

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2018056477801**

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

RE: Pluris Capital Group, Inc., Respondent
Member Firm
BD No. 30811

John Fletcher, Respondent
General Securities Representative
CRD No. 2750926

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondents Pluris Capital Group, Inc. ("Pluris" or the "Firm") and John Fletcher (collectively, "Respondents") submit 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 Respondents alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondents hereby accept and consent, 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

Pluris has been a FINRA member since 1992. The Firm employs four registered representatives and maintains its main office in New York, New York.

Fletcher first became registered with FINRA as a General Securities Representative ("GS") through a FINRA member firm in June 1998. In September 2016, Fletcher became associated with Pluris, where he currently is registered as a GS, Investment Banking Representative, General Securities Principal and in several other capacities.

RELEVANT DISCIPLINARY HISTORY

Respondents do not have any relevant disciplinary history with the Securities and Exchange Commission, any state securities regulators, FINRA, or any other self-regulatory organization.

OVERVIEW

In August 2017, Fletcher, on behalf of Pluris, negligently signed two documents containing false statements. Fletcher knew that those documents would be submitted to a court to obtain judicial confirmation that securities issued in exchange for the satisfaction of claims against two companies would be deemed exempted securities under Section 3(a)(10) of the Securities Act of 1933 ("Securities Act") and thus generally not subject to the registration requirements of Section 5 of the Securities Act. Respondents' conduct contravened Section 17(a)(2) of the Securities Act, thereby violating FINRA Rule 2010.

From August through October 2017 (the "Relevant Period"), Pluris failed to establish, maintain and enforce a supervisory system, including written supervisory procedures ("WSPs"), reasonably designed to achieve compliance with the registration requirements of Section 5 of the Securities Act. Specifically, Pluris did not implement reasonable systems or written procedures to determine whether securities issued in reliance on Section 3(a)(10) of the Securities Act were exempt from Section 5's registration requirements. This conduct violated FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

Background on Section 3(a)(10) of the Securities Act and VS

Section 5 of the Securities Act prohibits the offer or sale of any security unless there is a registration statement in effect as to that security or there is an exemption or safe-harbor available for that securities transaction. Section 3 of the Securities Act classifies certain categories of securities as exempted securities, meaning they are generally exempt from the registration requirements of Section 5 of the Securities Act.

Section 3(a)(10) of the Securities Act provides an exemption permitting a company, in certain circumstances, to extinguish debts and claims in exchange for court approved issuances of unregistered securities that are, in general, freely tradeable. More specifically, in relevant part, Section 3(a)(10) exempts from registration securities issued in exchange for "bona fide outstanding [] claims," if a court finds the terms of the issuance and exchange to be fair to the company and those receiving the shares after a public hearing (the "Fairness Hearing").

The SEC has stated that the Section 3(a)(10) exemption is not available for general capital raising. Additionally, the exemption is not available where certain terms and conditions are not presented to the court for consideration at the Fairness Hearing. The court must have sufficient information before it to determine the value of both the claims or interests to be surrendered and the securities to be issued in the proposed transaction.¹

During the Relevant Period, VS worked with several companies seeking to issue exempt

¹ SEC Staff Legal Bulletin No. 3A (CF) (June 18, 2008). For the securities to be freely tradeable, the securities must be issued to sellers who are not affiliates of the issuer and have not been affiliates of the issuer for the previous 90 days. *Id.*

securities in exchange for the satisfaction of claims against them, in reliance on Section 3(a)(10) of the Securities Act (the “Section 3(a)(10) Exchanges”).² Specifically, VS owned two funds that purchased outstanding claims from creditors of microcap companies.³ VS’s funds and the microcap companies’ creditors entered into claim purchase agreements (“CPAs”) pursuant to which the creditors transferred their interest in the microcap companies’ payables to the funds. After purchasing these claims, the funds filed lawsuits against the microcap companies to collect the total amount of the claims. The funds and the microcap companies then reached settlements in which the microcap companies agreed to issue securities in satisfaction of the amount of the total payables, as well as additional securities issued to VS’s funds. A court would then hold Fairness Hearings. Once the court approved, the microcap companies issued exempt securities to the funds, which the funds subsequently liquidated.

Respondents’ Role in the Section 3(a)(10) Exchanges

In early August 2017, Fletcher was introduced to VS, who offered Pluris a role as “investment banker” in connection with two Section 3(a)(10) Exchanges, each involving a different microcap company. In terms of compensation, VS explained to Fletcher that, after exempt shares were issued to VS’s fund and sold, Pluris would be paid five percent of the dollar amount of the sale proceeds.

