

STATE OF OKLAHOMA  
DEPARTMENT OF SECURITIES  
204 NORTH ROBINSON, SUITE 400  
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

Pentecost Capital Management, Inc. (CRD #106078) and  
C. Daniel Pentecost (CRD #1066678),

Respondents.

ODS File 20-019

**NOTICE OF SERVICE ON THE ADMINISTRATOR**  
**AND**  
**AFFIDAVIT OF COMPLIANCE**

STATE OF OKLAHOMA    )  
  )    ss.  
COUNTY OF OKLAHOMA)

The undersigned affiant, of lawful age, being first duly sworn upon oath deposes and states:

1. That she is the Administrator of the Oklahoma Department of Securities (“Administrator”).
2. That a copy of the Notice of Opportunity for Hearing (“Notice”) with Enforcement Division Recommendation (“Recommendation”) attached was delivered to Affiant in the office of the Deputy Administrator pursuant to Section 1-611 of the Oklahoma Uniform Securities Act (“Act”), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2019).
3. That the Administrator has received service of process on behalf of Respondents, pursuant to Section 1-611 of the Act.
4. That a copy of the Notice, with the Recommendation attached, and a copy of this Notice of Service on the Administrator and Affidavit of Compliance are being sent this 3rd day of August, 2020, by certified mail, return receipt requested, delivery restricted, to the last known addresses of Respondents, in compliance with Section 1-611 of the Act.
5. That this Affidavit of Compliance is declared filed of record as of the date set forth below in compliance with Section 1-611 of the Act.

FURTHER AFFIANT SAYETH NOT.

Dated this 3<sup>rd</sup> day of August, 2020.

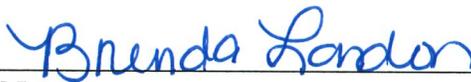
(SEAL)

  
\_\_\_\_\_  
MELANIE HALL, ADMINISTRATOR  
OKLAHOMA DEPARTMENT OF SECURITIES

Subscribed and sworn to before me this 3<sup>rd</sup> day of August, 2020.

(SEAL)



  
\_\_\_\_\_  
Notary Public

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**NOTICE OF OPPORTUNITY FOR HEARING**

1. On the 3rd day of August, 2020, the attached Enforcement Division Recommendation ("Recommendation"), in support of the issuance of an order imposing sanctions on Respondents, pursuant to Section 1-411 of the Oklahoma Uniform Securities Act of 2004 ("Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2019), was left in the office of the Administrator of the Oklahoma Department of Securities ("Administrator").

2. Pursuant to 660:2-9-1 of the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (effective November 1, 2018) ("Rules") and Section 1-411 of the Act, the Administrator hereby gives notice to Respondents of their obligation to file an answer and their right to request a hearing to show why an order based on the Recommendation should not be issued.

3. The answer must be in writing and received by the Administrator within fifteen (15) days after service of this Notice. As required by 660:2-9-2 of the Rules, the answer shall indicate whether Respondents request a hearing and shall specifically admit or deny each allegation contained in the Recommendation or state that Respondents do not have, and are unable to obtain, sufficient information to admit or deny each allegation. If Respondents intend in good faith to deny only a part of an allegation, Respondents shall specify so much of it as is true and shall deny only the remainder.

4. Failure to file an answer in compliance with 660:2-9-2 of the Rules, to include a request for a hearing as provided for herein, shall result in the issuance of an order revoking Respondents' registrations under the Act, pursuant to Section 1-411 of the Act and 660:2-9-2 of the Rules.

5. Upon receipt of a written request, pursuant to 660:2-9-2 of the Rules, a hearing on the Recommendation shall be promptly scheduled or a written order denying hearing shall be issued.

6. Notice of the date, time, and location of the hearing shall be given to Respondents not less than forty-five (45) days in advance thereof, pursuant to 660:2-9-2 of the Rules.

Witness my Hand and the Official Seal of the Oklahoma Department of Securities this 3<sup>rd</sup> day of August, 2020.

