

Pursuant to N.H. RSA 421-B:26, the Secretary of State has the authority to impose administrative penalties of up to \$2,500.00 for each violation of the securities laws and rules of New Hampshire.

NOTICE OF RIGHT TO REQUEST A HEARING

The above-named Respondent has the right to request a hearing on this order to cease and desist, as well as the right to be represented by counsel. Any such request for a hearing shall be in writing, shall be signed by the Respondent, or by the duly authorized agent of the above-named Respondent, and shall be delivered either by hand or certified mail, return receipt requested, to the Bureau of Securities Regulation, Department of State, 25 Capitol Street, Concord, New Hampshire 03301.

Under the provisions of N.H. RSA 421-B:23, I, if Respondent fails to request a hearing on this order within 30 calendar days of receipt of this order, the Respondent shall be deemed in default, and this order shall, on the thirty-first day, become permanent.

Upon request for a hearing being received by the Bureau of Securities Regulation, in the manner and form indicated above, a hearing shall be held not later than ten days after such request is received by the Bureau, after which hearing, the Secretary of State, or such other person authorized by statute, shall issue a further order vacating or modifying this order, or making it permanent, as the circumstances require.

STATEMENT OF ALLEGATIONS

The allegations contained in the Staff Petition for Relief dated September 4, 2014 (a copy of which is attached hereto) are incorporated by reference hereto.

ORDER

WHEREAS, finding it necessary and appropriate and in the public interest, and for the protection of investors and consistent with the intent and purposes of the New Hampshire securities laws, and

WHEREAS, finding that the allegations in the Staff Petition, if proved true and correct, form the legal basis of the relief requested.

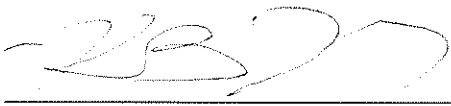
It is hereby ORDERED, that:

1. In accordance with N.H. RSA 421-B:23, the Respondent is hereby ordered to immediately cease and desist from the above indicated acts and from in any other way violating N.H. RSA 421-B.
2. The Respondent is barred from any securities licensure in the State of New Hampshire in accordance with N.H. RSA 421-B:10, I.
3. The Respondent shall be liable for administrative fines and penalties of one hundred thousand dollars in accordance with N.H. RSA 421-B:26, III.

4. In accordance with N.H. RSA 421-B:26, V The Respondent shall pay rescission and restitution as requested in Section III, paragraph 7 of the Bureau's Staff Petition for Relief.
5. The Respondent shall pay the Bureau's costs in this matter in the amount of twenty-five thousand dollars in accordance with N.H. RSA 421-B:22.

WILLIAM M. GARDNER
SECRETARY OF STATE
BY HIS DESIGNEE:

Dated: 7/4/14



Kevin B. Moquin
Senior Staff Attorney
Bureau of Securities Regulation

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION
25 CAPITOL STREET
CONCORD, NH 03301

STAFF PETITION FOR RELIEF
IN THE MATTER OF:

Richard M. Higgins

1-2014-000016

STATEMENT OF FACTS

- I. The staff of the State of New Hampshire, Department of State, Bureau of Securities Regulation (“Bureau”) hereby petitions the Director of the Bureau, and makes the following statement of facts:

Background

1. Richard M. Higgins (“Higgins”) is a New Hampshire resident who currently resides in Stratham, New Hampshire. From September 3, 2001 through June 29, 2007, Higgins was employed as a licensed registered representative in the State of New Hampshire for two different licensed broker-dealers. As of June 29, 2007, Higgins was no longer licensed as a securities professional in any capacity in the State of New Hampshire or elsewhere.
2. Higgins Equity Partners, LLP (“HEP”) was a New Hampshire limited liability partnership created by Higgins on February 13, 2007. According to the registration document filed with the State of New Hampshire, Department of State, Corporation Division, HEP was engaged in the business of “private equity investing.” However, Higgins and HEP failed to pay annual fees in 2008 and 2009 as required under N.H. RSA 304-A:47 and HEP was administratively dissolved on September 1, 2009.

3. Higgins Capital Management (“HCM”) is a trade name registered by Higgins with the State of New Hampshire, Department of State, Corporation Division on February 13, 2007. According to the registration document filed with the State of New Hampshire, Department of State, Corporation Division, HCM was engaged in the business of “trading securities.” According to the State of New Hampshire, Department of State, Corporation Division, the HCM trade name is currently inactive for failing to pay annual renewal fees. It is important to note that the HCM trade name was registered as a trade name for Higgins in his individual capacity and not as a trade name for HEP.

The Investigation

4. The Bureau received a tip in May 2014 and subsequently initiated an investigation to determine whether Higgins was violating the New Hampshire Securities Act, N.H. RSA 421-B. The Bureau subpoenaed records from Higgins on May 23, 2014. In response to that subpoena, Higgins responded to the Bureau via letter dated June 2, 2014 and enclosed responsive documents. In his letter, in response to the Bureau’s inquiry about HEP and HCM, Higgins stated the following:

Copy of agreements with participants enclosed, although it was quickly and ultimately decided that we not act as an LLP, as it was too complicated for our purpose. I am simply a “trader in securities” dba “Higgins Capital Management” for the purpose of opening a checking account and a brokerage account for participant assets.

In the June 2, 2014 letter Higgins provided the contact information for eight households that had invested with him, one of which was him and his wife. Higgins also provided the Merrimack County Savings Bank account information where investor funds were deposited and TradeStation Securities Inc. (“TradeStation”) brokerage account information where investor funds were transferred and invested. Higgins indicated in his June 2, 2014 letter to the Bureau that the bank and brokerage accounts where investor monies were deposited were held under his name individually doing business as HCM, not HEP.

