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 ProEquities alleging violations based on the same factual findings described herein.

I. ACCENTANCE 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

ProEquities has been a FINRA member since March 1, 1985. The Firm maintains its principal place of business in Birmingham, Alabama and engages in a general securities business. The Firm has approximately 1,201 registered individuals and maintains approximately 618 registered branch offices located throughout the United States.

RELEVANT DISCIPLINARY HISTORY

ProEquities has no relevant disciplinary history.

OVERVIEW

During the time period, January 1, 2008 through April 30, 2012, ProEquities failed to establish, maintain, and enforce adequate written procedures to supervise sales of non-traditional exchange-traded funds, in violation of NASD Conduct Rules 3010(b) and 2110 (for the time period prior to December 15, 2008) and FINRA Rule 2010 (for the time period after December 14, 2008). In addition, during the time period, April 2006 through July 2013, ProEquities
failed to establish, maintain, and enforce written procedures to supervise the creation and dissemination of consolidated reports, in violation of NASD Conduct Rules 3010, subparts (b) and (d)(2), and 2110 (conduct prior to December 15, 2008) and FINRA Rule 2010 (conduct after December 14, 2008). Also, during the time period, January 1, 2014 through March 30, 2014, ProEquities failed to enforce its written procedures relating to the supervision of registered persons conducting investment-advisory business through an independent registered investment adviser (“RIA”), in violation of NASD Conduct Rules 3010(d) and 3040(c) and FINRA Rule 2010. In addition, during the time period, June 3, 2013 through March 28, 2014, ProEquities failed to enforce certain provisions of its written procedures relating to the supervision of sales of variable annuities and 1035-exchange transactions, in violation of NASD Conduct Rule 3010(b) and FINRA Rules 2330(d) and 2010. Finally, during the time period, June 3, 2013 through March 28, 2014, ProEquities violated NASD Conduct Rule 3010(b) and FINRA Rules 2330(d) and 2010 by maintaining written procedures relating to the supervision of sales of variable annuities that identified, but did not sufficiently address, particular factors to be considered in assessing the suitability of a recommendation to buy or sell, in whole or in part, a variable annuity.

FACTS AND VIOLATIVE CONDUCT

Supervisory Deficiencies Relating to Non-Traditional Exchange-Traded Funds

Exchange-traded funds ("ETFs") are typically registered unit investment trusts or open-end investment companies whose shares represent an interest in a portfolio of securities that track an underlying benchmark or index. Shares of ETFs are typically listed on national securities exchanges and trade throughout the day at prices established by the market. Non-traditional ETFs differ from other ETFs in that they seek to return a multiple of the performance of the underlying index or benchmark, the inverse of that performance, or both. To accomplish these objectives, non-traditional ETFs use swaps, futures contracts, and other derivative instruments. Non-traditional ETFs are typically designed to achieve their stated objectives over the course of single trading day, and a non-traditional ETF's actual performance can deviate substantially from that of its target index or benchmark if the fund is held longer than one trading session.

In June 2009 FINRA issued Regulatory Notice 09-31 highlighting the unique characteristics and risks of non-traditional ETFs, including tracking error and the effect of daily resets, and cautioned members that non-traditional ETFs are typically not suitable for retail investors who plan to hold the funds longer than a single trading session.

During the time period, January 1, 2008 through April 30, 2012, ProEquities permitted its registered representatives to solicit transactions in non-traditional ETFs, though the Firm did not have in place written procedures relating to
suitability and supervision of recommendations involving non-traditional ETFs. Nor did the Firm have in place a procedure or system to identify instances in which a customer might be holding a position in a non-traditional ETF for an extended period of time. In addition, the Firm did not provide adequate training and guidance to its registered representatives regarding the unique characteristics and risks of non-traditional ETFs.

By this conduct, ProEquities violated NASD Conduct Rules 3010(b) and 2110 (conduct prior to December 15, 2008) and FINRA Rule 2010 (conduct after December 14, 2008).

**Supervisory Deficiencies Relating to Consolidated Reports**

A “consolidated report” is a document provided by a broker to a customer that combines account information regarding most or all of a customer’s assets. Consolidated reports supplement, but do not replace, the customer account statements required pursuant to NASD Rule 2340. On April 8, 2010 FINRA issued Regulatory Notice 10-19 reminding member firms that consolidated reports are communications with the public and, thus, must be clear and accurate and compliant with federal securities laws and FINRA rules. FINRA also cautioned that consolidated reports present a number of regulatory concerns, such as the potential for communicating inaccurate, confusing, or misleading information to customers, and the use of these reports for fraudulent or unethical purposes. FINRA also cautioned that any member firm that is unable to adequately supervise consolidated reports must prohibit the use and dissemination of such reports and take necessary steps to ensure that registered representatives comply with the prohibition.

