

1 **STATE OF WASHINGTON**

2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
3 **SECURITIES DIVISION**

4 IN THE MATTER OF DETERMINING
5 Whether there has been a violation of the
6 Securities Act of Washington by:

7 The Pilot’s Advisor, LLC (CRD No. 160241);
8 Ryan Joseph Fleming (CRD No. 5620708)

9 Respondents.

Order No. S-24-3711-24-CO01

CONSENT ORDER

10 **INTRODUCTION**

11 Pursuant to the Securities Act of Washington, RCW 21.20, the Securities Division of the Department
12 of Financial Institutions (“Securities Division”) and Respondents, The Pilot’s Advisor, LLC, and Ryan
13 Joseph Fleming, do hereby enter into this Consent Order in settlement of the matters alleged herein. The
14 Securities Division and Respondents jointly set forth the following Findings of Fact and Conclusions of
15 Law.

16 **FINDINGS OF FACT**

17 **Respondents**

18 1. The Pilot’s Advisor, LLC (“The Pilot’s Advisor”), formerly known as Fleming Financial
19 Group, LLC, is a Florida limited liability company formed in 2011. The Pilot’s Advisor has a Central
20 Registration Depository (CRD) number of 160241 and maintains its principal place of business in Seneca,
21 South Carolina. The Pilot’s Advisor is registered as an investment adviser with South Carolina since
22 August 8, 2012, and has been registered as an investment adviser in several other states. The Pilot’s
23 Advisor’s investment adviser registration with Washington state is currently pending.

1 2. Ryan Joseph Fleming (“Fleming”) resides in Seneca, South Carolina. Fleming is the sole
2 managing member and Chief Compliance Officer of The Pilot’s Advisor. Fleming’s CRD number is
3 5620708.

4 **Overview**

5 3. Fleming and The Pilot’s Advisor sent a postcard advertisement to Washington residents that
6 misrepresented that The Pilot’s advisor was a Washington State registered investment advisor. This
7 postcard, and the Pilot’s Advisor website it advertised, also contained misleading information including
8 fictional clients and hypothetical results.

9 **Nature of the Conduct**

10 *Unlawful Holding Out as Investment Adviser*

11 4. In 2023, Fleming and The Pilot’s Advisor sent a postcard advertisement to thirteen
12 Washington prospective clients. On this postcard, Fleming and the Pilot’s Advisor held Fleming Financial
13 Group, LLC¹ out as a Washington registered investment adviser when, in actuality, it was not registered as
14 an investment adviser in Washington.

15 5. At the time Fleming and The Pilot’s Advisor mailed out this postcard to prospective clients,
16 they knew that The Pilot’s Advisor was not yet registered in Washington. The Pilot’s Advisor applied to
17 register as an investment adviser in Washington on June 15, 2023. On November 22, 2023, the Securities
18 Division notified Fleming and The Pilot’s Advisor that the application would not be approved until
19 resolution of the issues commented on by the Division. Nevertheless, The Pilot’s Advisor mailed the
20 postcard between November 1, 2023, and March 5, 2024.

21 *Misleading Advertising*

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23 ¹ The Pilot’s Advisor changed the full legal name from Fleming Financial Group, LLC to The Pilot’s Advisor, LLC and filed a revised Form ADV Part 1 on May 2, 2024.

1 6. The Pilot's Advisor acts as a third-party solicitor in that they recommend clients to use a
2 particular third-party adviser for investment management services. In return, The Pilot's Advisor shares a
3 portion of the advisory fee paid to the third-party adviser. The Pilot's Advisor has a contractual
4 relationship with Howard Capital Management, Inc. ("HCM") and recommend clients to use them.

5 7. HCM ALP Growth is a composite which is an aggregation of portfolios managed by HCM
6 according to a similar investment objective or strategy. HCM ALP Growth is one of many composites
7 managed by HCM.

8 8. The Securities Division received a complaint alleging The Pilot's Advisor's use of an
9 inaccurate and misleading advertisement. The complaint enclosed the following postcard ("Postcard"):

YOU COULD EARN 31.4% MORE

BOTH PILOTS AT AGE 35 HAD A 401K BALANCE OF \$100,000 ON 9/1/2002

Year	M.A. Vrick	I.C. Emann
2004	\$187,318	\$145,284
2008	\$301,029	\$135,857
2012	\$382,560	\$235,541
2016	\$569,103	\$355,806
2020	\$1,083,880	\$664,934
2022 END BALANCE	\$773,565	\$530,955

OVER A 20 YEAR PERIOD M.A. VRICK'S 401K OUT-PERFORMED I.C. EMANN'S 401K BY 31.4%, PROVIDING M.A. VRICK AN ADDITIONAL **\$242,610.00**

IS YOUR 401K WORKING AS HARD AS YOU ARE?

SCAN THE QR CODE TO BEGIN YOUR FREE PORTFOLIO ANALYSIS!