5. On June 6, 2014, the Bureau subpoenaed bank records from Merrimack County Savings

Bank and brokerage statements from TradeStation. Upon reviewing the bank and brokerage records, it became clear to the Bureau that there were significant losses in the accounts. At that time the TradeStation account held 3,750 shares of ProShares UltraShort S&P500 (Ticker: "SDS"). These securities are high risk leveraged exchange traded funds ("ETFs") that correspond to two times the inverse of the daily performance of the S&P 500 Index.

- a. According to an August 18, 2009 joint Securities and Exchange Commission ("SEC") and Financial Industry Regulatory Authority ("FINRA") news release regarding leveraged and inverse ETFs, leveraged and inverse ETFs are "highly complex financial products," that the leveraged components "seek to deliver multiples of the performance of the index or benchmark (such as commodities or currencies) that they track," and that the inverse components "seek to deliver the opposite of the performance of the index or benchmark they track." Furthermore, according to this joint SEC and FINRA release, these products reset daily, meaning "they are designed to achieve their stated objectives on a daily basis" and "[t]heir performance over longer periods of time – over weeks, months or years – can differ substantially from the performance (or inverse of their performance) of their underlying index or benchmark during the same period of time." Finally, according to this joint SEC and FINRA release, these leverage and inverse ETFs "can deviate substantially from the performance of the underlying benchmark, particularly in volatile markets" and they are "highly complex financial instruments that can turn into a minefield for buy-and-hold investors."
- b. A review of the TradeStation brokerage account revealed that Higgins was holding the same position in SDS for over two years. Higgins' originally purchased 15,000 shares of SDS in January 2012 and these shares were converted to 3,750 shares of SDS as the result of a reverse split in October 2012. This highly speculative position was very concerning to the Bureau due to the risk of significant loss on the investment and because such an aggressive and speculative strategy is unsuitable for elderly investors, as will be discussed in greater detail below.

6. On June 17, 2014 Higgins entered into an Interim Consent Order (See Exhibit A) with the Bureau whereby he agreed to immediately liquidate the 3,750 shares of SDS and assented to a voluntary freeze of the proceeds in the TradeStation account for the future distribution to those who invested with Higgins. The cash position currently frozen in the TradeStation account is approximately ninety-nine thousand dollars (\$99,000). Higgins also agreed not to withdraw or cause to be withdrawn any of the approximately ten thousand dollars (\$10,000) left in the HCM Merrimack County Savings Bank account. At the time of this Interim Consent Order, Higgins had, in total, approximately one hundred and nine thousand dollars (\$109,000) of the over eight hundred and eighty thousand dollars (\$880,000) of the principal still invested with Higgins, as will be discussed in greater detail below.

The Investors

7. Investor #1 is a retiree from Boscawen, New Hampshire and is sixty-seven years old. Investor #1 first met Higgins while Higgins was a licensed registered representative of a broker-dealer in the mid-2000's. Investor #1 maintains that she has always had a moderate risk tolerance and had little investment experience.
 - a. In late 2006, Higgins informed Investor #1 that he was leaving his brokerage firm and solicited Investor #1 to invest directly with him as a limited partner of HEP. Higgins provided a number of documents to Investor #1 to induce her to invest in HEP, including a document titled "Private Placement Memorandum" for HEP.
 - b. Among several other provisions, the Private Placement Memorandum for HEP provided by Higgins to Investor #1 indicated that the HEP "reports individual investor results on Schedule K-1 of Form 1065" and that "[i]ndividual investors report results on Schedule E of Form 1040." The Private Placement Memorandum also states that Higgins would request an annual audit of the financial statements and "do whatever else is necessary to maintain the legal framework to conduct ongoing operations."

- c. On or about February 13, 2007, Investor #1 decided to invest in HEP and gave Higgins a check for thirty thousand dollars (\$30,000). The thirty thousand dollars (\$30,000) was deposited into a Merrimack County Savings Bank account entitled "Richard M Higgins DBA Higgins Capital Management," over which Higgins individually had the sole signatory authority. There is no, and never has been, HEP bank or brokerage account.
- d. On or about February 21, 2007, Higgins provided Investor #1 with an HEP Limited Liability Partnership Agreement signed by Higgins on February 15, 2007 which Investor #1 signed on that date. Higgins also provided Investor #1 with a Certificate of Interest in HEP showing Investor #1 purportedly owning 300 shares of the HEP valued at one hundred dollars (\$100) per share.
- e. Investor #1 received quarterly statements from Higgins that purportedly showed the performance of her investment. From 2007 through December 2009, Investor #1 received quarterly statements that always showed her balance to be above her initial investment of thirty thousand dollars (\$30,000). Investor #1 relied on these statements and trusted their accuracy. The December 2009 quarterly statement indicated that Investor #1 had a balance of thirty-seven thousand, one hundred and eight dollars (\$37,108). As Investor #1 had withdrawn three thousand dollars (\$3,000) in May 2009, this December 2009 quarterly statement received by Investor #1 stated a profit of approximately ten thousand dollars (\$10,000) on her initial investment in February 2007.
- f. In February 2010, Investor #1 invested an additional sixty thousand dollars (\$60,000) with Higgins. Again, the funds were deposited into a Merrimack County Savings Bank account entitled "Richard M Higgins DBA Higgins Capital Management," over which Higgins individually had the sole signatory authority, and not in any HEP account. According to Investor #1, her decision to invest more with Higgins in 2010 was influenced by her reliance on the quarterly statements and belief that her initial investment was growing. At the time of her second investment with Higgins, Investor #1 still believed she was a partner of the

HEP. Investor #1 never received any Certificate of Interest for the subsequent investments although Investor #1 continued to receive quarterly statements from Higgins through March 2014 that continued to show purported profits on her investments.

