

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2016052179401**

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

**RE: ProEquities, Inc., Respondent
CRD No. 15708**

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, ProEquities, Inc. ("ProEquities" or the "Firm") 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 the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. ProEquities 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

The Firm has been a member of FINRA since March 1985 and conducts a general securities business. It has approximately 1,051 registered representatives and approximately 531 branch offices.

RELEVANT DISCIPLINARY HISTORY

In November 2015, ProEquities consented to a FINRA AWC (2014041841001) that found the Firm failed to apply sales charge discounts to certain customers' eligible purchases of unit investment trusts ("UITs") in violation of FINRA Rule 2010, and failed to establish, maintain and enforce a supervisory system and WSPs reasonable designed to ensure that customers received sales charge discounts on all eligible UIT purchases in violation of NASD Conduct Rule 3010 and FINRA Rule 2010. ProEquities agreed to a censure, fine of \$165,000, and restitution to customer accounts of \$109,709 to settle this matter.

OVERVIEW

Between January 1, 2011, and March 2016, (the "Relevant Period"), ProEquities disadvantaged certain retirement plan and charitable organization customers that were eligible to purchase Class A shares in certain mutual funds without a front-end sales charge ("Eligible Customers"). These Eligible Customers were instead sold Class A shares with a front-end sales charge or Class B or C shares with back-end sales charges and higher ongoing fees and expenses. During this period, ProEquities failed to establish and maintain a supervisory system and procedures reasonably designed to ensure that Eligible Customers who purchased mutual fund shares received the benefit of applicable sales charge waivers. As a result, ProEquities violated NASD Conduct Rule 3010 (for misconduct before December 1, 2014), FINRA Rule 3110 (for misconduct on or after December 1, 2014), and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

ProEquities Failed to Identify and Apply Available Sales Charge Waivers to Eligible Retirement Accounts and Charitable Organizations

ProEquities sells mutual funds with different classes of shares representing interests in the same portfolio of securities, but differing in the structure and amount of both sales charges paid directly by shareholders and continuous, asset-based fees assessed on each shareholder's investment. Share class features, including fees and expenses and available sales charge waivers, are described by each mutual fund in its prospectus and/or statement of additional information.

Class A shares typically are subject to a front-end sales charge when originally purchased, and have annual fund expenses, including ongoing distribution and service fees ("fees") that are typically 0.25 percent. The majority of the front-end charge is paid to the selling broker-dealer as a concession. Investors purchase Class A shares at the applicable Net Asset Value ("NAV"), plus the initial sales charge. Most funds, however, offer certain investors a waiver of the initial sales charge associated with Class A shares under certain circumstances ("sales charge waiver").

Class B and C shares typically do not carry a front-end sales charge but have significantly higher distribution and service fees (typically 1.00 percent) and may be subject to a contingent deferred sales charge ("CDSC").

Some mutual funds offer Class R shares for purchase by certain retirement plans. Class R shares typically are sold without a front-end sales charge. However, Class R shares typically have higher fees than Class A shares.

The different sales charges, breakpoints, waivers and fees associated with different share classes affect mutual fund investors' returns. If an investor

qualifies for a Class A sales charge waiver and purchases Class A shares, the investor will not pay a front-end sales load. In contrast, a purchase of Class B or C shares of the same fund will be subject to higher ongoing fees, as well as potential application of a CDSC. Therefore, if an investor qualifies for a Class A sales charge waiver, there would be no reason for the investor to purchase any other class of shares that has a sales load and/or higher annual expenses.

Many mutual funds waive the up-front sales charges associated with Class A shares for certain retirement plans and/or charitable organizations. Some of the mutual funds available on the Firm's retail platform during the Relevant Period offered such waivers and disclosed those waivers in their prospectuses. Notwithstanding the availability of the waivers, ProEquities failed to apply the waivers to mutual fund purchases made by Eligible Customers and instead sold them Class A shares with a front-end sales charge or Class B or C shares with back-end sales charges and higher ongoing fees and expenses. These sales disadvantaged Eligible Customers by causing such customers to pay higher fees than they were actually required to pay.

ProEquities' Supervisory Failures

During the Relevant Period, ProEquities failed to reasonably supervise the application of sales charge waivers to eligible mutual fund sales. The Firm relied on its financial advisors to determine the applicability of sales charge waivers, but failed to maintain reasonable written policies or procedures to assist financial advisors in making this determination. For instance, ProEquities failed to establish and maintain written procedures to identify applicable sales charge waivers in fund prospectuses for Eligible Customers.

In addition, ProEquities failed to adequately notify and train its financial advisors regarding the availability of mutual fund sales charge waivers for Eligible Customers. Finally, ProEquities failed to adopt reasonable controls to detect instances in which they did not provide sales charge waivers to Eligible Customers in connection with their mutual fund purchases.

By failing to reasonably supervise mutual fund sales to ensure that Eligible Customers who purchased mutual fund shares received the benefit of applicable sales charge waivers, ProEquities violated NASD Conduct Rule 3010 (for misconduct before December 1, 2014), FINRA Rule 3110 (for misconduct on or after December 1, 2014), and FINRA Rule 2010.