(SEAL)

  
\_\_\_\_\_  
MELANIE HALL, ADMINISTRATOR  
OKLAHOMA DEPARTMENT OF SECURITIES

**CERTIFICATE OF MAILING**

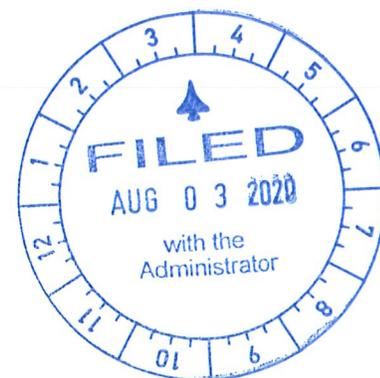
The undersigned hereby certifies that on the 3<sup>rd</sup> day of August, 2020, a true and correct copy of the above and foregoing *Notice of Opportunity for Hearing* and the *Enforcement Division Recommendation* were mailed by certified mail, return receipt requested, delivery restricted, with postage prepaid thereon, addressed to:

C. Daniel Pentecost  
4630 S. Columbia Ave.  
Tulsa, OK 74105

Pentecost Capital Management, Inc.  
1909 West C Street  
Jenks, OK 74037

Brenda London  
Brenda London, Paralegal

STATE OF OKLAHOMA  
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**ENFORCEMENT DIVISION RECOMMENDATION**

The Enforcement Division of the Oklahoma Department of Securities (“**Department**”) submits the following proposed Findings of Fact, Authorities, and Conclusions of Law to the Administrator of the Department (“**Administrator**”) in support of the issuance of an order revoking Respondents’ registrations under the Oklahoma Uniform Securities Act of 2004 (“**Act**”), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (2011 and Supp. 2019), and an order summarily suspending Respondents’ registrations until a final determination in the matter.

**Findings of Fact**

1. Pentecost Capital Management, Inc. (“**PCM**”) is an Oklahoma corporation that has been registered under Oklahoma’s securities laws as an investment adviser during the time periods April 2003 to December 2003, and February 2007 to the present. PCM was registered under federal law as an investment adviser during the time periods February 1997 to July 2003, and December 2003 to March 2007. At all times material hereto, PCM’s principal office and place of business has been in Jenks, Oklahoma.

2. C. Daniel Pentecost (“**Pentecost**”) is a registered investment adviser representative of PCM under Oklahoma’s securities laws and has been since March 1997. At all times material hereto, Pentecost has been the president, sole owner, and sole investment adviser representative of PCM.

**Insolvency**

3. On April 16, 2020, Pentecost and his wife filed a voluntary petition for Chapter 7 bankruptcy in the Northern District of Oklahoma.

4. Pentecost's bankruptcy petition values the debtors' assets at \$570,066 and their total liabilities at over \$6.2 million. The total liabilities include almost \$1.7 million in secured claims and over \$4.5 million in unsecured claims.

5. The bankruptcy petition lists PCM as a financial asset of the debtors and states that PCM's liabilities exceed its assets.

6. Pentecost and PCM are insolvent.

### Unethical Practices

7. Pentecost's bankruptcy petition lists a PCM client ("**Client A**") as a nonpriority creditor with an unsecured claim in the amount of \$35,000 for a "personal loan" that was purportedly incurred in 2019.

8. Client A is a vulnerable 92-year-old widow and an unsophisticated investor who has trusted Respondents for investment advice for more than twenty (20) years.

9. Client A describes herself as an "extremely careful" investor and "not a gambler."

10. Respondents have managed a brokerage account for Client A at Charles Schwab since at least 1999.

11. Respondents have discretionary authority over Client A's brokerage account. Client A relies on Respondents to choose the securities that are bought and sold in her account.

12. Client A's brokerage account is a margin account thereby allowing Client A to borrow funds against eligible securities.

13. Client A agreed to select the margin feature on her brokerage account because Pentecost told her that it would allow him to buy and sell stock in her account while she was out of town.

14. Although Client A does not like having a margin loan balance, Client A's brokerage account has almost consistently maintained a margin loan balance since at least July 1, 2010.<sup>1</sup> As of June 30, 2020, Client A's margin loan balance was \$12,347.32.

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<sup>1</sup> Account statements prior to July 1, 2010, are no longer available due to Charles Schwab's record retention requirements.

15. Client A has routinely relied on monthly withdrawals from her brokerage account to pay for her living expenses since at least July 1, 2010.

16. Respondents have made unsuitable purchases of Direxion Daily Small Cap Bull 3X Shares (symbol “TNA”) and ProShares Ultra QQQ (symbol “QLD”) in Client A’s brokerage account.

