

# Boustead Securities

April 9, 2021

Marvin Bautista  
Examination Manager  
FINRA

Re: Examination Number: 2020065094  
Firm CRD Number: 141391

Dear Mr. Bautista:

Please find our responses the FINRA letter dated March 31, 2021 below:

**(1) EXCEPTION:**

The Firm was not in compliance with:

**FINRA Rule 2111**

Suitability

**FINRA Rule 3110 (b) (1)**

General Requirements

**FINRA Rule 4512 (a) (2)**

Customer Account Information

**DETAILS:** The Staff's sampling of eleven (11) investors making purchases in the Clear Cannabis private placement offering revealed the following deficiencies:

- The investor profile for Customer Bertram Tuckey was not provided. As such, the Staff could not determine whether the recommendation was suitable for the customer.

***BSL Response:***

*The investor profile for Customer Bertram Tuckey was uploaded to 3242536: Suitability Determination on March 1, 2021 at 5:21pm. Document labeled, "Bertram Tuckey Investor Representation.pdf". As is noted on the profile, Mr. Tuckey is a sophisticated investor with high net worth and income. His investment objectives are consistent with the offering. As such, the Firm is confident that the recommendation was suitable for Mr. Tuckey.*

- The recommendation of Clear Cannabis Private Placements to the following seven (7) investors does not appear suitable in that each investor's investment profile reflects a short investment time horizon for a security that may not have a ready market for many years. In addition, these investors show a low level for risk tolerance, and either limited or no investment experience. Furthermore, the investment profile does not include investment

objective, tax status or other investment.

<b>Customer Name</b>	<b>Investment Time Horizon</b>	<b>BSL Response:</b>
Meruzhan P. Korniyenko	18 Months	<p>-An eighteen-month time horizon combined with a low liquidity need is suitable for a private placement investment. In the PPM, Clear Cannabis stated its capital market plans included a listing on NASDAQ within one to two years. The Firm has taken many companies public within one to two years of completing a private placement and believe that the time horizon in the PPM is reasonable.</p> <p>-Clear Cannabis noted that the investor is an extremely wealthy business owner operating two separate businesses and has liquidity over \$5 million dollars. This investor is well known to Clear Cannabis as the investor is a personal friend of the CEO for seven years and was looking to extend his position in Clear Cannabis.</p>
Rory Lamberton	12 - 36 Months	<p>A three-year time horizon combined with a low liquidity need is suitable for a private placement investment. In the PPM, Clear Cannabis stated its capital market plans included a listing on NASDAQ within one to two years. The Firm has taken many companies public within one to two years of completing a private placement and believe that the time horizon in the PPM is reasonable.</p>
Forrest Charlesworth	12 Months	<p>-A one-year time horizon combined with a low liquidity need is suitable for a private placement investment. In the PPM, Clear Cannabis stated its capital market plans included a listing on NASDAQ within one to two years. The Firm has taken many companies public within one to two years of completing a private placement and believe that the time horizon in the PPM is reasonable.</p> <p>- Clear Cannabis noted that Mr. Charlesworth is a business owner and has been an investor in each and every one of Clear Cannabis' deals from 2015 until the present. This investment represents less than 1% of his portfolio and less than 10% of just what he has invested in Clear Cannabis. He recently</p>