ProEquities' Investigation

In October 2015, ProEquities advised FINRA it was undertaking a review to determine whether it provided available sales charge waivers to Eligible Customers. After identifying Eligible Customer accounts, in July 2016, FINRA staff requested that ProEquities review the applicable sales, dating back to

January 1, 2011. ProEquities estimates that, since January 1, 2011, approximately 350 customer accounts purchased mutual fund shares for which an available sales charge waiver was not applied. As a result, the Firm estimates that Eligible Customers were overcharged by approximately \$136,660 for mutual fund purchases made since January 1, 2011. As part of this settlement, ProEquities agrees to pay restitution to Eligible Customers on the terms specified below, which is estimated to total \$152,880 (*i.e.*, the amount Eligible Customers were overcharged, inclusive of interest). ProEquities has represented the firm will also ensure that retirement and charitable waivers are appropriately applied to all future transactions.

OTHER FACTORS

In resolving this matter, FINRA has recognized the extraordinary cooperation of ProEquities for: (1) initiating an investigation to identify whether Eligible Customers received sales charge waivers during the Relevant Period; (2) undertaking a self-review of Eligible Customer accounts, before FINRA initiated its investigation; (3) providing restitution to Eligible Customers for a period of five years and three months; (4) promptly establishing a plan of remediation for Eligible Customers who did not receive appropriate sales charge waivers; and (5) promptly taking action and remedial steps to correct the violative conduct, including programming changes to preclude ongoing customer harm while the Firm instituted permanent systems upgrades.

- B. ProEquities also consents to the imposition of the following sanctions:
1. A censure;
 2. ProEquities will provide remediation to Eligible Customers who, from January 1, 2011, qualified for, but did not receive, the applicable mutual fund sales charge waivers as described in Section A of this document.
 - a. Within 30 days of the date this AWC is accepted, the Firm will provide to FINRA a detailed plan to remediate Eligible Customers based on specific criteria that is not unacceptable to FINRA. In the event FINRA does object to the plan, the Firm will have an opportunity to address FINRA's objections and resubmit the plan within 20 days. The date that FINRA notifies the Firm that it does not object to the plan shall be called the Notice Date.
 - b. The remediation plan submitted by the Firm will also address restitution for each retirement plan customer that, while not eligible to purchase Class A shares without a front-end sales charge, was eligible to purchase an alternative share class (including, but not limited to, R shares) without a front-end sales charge and with ongoing fees substantially similar to those of the Class A share.

- c. Within 30 days from the Notice Date, the Firm will submit to FINRA a schedule of Eligible Customers identified for remediation and include the details of the qualifying purchases and total dollar amounts of restitution that will be provided to each customer. Each Eligible Customer will receive restitution, plus interest, from the date of purchase through the payment date at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2) (the "IRS Rate").
- d. A registered principal on behalf of ProEquities shall submit satisfactory proof of payment of restitution or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted to Katie Gostinger either by letter that identifies Respondent and the case number and includes copies of the checks, money orders or other methods of payment or by e-mail, with .pdf copies of the payment documentation, from a work-related account of the registered principal(s) of Respondent to EnforcementNotice@FINRA.org. This proof shall be provided to the FINRA staff member listed above no later than 180 days from the Notice Date.
- e. If for any reason ProEquities cannot locate any Eligible Customer after reasonable and documented efforts, ProEquities shall move the money to an appropriate escheat account. ProEquities shall follow the standard escheatment process, adhering with each state's required time frames based on the state in which an Eligible Customer is last known to have resided. ProEquities shall provide satisfactory proof of such action to the FINRA staff member identified above and in the manner described above, within 14 days of moving the undistributed restitution and interest to the appropriate escheat account.
- f. Upon written request showing good cause, FINRA staff may extend any of the procedural dates set forth above.

ProEquities specifically and voluntarily waives any right to claim an inability to pay, now or at any time hereafter, the remediation committed to in this matter.

The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

Restitution payments to customers shall be preceded or accompanied by a letter, not unacceptable to FINRA staff, describing the reason for the payment and the

fact that the payment is being made pursuant to a settlement with FINRA and as a term of this AWC.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

The Firm specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against it;
- 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, the Firm 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 acceptance or rejection of this AWC.

The Firm 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

The Firm 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 ProEquities; and
- C. If accepted:
 - 1. this AWC will become part of the Firm's permanent disciplinary records and may be considered in any future actions brought by FINRA or any other regulator against the Firm;
 - 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. The Firm 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. The Firm 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 the Firm'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. The Firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm understands that it 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.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on the Firm's behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that the Firm 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 the Firm to submit it.

02/14/2019
Date (mm/dd/yyyy)

ProEquities Financial Inc., Respondent

By: Christopher Wade Flint
Christopher Wade Flint
CEO
2801 Highway 280 South
Birmingham, AL 35223

Accepted by FINRA:

3/7/2019
Date

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

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