

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2018060896301**

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

RE: Purshe Kaplan Sterling Investments, Inc. (Respondent)
Member Firm
CRD No. 35747

Pursuant to FINRA Rule 9216, Respondent Purshe Kaplan Sterling Investments, Inc. (PKS) 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

PKS has been a FINRA member firm since April 1994. PKS is a full-service introducing broker-dealer that engages in a general securities business. PKS's main office is in Albany, New York, and it currently has approximately 1,680 registered representatives who operate from approximately 720 branch offices.¹

OVERVIEW

Between May 4, 2018, and June 29, 2018, PKS negligently failed to tell three investors in offerings related to GPB Capital Holdings, LLC (GPB Capital) that the issuers failed to timely make required filings with the Securities and Exchange Commission, including filing audited financial statements. By virtue of the foregoing, PKS violated FINRA Rule 2010.

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

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's investigation into firms that sold GPB Capital securities.

A. Factual Background

GPB Capital is a New York-based alternative asset management firm founded in 2013. GPB Capital serves as the general partner for limited partnerships formed to acquire income-producing companies. From 2013 through 2018, GPB Capital launched several limited partnerships, each focused on acquiring controlling interests in certain private sector companies. As relevant here, the GPB Capital limited partnerships included GPB Automotive Portfolio, LP (Automotive Portfolio), which was formed in 2013 to acquire and operate automotive dealerships, and GPB Holdings II, LP (Holdings II), which was formed in 2015 primarily to acquire and operate companies in the automotive retail and managed IT sectors.

These GPB Capital limited partnerships raised capital by selling limited partnership interests to retail investors. GPB Capital sold the limited partnership interests through, among other channels, broker-dealers. The securities GPB Capital sold, including those issued by Automotive Portfolio and Holdings II, were not registered. Instead, the limited partnership interests were sold pursuant to Regulation D of the Securities Act of 1933. As a condition of the offering, only accredited investors were permitted to purchase the GPB Capital limited partnership interests.² Automotive Portfolio and Holdings II raised a combined amount of more than \$1 billion from investors between July 2013 and June 2018.

After conducting due diligence on each offering, PKS approved Automotive Portfolio and Holdings II for sale by the firm's registered representatives in May 2017.

B. PKS Negligently Failed to Tell Three Investors Material Information Concerning GPB Capital Offerings in 2018

FINRA Rule 2010 requires that members and associated persons observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Making a negligent misrepresentation or omitting a material fact to customers violates FINRA Rule 2010, as it is inconsistent with just and equitable principles of trade.

On July 10, 2017, GPB Capital filed a lawsuit in New York against one of its former operating partners who had allegedly failed to acquire certain automotive dealership interests (the New York Litigation). In connection with the New York Litigation, the former partner asserted various counterclaims against GPB Capital and alleged that GPB Capital had falsified financial statements to conceal that GPB Capital was defrauding its investors. GPB Capital denied the former partner's allegations and the litigation remains pending.

² See 17 CFR §230.501(a) (defining accredited investor).

On April 27, 2018, GPB Capital released what it characterized as important updates regarding the audited financial statements for certain of its limited partnerships, including Automotive Portfolio and Holdings II. The letters, which were sent to broker-dealers that sold GPB Capital-related investments, including PKS, stated that GPB Capital was in the process of registering certain classes of securities issued by certain of the limited partnerships, including Automotive Portfolio and Holdings II, with the SEC. As part of that process, Automotive Portfolio and Holdings II were required to file audited financial statements. The letters further stated that the delivery of Automotive Portfolio's and Holdings II's audited financial statements (which were due to be filed by April 30, 2018) would be delayed pending the completion of a forensic audit. Specifically, GPB Capital disclosed that it and its auditors "determined that it would be prudent to hire a third party firm to complete a forensic audit in order to endeavor to put [the former partner's] counterclaims and other allegations to rest." The offering documents for Automotive Portfolio and Holdings II were not timely amended to disclose that the partnerships would be delayed in filing their audited financial statements with the SEC.