VS also told Fletcher that Pluris should enter into engagement agreements with each of the two microcap companies and CPAs with VS’s funds setting forth this compensation arrangement. In other words, for each transaction, Pluris would enter into an engagement agreement with a microcap company, provide a copy of that engagement agreement to one of VS’s funds, and then enter into a CPA with the fund to sell the fund Pluris’s claim to the compensation Pluris was owed under the engagement agreement. VS’s fund would then add Pluris’s claim to the payables it purchased from the microcap company’s creditors and after filing a lawsuit and reaching a settlement, submit the settlement, including documentation related to the claims, for the court’s consideration at the Fairness Hearing. VS’s funds would pay Pluris’s fee if court approval was obtained and the microcap companies issued shares that VS’s funds were able to profitably liquidate.

Prior to meeting VS, neither Pluris nor Fletcher had any experience with Section 3(a)(10) Exchanges. The Firm did not have any supervisory systems, including WSPs, in place to address Section 3(a)(10)-related work. Nonetheless, Fletcher and Pluris accepted VS’s offer to work on the two Section 3(a)(10) Exchanges. Despite knowing that Section 3(a)(10) Exchanges were complex, and despite Respondents’ typical practice of retaining counsel for complex transactions, Respondents did not hire counsel or any subject matter expert to assist them with their work.

In August 2017, on behalf of Pluris, Fletcher signed engagement agreements with the respective microcap companies and signed CPAs with VS’s funds, in connection with the

² FINRA does not have jurisdiction over VS, who has not been registered with FINRA since 2015.

³ Companies with a market capitalization of less than \$250 or \$300 million are often called “microcap”—although many have market capitalizations far less than those amounts.

two Section 3(a)(10) Exchanges. In those engagement agreements, Pluris agreed to be the exclusive corporate finance advisor, consultant and investment banker to the microcap companies. With respect to Section 3(a)(10) Exchanges, Pluris agreed to facilitate Section 3(a)(10) settlements, review legal documents related to the use of the Section 3(a)(10) exemption and help the microcap companies understand the settlement documents.

Notwithstanding the obligations set forth in the engagement agreements—which labeled the Section 3(a)(10) Exchanges as “debt reduction strategies”—neither Fletcher nor anyone else at Pluris carefully read the underlying documents or evaluated the creditors’ claims being submitted as part of the settlements. Although Fletcher created a questionnaire to send to each creditor, the questionnaire asked for only limited information, and the Firm had no procedures for following up on answers that should have resulted in additional inquiry. For instance, Pluris took no further actions when a creditor responded “N/A” to basic questions about its debt (*i.e.*, how much was owed, how long it had been due and how much was expected to be paid down through the contemplated transaction). Further, Pluris sent the questionnaire to at least five of the creditors *after* the Section 3(a)(10) Exchange already was approved at a Fairness Hearing.

Between August 31 and October 17, 2017, VS’s funds filed papers concerning the claims and resulting settlements, including the CPAs Fletcher signed, in a Florida state court. The court held Fairness Hearings related to the settlements and approved all of the requested share issuances. In all, the court approved the exchange of shares for payables totaling \$2,483,600.26 from 30 creditors, including Pluris, plus additional shares as a fee to VS’s funds, pursuant to Section 3(a)(10).

Between September 30, 2017 and April 27, 2018, the microcap companies issued a total of 8,994,934,453 shares to VS’s funds, which sold them on the open market for \$2,108,712.72. VS then determined that the funds could not sell any additional shares due to market conditions and the funds sold the remainder of each claim back to its respective creditor, including Pluris, as the CPAs permitted. Pluris received a total of \$30,030 in fees in connection with the two Section 3(a)(10) Exchanges.

Pluris has not participated in any Section 3(a)(10) Exchanges since the end of the Relevant Period.

Misrepresentations in Contravention of Section 17(a)(2)

FINRA Rule 2010 requires that FINRA member firms observe high standards of commercial honor and just and equitable principles of trade. Section 17(a)(2) provides that it shall be unlawful “to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading” It is a violation of FINRA Rule 2010 to act in contravention of Section 17(a)(2).

Section 4 of the CPAs that Fletcher signed on behalf of Pluris, in connection with the two Section 3(a)(10) Exchanges, stated that:

[Pluris] held a bona fide outstanding claim against [the respective microcap company] . . . arising in the ordinary course of business, for goods and/or services rendered The Claim is currently due and owing, and is payable in full [Pluris] did not enter into the transaction giving rise to the Claim in contemplation of any sale or distribution of [the respective microcap company]’s common stock or other securities. . . . [Pluris] is not a broker or dealer in securities.

