

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In The Matter of
The Continued Association of
David S. Thomas, Jr.

as a
General Securities Representative
with

Purshe Kaplan Sterling Investments, Inc.

Notice Pursuant to
Rule 19h-1
Securities Exchange Act
of 1934

SD-2012

September 9, 2014

On November 26, 2013, Purshe Kaplan Sterling Investments, Inc. (“PKS” or the “Firm”) filed a Membership Continuance Application (“MC-400” or “Application”) with FINRA’s Department of Registration and Disclosure (“RAD”), seeking to permit the continued association of David S. Thomas, Jr. (“Thomas”), a person subject to a statutory disqualification, as a General Securities Representative.¹ A hearing was not held in this matter; rather, pursuant to FINRA Rule 9523(b), FINRA is filing this Notice pursuant to Rule 19h-1 of the Securities Exchange Act of 1934 (“Exchange Act” or “SEA”).²

Thomas’ Statutorily Disqualifying Event

Thomas is subject to a statutory disqualification, as that term is defined in Section 3(a)(39) of the Exchange Act, as a result of the U.S. Securities and Exchange Commission’s (“SEC” or “Commission”) October 23, 2013 administrative order (the “Order”) finding that he willfully aided and abetted and caused violations of Section 206(4) of the Investment Advisers Act of 1940 (“Advisers Act”) and Rules 206(4)-1 and 206(4)-7 thereunder.³

¹ An MC-400 was required in this instance, as FINRA considers the sanctions to still be in effect because Thomas’ undertakings have not been completed. See FINRA Regulatory Notice 09-19 (Apr. 2009), available at <https://www.finra.org/Industry/Regulation/Notices/2009/P118467>.

² A notice, rather than a notification pursuant to SEA Rule 19h-1(a)(3)(iii)(B), is necessary because, as previously stated, FINRA considers the sanctions to still be in effect.

³ *In the Matter of Equitas Capital Advisors, LLC, et al.*, Admin. Proc. File No. 3-15585, Exchange Act Release No. 70743, Investment Adviser Release No. 3704 (Oct. 23, 2013) (attached as Exhibit 1).

Thomas is the principal founder, chief executive officer (“CEO”) and sole owner of a SEC-registered investment adviser, Equitas Capital Advisors, LLC (“Equitas”), and the sole owner and principal investment adviser of Equitas Partners, LLC (“Equitas Partners”), a former SEC-registered investment adviser that is under common control with Equitas.⁴

The Order involved violations of the Advisers Act by both Equitas and Equitas Partners. The Order found that Equitas inadvertently over billed and under billed certain clients and negligently made false and misleading disclosures to clients and potential clients about its historical performance, compensation, conflicts of interest, and prior examination deficiencies.⁵ In addition, the Order found that Equitas as well as Equitas Partners failed to conduct required annual compliance reviews, and in the case of Equitas, failed to maintain written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and rules promulgated thereunder.⁶

The Order found that Thomas willfully aided and abetted and caused Equitas’ violations of Advisers Act Section 206(4) and Rule 206(4)-1 thereunder when, on multiple occasions in 2011, Equitas disseminated misleading advertisements about its historical performance.⁷ Thomas authorized and directed the preparation and publication of these advertisements despite the voiced concerns of Equitas’ chief compliance officer (“CCO”) and without her approval as required by the firm’s compliance procedures.⁸

In addition, the Order found that Thomas willfully aided and abetted and caused both Equitas’ and Equitas Partners’ violations of the Advisers Act Section 206(4) and Rule 206(4)-7 thereunder by failing to implement written policies and procedures reasonably designed to prevent Advisers Act violations, and by failing to conduct annual reviews of the adequacy of such policies and procedures and the effectiveness of their implementation.⁹

Pursuant to the Order, Thomas was ordered to cease and desist from committing or causing any violations and any future violations of Advisers Act Section 206(4) and Rules 206(4)-1 and 206(4)-7 thereunder.¹⁰ In addition, Thomas was fined \$35,000 and ordered to cause Equitas and Equitas Partners to comply with various undertakings, including the retention of an independent consultant for three years to review the Equitas’

⁴ *Id.* Per the Order, Equitas Partners withdrew its registration in March 2012.