- g. The quarterly statement from March 2014, the last statement Investor #1 received from Higgins, indicated that Investor #1 had a balance of over one hundred thousand dollars (\$100,000) in her account, representing over twenty-four thousand dollars (\$24,000) in profit on her principal investments, net of the withdrawals.
 - h. Investor #1 does not recall any discussion with Higgins regarding the risk of her investments and does not recall a discussion about Higgins' fees. Investor #1 never received any tax documents from HEP as outlined in the Private Placement Memorandum and Limited Liability Partnership Agreement but recalls being told by Higgins that he would pay her proportionate share of taxes directly to the Internal Revenue Service on her behalf. Investor #1 was unsure of the investment strategy being employed by Higgins but recalls being told by Higgins that he was properly licensed for this activity.
 - i. Investor #1 withdrew three thousand dollars (\$3,000) from her investment with Higgins in 2009, withdrew another three thousand dollars (\$3,000) from her investment with Higgins in 2010, and also withdrew an additional eight thousand dollars (\$8,000) in 2014, leaving Investor #1 with a purported total net investment in HEP of seventy-six thousand dollars (\$76,000).
8. Investor #2 is a retiree from Concord, New Hampshire and is eighty-four years old. Investor #2 has known Higgins since when he was her neighbor in the 1970's. Higgins was Investor #2's investment adviser while Higgins was employed as a licensed registered representative for two different licensed broker-dealers in the mid 2000's. Investor #2 has always considered herself a moderate investor and wanted Higgins to invest in safe products that provided returns slightly better than the bank issued certificate

of deposits that she was used to.

- a. In late 2006, Higgins informed Investor #2 that he was leaving the brokerage firm he was employed at and solicited Investor #2 to invest directly with him as a limited partner of HEP. Higgins provided a number of documents to Investor #2 to induce her to invest in the HEP, including the same Private Placement Memorandum given to Investor #1 discussed in 7(a) and 7(b) above.
- b. On or about February 20, 2007, Investor #2 decided to invest with Higgins and gave Higgins a check for eighty thousand dollars (\$80,000). Investor #2's check was actually deposited into a Merrimack County Savings Bank account entitled "Richard M Higgins DBA Higgins Capital Management," over which Higgins individually had the sole signatory authority, and not into any HEP account. Higgins provided Investor #2 with an HEP Limited Liability Partnership Agreement and Certificate of Interest in the HEP showing Investor #2 purportedly owning 800 shares of the HEP valued at one hundred dollars (\$100) per share.
- c. Investor #2 received quarterly statements from Higgins that purported to show the performance of her investment from March 2007 through at least June 2013. At all times from 2007 through 2013 Investor #2's quarterly statement from Higgins showed a profit on her investment, with a peak balance of over one hundred and fifteen thousand dollars (\$115,000) in December 2008, representing over thirty-five thousand dollars (\$35,000) in profit. Investor #2's last June 2013 quarterly statement showed a balance of approximately ninety-eight thousand dollars (\$98,000), representing approximately eighteen thousand dollars (\$18,000) in profit from her initial investment.
- d. Investor #2 does not recall any discussion with Higgins regarding the risk of her investments but expected the same level of risk that she had when Higgins was a licensed registered representative. Investor #2 never received any tax documents from HEP as outlined in the Private Placement Memorandum and Limited Liability Partnership Agreement but recalls being told by Higgins that he would

pay her proportionate share of taxes directly to the Internal Revenue Service on her behalf.

- e. As Investor #2 never withdrew funds, her total net investment remains at eighty thousand dollars (\$80,000).
9. Investor #3 is a retiree from Canterbury, New Hampshire and is sixty-seven years old. Investor #3 was introduced to Higgins in 2006. Investor #3 maintains that she has very limited investment experience and, prior to investing with Higgins, had all her investments in conservative mutual funds.
- a. In late 2006, Higgins solicited Investor #3 to invest directly with him as a limited partner of HEP. Higgins provided a number of documents to Investor #3 to induce her to invest in HEP, including the same Private Placement Memorandum given to Investor #1 and Investor #2 discussed above. Investor #3 also provided emails to the Bureau between her and Higgins discussing the investment. In one email from Higgins to Investor #3 dated January 5, 2007, Higgins stated that he would be “bonded” and being bonded “addresses the all important issue of ‘will Rick and my money end up in a Caribbean hideaway.’” The notion of being bonded provided Investor #3 added comfort in deciding to invest with Higgins. Upon information and belief, no such bond was or ever has been put in place.
 - b. On or about March 21, 2007, Investor #3 decided to invest in the HEP and gave Higgins a check for forty-seven thousand dollars (\$47,000). Higgins provided Investor #3 with an HEP Limited Liability Partnership Agreement and a Certificate of Interest in HEP showing Investor #3 purportedly owning 470 shares of the HEP valued at one hundred dollars (\$100) per share. On or about April 16, 2007, Investor #3 invested an additional eighteen thousand dollars (\$18,000) in HEP and Higgins provided another Certificate of Interest in HEP showing Investor #3 purportedly owning 180 shares of HEP valued at one hundred dollars (\$100) per share. Investor #3’s sixty-five thousand dollar (\$65,000) investment was actually deposited into a Merrimack County Savings Bank account entitled

“Richard M Higgins DBA Higgins Capital Management,” over which Higgins individually had the sole signatory authority, and not in any HEP account.

- c. Investor #3 withdrew ten thousand dollars (\$10,000) in February 2009, ten thousand dollars (\$10,000) in October 2010, and two thousand five hundred dollars (\$2,500) in November 2011. Factoring in these withdrawals, Investor #3's net investment with Higgins is forty-two thousand five hundred dollars (\$42,500).
 - d. From March 2007 through March 2014, Investor #3 received quarterly statements from Higgins that purported to show the performance of her investment. These quarterly statements always showed Investor #3's balance to be above her principal investments (net of any withdrawals at the time). Investor #3 relied on these statements and trusted their accuracy. Investor #3's final March 2014 quarterly statement showed a balance of over sixty-three thousand dollars (\$63,000), representing over twenty thousand dollars (\$20,000) of profits from Investor #3's net investment of forty-two thousand five hundred dollars (\$42,500).
 - e. Investor #3 does not recall any discussion with Higgins regarding the risk of her investments but knew there would be some level of risk to this investment. Investor #3 never received any tax documents from HEP as outlined in the Private Placement Memorandum and Limited Liability Partnership Agreement but recalls being told by Higgins that he would pay her proportionate share of taxes directly to the Internal Revenue Service on her behalf.
10. Investor #4 is a retiree from Canterbury, New Hampshire and is sixty-six years old. Investor #5, Investor #4's wife, is also a retiree from Canterbury, New Hampshire and is sixty-six years old. Investor #4 and #5 first met Higgins in 2006 while Higgins was a licensed registered representative of a broker-dealer. Investor #4 considers himself to be a conservative to moderate risk taker despite an account application he signed indicating that he was a high risk taker. Investor #5 considers herself a moderate risk taker.
- a. In late 2006, Higgins solicited Investor #4 and #5 to invest directly with him as a

