

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2020065798801**

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

RE: Wayne von Borstel (Respondent)
Former General Securities Representative
CRD No. 1419351

Pursuant to FINRA Rule 9216, Respondent Wayne von Borstel 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

Von Borstel first entered the securities industry in November 1985. From July 2001 until August 2020, Von Borstel was registered with FINRA as a general securities representative through LPL Financial LLC. On August 12, 2020, LPL filed a Form U5 terminating his registration with the firm. Since that time, Von Borstel has not been registered through an association with a FINRA member. Von Borstel, however, remains subject to FINRA's jurisdiction under Article V, Section 4(a) of FINRA's By-Laws.¹

OVERVIEW

Between August 2016 and December 2017, Von Borstel failed to identify the intended beneficiaries on new account forms for multiple 529 plan accounts, which caused LPL's books and records to be inaccurate, in violation of Municipal Securities Rulemaking Board (MSRB) Rule G-8.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a regulatory filing disclosure.

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

529 plans are tax-advantaged municipal securities that are designed to encourage saving for the future educational expenses of a designated beneficiary, typically a minor. 529 plans are sponsored by states, state agencies, or educational institutions. States offer 529 plans either directly, through designated broker-dealers, or both.

MSRB Rule G-8 requires brokers, dealers and municipal securities dealers and their associated persons to keep current and accurate books and records, including customer account information. Specifically, MSRB Rule G-8(a)(xi)(F) requires a record of customer information obtained pursuant to MSRB Rule G-19, which would include information regarding a 529 plan account's beneficiary.²

Prior to June 2016, a number of Von Borstel's customers had 529 plan accounts established for the purchase of Class C shares that had identified beneficiaries that were minors 12 years of age or younger (young beneficiaries). When he established those accounts for his customers, Von Borstel completed new account forms that accurately identified the intended beneficiaries of those accounts as young beneficiaries.

In June 2016, LPL implemented a new policy prohibiting the purchase of Class C shares in 529 plan accounts for young beneficiaries, unless the firm granted an exception. Under the firm's policies, an exception could be granted where, for example, a representative provided evidence that Class C shares were more cost effective than Class A shares for a particular customer or account.

Between August 2016 and December 2017, after LPL's new policy became effective, ten of Von Borstel's customers decided to close approximately 20 existing 529 plan Class C-share accounts for young beneficiaries and to open new 529 plan C-share accounts. The customers decided to do this based on estate planning and financial aid considerations, as well as a desire to avoid multiple account maintenance fees. As part of this process, Von Borstel established 15 new 529 plan Class C-share accounts for these customers directly with 529 plan fund companies, which were funded with assets from the closed accounts. The new 529 accounts were established for the benefit of young beneficiaries, including those who were previously identified as beneficiaries on the closed 529 plan accounts.

However, when Von Borstel completed the required LPL forms to establish the new 529 plan Class C-share accounts, instead of identifying the young beneficiaries on the account forms, he identified adults who were related to the young beneficiaries, typically a parent, as each account's beneficiary. By doing so, Von Borstel enabled these new accounts to bypass LPL's review under its new 529 plan policy and caused LPL's books and records to be inaccurate.

² MSRB Rule G-19 requires that one have a reasonable basis to believe that a recommended transaction is suitable for a customer based on the customer's investment profile, which includes a customer's investment objectives. For purposes of Rule G-19, MSRB interpretive guidance states that information regarding the designated beneficiary of a 529 plan account should be treated as information relating to the customer's investment objectives. (*See Interpretation on Customer Obligations Related to Marketing of 529 College Savings Plans* (Aug. 7, 2006)).

Therefore, Respondent violated MSRB Rule G-8.

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

- a 15-business-day suspension from associating with any FINRA member in all capacities; and
- a \$5,000 fine (deferred).

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.

July 25, 2022

Date

Wayne von Borstel

Wayne von Borstel
Respondent

Reviewed by:

Emil J. Ali

Emil J. Ali
Counsel for Respondent
McCabe & Ali
16530 Ventura Boulevard, Suite 306
Encino, CA 91436

Accepted by FINRA:

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

July 28, 2022

Date

Richard March

Richard March
Senior Counsel
FINRA
Department of Enforcement
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