		<i>extended his position in Clear Cannabis.</i>
Harold K. Morgan	60 Months	<i>A five-year time horizon is suitable for a private placement investment. In the PPM, Clear Cannabis stated its capital market plans included a listing on NASDAQ within one to two years. The Firm has taken many companies public within one to two years of completing a private placement and believe that the time horizon in the PPM is reasonable.</i>
Ashley Frank	9 months	<i>Ms. Frank's investment time horizon is long term. This assumes a minimum of one year. In the PPM, Clear Cannabis stated its capital market plans included a listing on NASDAQ within one to two years. The Firm has taken many companies public within one to two years of completing a private placement and believe that the time horizon in the PPM is reasonable.</i> <i>Clear Cannabis noted that Ms. Frank is well known to the CEO of Clear Cannabis and is an experienced investor on her own for the last ten years. She has a large trust that she self directs her private investments and holds equity in at least six different privately held businesses. She recently extended her position in Clear Cannabis.</i>
Claudia Moore	2 years	<i>-A two-year time horizon combined with a low liquidity need is suitable for a private placement investment. In the PPM, Clear Cannabis stated its capital market plans included a listing on NASDAQ within one to two years. The Firm has taken many companies public within one to two years of completing a private placement and believe that the time horizon in the PPM is reasonable.</i> <i>- Clear Cannabis noted that Ms. Moore is a private investor, independently wealthy and brought in because she is friends with Forrest Charlesworth. She has completed private deals in the emerging market space previously and completed large real estate transactions.</i>
Susan Weissman Frank	36 months	<i>A three-year time horizon is suitable for a private placement investment. In the PPM, Clear Cannabis stated its capital</i>

		<i>market plans included a listing on NASDAQ within one to two years. The Firm has taken many companies public within one to two years of completing a private placement and believe that the time horizon in the PPM is reasonable.</i>
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- The following three (3) Investors show a low level risk tolerance, and either limited or no investment experience. Furthermore, the investment profile does not include investment objective, tax status or other investment(s).

<b>Customer Name</b>	<b>BSL Responses:</b>
M. Louise Wingert	<p><i>According to the suitability questionnaire we provided at item C-4 the investor represented that the investor's risk tolerance is aggressive, not low.</i></p> <p><i>Furthermore, item C-1 states the investor has substantial experience in investments generally and limited partnerships. Item C-1 also states the investor has limited experience in stock and bonds, among others. Limited experience is acceptable for investment in private placements given her accredited investor status where the investor states they have a net worth of over a million dollars.</i></p>
Harold K. Morgan	<p><i>This investor represented on the suitability questionnaire we provided at item C-4 that the investor's risk tolerance is aggressive, not low.</i></p> <p><i>Furthermore, item C-1 states the investor has limited experience in investments generally, among others. Limited experience is acceptable for investment in private placements given his accredited investor status where he states he exceeds the income requirements.</i></p>
Susan Weissman Frank	<p><i>This investor represented on the suitability questionnaire we provided at item C-4 that the investor's risk tolerance is aggressive, not low.</i></p> <p><i>Furthermore, item C-1 states the investor has limited experience in investments generally, among others. Limited experience is acceptable for investment in private placements given her accredited investor status where she states she has a net worth of over a million dollars.</i></p>

**BSL Additional Response:**

*The Firm acknowledges that the suitability questionnaire for Clear Cannabis did not require the investor to provide investment objective, tax status or other investment(s) information. It is important to note the Firm engaged outside counsel of Kutak Rock, LLP to represent the Firm. Among the*

services it provided to the Firm was the approval and distribution of the offering documents, including the suitability questionnaire upon which the Firm and the issuer relied. In addition to the Firm's counsel the issuer had its own outside securities counsel, Ross Law Group PLLC, who also reviewed and agreed upon the documents, including the suitability questionnaire. The Firm believes it was reasonable for it to rely on experienced securities counsel in this manner. Notwithstanding this belief, upon a FINRA finding in the 2019 Sales Practice exam, the Firm took immediate action to incorporate a robust investor profile into its subscription requirements.

- The Staff notes that the exceptions listed above relating to Suitability of Private Placement offerings are repeat violations.

**BSL Response:**

*The Firm firmly and respectfully rejects that these suitability questionnaire findings are "repeat violations." All of the investors cited above invested prior to the disposition of the 2019 Sales Practice Exam and as such would not represent repeat violations. The Firm acknowledges that it was unaware of these continuing violations as different outside securities counsel were engaged for the vast majority of the deals completed or engaged by the Firm until informed in the 2019 Sales Practices Exam. Up to that time, the Firm solely and extensively relied on such reviewed/approved offering documents, including the suitability questionnaires. As noted above, the Firm, since first learning of the missing items, immediately responded and has taken the following actions: (1) revised its suitability questionnaire templates; (2) revised its approval process; (3) advised all outside counsel with whom the Firm worked to inform them of their errors; and (4) cease relying upon outside counsel's subscription drafts going forward. The Firm took the actions noted above after learning of those matters from the 2019 Sales Practice Exam report.*