17. TNA is a leveraged exchange-traded fund that seeks the daily investment results, before fees and expenses, of 300% of the performance of the Russell 2000 Index. TNA is designed to be traded on a daily basis. TNA’s Summary Prospectus, dated February 28, 2020, states the following, in pertinent part:

**This means that the return of the Fund for a period longer than a trading day will be the result of each trading day’s compounded return over the period, which will very likely differ from 300% of the return of the Index for that period. As a consequence, longer holding periods, higher volatility of the Index and greater leverage increase the impact of compounding on an investor’s returns.** During periods of higher Index volatility, the volatility of the Index may affect the Fund’s return as much as, or more than, the return of the Index. Further, the return for investors that invest for periods less than a trading day will not be 300% of the performance of the Index for the trading day. [Emphasis added.]

\* \* \*

For periods longer than a single day, the Fund will lose money if the Index’s performance is flat, and it is possible that the Fund will lose money even if the Index’s performance increases over a period longer than a single day. **An investor could lose the full principal value of his/her investment within a single day.** [Emphasis in original.]

18. QLD is another leveraged exchanged-traded fund that is designed to be traded on a daily basis. QLD’s Summary Prospectus, dated October 1, 2018, states the following, in pertinent part:

[QLD] (the “Fund”) seeks daily investment results, before fees and expenses, that correspond to two times (2x) the return of the Nasdaq-100 Index® (the “Index”) **for a single day**, not for any other period. A “single day” is measured from the time the Fund calculates its net asset value (“NAV”) to the time of the Fund’s next NAV calculation. **The return of the Fund for periods longer than a single day will be the result of its return for each day compounded over the period. The Fund’s returns for periods longer than a single day will very likely differ in amount, and possibly even direction,**

**from the Fund's stated multiple (2x) times the return of the Fund's Index for the same period. For periods longer than a single day, the Fund will lose money if the Index's performance is flat, and it is possible that the Fund will lose money even if the level of the Index rises.** Longer holding periods, higher index volatility and greater leverage each exacerbate the impact of compounding on an investor's returns.

During periods of higher Index volatility, the volatility of the Index may affect the Fund's return as much as or more than the return of the Index.

\* \* \*

**An investor in the Fund could potentially lose the full principal value of his/her investment within a single day.** [Emphasis in original.]

19. Shares of TNA and QLD have been held as long-term investments in Client A's brokerage account rather than traded as designed.

20. In May 2015, Pentecost, as managing partner of Sonus Rights Managements, LLC, borrowed \$45,000 from Client A at an annual interest rate of 10.5%. The loan is evidenced by a document entitled, "Unsecured Promissory Note (Demand)," that states, "The entire principal balance, including any accrued interest, shall be fully and immediately payable on, or before the 10<sup>th</sup> day of July, 2015."

21. The principal and interest have not been repaid in full to Client A.

22. Funds withdrawn on margin from Client A's brokerage account partially funded Client A's loan to Pentecost. The transaction left Client A's brokerage account with a margin loan balance of \$61,575.25 as of May 31, 2015. Client A's brokerage account had an ending value on May 31, 2015, of \$164,355.56.

23. In February 2018, Pentecost sold a limited partnership interest in PMP Investors I, LP—an entity under Pentecost's control in his capacity as 50% owner of the general partner—to Client A for \$50,000.

24. The Confidential Private Placement Memorandum, dated February 2018, for PMP Investors I, LP, states in pertinent part: "An investment in the partnership interests is highly speculative."

25. The memorandum also states that holders of the partnership interests "are not likely to be able to liquidate their investment, or pledge the Partnership Interests as security on a loan in the event of an emergency."

26. Client A's investment in PMP Investors I, LP, was made with \$50,000 that was wired out of her brokerage account on June 5, 2018. The wired funds were partially withdrawn on margin.

27. As of June 30, 2018, Client A's brokerage account had an ending value of \$104,512.50, and a margin loan balance of \$70,060.85.

28. Through the conduct described above, Respondents failed to act in the best interests of Client A.

29. Pentecost has borrowed funds from other clients of Respondents.

To the extent any of these Findings of Fact are more properly characterized as Conclusions of Law, they should be so considered.

