

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015046376501**

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

RE: Gerard A. Fagnant, Respondent
General Securities Representative
CRD No. 1886886

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Gerard A. Fagnant ("Fagnant"), submit 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

Fagnant entered the securities industry in September 1988 and became registered with FINRA as a General Securities Representative (Series 7) in October 1988. From September 1998 to November 2011, Fagnant was associated with two FINRA member firms.

In November 2011, Fagnant became associated with LPL Financial LLC (the "Firm"). In a Form U5 Uniform Termination Notice for Securities Industry Registration ("Form U5") dated April 24, 2015, the Firm reported Fagnant's termination on March 6, 2015 for "failure to complete firm element continuing education requirements." Fagnant's registration with FINRA ended on April 24, 2015.

In a subsequent Form U5 amendment dated July 17, 2015, the Firm reported a written complaint filed against Fagnant by Firm customers CA and JA, a married couple. The Form U5 stated that CA and JA invested in a "private promissory note which was subsequently never repaid."

Fagnant is not currently registered with a FINRA member firm, but remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of the

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FINRA By-Laws.

RELEVANT DISCIPLINARY HISTORY

Fagnant has no prior relevant disciplinary history.

OVERVIEW

From June 2013 to September 2014 (the "Relevant Period"), while associated with the Firm, Fagnant improperly accepted five loans totaling \$325,000 from two Firm customers, in violation of FINRA Rules 3240 and 2010. Fagnant also falsely represented on two Firm compliance questionnaires dated October 2013 and November 2014 that he was in compliance with the Firm's policies and procedures concerning lending arrangements and promissory notes, in violation of FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

In December 2011, CA and JA opened a joint brokerage account at the Firm. Fagnant was the registered representative assigned to, and had discretionary trading authority over, the customers' brokerage account.

During the Relevant Period, CA and JA loaned Fagnant a total of \$325,000 on five separate occasions in June 2013, January 2014, May 2014, August 2014, and September 2014. Of the \$325,000 loaned to Fagnant, the customers obtained \$300,000 from their brokerage account.

Specifically, during the Relevant Period, the customers liquidated approximately \$281,203 worth of securities on three occasions in June 2013, May 2014 and August 2014 and were issued four Firm checks totaling \$300,000 in June 2013, May 2014, August 2014 and September 2014. The activity resulted in the near depletion of the customers' brokerage account.

The following chart summarizes the activity in the brokerage account during the Relevant Period:

Date	Description	Amount
6/01/2013	Opening Balance	\$311,277
6/26/2013	Securities Sold	\$99,019
6/28/2013	Check Issued	\$75,000
5/12/2014	Securities Sold	\$71,476
5/15/2014	Check Issued	\$100,000
8/01/2014	Securities Sold	\$110,708
8/05/2014	Check Issued	\$100,000
9/05/2014	Check Issued	\$25,000
9/30/2014	Closing Balance	\$12,054

The customers deposited the four Firm checks totaling \$300,000 into their personal bank account, held outside the Firm. The customers then loaned Fagnant \$325,000 by writing five checks, payable directly to Fagnant and drawn against their bank account, in June 2013 (\$75,000), January 2014 (\$25,000), May 2014 (\$100,000), August 2014 (\$100,000), and September 2014 (\$25,000). Fagnant deposited the five checks into his personal bank account, held outside the Firm.

The five loans were subsequently documented in a promissory note dated September 2014, signed by Fagnant and CA. The promissory note provided for a 24-month, 3% per month interest only loan commencing on October 1, 2014 with a final balloon payment of \$325,000 payable on September 1, 2016. The promissory note contained a default clause by which CA could demand the entire principal balance and any accrued interest thereon should Fagnant fail to make any payment.

In accordance with the promissory note, Fagnant commenced making interest only payments to CA, through at least February 2015, but ceased making payments thereafter. To date, the principal balance remains outstanding.

Fagnant did not notify or receive approval from the Firm prior to accepting the loans from the customers. Moreover, the Firm's written policies and procedures precluded Fagnant from accepting such loans. Specifically, the Firm's written policies and procedures prohibited representatives from borrowing from a Firm customer, except for, in limited circumstances, loans with family members. CA and JA are not members of Fagnant's family.

Fagnant was aware of the Firm's policies and procedures governing loans. In compliance questionnaires dated October 2013 and November 2014, Fagnant certified that he read and understood the Firm's policies and procedures.

In addition, in both questionnaires, Fagnant falsely answered "No" to the question, "Have you...borrowed or loaned any money or securities from or to another individual or entity?" In the November 2014 questionnaire, Fagnant also falsely answered "No" to a question asking if he had issued, offered or participated in a promissory note.

FINRA Rule 3240 prohibits registered persons from borrowing money from or lending money to his or her customers unless the firm has written procedures that permit lending arrangements and the lending arrangement meets one of five permissible conditions, including loans with immediate family members.

FINRA Rule 2010 requires members, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.

By improperly borrowing \$325,000 from two Firm customers, Fagnant violated FINRA Rules 3240 and 2010. In addition, by falsely representing to the Firm in two compliance questionnaires that he was in compliance with the Firm's policies and procedures concerning lending arrangements and promissory notes, Fagnant violated FINRA Rule 2010.

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

A bar from associating with any FINRA member firm 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 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.

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.


12/29/2015
Date (mm/dd/yyyy)


Gerard A. Fagnant, Respondent

Accepted by FINRA:

4/19/16
Date

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


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