limited partner of HEP. Higgins provided a number of documents to Investor #4 and #5 to induce them to invest in the HEP, including the same Private Placement Memorandum given to the other investors discussed above.

- b. On or about March 21, 2007, Investor #4 decided to invest in the HEP and gave Higgins a check for nineteen thousand dollars (\$19,000). Higgins provided Investor #4 with an HEP Limited Liability Partnership Agreement and a Certificate of Interest in HEP showing Investor #4 purportedly owning 190 shares of HEP valued at one hundred dollars (\$100) per share. On or about April 16, 2007, Investor #4 invested an additional six thousand dollars (\$6,000) and Higgins provided another Certificate of Interest showing Investor #4 purportedly owning 60 shares of HEP valued at one hundred dollars (\$100) per share. Investor #4's checks were deposited into a Merrimack County Savings Bank account entitled "Richard M Higgins DBA Higgins Capital Management," over which Higgins individually had the sole signatory authority, and not in any HEP account.
- c. On or about August 20, 2007, Investor #5 decided to invest in HEP and gave Higgins a check for thirty thousand dollars (\$30,000). Investor #5 never received the HEP Limited Liability Partnership Agreement or any Certificate of Interest in HEP. Investor #5's check was actually deposited into a Merrimack County Savings Bank account entitled "Richard M Higgins DBA Higgins Capital Management," over which Higgins individually had the sole signatory authority.
- d. Investor #4 and Investor #5 total combined investments with Higgins was fifty-five thousand dollars (\$55,000). From November 2007 through May 2014, Investor #4 and #5 withdrew a combined total of thirty-eight thousand, six hundred dollars (\$38,600), leaving a total combined net investment of sixteen thousand and four hundred dollars (\$16,400).
- e. Investor #4 and #5 received quarterly statements from Higgins that purported to show the performance of their investments. From 2007 through December 2013,

Investor #4 and #5 received these quarterly statements and these statements always showed their balance to be above their initial investments, net of any withdrawals since that time. Investor #4 and #5 relied on these statements and trusted their accuracy. The last quarterly statement Investor #4 and #5 received from Higgins, for the quarter ending December 2013, indicated that Investor #4 and #5 had a combined balance of over forty-one thousand dollars (\$41,000) at a time where their total combined net investment was approximately nineteen thousand dollars (\$19,000), representing over approximately twenty-two thousand dollars (\$22,000) in profits.

- f. Investor #4 and #5 do not recall any discussion with Higgins regarding the risk of their investments. Investor #4 and #5 never received any tax documents from HEP as outlined in the Private Placement Memorandum and Limited Liability Partnership Agreement but recall being told by Higgins that he would pay their proportionate share of taxes directly to the Internal Revenue Service on their behalf.
- g. Higgins also managed Investor #5's Scottrade brokerage account, and although he didn't charge a separate fee for this management, this account incurred significant losses during the tenure of his management.

11. Investor #6 is from Concord, New Hampshire and is sixty-one years old. Investor #6 first met Higgins in the early 2000's while Higgins was a licensed registered representative of a broker-dealer. Investor #6 maintains that he has always maintained a low to moderate risk tolerance.

- a. In late 2006, Higgins solicited Investor #6 to invest directly with him as a limited partner of HEP. Higgins provided a number of documents to Investor #6 to induce him to invest in HEP, including the same Private Placement Memorandum given to the other investors discussed above.
- b. On or about February 20, 2007, Investor #6 decided to invest in HEP and gave

Higgins a check for one hundred and fifty thousand dollars (\$150,000). Higgins provided Investor #6 with an HEP Limited Liability Partnership Agreement and a Certificate of Interest in HEP showing Investor #6 purportedly owning 1,500 shares of the HEP valued at one hundred dollars (\$100) per share. Investor #6's check was deposited into a Merrimack County Savings Bank account entitled "Richard M Higgins DBA Higgins Capital Management," over which Higgins individually had the sole signatory authority.

- c. On or about May 2, 2007, Investor #6 invested an additional fifteen thousand five hundred seventy-four dollars and thirty-three cents (\$15,574.33) with Higgins. Investor #6 never received any Certificate of Interest in HEP for this additional investment. Again, Investor #6's check was deposited into a Merrimack County Savings Bank account entitled "Richard M Higgins DBA Higgins Capital Management," over which Higgins individually had the sole signatory authority.

- d. Investor #6 received quarterly statements from Higgins that purported to show the performance of his investment. From 2007 through December 2010, Investor #6 received quarterly statements. These statements always showed his balance to be above his initial investments of approximately one hundred and sixty-five thousand dollars (\$165,000). The December 2010 quarterly statement purported to show a balance of one hundred and eighty-seven thousand dollars (\$187,000), representing a profit of over twenty thousand dollars (\$20,000) at that time. Investor #6 relied on these statements and trusted their accuracy. Relying on this statement and the apparent profits they reported, on or about February 28, 2011, Investor #6 invested an additional twenty-five thousand dollars (\$25,000) with Higgins. Investor #6 never received any Certificate of Interest in HEP for this additional investment. Again, Investor #6's check was actually deposited into a Merrimack County Savings Bank account entitled "Richard M Higgins DBA Higgins Capital Management," over which Higgins individually had the sole signatory authority.

