

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2022074939304**

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

RE: PFS Investments Inc. (Respondent)
Member Firm
CRD No. 10111

Pursuant to FINRA Rule 9216, Respondent PFS Investments Inc. (PFSI) 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 in this AWC.

I.

ACCEPTANCE AND CONSENT

- A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

PFSI has been a FINRA member since 1981. The firm is headquartered in Duluth, Georgia and has approximately 19,000 registered representatives in 4,000 branch offices. PFSI's broker-dealer business includes sales of mutual funds and variable annuities.¹

OVERVIEW

Between April 2021 and March 2023, PFSI was on notice that three of its registered representatives co-owned and operated an outside business activity (OBA). Although it maintained written supervisory procedures (WSPs) requiring representatives to disclose OBAs to the firm in writing consistent with FINRA Rule 3270, the firm did not enforce that requirement. By failing to require the representatives to submit written notice in compliance with FINRA Rule 3270, PFSI violated FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from an anonymous complaint about the marketing of the OBA.

¹ For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

FINRA Rule 3110(a) provides that “[e]ach member shall establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.” FINRA Rule 3110(b) provides that “[e]ach member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.” A violation of FINRA Rule 3110 constitutes a violation of FINRA Rule 2010, which requires a member firm to observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business.

FINRA Rule 3270 prohibits registered persons from engaging in OBAs unless they provide prior written notice to the member firm, in such form as specified by the member. Once the member firm receives written notice, the firm must evaluate the proposed activity pursuant to Supplementary Material .01 to FINRA Rule 3270 (Rule 3270.01), including determining whether the OBA poses a potential conflict with the registered person’s responsibilities to the firm or the public and whether the OBA should be characterized as an outside securities transaction subject to FINRA Rule 3280. The firm must also consider whether to impose specific conditions or limitations on the registered person’s participation in the OBA.

PFSI’s written supervisory procedures required representatives engaging in an OBA to report the nature of the activity in writing to the firm, which would then review the proposed activity. Once PFSI received the required written notice, PFSI’s WSPs required the firm to complete the required review under FINRA Rule 3270.01.

In late March 2021, three PFSI registered representatives founded a company independent of PFSI that had two distinct lines of business. First, the company assisted customers with setting up and operating e-commerce storefronts, which offered products for sale on established e-commerce platforms. Second, the company offered to customers lead-generation websites (digital real estate), which advertised a particular service in a particular location and prompted consumers to provide their information if they were interested in that service. The e-commerce storefronts generated revenue when online consumers purchased products through the storefronts, and the digital real estate websites typically generated revenue on a per-lead basis through sales to third-party lead aggregators. The OBA’s customers each paid an up-front fee per e-commerce storefront and per digital real estate website and then received a percentage of any income those storefronts and websites generated.

In April 2021, PFSI became aware of the e-commerce storefront component of the OBA after one of the three representatives orally disclosed it to the firm’s OBA team. At PFSI’s oral request, this representative orally provided the information contained on PFSI’s OBA Form. PFSI did not discuss the information contained on the OBA Form with the other two representatives, and contrary to PFSI’s WSPs, PFSI did not require any of the three representatives to provide written notice of the OBA. Instead, the Firm approved the OBA in August 2021 based on oral notice from the one representative. At

that time, PFSI was aware that the OBA had already sold e-commerce storefront products but was unaware of the exact magnitude of these sales. PFSI was also unaware of the OBA's digital real estate line of business and was unaware that the three representatives would be involved in marketing the OBA.² By the time of PFSI's approval of the e-commerce storefront component of the OBA, the OBA had already received up-front fees from at least 33 customers, some of whom were e-commerce storefront customers, some of whom were digital real estate customers, and some of whom were both.

In the fall of 2021, shortly after PFSI's approval of the e-commerce storefront component of the OBA, PFSI began receiving complaints from several of its registered representatives that the three representatives were marketing the OBA on social media. These social media posts were visible to the public, including PFSI registered representatives and PFSI customers. Even with this additional information about the three representatives' involvement with the OBA, PFSI did not require any of them to submit written notice. After attempting to force the three representatives to identify all PFSI representatives and customers who were customers of the OBA, in October 2021, PFSI prohibited the three representatives from marketing the OBA. However, after the marketing suspension went into effect, PFSI received additional complaints from several of its registered representatives in late 2021 and early 2022 regarding the three representatives' continued marketing of their OBA on social media.

In February 2022, PFSI had a discussion with one of the registered representatives regarding the marketing of the OBA, and during this meeting, the registered representative orally disclosed the OBA's digital real estate line of business. Unbeknownst to PFSI, by this time, the OBA had already received up-front fees for over 900 digital real estate websites. PFSI still did not require the three representatives to provide written disclosure of the OBA, including the newly identified digital real estate component of the OBA.

In April 2022, PFSI instructed the representatives that they could no longer remain associated with PFSI unless they terminated their involvement with the OBA. By this time, PFSI was on notice that the representatives were continuing to market the OBA through public social media posts. PFSI was also on notice that other PFSI representatives were continuing to complain about the marketing of the OBA and that the representatives had refused to provide a list of PFSI customers who were also customers of the OBA. Although the three representatives continued actively working on the OBA—and the OBA continued to make significant sales to its customers—the three representatives did not immediately leave PFSI, nor did PFSI ever require them to provide written notice of their involvement with the OBA. Two of the representatives terminated their association with PFSI in August 2022, and the third did so in March 2023. Although PFSI was unaware of the precise volume of the OBA's sales, between

² FINRA sanctioned the three representatives for their failures to timely and completely disclose in writing the OBA's activities to PFSI (each consented to a 24-month suspension in all capacities and a \$10,000 fine).

April 2021 and March 2023, hundreds of OBA customers purchased approximately \$33 million in e-commerce storefronts and digital real estate from the OBA.³

PFSI failed to comply with Rule 3110 because it failed to establish, maintain, and enforce a supervisory system that was reasonably designed to achieve compliance with FINRA Rules 3270 and 3270.01. In particular, the firm failed to enforce its WSPs for compliance with FINRA Rule 3270 by failing to require the representatives to provide a written disclosure of their OBA. Despite repeatedly receiving new information suggesting that the representatives' involvement in the OBA was significant and ongoing, PFSI did not require the representatives to make any written disclosure of the OBA, which was contrary to the firm's WSPs and the firm's obligations to evaluate the OBA under Rule 3270.01.

Therefore, PFSI violated FINRA Rules 3110 and 2010.

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

- a censure; and
- a \$60,000 fine.

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

Respondent specifically and voluntarily waives any right to claim an inability to pay, now or at any time after the execution of this AWC, the monetary sanction imposed in this matter.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

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;

³ Unbeknownst to PFSI, which received no complaints from identified customers and never received an OBA customer list from the representatives, certain PFSI customers were in fact also customers of the OBA.

- 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 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 its acceptance or rejection.

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 action 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 its subject matter 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 right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.

- 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.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent'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 Respondent has agreed to the AWC's provisions 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 Respondent to submit this AWC.

July 11, 2024

Date

Lori Rivet

PFS Investments Inc.
Respondent

Print Name: Lori Rivet

Title: EVP and Deputy General Counsel

Reviewed by:

Terry R. Weiss

Terry R. Weiss
Stefanie Wayco
Counsel for Respondent
Duane Morris LLP
1075 Peachtree Street NE, Suite 1700
Atlanta, GA 30309-3929

Accepted by FINRA:

July 12, 2024

Date

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



Lisa Lightbody

Counsel

FINRA

Department of Enforcement

Brookfield Place

200 Liberty Place

New York, NY 10281