⁵ *Id.* at 2.

⁶ *Id.*

⁷ *Id.* at 8.

⁸ *Id.* at 5-6.

⁹ *Id.* at 8.

¹⁰ *Id.* at 8-12.

and Equitas Partners' supervisory, compliance, and other policies and procedures.¹¹ The three year review period commenced on October 23, 2013.¹²

Background Information of Thomas

Registration History

Thomas qualified as a General Securities Representative (Series 7) in October 1980.¹³ He also passed the Uniform Securities Agent State Law Examination (Series 63) in November 1980; the National Commodity Futures Examination (Series 3) in August 1982; the Foreign Currency Options Examination (Series 15) in December 1982; and the Uniform Investment Advisor Law Examination (Series 65) in March 1993.¹⁴ In addition, he registered as an Operations Professional (Series 99) in November 2011.¹⁵

Employment History

Thomas entered the securities industry in 1980, first as a sales assistant with Financial Advisory Services from January 1980 to January 1981 and later as a registered representative with United Capital Securities, Inc. from October 1980 to March 1981.¹⁶ Since then, he has been employed at the following broker-dealers or investment advisers: PaineWebber Incorporated n/k/a UBS Financial Services, Inc. (January 1981 to March 1989); Prudential-Bache Securities, Inc. n/k/a Prudential Equity Group, LLC (March 1989 to October 2002); Pan-American Investment Advisers, Inc. (September 2002 to December 2003); Pan-American Financial Advisers, Inc. (September 2002 to November 2005); Equitas (September 2002 to present); Equitas Partners (May 2003 to present); and PKS (June 2006 to the present).¹⁷

Thomas spends most of his time conducting an investment advisory business for Equitas & Equitas Partners.¹⁸ He associated with PKS in 2006 after his previous broker-

¹¹ *Id.* Thomas paid the fine on October 31, 2013. See MC-400 (with attachments) at FINRA00223-24 (Declaration of David S. Thomas, Jr.) (attached as Exhibit 2).

¹² Exhibit 1, *supra* note 3, at 9.

¹³ Central Registration Depository ("CRD") Snapshot of David S. Thomas at 9 (attached as Exhibit 3).

¹⁴ *Id.*

¹⁵ *Id.* at 4. Thomas terminated his Series 99 license on July 14, 2014. *Id.*

¹⁶ CRD printout entitled "Legacy Employment History" (attached as Exhibit 4). In the Application, Thomas represents that he has engaged in investment consulting since 1979. Exhibit 2, *supra* note 11, at FINRA00200.

¹⁷ Exhibit 4, *supra* note 16; Exhibit 3, *supra* note 13, at 7.

¹⁸ Exhibit 3, *supra* note 13, at 9; Exhibit 2, *supra* note 11, at FINRA00185 and FINRA00202. In conjunction with his duties at Equitas and Equitas Partners, Thomas serves as the portfolio adviser and CCO of a fund of hedge funds called the Evergreen Fund, which was Equitas Partners' sole client until the

dealer left the industry.¹⁹ He associated with PKS primarily to facilitate the processing of payments that certain of his Equitas clients receive as a result of their ownership interests in the following hedge funds: Meridian Horizon Fund LP; Meridian Horizon Fund II LP; Meridian Diversified Fund LP; and Meridian Diversified Fund Ltd (collectively the “Meridian Funds”).²⁰ PKS has a selling agent agreement with the Meridian Funds.²¹

Customer Complaints

Thomas was named in three customer lawsuits alleging, among other things, unsuitability and breach of fiduciary duty in the sale of high-yield bond funds, real estate limited partnerships, and a deferred tax annuity.²² The lawsuits were settled by PaineWebber in 1997 and 1998 for approximately \$63,000 without any contribution by Thomas.²³

Disciplinary History

Other than the Order, Thomas has no other disciplinary history.

Background Information of PKS

PKS, a FINRA member since April 1994, is headquartered in Albany, New York, and engages in a general securities business.²⁴ The Firm represents in the Application that it has two Offices of Supervisory Jurisdiction (“OSJs”) and 380 branch offices.²⁵ The Firm further represents that it employs 210 registered principals, 911 registered representatives and non-registered 79 employees.²⁶

second quarter of 2013 when Equitas Partners hired Equitas as the fund’s investment adviser. Exhibit 3, *supra* note 13, at 9; Exhibit 1, *supra* note 3, at 2.