- e. Investor #6 provided the Bureau with a copy of what purports to be the first page of an HCM TradeStation account statement for the month of September 2011 that Investor #6 maintains he received from Higgins. This TradeStation account statement purportedly showed a balance of over seven hundred and fifty thousand dollars (\$750,000) in the HCM account. However, the true account statement for September 2011 reflects a value of only approximately one hundred and thirty-one thousand dollars (\$131,000). The Bureau confirmed with TradeStation that the document given to Investor #6 by Higgins was not a TradeStation original document and that somebody had altered the original TradeStation statement. Upon information and belief, Higgins provided the forged TradeStation statement and gave it to Investor #6 to induce him to invest more monies.
- f. On or about October 15, 2011, Investor #6 invested an additional twelve thousand dollars (\$12,000) with Higgins and, on or about December 15, 2011, Investor #6 invested an additional two hundred and ninety-five thousand dollars (\$295,000) with Higgins. Investor #6 never received any Certificate of Interest in the HEP for these additional investments. Again, Investor #6's checks were deposited into the HCM Merrimack County Savings Bank account of Higgins. The last quarterly statement Investor #6 received before making these two investments was the September 2011 quarterly statement, which purported to show that Investor #6 had a balance of approximately two hundred and twenty-five thousand dollars (\$225,000), representing a purported profit of approximately thirty-five thousand dollars (\$35,000) at the time. In reality, the value of the investors' monies in the HCM Merrimack County Savings Bank for the quarter ending September 2011 was under one hundred dollars (\$100) and the value of the TradeStation brokerage account for the quarter ending September 2011 totaled only approximately one hundred and thirty-one thousand dollars (\$131,000). Investor #6 indicated to the Bureau that he would not have made any additional investments in 2011 had he known the true value of his account and that he relied on the inaccurate quarterly statement sent to him by Higgins in deciding to invest additional monies in HEP.

- g. Investor #6 invested a total of four hundred ninety-seven thousand, five hundred seventy-four dollars and thirty-three cents (\$497,574.33). Investor #6 never made any withdrawals.
 - h. Investor #6 never received any tax documents from HEP as outlined in the Private Placement Memorandum and Limited Liability Partnership Agreement but recalls being told by Higgins that he would pay Investor #6's proportionate share of taxes directly to the Internal Revenue Service on Investor #6's behalf.
 - i. Higgins also managed Investor #6's Scottrade brokerage account, and although he didn't charge a separate fee for this management, this account incurred significant losses.
12. Investor #7 is a family member of Higgins who resides in East Berne, New York. Through Higgins' June 2, 2014 letter, the Bureau became aware that Investor #7 was an investor with Higgins and reached out by mail to Investor #7 to ask whether Investor #7 would be willing to voluntarily speak with the Bureau and share documents regarding Higgins. To date, the Bureau has not received a response to this letter. Upon information and belief, and after a review of Higgins' bank records, on or about May 2, 2007 Investor #7 invested seventy thousand dollars (\$70,000) with Higgins and on or about May 12, 2008 Investor #7 withdrew eleven thousand dollars (\$11,000). Upon information and belief, Investor #7 had a total net investment of fifty-nine thousand dollars (\$59,000) with Higgins.
13. Investor #8 is a family member of Higgins who resides in Selkirk, New York. Through Higgins' June 2, 2014 letter, the Bureau became aware that Investor #8 was an investor with Higgins and reached out by mail to Investor #8 to ask whether Investor #8 would be willing to voluntarily speak with the Bureau and share documents regarding Higgins. To date, the Bureau has not received a response to this letter. Upon information and belief, and after a review of Higgins' bank records, on or about February 23, 2007, Investor #8 invested one hundred and fifteen thousand dollars (\$115,000) with Higgins.

No later withdrawals were made.

14. Investor #9 is from Webster, New Hampshire. On or about May 15, 2007, Investor #9 invested fifty thousand dollars (\$50,000) with Higgins. Subsequently, after questioning Higgins regarding concerns she had over the HEP, Investor #9 decided to cease her relationship with Higgins and withdrew all of her invested funds on or about August 9, 2007. Investor #9 also received a check for four thousand nine hundred and fifty-seven dollars (\$4,957) from Higgins for purported gains in her account. Investor #9 was not listed as an investor in the Fund in Higgins' June 2, 2014 reply to the BSR.

Fraudulent Quarterly Statements

15. The Bureau received several quarterly statements from Investor #1, #2, #3, #4, #5, and #6 that they had each received directly from Higgins. Each of these investors told the Bureau that they relied on these quarterly statements when deciding to keep their monies invested with Higgins and, in some instances, when deciding to invest more money with Higgins. The Bureau compared these quarterly statements to the TradeStation and Merrimack County Savings Bank accounts, where investor funds were deposited, and the Bureau quickly determined that these quarterly statements were not accurate when provided to investors. From at least December 2009 through March 2014, while Higgins was suffering significant losses and still taking fees for himself, Higgins was sending fraudulent quarterly statements to Investor #1, #2, #3, #4, #5, and #6 showing inflated and unreal gains in their investments.
16. For eighteen straight quarters over four years, from at least the quarters ending December 2009 through March 2014, Higgins sent Investor #1, #2, #3, #4, #5, and #6 statements every quarter that showed inaccurate and significantly inflated investment balances. For example, Higgins sent quarterly statements to Investor #1, #2, #3, #4, #5, and #6 for March 2011 that showed a combined balance of approximately five hundred thousand dollars (\$500,000) but the true balance of the TradeStation and Merrimack County Savings Bank accounts combined was approximately one hundred and fifty thousand

dollars (\$150,000), representing an over three hundred percent (300%) overstatement to the investors.