**(2) EXCEPTION:**

The firm was not in compliance with:

**FINRA Rule 3110 (b)**

Written Procedures

**Securities Act of 1933 Regulation D 230.506**

Exemption for limited offers and sales without regard to dollar amount of offering

**DETAILS:**

The Staff's sample of eleven (11) investors making purchases in the Clear Cannabis private placement revealed the following deficiencies:

- The Subscription Agreements, Investor Questionnaire and Investor Profile for customers: Meruzhan P. Korniyenko; Joshua Rex Miller; and, Walter Filipowicz are not dated. As such, the Staff cannot determine when such information was obtained by the client.

**BSL Response:**

*As the Firm noted in the call with Staff on March 8, 2021, the Firm provided emails for Korniyenko. Miller and Filipowicz from the issuer, Clear Cannabis, which provided the suitability questionnaire for the Firm to review. Mr. Korniyenko's suitability questionnaire was provided in hard copy via regular mail. Global Relay has responded that the Firm may create a Proxy User to review the emails and open the attachments so that Staff may verify the attachment was the suitability questionnaire and the date of the email. The log in for Global Relay is:*

[www.globalrelay.com](http://www.globalrelay.com)

Login: [Irisnavy@mbsecurities.com](mailto:Irisnavy@mbsecurities.com)

Pw: Passw0rd1 (that's a zero)

- As the Firm's failed to adequately date each of the subscription agreements, the Staff cannot confirm if the Member has met the \$500K contingency requirement by the stipulated date of August 31, 2019.

**BSL Response:**

*The Firm firmly and respectfully rejects this finding. On July 25, 2019, the Firm closed on \$1,095,000 for Clear Cannabis's first closing, which included Mr. Korniyenko's \$250,000 investment. Therefore, the Firm had over \$750,000 in subscriptions prior to August 31, 2019 (excluding Mr. Korniyenko's subscription) which was well above the \$500,000 contingency requirement. We have attached the signed closing release memo evidencing the close and the investors who participated in the closing.*

- The Investor Questionnaire and Investment Profile of customer Harold Morgan do not provide evidence that the investor is an accredited customer. Although a verification attestation of accredited status was obtained from the client; it was submitted on 8/2/2019 when the transaction was executed on 7/9/2019. As such, the transaction was executed prior to verification of Mr. Morgan's accredited status.

**BSL Response:**

*Harold Morgan's investor profile states that he is a natural person with income that exceeded \$200,000 in each of the two most recent years or his joint income together with his spouse exceeded \$300,000 in each of those years. See check marked item (a) under A. (1) on page A-14 of the investor's profile.*

*Mr. Morgan signed the subscription agreement on 7/9/2019 but the Firm did not close on Mr. Morgan's investment until 8/15/2019. Therefore, he was not invested in Clear Cannabis until 8/15/2019, after the Firm received and reviewed the documentation. Attached is the wire documentation to evidence the investment date.*

- The Verification of Accreditation Status per 506(c) exemption had not been obtained for the following 5 Nano-C investors;

- John F. Cogan, Jr. 2001 Revocable Trust
- Nancy C. Curtin Trust-1996
- Luther H. Hodges
- J. Atwood Ives
- Stephen M. Address

**BSL Response:**

*As the Firm noted in an email response to Staff dated March 3, 2021, the 5 Nano C investors that are noted above were already invested in the 506(b) fundraise completed by Nano C. These investors are not part of the 506(c) fundraise for which the Firm was the placement agent. In other words, these investors were already invested in Nano C by the time the Firm was engaged and there are not considered customers of the Firm.*

- The Staff notes that the exceptions listed above relating to Private Placement offerings are repeat violations.

