





1           4.       Respondent failed to enforce its procedures regarding the documentation of due  
2 diligence records in connection with the private placement offerings recommended by the  
3 Respondent.

4           5.       Respondent violated IDAPA 12.01.08.105, Rule 105, as well as FINRA Rule  
5 3010 which requires broker-dealers to establish, maintain and enforce their written procedures.

6           6.       Idaho Code §30-14-501(a)(3) provides that it is unlawful for a person, in  
7 connection with the offer, sale or purchase of a security, directly or indirectly to engage in an act,  
8 practice, or course of business that operates or would operate as a fraud or deceit upon another  
9 person. A person who engages in any of the practices enumerated in IDAPA 12.01.08.104, Rule  
10 104, is deemed to have engaged in fraudulent, dishonest and unethical practices pursuant to  
11 Idaho Code §30-14-501(3).

12          7.       Respondent recommended the purchase of private placement offerings of local  
13 companies to customers without documenting its reasonable investigation of these companies in  
14 order to determine that its recommendation was suitable for investors. In addition, Respondent's  
15 documentation of suitability information pertaining to certain individuals who purchased the  
16 private placement offerings was inadequate and did not provide reasonable grounds to conclude  
17 that the recommendation was suitable. Making unsuitable recommendations is considered a  
18 fraudulent, dishonest and unethical practice under IDAPA 12.01.08, Rule 104.04, and NASD  
19 Rule 2310.

20          8.       Respondent violated IDAPA 12.01.08.104.04, Rule 104.04, and NASD Rule 2310  
21 which prohibits unsuitable recommendations. NASD Rule 2310 requires a broker-dealer to have  
22 reasonable grounds to believe that a recommendation to purchase, sell or exchange a security is  
23 suitable for the customer. Reasonable-basis suitability analysis has two components. A broker-  
24 dealer must 1) perform reasonable diligence to understand the potential risks and rewards  
25 associated with a recommended security or strategy and 2) determine whether the

1 recommendation is suitable for at least some investors based on that understanding. While  
2 Respondent asserts that it is familiar with the local companies' management and operations,  
3 documentation supporting Respondent's investigation of these local companies' private  
4 placement offerings cannot support a conclusion that Respondent conducted a reasonable-basis  
5 suitability analysis.

6 9. Respondent incorrectly categorized some trades as non-solicited when in fact they  
7 were solicited.

8 10. Respondent violated IDAPA 12.01.08.104.26, Rule 104.26, which prohibits the  
9 marking of any order tickets or confirmations as unsolicited when in fact the transaction was  
10 solicited.

11 11. Respondent's violations of IDAPA Rule 88, Rule 105, Rule 104.04, and Rule  
12 104.26 constitute grounds for suspension or revocation pursuant to Idaho Code §§ 30-14-  
13 412(d)(2) and 30-14-412(d)(13).

### 15 III.

### 16 REMEDIES

17 THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and  
18 Respondent's agreement to the entry of this Agreement and Order, the Director finds that the  
19 following remedies are appropriate and in the public interest:

20 1. Respondent neither admits nor denies the Findings of Fact and Conclusions of  
21 Law as set forth in this Agreement and Order.

22 2. Respondent is cautioned to permanently cease and desist from violating the Act  
23 and agrees to comply with the provisions of the Act and rules promulgated thereunder in the  
24 future. In the event that Respondent commits a violation of the Act in the future, or fails to  
25

1 adhere to the terms of this Agreement and Order, Respondent acknowledges that Complainant  
2 can incorporate the allegations giving rise to this Agreement and Order in any future proceeding.

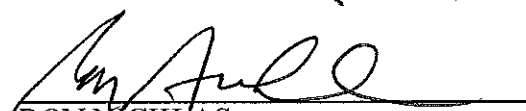
3 3. Respondent agrees to cease designating clients' accounts as closed in order to  
4 avoid paying inactivity fees to its clearing firm. Respondent agrees to adhere to the terms of its  
5 clearing agreement or obtain an exception from its clearing firm with regard to its inactivity fee  
6 practices.

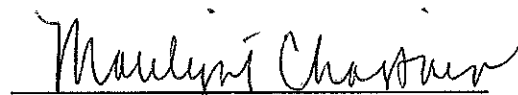
7 4. Respondent agrees to implement a system to eliminate the automatic non-solicited  
8 default setting for its order tickets and implement a system that requires an affirmative human  
9 action in categorizing the trade as either solicited or non-solicited.

10 5. Respondent agrees to pay a civil penalty of three thousand (\$3,000) dollars no  
11 later than thirty (30) days after signature by the Director. Payment shall be made payable to the  
12 order of "Idaho Department of Finance."

13 6. Respondent waives notice and opportunity for a hearing under I.C. § 30-14-  
14 604(b) and (c), and under the contested case provisions of the Idaho Administrative Procedures  
15 Act, I.C. § 67-5240 et. seq.

16  
17 AGREED TO and ACKNOWLEDGED this 27 day of March 2013.

18  
19  
20   
21 RON NICKLAS  
22 President, Pennaluna and Company

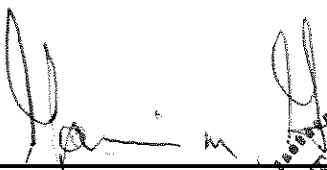
23   
24 MARILYN T. CHASTAIN  
25 Bureau Chief, Securities Bureau  
Department of Finance  
State of Idaho

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IT IS SO ORDERED.

DATED this 1st Day of April, 2013.

STATE OF IDAHO  
DEPARTMENT OF FINANCE

  
\_\_\_\_\_  
GAVIN M. GEE, Director