¹⁹ Exhibit 2, *supra* note 11, at FINRA00202-03.

²⁰ *Id.*

²¹ *Id.*

²² Email dated January 28, 2014 with attached letter from Lisa Evans of PKS to Bernard Canepa (“Canepa”) of FINRA (attached as Exhibit 5); Exhibit 3, *supra* note 13, at 12-18.

²³ *Id.*

²⁴ Exhibit 2, *supra* note 11, at FINRA00190; CRD Snapshot of PKS at 3 and 5 (attached as Exhibit 6). PKS also have an investment adviser affiliate, PKS Advisory Services, LLC.

²⁵ Exhibit 2, *supra* note 11, at FINRA00190.

²⁶ *Id.*

The Firm's Regulatory History

Recent Examination History

The Firm's two most recent cycle examinations were conducted in 2012 and 2010. Both the 2012 and 2010 cycle examinations focused on the Sales Practice, Financial/Operational, Municipal and Branch Office areas of the Firm, and both resulted in Cautionary Actions.²⁷ The Firm addressed the exceptions in both examinations by taking corrective measures and amending its policies and procedures to address inadequacies.²⁸

Recent Disciplinary Actions Against the Firm

PKS has had only one notable disciplinary action in the past five years. On February 8, 2011, FINRA accepted a Letter of Acceptance, Waiver and Consent ("AWC") from PKS for failing to establish, maintain and enforce a supervisory system and written procedures that were reasonably designed to achieve compliance with the rules and regulations applicable to the supervision and suitability of variable annuity transactions.²⁹ The AWC stemmed from findings from the 2008 and 2009 cycle examinations of the Firm. The AWC found, among other things, that the Firm failed to review variable annuity transactions on a timely basis, supply adequate guidance to supervisors to effectively review the suitability of variable annuity exchanges and the subaccount and rider recommendations associated with variable annuity sales, and implement reasonable means of identifying suspicious patterns involving variable annuity exchanges, such as exception reports.³⁰ In addition, PKS had deficient control policies and procedures concerning the transmittal of customer funds, which allowed a former registered representative to misappropriate \$41,300 from a customer.³¹ As a result, the Firm was censured and fined \$100,000.³²

²⁷ 2012 cycle examination documents (attached as Exhibit 7) and 2010 cycle examination documents (attached as Exhibit 8).

²⁸ *Id.*

²⁹ FINRA AWC No. 2009016218601 (PKS) (Feb. 8, 2011) (attached as Exhibit 9).

³⁰ *Id.*

³¹ *Id.*

³² *Id.* The Firm paid the fine in full on February 11, 2011. Email dated January 13, 2014 from Michelle Glunt of FINRA to Canepa (attached as Exhibit 10).

Thomas' Proposed Business Activities and Supervision

PKS proposes that Thomas will continue to work from the Firm's branch office located at 365 Canal Street, Suite 3050, New Orleans, Louisiana, where he will function as a General Securities Representative.³³

The Firm represented to FINRA's Department of Member Regulation that Thomas engages in a limited brokerage business, solely receiving commission trails from the sale of ownership interests in the Meridian Funds that he sold to Equitas clients prior to his association with PKS in 2006.³⁴ The Firm represented (and incorporated as a condition in the plan of supervision) that Thomas will not conduct any new business through PKS.³⁵ He will, however, be allowed to maintain his existing client accounts held at PKS in which he is listed as the representative of record.³⁶

Primary Supervisor

PKS proposes that John Goldman ("Goldman") serve as Thomas' primary supervisor.³⁷ Goldman would provide offsite supervision of Thomas from the Firm's home office located in Albany, New York.³⁸ Goldman has been in the securities industry since 1997, when he joined PKS.³⁹ Goldman has also been registered since January 2007 as an investment adviser with PKS's adviser affiliate, PKS Advisory Services, LLC.⁴⁰ He qualified as a General Securities Representative (Series 7) in December 1997 and a General Securities Principal (Series 24) in April 2005.⁴¹ He also passed the requisite Uniform Securities Agent State Law Examination (Series 63) and Uniform Investment Advisor Law Examination (Series 65) in December 1997 and February 2006, respectively.⁴² He has been a Regional Supervisor for PKS for over ten years, and he

³³ Exhibit 2, *supra* note 11, at FINRA00203.

