

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2016048453601**

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

**RE: John Blakezuniga, Respondent  
CRD No. 1014886**

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, John Blakezuniga ("Blakezuniga" or the "Respondent") 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**

Blakezuniga first entered the securities industry in 1981 when he associated with a member firm and became registered as a General Securities Representative ("GSR") in 1984. Subsequently, he was associated with various member firms and was registered as a GSR. In January 1999, Blakezuniga associated with former member firm Vanguard Capital and remained associated with the firm until its membership was terminated in January 2017. During his association with Vanguard Capital, Blakezuniga was registered as a GSR and a General Securities Principal. Blakezuniga is not currently registered or associated with a member firm. However, he remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

**RELEVANT DISCIPLINARY HISTORY**

In August 2011, Blakezuniga entered into an AWC (No. 2010024761201) in which he agreed to a 30-business day suspension and a \$5,000 fine for failing to disclose an outside business activity.

In March 2011, Blakezuniga was the subject of a consent order (S-11-0228-110R1) by the Arkansas Securities Commissioner in which he was fined \$3,500 for failing to update his outside business activity notification form to disclose his position as Chief Executive Officer of a company.

### **OVERVIEW**

Between 2007 and 2013, Blakezuniga borrowed \$775,000 (which he has not fully repaid) from two firm customers in violation of the firm's policy. As a result, Blakezuniga violated NASD Rules 2370 and 2110 and FINRA Rules 3240 and 2010. Blakezuniga separately violated FINRA Rule 2010 by falsely answering "no" to a question on the firm's 2013 annual compliance questionnaire that asked if he had ever borrowed money from a customer.

In addition, from 2010 to 2014, Blakezuniga recommended approximately 1,280 transactions in inverse and inverse leveraged Exchange Traded Funds ("non-traditional ETFs") in 85 customer accounts without a reasonable basis for the recommendations. By doing so, Blakezuniga violated NASD Rule 2310 and FINRA Rules 2111 and 2010.

### **FACTS AND VIOLATIVE CONDUCT**

#### **BORROWING FROM CUSTOMERS**

NASD Rule 2370 and FINRA Rule 3240<sup>1</sup> generally prohibit registered representatives from borrowing money from any customer subject to limited exceptions and in accordance with firm procedures. A violation of NASD Rule 2370 occurring before December 15, 2008, also constitutes a violation of NASD Rule 2110, and a violation of either NASD Rule 2370 or FINRA Rule 3240 occurring on or after December 15, 2008, also constitutes a violation of FINRA Rule 2010.<sup>2</sup>

Vanguard Capital's procedures prohibited Blakezuniga from borrowing money from any customer. In violation of the firm's procedures, Blakezuniga borrowed (i) \$300,000 in February 2007 from a trust established by a firm customer and (ii) \$475,000 in June 2013 from a separate trust established by another firm customer. Blakezuniga has not repaid the full principal amount owed for either of these loans.

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<sup>1</sup> FINRA Rule 3240 replaced NASD Rule 2370 effective June 14, 2010. Both of these rules apply here because the misconduct occurred before and after the effective date of the rule change.

<sup>2</sup> FINRA Rule 2010 replaced NASD Rule 2110 effective December 15, 2008. Both of these rules apply here because the misconduct occurred before and after the effective date of the rule change.

As a result of the foregoing, Blakezuniga violated NASD Rules 2370 and 2110 (for the 2007 loan) and FINRA Rules 3240 and 2010 (for the 2013 loan).

#### **FALSE COMPLIANCE QUESTIONNAIRE**

Providing misleading or false answers to a FINRA member firm on compliance questionnaires is a violation of FINRA Rule 2010.

In November 2013, Blakezuniga completed Vanguard Capital's 2013 annual compliance questionnaire and answered "no" to a question that asked if he had ever borrowed money from a customer. This answer was false because he had, in fact, previously borrowed money.

As a result of the foregoing, Blakezuniga violated FINRA Rule 2010.

#### **REASONABLE-BASIS SUITABILITY: NON-TRADITIONAL ETFs**

NASD Rule 2310 and FINRA Rule 2111<sup>3</sup> require registered representatives to have reasonable grounds for believing that a recommendation is suitable for a customer based upon the customer's disclosed security holdings and financial situation and needs. A violation of these rules also constitutes a violation of FINRA Rule 2010.

In June 2009, FINRA advised its membership through Regulatory Notice 09-31 concerning non-traditional ETFs that "[d]ue to the effect of compounding, their performance over longer periods of time can differ significantly from the performance . . . of their underlying index or benchmark during the same period of time." Because of these risks and the inherent complexity of the products, FINRA Regulatory Notice 09-31 advised broker-dealers and their representatives that non-traditional ETFs "typically are not suitable for retail investors who plan to hold them for more than one trading session, particularly in volatile markets."

From 2010 through 2014, Blakezuniga recommended approximately 1,280 non-traditional ETF transactions in 85 customer accounts. These investments were not meant to be held for long periods of time. In fact, the prospectuses for the non-traditional ETFs recommended by Blakezuniga warned that the ETFs were intended to be used as short-term trading vehicles, were not designed to be long-term investments, and sought "investment results for a single day only, not for longer periods." Despite the warning in the prospectuses (as well as Regulatory Notice 09-31), Blakezuniga recommended that non-traditional ETF positions be held in customer accounts for periods ranging from approximately thirty days to several years. He did not have reasonable grounds for believing these recommendations were suitable.

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<sup>3</sup> FINRA Rule 2111 replaced NASD Rule 2310 effective July 9, 2012. Both of these rules apply here because the misconduct occurred before and after the effective date of the rule change.

As a result of the foregoing, Blakezuniga violated NASD Rule 2310 (for the period prior to July 9, 2012) and FINRA Rules 2111 (for the period on and after July 9, 2012) and 2010.

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

- A 22-month suspension from associating with any FINRA member in any capacity; and
- A \$25,000 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 that he is unable 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 Respondent;
- 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; and
- C. If accepted:
  - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions 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; that Respondent has 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 Respondent to submit it.

3/20/17  
Date (mm/dd/yyyy)

John Blakezuniga  
John Blakezuniga

Reviewed by:

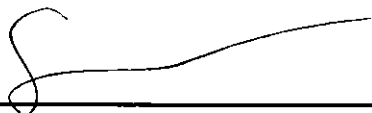
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**Accepted by FINRA:**

4/3/17

**Date**

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



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**Soo H. Im  
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