While PKS received the letters from GPB Capital notifying it of the delays and GPB Capital's stated intention to complete a forensic audit, PKS sold three limited partnership interests in Automotive Portfolio and one limited partnership interest in Holdings II to the firm's customers after that announcement. The principal value of those four sales, which occurred between May 4, 2018, and June 29, 2018, totaled \$400,000. PKS received a total of \$32,000 in commissions from these sales.

In connection with these four sales, however, PKS did not inform the customers that Automotive Portfolio and Holdings II had not timely filed its audited financial statements with the SEC or the reasons for the delay. The delay in filing audited financial statements and the reasons for it was material information that should have been disclosed.³

By negligently omitting material facts, PKS violated FINRA Rule 2010.

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

- a censure;
- a \$40,000 fine; and
- partial restitution of \$16,000, plus interest as described below.⁴

³ In February 2021, the SEC filed a complaint against GPB Capital and other defendants alleging, among other things, that the defendants engaged in securities fraud in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. (Case No. 1:21-cv-00583, E.D.N.Y.). The United States Department of Justice also brought criminal charges against GPB Capital's founder and CEO and two other executives, charging, among other things, securities fraud, mail fraud and wire fraud. (Case No. 1:21-cr-54, E.D.N.Y.). Both cases remain pending. In June 2023, one of GPB Capital's former executives pled guilty to wire fraud.

⁴ The amount of partial restitution being paid to customers is equal to the commissions that PKS received in connection with these customers' investments in Automotive Portfolio and Holdings II. One customer at issue in this AWC will not receive partial restitution because the customer previously settled his claims related to GPB Capital with the firm.

Respondent agrees to pay the monetary sanctions 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.

Partial restitution is ordered to be paid to the customers listed on Attachment A to this AWC (Eligible Customers) in the total amount of \$16,000, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), from the respective dates set forth on Attachment A until the date this AWC is accepted by the National Adjudicatory Council (NAC).

A registered principal on behalf of Respondent shall submit satisfactory proof of payment of restitution and interest (separately specifying the date and amount of each paid to each Eligible Customer) or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted by email to EnforcementNotice@FINRA.org from a work-related account of the registered principal of Respondent. The email must identify Respondent and the case number and include a copy of the check, money order, or other method of payment. This proof shall be provided by email to EnforcementNotice@FINRA.org no later than 120 days after the date of the notice of acceptance of the AWC.

The restitution amount plus interest to be paid to each Eligible Customer shall be treated by the Respondent as the Eligible Customer's property for purposes of state escheatment, unclaimed property, abandoned property, and similar laws. If after reasonable and documented efforts undertaken to effect restitution Respondent is unable to pay all Eligible Customers within 120 days after the date of the notice of acceptance of the AWC, Respondent shall submit to FINRA in the manner described above a list of the unpaid Eligible Customers and a description of Respondent's plan, not unacceptable to FINRA, to comply with the applicable escheatment, unclaimed property, abandoned property, or similar laws for each such Eligible Customer.

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 sanctions imposed in this matter.

The imposition of a restitution order or any other monetary sanctions in this AWC, 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, 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 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;
- 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 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 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.

11/29/23
Date


Purshu Kaplan Sterling Investments, Inc.
Respondent

Print Name: JP Purcell

Title: CEO


Reviewed by:


Brian Hamburger, Esq.
Counsel for Respondent
Hamburger Law Firm LLC
228 Park Ave S
PMB 51917
New York, NY 10003-1502

Accepted by FINRA:

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

12/20/2023
Date


Tricia Lyons
Counsel
FINRA
Department of Enforcement
200 Liberty Street | 11th Floor
New York, NY 10281

ATTACHMENT A

RESTITUTION SCHEDULE FOR GPB CAPITAL CUSTOMERS

Customer	Investment and Date	Restitution Amount (Exclusive of Interest)
1	Automotive May 4, 2018	\$4,000.00
2	Automotive June 29, 2018	\$12,000.00
TOTAL		\$16,000.00