These statements were false. Pluris *is* a broker-dealer of securities, its claims were *not* “payable in full” until the sales following the Section 3(a)(10) Exchanges, and it *did* contemplate the distribution of the respective microcap company’s securities. Fletcher knew that Pluris would only be paid its fee if VS’s funds successfully liquidated securities issued pursuant to court approval in connection with the two Section 3(a)(10) Exchanges. Fletcher’s conduct was negligent—he did not read the CPAs carefully before signing them, despite knowing that they would be submitted to a court.

The statements also were material because they created the false impression that Pluris was not timely paid for past work unrelated to the Section 3(a)(10) Exchanges. Because the court was required to conduct a Fairness Hearing and evaluate the bona fides of the claims to ensure the issuance of securities was fair to the company and the parties receiving the shares, these misrepresentations may have impacted the court’s understanding of the proposed settlements, and may have influenced the court’s decisions to approve the exchanges of unregistered securities for Pluris’s claims.

By virtue of the foregoing, Fletcher and Pluris violated FINRA Rule 2010 by acting in contravention of Section 17(a)(2) of the Securities Act.

Supervisory Failure in Violation of FINRA Rule 3110

FINRA Rule 3110(a) requires that each member 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) requires that each member 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 also violates FINRA Rule 2010.

During the Relevant Period, Pluris failed to implement a supervisory system reasonably designed to achieve compliance with the registration requirements of Section 5 of the Securities Act. Despite the fact that the Firm generated all of its 2017 revenue from facilitating Section 3(a)(10) Exchanges, it did not have any systems, including WSPs, addressing Section 3(a)(10) Exchanges and whether the securities issued in those exchanges were exempt from the registration requirements of Section 5 of the Securities Act. Nor was there any other system or procedures in place to supervise Fletcher, who took the lead for the Firm on its work in connection with the two Section 3(a)(10) Exchanges, despite having no prior experience with the issuance of exempt securities under Section 3(a)(10) of the Securities Act. Specifically, the Firm did not review or consider whether Fletcher's work on these transactions, which included developing a limited questionnaire to send to creditors to ensure their claims were bona fide, was reasonably designed to achieve compliance with the registration requirements of Section 5.

By virtue of the foregoing, Pluris violated FINRA Rules 3110 and 2010.

B. Respondents also consent to the imposition of the following sanctions:

- For Pluris, a censure and a fine of \$20,000.⁴
- For Fletcher, a fine of \$7,500 and a two-month suspension from any FINRA member in all capacities.

Respondents agree to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. Respondents have each submitted an Election of Payment form showing the method by which they propose to pay the fine imposed.

Respondents specifically and voluntarily waive any right to claim an inability to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

Fletcher understands that if he is barred or suspended from associating with any FINRA member, he becomes subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, he may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. See FINRA Rules 8310 and 8311.

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

⁴ Pursuant to the General Principles Applicable to all Sanction Determinations contained in the Sanction Guidelines, FINRA imposed a lower fine in this case after it considered, among other things, the Firm's revenues and financial resources. See Notice to Members 06-55.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondents specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against them;
- 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, Respondents specifically and voluntarily waive 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.

Respondents further specifically and voluntarily waive 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

Respondents understand 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 Respondents; and
- C. If accepted:
 - 1. this AWC will become part of Respondents' permanent disciplinary

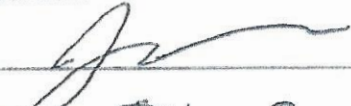
record and may be considered in any future action brought by FINRA or any other regulator against Respondents;

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. Respondents 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. Respondents 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 Respondents': (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. Respondents may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they 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 Pluris, 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 it 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 herein and the prospect of avoiding the issuance of a Complaint, has been made to induce it to submit it.

Pluris Capital Group, Inc.
Respondent

1/30/20
Date

By: 
Print Name: John Fletcher
Title: COO

Respondent Fletcher certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; Respondent Fletcher has agreed to the AWC's provisions voluntarily; and 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 him to submit this AWC.

1/30/20
Date


John Fletcher
Respondent

Reviewed by:


Jeff Kiem, Esq.
Counsel for Respondents
Sheppard Mullin
30 Rockefeller Plaza
New York, NY 10112-0015

Accepted by FINRA:

3/17/2020
Date

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

David Pollack/st

David C. Pollack

Senior Counsel

FINRA

Department of Enforcement

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