³⁴ The Firm made these representations in a telephone call with the Department of Member Regulation on March 26, 2014. *See* email dated August 13, 2014 from Kathy Flouton ("Flouton") of PKS to Canepa confirming representations (attached as Exhibit 11).

³⁵ *Id.*; executed letter consenting to supervisory plan *infra* note 52.

³⁶ Executed letter consenting to supervisory plan *infra* note 52.

³⁷ Exhibit 2, *supra* note 11, at FINRA00204.

³⁸ *Id.* at FINRA00195.

³⁹ CRD Snapshot of John Goldman at p. 9 (attached as Exhibit 12).

⁴⁰ *Id.*

⁴¹ *Id.* at 13.

⁴² *Id.*

currently supervises nine registered representatives which are subject to heightened supervision.⁴³ He has no disciplinary history or customer complaints.⁴⁴

Alternate Supervisor

If the event that Goldman is on vacation or out of the office for an extended period of time, Donald Guider (“Guider”) will serve as Thomas’ alternate supervisor.⁴⁵ Guider is also located at PKS’s home office.⁴⁶ He has been employed with PKS since July 2008.⁴⁷ Prior to that, he was employed with Linsco/Private Ledger Corp. n/k/a LPL Financial, Inc. (November 2003 – December 2007) and McDonald Investments, Inc. n/k/a KeyBanc Capital Markets, Inc. (December 1999 – August 2002).⁴⁸ He qualified as a General Securities Representative (Series 7) in June 2000; a General Securities Principal (Series 24) in August 2009; a Municipal Securities Principal (Series 53) in March 2010; and a Registered Options Principal (Series 4) in June 2010.⁴⁹ He also passed the Uniform Securities Agent State Law Examination (Series 63) in April 2001.⁵⁰ He has no disciplinary history or customer complaints.⁵¹

Supervisory Plan

The Firm has agreed to the following plan of supervision (the “Supervisory Plan”):

1. Purshe Kaplan Sterling Investments, Inc. (“PKS”) will amend its written supervisory procedures to state that John Goldman (CRD # 2980634) will be the primary supervisor responsible for Mr. Thomas. Mr. Goldman is responsible for supervising PKS’s registered representatives on heightened supervision. He will supervise no more than 15 individuals subject to heightened supervision;
2. Mr. Thomas will be permitted to work from a branch office at 365 Canal Street, Suite 3050, New Orleans, Louisiana 70130. Mr. Goldman will supervise Mr.

⁴³ Exhibit 2, *supra* note 11, at FINRA00195; email dated June 20, 2014 from Flouton to Canepa (without attachments) (attached as Exhibit 13).

⁴⁴ Exhibit 12, *supra* note 39, at 19.

⁴⁵ Email dated April 21, 2014 from Flouton to Canepa with attached draft supervisory plan (attached as Exhibit 14).

⁴⁶ CRD Snapshot of Donald Guider at 3 (attached as Exhibit 15).

⁴⁷ *Id.* at 9.

⁴⁸ *Id.*

⁴⁹ *Id.* at 7.

⁵⁰ *Id.*

⁵¹ Guider reported that over ten years ago he compromised with five creditors, which resulted in his payment of approximately \$8,400 of an outstanding debt of \$11,000. *Id.* at 22-25.