17. As another example, Higgins sent quarterly statements to Investor #1, #2, #3, #4, #5, and #6 for March 2013 that showed a combined balance of approximately eight hundred and seventy thousand dollars (\$870,000) while the true balance of the TradeStation and Merrimack County Savings Bank accounts combined was only approximately two hundred thousand dollars (200,000), representing an over four hundred percent (400%) overstatement to the investors.

Other Fraudulent Acts

18. Investor #1, #2, #3, #4, #5, and #6 all believed that they were investing with Higgins through HEP, despite Higgins informing the Bureau in his June 2, 2014 letter that HEP was abandoned early on 2007 as it was determined it was "too complicated." For over seven years these investors believed they were investing with HEP when in reality they were not. When they questioned Higgins about taxes, Higgins informed the investors that he was paying the taxes on their behalf, even though the Private Placement Memorandum provided to investors maintained that the HEP would report individual results on Schedule K-1 of Form 1065. Higgins never obtained a federal tax identification number for HEP which he would have needed to file and pay taxes on behalf of the investors. Higgins never communicated to Investor #1, #2, #3, #4, #5, or #6 that the HEP was being abandoned, never sent Schedule K-1 of Form 1065 to the investors, and never paid any taxes on any of the investors' behalf. Furthermore, the Private Placement Memorandum indicated that an annual audit would be done of the financial statements of the HEP. This was never done and the failure to do so never communicated to any of his investors. When investors made deposits after 2008, Higgins never provided a Certificate of Interest in HEP like he had when investors originally invested, which in addition to the failure to file taxes, is another indication that Higgins abandoned the HEP in 2008.

19. There is not and never has been a HEP bank or brokerage account. Higgins explained to

the Bureau by letter dated June 2, 2014 that investor funds were deposited in HCM's Merrimack County Savings Bank account and transferred to and from HCM's TradeStation account. As HCM is nothing more than a trade name registered by Higgins individually and the investor funds were deposited into accounts solely controlled by Higgins personally. Furthermore, it appears that Higgins, in his individual capacity, paid eighty-eight thousand, fourteen dollars (\$88,014) in taxes on his 2008 individual tax return for personal trading gains; this is further demonstrates that Higgins converted investor funds for his personal use through the HCM bank and brokerage accounts. Finally, when Higgins filed his 2009 individual tax return, he reported a stock trading loss of eight hundred twenty four thousand six hundred twenty seven dollars (\$-824,627), which eliminated the tax on his wife's approximately sixty seven thousand dollar salary and directly netted Higgins a refund of taxes withheld from her totaling six thousand nine hundred eighty seven dollars (\$6,987). From the very beginning in 2007, Higgins, under the pretence that the investors were going to be members of HEP, assumed complete dominance and control over the investor funds, deposited them into personal accounts, paid taxes personally of gains while promising to pay taxes on the investors' behalf and not doing so, and sent false statements to these investors for several years.

20. Investor #1, #2, #3, #4, #5, and #6 all understood that Higgins would be receiving a fee for managing their funds but there was very little, if any, discussion about fees between Higgins and his investors. The HEP Limited Liability Partnership Agreement given to these investors indicates that Higgins' fee would be "two percent of the gross capital" as a "general and administrative fee," as well as "seventy eight thousand dollars (prorated monthly) or twenty percent of the Partnership's profit; whichever is greater, during the fiscal year." Investor #1, #2, #3, #4, #5, and #6 never received any invoices to show fees being paid to Higgins. As HEP was abandoned in 2007, none of the provisions of the HEP Limited Liability Agreement were effective during much of the relevant time period. Furthermore, Higgins never notified any of the investors when fees were taken or how much the fees would be. A review of the tax returns filed by Higgins (jointly with his wife) reveal that Higgins never claimed any of the fees he took as taxable income.

21. Higgins never disclosed to Investor #1, #2, #3, #4, #5, or #6 that after June 2007 he was

not properly licensed to act as their investment adviser. Many of the investors assumed he had the proper licensure. Furthermore, Higgins failed to disclose that investor monies would be invested in a very speculative and high risk manner, failed to disclose that he was suffering significant losses for several years, and disseminated forged TradeStation account statements as discussed in paragraph 11(e) above.

Accounting of Investor funds

22. Investor #1, #2, #3, #4, #5, #6, #7, #8, and #9 deposited a total of one million, twenty-two thousand five hundred seventy-four dollars and thirty-three cents (\$1,022,574.33) with Higgins. As Investor #1, #2, #3, #4, #5, #6, #7, #8, and #9 withdrew a combined total of one hundred and forty-one thousand, fifty-seven dollars (\$141,057), their combined investment with Higgins, net of all withdrawals, totals eight hundred eighty-one thousand five hundred seventeen dollars and thirty three cents (\$881,517.33). As discussed in paragraph 6 above, there only remains approximately one hundred and nine thousand dollars (\$109,000) of investor funds as of May 2014, representing approximately seven hundred and seventy-two thousand dollars (\$772,000) in losses to the investors.
23. A review of HCM's Merrimack County Savings Bank account revealed that from February 2007 through May 2014, Higgins only deposited sixteen thousand two hundred and seventy dollars (\$16,270) of his own personal funds into the account while during the same timeframe Higgins withdrew a total of four hundred thirty-six thousand four hundred seventy dollars (\$436,470), leaving a net withdrawal total of four hundred twenty thousand two hundred dollars (\$420,200). This figure includes the personal taxes paid by Higgins referenced in paragraph 20 above. Essentially, Higgins withdrew forty percent (40%) of the investors' funds over time for himself. Most of the withdrawals occurred in 2007, 2008, and 2009.
24. As of May 31, 2014, Investor #1, #2, #3, #4, #5, #6, #7, and #8, had combined investment with Higgins, net of all withdrawals, totaling eight hundred eighty-one thousand five hundred seventeen dollars and thirty three cents (\$881,517.33). Monies withdrawn by Higgins total four hundred twenty thousand two hundred dollars

(\$420,200). There only remains approximately one hundred and nine thousand dollars (\$109,000) in the bank and brokerage account. Thus, Higgins suffered approximately three hundred and fifty-two thousand, three hundred seventeen dollars, and thirty-three cents (\$352,317.33) in trading losses.