**BSL Response:**

*The Firm firmly and respectfully rejects that these private placement questionnaires are “repeat violations.” We have reviewed prior exam findings dating to 2014, and see no relevant findings related to private placement offering violations. We take all deficiencies seriously and aim to remediate them immediately.*

**(3) EXCEPTION:**

The firm was not in compliance with:

**FINRA Rule 5110 (b) (5) (A) (ii)**

Documents to be Filed

**FINRA Rule 5110 (f) (2) (G)**

Prohibited Arrangements

**Securities Exchange Act of 1934 240.17a-3 (a) (2)**

Records to be Made by Certain Exchange Members, Brokers & Dealers

**Securities Exchange Act of 1934 240.17a-4 (a)**

Records to Be Preserved by Certain Exchange Members, Brokers & Dealers

**DETAILS:**

Based on the review of ATIF Holdings Limited Offering, Staff notes the following deficiencies:

- The Firm did not submit a full accounting/breakdown of the expense reimbursements it received. The Firm is required to make and retain records such as those regarding expense reimbursements and should have been able to readily provide a full accounting of its expense reimbursements in this exam. The Firm’s failure to do so is a violation of SEC Rules 240.17a-3

and 240.17a-4.

**BSL Response:**

*The Firm appreciates the Staff's patience while it gathered the expense reimbursements it received related to the ATIF Holdings offering as the Firm's back office and compliance staff has been supporting the requests related to the 2020 Sales Practice exam, the 2019 ongoing exam, including two 8210 requests and three OTRs, as well the Firms annual audit. As of this response, the Firm has provided the schedule of expense reimbursements through FINRA Gateway.*

The Firm failed to file with FINRA the executed Warrant Agreement within one business day after such document was filed with the SEC, as required in FINRA Rule 5110(b)(5)(a)(ii).

**BSL Response:**

*As noted previously, the Firm has relied on its securities counsel to make the necessary filings related to its underwritten offerings (pursuant to Rule 5110). The Firm notified its counsel of the failure to file the executed Warrant Agreement and, upon such notification, the counsel made the filing. It should be noted that the form of warrant was reviewed by FINRA Corporate Finance prior to signing the warrant.*

The Firm identified the warrant exercise period in the warrant agreement based upon the issuance date (4/29/2019) rather than the effective date of the offering (2/8/2019) as required in FINRA Rule 5110(f)(2)(G)(i).

**BSL Response:**

*The Firm has relied on its securities counsel to prepare underwriter warrants and in the case of ATIF Holdings, the underwriter warrants were reviewed by ATIF Holdings, their counsel and FINRA Corporate Finance. The Firm will work with all parties to ensure that the warrant exercise period commences upon the effective date of the offering as required in FINRA Rule 5110(f)(2)(G)(i).*

The Firm failed to include the duration of the time period of the piggy-back registration right in the Warrant Agreement as required in FINRA Rule 5110(f)(2)(G)(v).

**BSL Response:**

*The Firm has relied on its securities counsel to prepare underwriter warrants and in the case of ATIF Holdings, the underwriter warrants were reviewed by ATIF Holdings, their counsel and FINRA Corporate Finance. The Firm will work with all parties to ensure that the duration of the time period of the piggy-back registration right in the Warrant Agreement is included as required in FINRA Rule 5110(f)(2)(G)(v).*



**(4) EXCEPTION:**

The Firm was not in compliance with:

**FINRA Rule 3110 (b) (1)**

General Requirements

**DETAILS:**

- The Firm did not implement its written supervisory procedures in that it did not make confirming/verifying calls to customers in three outgoing wires:
  - David S. Nagelberg 2003 Revocable Trust (wire date 3/24/2020),
  - Mark Swaim (wire date 4/21/2020), and
  - Genglan Shen (wire date 12/20/19).

This failure represents a violation of FINRA Rule 3110(b)(1) which states:

Each member shall 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.

***BSL Response:***

*The Firm's staff does believe they did confirm these wires verbally and only failed to document such verbal confirmation. The Firm continues to search its records for documentation to support the verbal confirmation of those wires.*

Regards,

A handwritten signature in blue ink, appearing to read 'Keith Moore', with a stylized flourish at the end.

Keith Moore, CEO

Cc: Robert Bull, CCO

Lisa Roth, Compliance Consultant