Year	Return
2004	+10.58%
2008	+7.77%
2012	+11.47%
2016	+12.10%
2020	+41.09%
20 YEAR AVERAGE RETURN	+12.81%

SEE IF YOU HAVE WHAT IT TAKES TO BECOME A 401K MAVERICK!

THE PILOT'S ADVISOR

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17 9. The advertisement on the Postcard is misleading because the performance returns are not
18 based on actual client performance but rather, based on fictitious characters. The names of the two
19 characters used in the advertisement are M.A. Vrick and I.C. Emann, which appears to have been inspired
20 by Maverick and Iceman, the two main characters from the "Top Gun" film franchise. The advertisement
21 on the Postcard created a 20-year performance track record for the two fictitious characters while their
22 portfolios do not exist. As a result, the advertisement created a false expectation for the prospective
23 clients.

1 10. The advertisement on the Postcard is further misleading because it includes a 20-year
2 performance return when The Pilot's Advisor has not been a registered investment adviser for that period
3 of time. The Postcard indicates a 20-year average return of 12.81% in the 401k investment and states, "*IS*
4 *YOUR 401K WORKING AS HARD AS YOU ARE? SEE IF YOU HAVE WHAT IT TAKES TO BECOME A*
5 *401K MAVERICK!*". In addition, when comparing the performance data for the two characters, it states,
6 "*Both pilots had a beginning 401K balance of \$100,000 on 9/1/2002.*" The Pilot's Advisor registered as
7 an investment adviser in South Carolina in 2012, and Fleming became an investment adviser
8 representative and registered representative in 2008. The years that either The Pilot's Advisor or Fleming
9 has engaged in the business of providing investment advisory services is less than 20 years. Advertising a
10 20-year average return or a 20-year performance data, when The Pilot's Advisor or Fleming have less than
11 20 years of experience in the investment advisory business, is misleading.

12 Based upon the above Findings of Fact, the following Conclusions of Law are made:

13 **CONCLUSIONS OF LAW**

14 1. Pursuant to RCW 21.20.040(4), it is unlawful for a person to hold himself out as an
15 investment adviser or investment adviser representative in Washington state unless the person is registered
16 as an investment adviser or investment adviser representative or is exempt from registration in
17 Washington state. The Pilot's Advisor acted unlawfully by holding itself out on the Postcard as a
18 registered investment adviser of Washington state when it was not registered in Washington state.

19 2. Fleming and The Pilot's Advisor violated RCW 21.20.020, as defined by WAC 460-24A-
20 100(13), by engaging in misleading advertising that included performance data for two fictitious
21 characters, and by advertising performance data for longer than they had been engaged in investment
22 advisory services.
23

1 3. Fleming and The Pilot’s Advisor violated RCW 21.20.020, as defined by WAC 460-24A-
2 100(7), by advertising backtested performance figures.

3 Based upon the foregoing and finding it in the public interest:

4 **CONSENT ORDER**

5 IT IS AGREED AND ORDERED that The Pilot’s Advisor and Fleming shall cease and desist from
6 violations of RCW 21.20.040, RCW 21.20.020, WAC 460-24A-100(7), and WAC 460-24A-100(13).

7 IT IS FURTHER AGREED AND ORDERED that The Pilot’s Advisor and Fleming shall be jointly
8 and severally liable for and shall pay a fine in the amount of \$20,000.00, prior to the entry of this Consent
9 Order.

10 IT IS FURTHER AGREED AND ORDERED that The Pilot’s Advisor and Fleming shall be jointly
11 and severally liable for and shall pay \$2,500.00 for the costs, fees, and other expenses incurred in the
12 administrative investigation of this matter prior to the entry of this Consent Order.

13 IT IS FURTHER AGREED that the Securities Division has jurisdiction to enter this Consent Order.

14 IT IS FURTHER AGREED that The Pilot’s Advisor and Fleming entered into this Consent Order
15 freely and voluntarily and with a full understanding of its terms and significance.

16 IT IS FURTHER AGREED that in consideration of the foregoing, The Pilot’s Advisor and Fleming
17 waive their rights to a hearing and to judicial review of this matter pursuant to RCW 21.20.440 and Chapter
18 34.05 RCW.

19 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

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22 Signed this ____3rd____ day of ____Dec____ 2024.

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Signed by:
The Pilot's Advisor, LLC

_____/s/_____
Ryan Joseph Fleming, Managing Member

Signed by:

_____/s/_____
Ryan Joseph Fleming, Individually

Approved as to form by:

_____/s/_____
Erin Washom, Attorney for The Pilot's Advisor, LLC and Ryan Joseph Fleming

SIGNED and ENTERED this 10th day of December, 2024.

_____/s/_____
William M. Beatty
Securities Administrator

Approved by:

Presented by:

_____/s/_____
Brian J. Guerard
Chief of Enforcement

_____/s/_____
James Lee
Financial Legal Examiner