25. A review of Higgins' and his wife's other personal bank accounts and sworn financial affidavit submitted to the Bureau reveals little to no personal assets remaining.

26. All the transaction dates and amounts discussed in detail above were confirmed by an extensive forensic financial examination of HCM's TradeStation and Merrimack County Savings Bank accounts by the Bureau.

STATEMENT OF LAWS

II. The staff of the Bureau hereby petitions the Director and makes the following statements of law under the New Hampshire Revised Statutes Annotated, RSA 421-B, and regulations thereunder:

1. Higgins is a "person" within the meaning of N.H. RSA 421-B:2, XVI.
2. Higgins is an "investment adviser" within the meaning of N.H. RSA 421-B:2, IX.
3. Higgins is a "broker-dealer" within the meaning of N.H. RSA 421-B:2, III.
4. Pursuant to N.H. RSA 421-B:3, it is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly: (a) To employ any device, scheme, or artifice to defraud; (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. Higgins is in violation of this provision and committed fraud by disseminating

false quarterly statements to Investor #1, #2, #3, #4, #5, and #6, depositing their funds into personal accounts and converting their funds for personal use, representing that he would pay taxes on their behalf, disseminating a forged TradeStation statement to Investor #6, taking an unreasonable fee, failing to disclose that he abandoned the HEP, and failing to disclose the lack of proper licensure.

5. Pursuant to N.H. RSA 421-B:3-a, in recommending to a customer the purchase, sale, or exchange of a security, a broker-dealer or broker-dealer agent must have reasonable grounds for believing that the recommendation is suitable for the customer upon the basis of the facts, if any, disclosed by the customer after reasonable inquiry as to his or her other security holdings and as to his or her financial situation and needs. Higgins is subject to and in violation of this provision for recommending to Investor #1, #2, #3, #4, #5, and #6 highly speculative and risky securities without reasonable grounds for believing that the recommendation is suitable.
6. Pursuant to N.H. RSA 421-B:4, I, it is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale whether through the issuance of analyses or reports or otherwise: (a) To employ any device, scheme, or artifice to defraud another person; or (b) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person. Higgins is in violation of this provision and committed fraud by disseminating false quarterly statements to Investor #1, #2, #3, #4, #5, and #6, converting their funds intended to the HEP for personal use into a personal bank and brokerage account, disseminating a forged TradeStation statement to Investor #6, taking an unreasonable fee, failing to disclose that he abandoned the HEP, and failing to disclose the lack of proper licensure.
7. Pursuant to N.H. RSA 421-B:6, I, it is unlawful for any person to transact business in this state as a broker-dealer, investment adviser, or agent unless such person is licensed under N.H. RSA 421-B or exempt from licensing. Higgins is subject to and in violation of this provision for not being properly licensed as a broker-dealer, investment adviser or agent for Investor #1, #2, #3, #4, #5, #6, #7, #8, and #9.

8. Pursuant to N.H. RSA 421-B:10, I(a) and (b)(2), the secretary of state may by order bar any license if he or she finds that the order is in the public interest and that the licensee has willfully violated or failed to comply with any provision of this title. Higgins is subject to this provision and should be barred for life from any securities licensure in any capacity in the State of New Hampshire for the conduct described above.
9. Pursuant to N.H. RSA 421-B:22, IV, in any investigation to determine whether any person has violated or is about to violate this title or any rule or order under this title, upon the secretary of state's prevailing at hearing, or the person charged with the violation being found in default, or pursuant to a consent order issued by the secretary of state, the secretary of state shall be entitled to recover the costs of the investigation, and any related proceedings, including reasonable attorney's fees, in addition to any other penalty provided for under this chapter. Higgins is subject to this provision.
10. Pursuant to N.H. RSA 421-B:23, whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule under this chapter, he shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter. Higgins is subject to this provision and should be ordered to cease and desist from further violations of N.H. RSA 421-B.
11. Pursuant to N.H. RSA 421-B:26, III, any person who, either knowingly or negligently, violates any provisions of this chapter may, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation or denial of any registration or license, or an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation. Higgins is subject to this provision.
12. Pursuant to N.H. RSA 421-B:26, V, after notice and hearing, the Secretary of State may enter an order of rescission, restitution, or disgorgement directed to a person who has violated N.H. RSA 421-B. Higgins is subject to this provision.

RELIEF REQUESTED

III. The staff of the Bureau makes the following requests for relief in the above-referenced matter as permitted under the Act:

1. Find as fact the allegations contained in Section I of the Statement of Facts of this Petition.
2. Make conclusions of law as stated in Section II relative to the allegations contained in Section I of this Petition.
3. Order Higgins to permanently cease and desist from further violations of N.H. RSA 421-B.
4. Order Higgins permanently barred from any securities licensure in the State of New Hampshire, in accordance with N.H. RSA 421-B:10, I.
5. Order Higgins to pay an administrative fine of one hundred thousand dollars (\$100,000) for the violations of N.H. RSA 421-B:3, 3-a, 4, and 6, in accordance with N.H. RSA 421-B:26, III.
6. Order Higgins to pay the Bureau's costs of investigation of twenty-five thousand dollars (\$25,000), in accordance with N.H. RSA 421-B:22, IV.
7. Order Higgins to pay restitution to Investor #1, #2, #3, #4, #5, #6, #7, and #8 in accordance with N.H. RSA 421-B:26, and in the following amounts, representing each investors' out-of-pocket losses:
 - Investor #1: \$76,000
 - Investor #2: \$80,000
 - Investor #3: \$42,500
 - Investor #4 & 5: \$16,400
 - Investor #6: \$497,574.33

Investor #7: \$59,000

Investor #8: \$115,000

Total: \$886,474.33

8. Take such other actions as necessary for the protection of New Hampshire investors and enforcement of N.H. RSA-421-B.

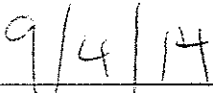
RIGHT TO AMEND

The Bureau's Staff reserves the right to amend this Staff Petition for Relief and to request that the Director of the Bureau take additional administrative action. Nothing herein shall preclude the Staff of the Bureau from bringing additional enforcement action under this N.H. RSA 421-B or the regulations thereunder.