Thomas offsite from the PKS's home office at 18 Corporate Woods Boulevard, Albany, New York 12211;

3. If Mr. Goldman is to be on vacation or out of the office for an extended period, Donald Guider (CRD # 4196928), will act as Mr. Thomas' interim supervisor;
4. Mr. Thomas will not act in any supervisory capacity;
5. Mr. Thomas shall not exercise any discretionary authority in a customer account held at PKS;
6. Mr. Thomas will not conduct any new business through PKS. Mr. Thomas is only allowed to maintain the existing client accounts held at PKS which he is listed as representative of record. Mr. Thomas will not be allowed to conduct new business for his existing clients. "New business" includes, but is not limited to, opening new accounts or engaging in recommended purchases or sales of securities on behalf of his existing clients;
7. Mr. Thomas will not receive or process any checks, wire transfers or money movements for his existing clients;
8. Mr. Goldman will review all incoming and outgoing written correspondence (which includes electronic communications and correspondence) addressed to or relating to Mr. Thomas and his PKS clients. Mr. Goldman will review the correspondence upon its arrival and will review outgoing correspondence before it is sent;
9. For the purposes of communication with his PKS clients, Mr. Thomas will only be allowed to use an email account that is held at PKS, with all emails being filtered through PKS's email system. If Mr. Thomas receives an email message related to a PKS client in another email account outside of PKS, he will immediately deliver that message to PKS's email account. Mr. Thomas will also inform PKS of all outside email accounts that he maintains and will provide the Firm access to the accounts upon request. Mr. Goldman will conduct a weekly review of all email messages that are either sent to or received by Mr. Thomas from PKS clients. Mr. Thomas will maintain the emails and keep them segregated for ease of review during any statutory disqualification examination. These procedures will equally apply to any form of electronic communication or correspondence with clients;
10. All complaints pertaining to Mr. Thomas, whether verbal or written, will be immediately referred to Mr. Goldman for his review. He will prepare a memorandum to the file as to what measures he took to investigate the merits of the complaint (*e.g.*, contact with the customer) and the resolution of the matter, and provide a copy of the memorandum to the PKS Compliance Department;

11. Mr. Thomas must copy the PKS Compliance Department (who in turn will copy FINRA) on all correspondence with the SEC regarding the independent consultant's reports and annual certifications required under Mr. Thomas' settlement with the SEC;
12. At the conclusion of the Order's undertakings, the PKS Compliance Department will provide to FINRA a declaration by Mr. Thomas that he has complied with all of the sanctions and undertakings specified in the Order. PKS will immediately terminate Mr. Thomas should he delay or fail to comply with the sanctions and undertakings, absent approval by the SEC;
13. PKS's Compliance Department will conduct a branch audit exam of Mr. Thomas' branch office annually on a calendar basis;
14. While this heightened supervisory plan is in effect, PKS must obtain prior approval from FINRA's Department of Member Regulation if it wishes to change Mr. Thomas' responsible supervisor from Mr. Goldman to another person; and
15. Mr. Goldman and Mr. Thomas must certify quarterly (March 31st, June 30th, September 30th and December 31st) to the PKS Compliance Department that Mr. Goldman and Mr. Thomas are in compliance with all of the above conditions of the heightened supervision plan.⁵²

Discussion

After careful review of the entire record in this matter, FINRA approves Thomas' continued association as a General Securities Representative with PKS.

FINRA considered the Order's findings and the sanctions imposed upon Thomas. Notably, the Commission did not bar or suspend Thomas from association with either an investment advisor or a broker-dealer.⁵³ Rather, the Commission assessed a civil monetary penalty against Thomas, required him to cause Equitas and Equitas Partners' compliance with the Order's undertakings, and permitted him to remain, uninterrupted in the financial services business.⁵⁴ Thomas has complied, or is complying, with the sanctions and undertakings. He has paid the fine and in June 2012, he caused Equitas and Equitas Partners to hire an independent consultant ahead of the Commission's administrative proceeding.⁵⁵ He also caused Equitas and Equitas Partners to provide notice of the Order on the firms' websites and to notify clients of the settlement with the

⁵² Executed letter consenting to the Supervisory Plan (attached as Exhibit 16).

⁵³ Exhibit 1, *supra* note 3, at 11-12.

⁵⁴ *Id.*

⁵⁵ Exhibit 2, *supra* note 11, at FINRA00223-24 (Declaration of David S. Thomas, Jr.). The independent consultant continues to review Equitas and Equitas Partner's supervisory, compliance, and other policies and procedures.

Commission.⁵⁶ Although not required by the Order, Equitas and Equitas Partners refunded over billed clients and did not to pursue collections from under billed clients.⁵⁷

FINRA also considered Thomas' regulatory history. Thomas has had a relatively clean career in the securities industry. FINRA is not aware of any new information that reflects adversely on Thomas' ability to function as a registered representative with PKS.

