

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013035788401**

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

RE: Purshe Kaplan Sterling Investments, Inc., Respondent
CRD No. 35747

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Purshe Kaplan Sterling Investments, Inc. ("PKS," the "Firm" or "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. PKS 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

PKS has been a member of FINRA since April 1994. The Firm, headquartered in Albany, New York, conducts a general securities business. PKS employs approximately 1,234 registered representatives that operate from 463 branch offices. Approximately 700 of the Firm's registered representatives are dually registered as investment adviser representatives with an investment adviser firm not affiliated with PKS.

RELEVANT DISCIPLINARY HISTORY

The Firm has no relevant disciplinary history.

OVERVIEW

From at least January 1, 2011 through January 1, 2016, PKS violated FINRA Rules 3270 and 2010 by failing to adequately evaluate its registered representatives' outside business activities to determine whether the outside activities involved activities subject to the requirements of NASD Rule 3040.

Additionally, from March 12, 2012 through August 3, 2014, PKS violated NASD Rules 3010(a), (b) and (d)(2) and FINRA Rule 2010 by failing to establish an adequate system for the supervisory review of performance reports used by its registered persons.

FACTS AND VIOLATIVE CONDUCT

1. PKS Failed to Conduct Adequate Due Diligence of its Registered Representatives' Outside Business Activities as Required by Rule 3270

FINRA Rule 3270 provides that no registered person may be an employee, “or be compensated, or have the reasonable expectation of compensation,” from any person for “business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as provided by the member.” The Supplementary Material to Rule 3270, entitled “Obligation of Member Receiving Notice,” requires a member receiving notice of an outside activity to “evaluate the proposed activity to determine whether the activity properly is characterized as an outside business activity or whether it should be treated as an outside securities activity subject to the requirements of NASD Rule 3040.”¹

During the relevant period, the Firm failed to comply with its due diligence obligations under FINRA Rule 3270. For example, the Firm, in approving the outside business activities of its registered representatives, did not obtain or review information such as sample client advisory agreements, compensation received for investment advisory services and other information sufficient to determine whether these activities involved private securities transactions subject to Rule 3040.²

Based on the foregoing, PKS violated FINRA Rules 3270 and 2010.

2. PKS Failed to Supervise Performance Reports Used by its Registered Persons in Connection with Outside Brokerage Services

NASD Rule 3010(a) and (b) requires that each member firm maintain a system, including written supervisory procedures, to supervise the activities of each registered person that is reasonably designed to achieve compliance with applicable securities laws and regulations.³ Additionally, NASD Rule 3010(d)(2) requires a member to develop written procedures appropriate to its business, size, structure for the review of written and electronic correspondence with the public relating to its investment banking or securities business.

In Regulatory Notice 10-19, FINRA noted that performance reports are “communications with the public,” and “[t]o the extent individual representatives” use performance reports, “firms are required to supervise this activity” and “[a]ny firm that cannot properly supervise the dissemination of [performance] reports by its registered representatives must prohibit the

¹ NASD Rule 3040 was superseded by FINRA Rule 3280, effective September 21, 2015.

² The Firm’s practices preceded the relevant period.

³ NASD Rule 3010 was superseded by FINRA Rule 3110, effective December 1, 2014.

dissemination of those reports and take the necessary steps to ensure that its registered representatives comply with this prohibition.”⁴

During the relevant period, PKS did not have an adequate supervisory system for the review of the performance reports used by its registered persons. The Firm’s written procedures concerning performance reports did not include any provision for the supervisory review of the contents of these reports. The Firm also did not conduct any supervisory review of the performance reports used by its registered persons.

Based on the foregoing, PKS violated NASD Rules 3010(a), (b) and (d)(2) and FINRA Rule 2010.

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

1. Censure; and
2. Fine of \$200,000.

PKS also consents to the following undertaking:

3. Review of Policies and Procedures:

- a. Within 60 days of Notice of Acceptance of this AWC, the Chief Compliance Officer of the Firm shall submit to FINRA a written plan of how it will undertake to conduct a review of the adequacy of the relevant policies and procedures (written and otherwise) relating to the conduct addressed in this AWC.
- b. FINRA will review the plan submitted by PKS. In the event FINRA objects to the plan, PKS may address FINRA’s objections and resubmit the plan within 30 days of being notified of FINRA’s objections.
- c. At the conclusion of PKS’s comprehensive review, which shall be no more than 180 days after the Notice of Acceptance of the AWC, the Firm’s Chief Compliance Officer shall certify in writing to FINRA that PKS has adopted and implemented policies and procedures reasonably designed to ensure compliance with the NASD and FINRA rules addressed in this AWC.
- d. Upon written request showing good cause, FINRA staff may extend any of the procedural dates set forth above.

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

PKS agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. PKS has submitted an Election of Payment form showing the

⁴ Regulatory Notice 10-19 (April 2010). “[I]f not rigorously supervised,” the use of performance reports raises a number of regulatory concerns including the potential for communicating inaccurate, confusing or misleading information to clients and the use of these reports for fraudulent or unethical purposes. *Id.*

method by which it proposes to pay the fine imposed.

PKS specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

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 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, 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 it;
 - 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 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 its 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 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 the Firm to submit it.

4/5/2016
Date (mm/dd/yyyy)

Purshe Kaplan Sterling Investments, Inc.

By: 

Reviewed by:

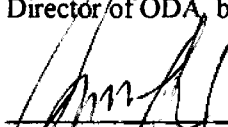
David M. Furber
GENERAL COUNSEL

Brian Hamburger, Esq.
Hamburger Law Firm LLC
Counsel to Respondent
61 W. Palisade Avenue
Englewood, NJ 07631
Telephone: 201-705-1222

Accepted by FINRA:

4/2/16
Date

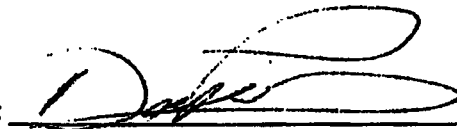
Signed on behalf of the
Director of ODA, by delegated authority


James E. Day
Vice President & Chief Counsel
FINRA Department of Enforcement
15200 Omega Drive, Third Floor
Rockville, MD 20850
Phone: 301-258-8520; Fax: 202-720-8303

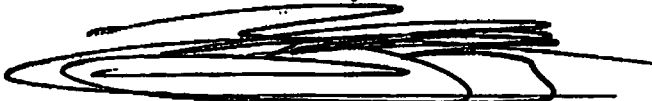
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4/5/2016
Date (mm/dd/yyyy)

Purshe Kaplan Sterling Investments, Inc.

By: 
David M. Parkell
GENERAL COUNSEL

Reviewed by:



Brian Hamburger, Esq.
Hamburger Law Firm LLC
Counsel to Respondent
61 W. Palisade Avenue
Englewood, NJ 07631
Telephone: 201-705-1222

Accepted by FINRA:

5 April 2016
Date

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

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