### Authority

1. Section 1-411 of the Act provides, in pertinent part:

B. If the Administrator finds that the order issued is in the public interest and subsection D of this section authorizes the action an order issued under this act may revoke, suspend, condition, or limit the registration of a registrant and if the registrant is a broker-dealer or investment adviser, any partner, officer, or director, any person having a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser. . . .

C. If the Administrator finds that the order is in the public interest and paragraphs 1 through 6, 8, 9, 10, 12 or 13 of subsection D of this section authorizes the action, an order under this act may censure, impose a bar, impose a civil penalty in an amount not to exceed a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or Two Hundred Fifty Thousand Dollars (\$250,000.00) for multiple violations on a registrant, and/or recover the costs of the investigation from a registrant and if the registrant is a broker-dealer or investment adviser, from any partner, officer, or director, any person having a similar function or any person directly or indirectly controlling the broker-dealer or investment adviser.

D. A person may be disciplined under subsections A through C of this section if the person:

\* \* \*

2. Has willfully violated or willfully failed to comply with this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous ten (10) years;

\* \* \*

7. Is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the Administrator may not enter an order against an applicant or registrant under this paragraph without a finding of insolvency as to the applicant or registrant;

\* \* \*

13. Has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance or insurance business within the previous ten (10) years[.]

\* \* \*

F. The Administrator may summarily postpone an application or summarily suspend a registration before final determination of an administrative proceeding. Upon the issuance of the order, the Administrator shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within fifteen (15) days after the receipt of a request in a record from the person the matter will be scheduled for a hearing and such hearing shall be commenced within fifteen (15) days of the matter being set for hearing. If a hearing is not requested and none is ordered by the Administrator, within thirty (30) days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the Administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

G. An order may not be issued under this section, except under subsection F of this section, without:

1. Appropriate notice to the applicant or registrant;
2. Opportunity for hearing; and

3. Findings of fact and conclusions of law in a record in accordance with the Administrative Procedures Act. If the person to whom the notice is addressed does not request a hearing within fifteen (15) days after the service of notice is effective, a final order as provided in subsection A, B or C of this section may be issued.

2. Rule 660:11-7-42 of the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (effective November 1, 2018) states, in pertinent part:

(a) **Purpose.** This Section is intended to set forth the standards of ethical practices for investment advisers and investment adviser representatives. Any noncompliance with the standards set forth in this Section will constitute unethical practices in the securities business as the same is set forth in Section 1-411.D.13 of the Securities Act; however, the following is not intended to be a comprehensive listing of all specific events or conditions that may constitute such unethical practices. The standards shall be interpreted in such manner as will aid in effectuating the policy and provisions of the Securities Act, and so as to require that all practices of investment advisers and investment adviser representatives in connection with their activities in this state shall be just, reasonable and not unfairly discriminatory. The standards set forth in this Section and the disclosure delivery requirement set forth in 660:11-7-43 shall apply to all investment advisers and investment adviser representatives.

(b) **Standards.** An investment adviser or investment adviser representative shall not engage in dishonest or unethical practices including, although not limited to, the following:

(1) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment profile.

(A) A client's investment profile includes, but is not limited to, the client's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information disclosed by the client or known to the investment adviser or investment adviser representative.

\* \* \*

(6) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser or investment adviser representative, or a financial institution engaged in the business of loaning funds.

**Conclusions of Law**

1. Respondents are insolvent.
2. Respondents have engaged in unethical practices in the securities business within the previous ten years, in violation of Rule 660:11-7-42, by:
  - a. borrowing money from clients,
  - b. recommending unsuitable transactions and investment strategies to Client A, and
  - c. breaching their fiduciary duties to Client A.
3. The Administrator is authorized under Section 1-411 of the Act to revoke and summarily suspend Respondents' registrations under the Act.
4. It is in the public interest for the Administrator to revoke and summarily suspend Respondents' registrations under the Act.

To the extent any of these Conclusions of Law are more properly characterized as Findings of Fact, they should be so considered.

**WHEREFORE**, it is recommended that the Administrator revoke Respondents' registrations under the Act and impose any other sanctions deemed appropriate and authorized by law. It is further recommended that the Administrator summarily suspend Respondents' registrations under the Act until a final determination of this proceeding.

Respectfully submitted,

/s/ Terra Shamas Bonnell

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Amanda Cornmesser

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