Further, FINRA considered PKS's regulatory history and the Supervisory Plan. PKS has a relatively clean regulatory history. Although PKS was the subject of a 2011 AWC for supervisory violations, the violations were limited to one product and the Firm addressed the supervisory deficiencies that were the cause of the violations. There were also no repeat or any other supervisory violations in the next two cycle examinations conducted in 2010 and 2012. PKS proposed a sufficiently comprehensive supervisory plan tailored to Thomas' limited brokerage business. While the supervision to be accorded Thomas is conducted by offsite supervisors, Thomas will not be conducting any new business for his current or prospective clients, and PKS will inspect Thomas' branch office on an annual basis. PKS will keep FINRA apprised of Thomas' compliance with the continuing undertakings, as the Firm will submit to FINRA the annual certifications made to the SEC by the independent consultant. Upon completion of the Order's undertakings (expected in October 2016) and receipt by FINRA of an affirmation or declaration from Thomas that he has complied with the undertakings, Thomas will no longer be required to be under heightened supervision.⁵⁸ In the event that Thomas delays or fails to comply with the undertakings without approval by the SEC, PKS will immediately terminate his association.

As it pertains to the suitability of the supervisors, both supervisors have clean regulatory histories and sufficient experience. Goldman has been a registered principal since 1997, has extensive supervisory experience as a Regional Supervisor, and has a clean regulatory history free of disciplinary actions and customer complaints. Notably, the Firm has agreed to limit the number of individuals Goldman supervises to ensure that he can devote adequate time and attention to supervising Thomas. Likewise, the alternate supervisor, Guider, has sufficient supervisory experience and a similarly clean regulatory history. Thus, FINRA believes that PKS and the supervisors are capable of supervising Thomas.

FINRA certifies that PKS meets all applicable requirements for Thomas' continued employment with the Firm. PKS represents that it is a member of the Municipal Securities Rulemaking Board ("MSRB"); Thomas, Goldman and Guider are not related by blood or marriage; and that it does not employ any other individuals who are subject to statutory disqualification.⁵⁹

⁵⁶ *Id.*

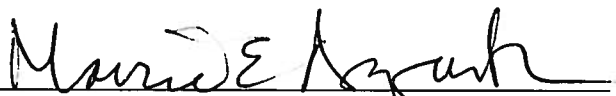
⁵⁷ Exhibit 1, *supra* note 3, at 3.

⁵⁸ FINRA Regulatory Notice 09-19 *supra* note 1.

⁵⁹ Exhibit 2, *supra* note 11, at FINRA00189-90.

Accordingly, we approve the continued association of Thomas as a General Securities Representative with PKS. In conformity with the provisions of Rule 19h-1, the association of Thomas will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the Commission.

On Behalf of the National Adjudicatory Council,



Marcia E. Asquith
Senior Vice President and Corporate Secretary

Exhibit List

1. Order *In the Matter of In the Matter of Equitas Capital Advisors, LLC, et al.*, Admin. Proc. File No. 3-15585, Exchange Act Rel. No. 70743, Investment Advisers Release No. 3704 (Oct. 23, 2013).
2. MC-400 Application and attachments.
3. CRD Snapshot of David S. Thomas.
4. CRD printout entitled "Legacy Employment History."
5. Email dated January 28, 2014 with attached letter from Lisa Evans to Bernard Canepa.
6. CRD Snapshot of PKS.
7. 2012 cycle examination documents.
8. 2010 cycle examination documents.
9. FINRA AWC No. 2009016218601 (PKS) (Feb. 8, 2011).
10. Email dated January 13, 2014 from Michelle Glunt to Bernard Canepa.
11. Email dated August 13, 2014 from Kathy Flouton to Bernard Canepa.
12. CRD Snapshot of John Goldman.
13. Email dated April 21, 2014 with attached draft supervisory plan from Kathy Flouton to Bernard Canepa.
14. Email dated June 20, 2014 from Kathy Flouton to Bernard Canepa.
15. CRD Snapshot of Daniel Guider.
16. Executed letter consenting to Supervisory Plan.