and in contravention of Section 17(a)(2) of the Securities Act of 1933.

¹ For more information about the Respondent, visit BrokerCheck® at www.finra.org/brokercheck.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a FINRA cause examination.

I. Levy lacked a reasonable basis to recommend purchases of membership interests in the Funds.

FINRA Rule 2111 requires associated persons to have a reasonable basis to believe that a recommended securities transaction is suitable for the customer. FINRA Rule 2111.05 further requires associated persons to have a reasonable basis to believe, based on reasonable diligence, that a recommended securities transaction is suitable for at least *some* investors. In general, what constitutes reasonable diligence will vary depending on, among other things, the complexity of and risks associated with the security and the associated person's familiarity with the security. An associated person's reasonable diligence must provide the associated person with an understanding of the potential risks and rewards associated with the recommended security. FINRA Regulatory Notice 10-22 provides that, for recommendations involving the private placement of securities, a registered representative's reasonable due diligence should include an evaluation of the issuer and individuals associated with the issuer, the issuer's purported business and prospects, and the use of the offering's proceeds. A violation of FINRA Rule 2111 is also a violation of FINRA Rule 2010.

Between August 2016 and July 2017, the Funds conducted separate private placement offerings, in which they sold membership interests to investors through Westpark. The proceeds from these offerings were used by the Funds to purchase rights to restricted shares of stock in pre-initial public offering (pre-IPO) companies. The acquisition of these rights was effectuated through a three-step process. In the first step, one of two counterparties obtained rights to shares of stock in a pre-IPO company, typically either by a forward purchase agreement² with a company shareholder or through private equity funds affiliated with certain online marketplaces for private securities. In the second step, the counterparty entered into a forward purchase agreement with one of the Funds, by which the counterparty agreed to deliver to the Fund the shares it obtained in the first step, with the transfer of shares being deferred until the counterparty obtained the actual shares. In the third step, the Funds sold membership interests to investors and used the proceeds to fund the forward purchase agreements with the counterparties in the second step. Investors in the Funds did not obtain shares of stock in the underlying pre-IPO company until after the company went public, if at all.

Levy did not perform reasonable diligence on the Funds before recommending them to customers and failed to understand the risks related to the investments. This failure stemmed, in part, from Levy's negligent review of the offering materials, which was cursory and only aimed at giving himself a high-level understanding of the offering terms. He did not understand the three-step process by which the Funds acquired rights to shares of stock in pre-IPO companies and was unaware of the counterparties' involvement in that process. He did not understand the terms of the forward purchase

² Forward purchase agreements are executory contracts used to secure future rights.

agreements or the risks associated with them. He did not know the source of the shares of stock in the pre-IPO companies, incorrectly believing the Funds were acquiring them directly from shareholders in the pre-IPO companies. He did not understand that the Funds were not receiving shares of stock in the pre-IPO companies but only rights to those shares. He also did not understand that the customers would not receive those shares if the pre-IPO companies never went public. Without sufficient understanding of these fundamental features or risks of the Funds, Levy recommended that 20 of his customers purchase membership interests in the Funds, investing a total of \$2,260,299.

As a result, Levy violated FINRA Rules 2111(a) and 2010.

II. Levy made negligent omissions of material information.

FINRA Rule 2010 requires associated persons to “observe high standards of commercial honor and just and equitable principles of trade” in the conduct of their business.

Section 17(a)(2) of the Securities Act provides that it shall be unlawful “to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.” It is a violation of FINRA Rule 2010 to act in contravention of Section 17(a) of the Securities Act.

In addition, making a material misrepresentation or omitting a material fact to customers independently violates FINRA Rule 2010. Broker-dealers have an obligation to disclose accurate information to prospective investors about their own financial incentives to make recommendations, including any potential selling compensation, because such incentives represent a potential conflict of interest that could influence the broker-dealer’s recommendation.

When he sold membership interests in the Funds to customers, Levy negligently failed to inform them about his role in the management company that managed the Funds and the sources of his potential compensation. Levy also used offering materials that did not disclose these material facts. Levy was one of two equal owners in the management company that managed the Funds and, in that capacity, was entitled to compensation from three sources: the management fees, the placement agent fees, and the performance fees. Although the offering materials disclosed that the management company would receive management fees and had the potential to earn performance fees, neither the offering materials nor Levy disclosed Levy’s role in and ownership of the management company and his interest in the management and performance fees. The offering materials also disclosed a placement agent fee. However, neither the offering materials nor Levy disclosed that these fees would not be paid entirely to the placement agent, Westpark, but instead would be divided among Westpark, the management company, and the selling broker. Levy, by virtue of his role in the management company and as a selling broker, was entitled to receive a portion of the placement agent fees. Because Levy never fully reviewed the offering materials, he was incapable of correcting the omissions therein.

As a result, Levy violated FINRA Rule 2010, both independently and by acting in contravention of Section 17(a)(2) of the Securities Act.

- B. Respondent also consents to the imposition of the following sanctions:
- a four-month suspension from associating with any FINRA member in all capacities; and
 - a \$5,000 fine.

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.

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.

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 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 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 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 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.

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

June 17, 2023

Date

Blake A. Levy

Blake Adam Levy
Respondent

Reviewed by:

Robert Herskovits

Robert L. Herskovits
Counsel for Respondent
Herskovits PLLC
305 Broadway, 7th Floor
New York, NY 10007

Accepted by FINRA:

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

June 20, 2023

Date

Katherine Betcher

Katherine Betcher
Principal Counsel
FINRA
Department of Enforcement
100 Pine Street
San Francisco, CA 94111