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1	BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE
2	OF THE STATE OF IDAHO
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4	STATE OF IDAHO, Department of Finance, Docket No.: 2013-7-01
5	Securities Bureau,
6	Complainant, AGREEMENT AND ORDER
7	vs.
8	Pennaluna and Company,
9	Respondent.
10)
11	The Director of the Department of Finance ("Director") has instituted an investigation
12	into the conduct of Pennaluna and Company ("Respondent"). Pursuant to the investigation
13	appears to the Director that violations of the Idaho Uniform Securities Act (2004) (the "Act"
14	Idaho Code 30-14-101 et seq., have occurred. The Director and Respondent have agreed to
15	resolve this matter without a public hearing. Therefore, the Director deems it appropriate and i
16	the public interest that this Agreement and Order be entered. Respondent admits the jurisdiction
17	of the Director and consents to the entry of this Agreement and Order.
18	I.
19	FINDINGS OF FACT
20	1. Pennaluna and Company is and has been at all relevant times, a registered broke
21	dealer at 421 Sherman Avenue in Coeur d'Alene, Idaho.
22	2. Respondent has been a registered broker-dealer with the Department from
23	February 28, 1984 to date.
24	3. Respondent provides broker-dealer services to Idaho residents and others.

- 4. The Department conducted a limited examination of Respondent's operations on May 14-17, 2012.
 - 5. Areas of regulatory concern identified during the examination include:
 - a. Respondent's failure to enforce its procedures relating to the documentation of its due diligence review of local companies' private placement offerings recommended by the Respondent.
 - b. Respondent's inaccurate categorization of solicited trading tickets as non-solicited. Respondent's system categorizes all trading tickets as "non-solicited" unless the registered representative takes affirmative action to change the "non-solicited" default setting.
 - c. Respondent's failure to maintain certain new account and investor suitability information.
 - d. Respondent's inaccurate, internal coding of certain investor accounts as closed in order to avoid paying inactivity fees to the Respondent's clearing firm.

II.

CONCLUSIONS OF LAW

- 1. The Director has jurisdiction over this matter pursuant to the Act.
- 2. Respondent failed to keep required books and records including certain new account records and updated suitability information. Respondent also inaccurately designated accounts as closed, when in fact the accounts were open, in order to avoid paying its clearing firm for account inactivity fees.
- 3. Respondent violated §30-14-411(c) and IDAPA 12.01.08.088, Rule 88 which require each broker-dealer registered or required to be registered under the Act to make, maintain and preserve books and records in compliance with the Securities and Exchange Act of 1934.

- 4. Respondent failed to enforce its procedures regarding the documentation of due diligence records in connection with the private placement offerings recommended by the Respondent.
- 5. Respondent violated IDAPA 12.01.08.105, Rule 105, as well as FINRA Rule 3010 which requires broker-dealers to establish, maintain and enforce their written procedures.
- 6. Idaho Code §30-14-501(a)(3) provides that it is unlawful for a person, in connection with the offer, sale or purchase of a security, directly or indirectly to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person. A person who engages in any of the practices enumerated in IDAPA 12.01.08.104, Rule 104, is deemed to have engaged in fraudulent, dishonest and unethical practices pursuant to Idaho Code §30-14-501(3).
- 7. Respondent recommended the purchase of private placement offerings of local companies to customers without documenting its reasonable investigation of these companies in order to determine that its recommendation was suitable for investors. In addition, Respondent's documentation of suitability information pertaining to certain individuals who purchased the private placement offerings was inadequate and did not provide reasonable grounds to conclude that the recommendation was suitable. Making unsuitable recommendations is considered a fraudulent, dishonest and unethical practice under IDAPA 12.01.08, Rule 104.04, and NASD Rule 2310.
- 8. Respondent violated IDAPA 12.01.08.104.04, Rule 104.04, and NASD Rule 2310 which prohibits unsuitable recommendations. NASD Rule 2310 requires a broker-dealer to have reasonable grounds to believe that a recommendation to purchase, sell or exchange a security is suitable for the customer. Reasonable-basis suitability analysis has two components. A broker-dealer must 1) perform reasonable diligence to understand the potential risks and rewards associated with a recommended security or strategy and 2) determine whether the

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

- 9. Respondent incorrectly categorized some trades as non-solicited when in fact they were solicited.
- 10. Respondent violated IDAPA 12.01.08.104.26, Rule 104.26, which prohibits the marking of any order tickets or confirmations as unsolicited when in fact the transaction was solicited.
- 11. Respondent's violations of IDAPA Rule 88, Rule 105, Rule 104.04, and Rule 104.26 constitute grounds for suspension or revocation pursuant to Idaho Code §§ 30-14-412(d)(2) and 30-14-412(d)(13).

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REMEDIES

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

- Respondent neither admits nor denies the Findings of Fact and Conclusions of Law as set forth in this Agreement and Order.
- 2. Respondent is cautioned to permanently cease and desist from violating the Act and agrees to comply with the provisions of the Act and rules promulgated thereunder in the future. In the event that Respondent commits a violation of the Act in the future, or fails to

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

- 3. Respondent agrees to cease designating clients' accounts as closed in order to avoid paying inactivity fees to its clearing firm. Respondent agrees to adhere to the terms of its clearing agreement or obtain an exception from its clearing firm with regard to its inactivity fee practices.
- 4. Respondent agrees to implement a system to eliminate the automatic non-solicited default setting for its order tickets and implement a system that requires an affirmative human action in categorizing the trade as either solicited or non-solicited.
- 5. Respondent agrees to pay a civil penalty of three thousand (\$3,000) dollars no later than thirty (30) days after signature by the Director. Payment shall be made payable to the order of "Idaho Department of Finance."
- 6. Respondent waives notice and opportunity for a hearing under I.C. § 30-14-604(b) and (c), and under the contested case provisions of the Idaho Administrative Procedures Act, I.C. § 67-5240 et. seq.

AGREED TO and ACKNOWLEDGED this 27 day of Mark 2013.

RON NICKLAS

President, Pennaluna and Company

MARILYN T. CHASTAIN

Bureau Chief, Securities Bureau

Department of Finance

State of Idaho

IT IS SO ORDERED.

DATED this Day of Pric, 2013.

STATE OF IDAHO DEPARTMENT OF FINANCE

GAVIN M. GEE, Director

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