During the time period, April 2006 through July 2013, ProEquities permitted its registered representatives to prepare and disseminate consolidated reports using firm-approved software applications. Some of those applications provided the ability to manually enter securities positions and values. During the stated time period, the Firm did not have written procedures addressing the use and supervision of consolidated reports.

By failing to establish, maintain, and enforce written procedures to supervise the creation and dissemination of consolidated reports, ProEquities violated NASD Conduct Rules 3010, subparts (b) and (d)(2), and 2110 (conduct prior to December 15, 2008) and FINRA Rule 2010 (conduct after December 14, 2008).

**Supervisory Deficiencies Relating to Independent RIAs**

Under NASD Rule 3040 (superseded by FINRA Rule 3280 effective September 21, 2015), an associated person must, in writing, request and obtain approval from his/her member firm before engaging in any private securities transaction involving selling compensation. The rule further requires that, if the member
firm approves the associated person’s participation in the private securities transaction, the member firm must record the transaction on the books and records of the firm and supervise the associated person’s participation in the transaction as if the transaction were executed on behalf of the member.

In May 1994 FINRA issued Special Notice to Members 94-44, clarifying that the requirements of Rule 3040 are applicable to investment advisory ("IA") activities of registered representatives who are also investment advisers ("RR/IAs"), and that, if the RR/IA’s participation involves compensation, and that participation is approved by the member firm, the member firm must record the transactions on its books and records and supervise the conduct of the RR/IA.

In May 1996 FINRA issued Notice to Members 96-33, providing further guidance to member firms about their supervisory and recordkeeping obligations in regards to RR/IAs. Among other things, FINRA stated that a member firm must develop and maintain a recordkeeping system that captures the transactions executed by the RR/IA in its books and records and that facilitates supervision over the activity. FINRA cautioned that recordkeeping systems that simply record transactions will not suffice as adequate supervision under Rule 3040 but that, the records created and recordkeeping system used, together with relevant supervisory procedures, must enable the member to properly supervise the RR/IA by aiding the member’s understanding of the nature of the service provided by an RR/IA, the scope of the RR/IA’s authority, and the suitability of the transactions.

During the time period, January 1, 2014 through March 30, 2014, ProEquities permitted RR/IAs to offer investment-advisory services through independent RIAs. During the stated time period, the Firm had in place written procedures for supervision and recordkeeping of such activities. However, in certain circumstances, the Firm did not consistently enforce those procedures. Specifically, the Firm failed to ensure that certain RR/IAs complied with the Firm’s requirement that they provide written notice to the Firm’s compliance department of any changes in their RIA business or clientele. In addition, the Firm’s written procedures required that supervising principals utilize a “Section 40 blotter” to review RR/IA securities transactions executed away from the Firm, but in certain circumstances the Firm did not enforce that requirement, and individual supervising principals were permitted to utilize their own methods to review these transactions and often did not document the reviews. Finally, the Firm’s written procedures required that compliance department personnel conduct and document an annual review of each RR/IA’s business and recordkeeping practices, but such reviews were not consistently performed or documented.

By failing to enforce its written procedures relating to RR/IAs, ProEquities violated NASD Conduct Rules 3010(b) and 3040(c) and FINRA Rule 2010.
Supervisory Deficiencies Relating to Transactions Involving Variable Annuities

During the time period, June 3, 2013 through March 28, 2014, ProEquities failed to adequately enforce particular provisions of its written procedures relating to supervision of recommendations involving variable annuities. Specifically, the Firm’s written procedures required that supervising principals perform an “enhanced review” of variable-annuity purchases in which the dollar amount of the purchase constituted 40 percent or more of the customer’s stated net worth and document the results of that review. During the stated time period, the Firm failed to ensure that such reviews were always performed and documented. Also, the Firm’s practice was to generate a weekly 1035-exchange report, but the Firm failed to ensure that reviews of such reports were always conducted timely and consistently. In addition, during the stated time period, the Firm’s written procedures addressing suitability of variable-annuity recommendations identified, but did not adequately discuss, annuity share class as a factor to be considered in assessing suitability.

By this conduct, ProEquities violated NASD Conduct Rule 3010(b) and FINRA Rules 2330(d) and 2010.

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

- A censure and a $200,000 fine.

ProEquities agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. ProEquities has submitted an Election of Payment Form showing the method by which the Firm proposes to pay the fine imposed.

ProEquities 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.

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

II.

WAIVER OF PROCEDURAL RIGHTS

ProEquities 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, ProEquities 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.

ProEquities 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

ProEquities 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 the Firm; and

C. If accepted:

1. this AWC will become part of the Firm’s permanent disciplinary record 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 ProEquities, 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 the provisions of this AWC voluntarily; and that 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 ProEquities to submit it.

ProEquities, Inc., Respondent

By: Christopher Flint

Name: Christopher Flint

Title: President and CEO

Reviewed by:

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Counsel for ProEquities, Inc.
Accepted by FINRA:

August 8, 2016
Date

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

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