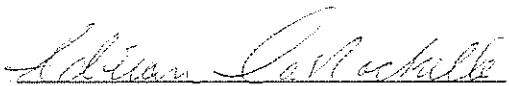
Respectfully submitted by:



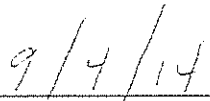
Eric Forcier, Staff Attorney



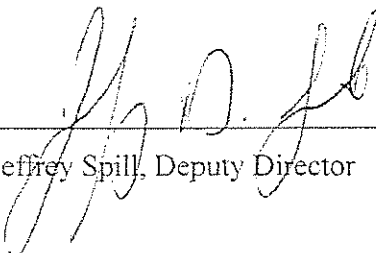
Date



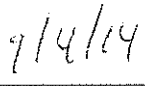
Adrian LaRochelle, Staff Attorney



Date



Jeffrey Spill, Deputy Director



Date

Exhibit A

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION
CONCORD, NEW HAMPSHIRE

IN THE MATTER OF:

Richard M. Higgins (CRD #4450943)
Higgins Capital Management

Respondents

No. INV.2014-000016

INTERIM CONSENT ORDER

For the purpose of establishing an interim Order to Cease and Desist and to preserve assets, the above listed Respondents have submitted an offer to enter into this Interim Order To Cease and Desist from violations of RSA 421-B pending the completion of an investigation and any further action that may be taken by the State of New Hampshire, Department of State, Bureau of Securities Regulation (hereinafter referred to as the "Bureau"). A violation of this Order constitutes a felony crime under RSA 421-B:24. Accordingly, the Respondents, without admitting or denying the following facts or allegations, do hereby consent to the following:

FACTS

1. Richard M. Higgins ("Higgins") (CRD#4450943) is an individual who resides at 43 Thornhill Road, Stratham, NH 03885. Higgins has a sole proprietorship, Higgins Capital Management ("HCM"), which is located at the same above address. Higgins also formed Higgins Equity Partnership, LLP in February 2007 but the partnership was administratively dissolved in September 2009 by the New Hampshire Secretary of State, Corporation Division and is no longer active.
2. Neither Higgins nor HCM are licensed under N.H. RSA 421-B in any capacity.
3. Since 2007, Higgins and HCM have invested other people's money for a fee in violation of N.H. RSA 421-B:6.
4. Higgins deposited investor funds with Merrimack County Savings Bank, and the current balance of this account is \$10,004.68 (this amount includes a deduction of \$400 for a recent check written but not yet cleared from this account). Higgins and HCM also maintain a single brokerage account at TradeStation Securities Inc.

("TradeStation"). All securities and cash in this TradeStation account belong to the investors referenced above. The TradeStation account currently holds approximately two thousand dollars (\$2,000) in cash and 3,750 shares of ULTRASHORT S&P PROSHARES (Symbol "SDS").

5. ULTRASHORT S&P PROSHARES are highly risky leveraged exchange traded funds that correspond to two times the inverse of the daily performance of the S&P 500 Index. Liquidation of said shares is required to preserve the value of the asset and avoid the risk of loss to investors.


UNDERTAKINGS

1. Higgins and HCM agree to immediately liquidate the 3,750 shares of ULTRASHORT S&P 500 PROSHARES with the cash proceeds to remain in TradeStation account number 17265891. The purpose of this liquidation is to preserve the remaining assets for a future distribution to Higgins' investors.
2. Immediately following the liquidation referenced in Undertaking #1 above, Higgins and HCM agree to a voluntary freeze of TradeStation account number 17265891 by providing TradeStation with a copy of this Interim Consent Order and instructing TradeStation to completely restrict Higgins and HCM from any access of any kind to this TradeStation account pending further order from the Bureau or agreement by the parties. Higgins and HCM acknowledge and agree that they will not be able to make any trades or withdraw any funds from this account without prior written approval from the Bureau.
3. Higgins and HCM agree not to withdraw or cause to be withdrawn any funds from Merrimack County Savings Bank account number 7014074 pending further order from the Bureau or agreement by the parties. The current balance of this account is \$10,004.68 (this amount includes a deduction of \$400 for a recent check written but not yet cleared from this account).
4. Higgins and HCM each agrees to waive their right to a hearing pursuant to RSA 421-B:23 with respect to this Interim Consent Order.
5. This Consent Order constitutes an interim Order of the Bureau. Higgins and HCM acknowledge that this Consent Order does not waive, in any respect, the Bureau's jurisdiction, authority and right to bring further proceedings under RSA 421-B as it deems necessary and appropriate to determine the extent and scope of the violations of RSA 421-B at which time this Order may be modified, amended or extended by the parties to it.

Based on the foregoing, the Bureau deems it appropriate and in the public interest to accept and enter into this Interim Consent Order. **THEREFORE, IT IS HEREBY ORDERED THAT:**

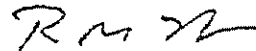
1. Pursuant to RSA 421-B:23, Higgins and HCM are hereby ordered to Cease and Desist from committing violations under RSA 421-B.
2. Higgins and HCM are hereby ordered to comply with the agreement to liquidate securities, freeze assets, and all other Undertakings indicated above.

Entered this 17 day of June, 2014.



 Barry Glenn, Director

Entered this 17th day of JUNE, 2014.



 Richard M. Higgins

Entered this 17th day of JUNE, 2014.

Higgins Capital Management

By: 

 Richard M. Higgins