

Pursuant to RSA 421-B:6-604(d), the Secretary of State has the authority to impose administrative penalties of up to \$2,500 for a single violation.

Pursuant to RSA 421-B:6-604(e) the Secretary of State may order rescission, restitution or disgorgement for violations of this chapter.

Pursuant to RSA 421-B:6-604(g), the Secretary of State may charge the actual cost of an investigation or proceeding for a violation of this chapter or an order issued under this chapter.

NOTICE OF RIGHT TO REQUEST A HEARING

The above named respondents have 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 respondents, or by the duly authorized agent of the above named respondents, 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 RSA 421-B: 6-604(b), within 15 days after receipt of a request in a record from the respondents, the matter will be scheduled for a hearing. If a Respondent subject to the order does not request a hearing and none is ordered by the secretary of state within 30 days after the date of service of the order, the order becomes final as to that Respondent. If a hearing is requested or ordered, the secretary of state, after notice of and opportunity for hearing to each respondent subject to the order, may modify or vacate the order or extend it until final determination. If the respondents to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, such respondents shall

be deemed in default, and the proceeding may be determined against him or her upon consideration of the cease and desist order, the allegations of which may be deemed to be true.

STATEMENT OF ALLEGATIONS

The allegations contained in the Staff Petition for Relief dated May 19, 2020, (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 contained in the Staff Petition, if proved true and correct, form the legal basis of the relief requested, therefore:

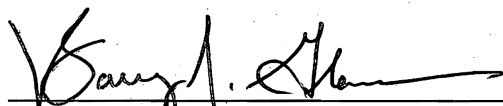
It is hereby **ORDERED**, that:

1. Respondent Frank C. Stama and MKT Investments, LLC shall cease and desist from: (a) trading inverse, or inverse and leveraged ETFs in retail client accounts, (b) providing investment advisory services without executing and/or maintaining written investment advisory service contracts, and (c) exercising discretionary trading without executing and/or maintaining written discretionary authority.
2. Respondents shall jointly and severally pay restitution to Investors 1-12 in an amount to be determined by the Hearing Officer.
3. Respondents shall jointly and severally pay an administrative fine in an amount to be determined by the Hearing Officer, but no less than \$80,000.

4. Respondents shall pay for the costs of the Bureau's investigation and the costs of the hearing process, in an amount to be determined by the Hearing Officer.
5. Respondent Stama and MKT's registration with the State of New Hampshire, Bureau of Securities Regulation is conditioned upon the prohibition of Recommending inverse, and inverse and leveraged ETFs in retail client accounts.
6. Respondent Stama and MKT's securities licenses shall be suspended for a period of time as determined by the Hearing Officer.
7. Failure to request a hearing within 30 days of the date of receipt of this Order shall result in a default judgment being rendered and administrative penalties and other relief described herein being imposed upon the defaulting respondents.

SIGNED,
WILLIAM M. GARDNER
SECRETARY OF STATE
BY HIS DESIGNEE:

Dated: 5-22-2020


BARRY J. GLENNON, DIRECTOR,
BUREAU OF SECURITIES REGULATION

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

**STAFF PETITION FOR RELIEF
IN THE MATTER OF:**

**Frank C. Stama
MKT Investments, LLC**

RESPONDENTS

INV2017-0003

STATEMENT OF FACTS

- I. The Bureau of Securities Regulation, Department of State, State of New Hampshire (the "Bureau"), hereby petitions the Director, and makes the following statements of fact:
1. Frank Stama (CRD # 4956271) (hereinafter "Stama") is a New Hampshire Investment Advisor Representative with and owner of MKT Investments, LLC (CRD# 298252) a State registered Investment Adviser, located at 264 South River Road, Suite 520, Bedford, NH (hereinafter "MKT"). MKT was approved as a State Registered Investment Adviser in New Hampshire on November 13, 2018. From about March 2013 to about March 2019, Stama was an Investment Advisor Representative with and part owner of Northeastern Wealth Management, LLC (CRD# 167101), a state registered Investment Adviser (hereinafter "NWM"). Prior to forming NWM, Stama was an investment advisor and broker dealer agent with SII Investments, Inc. (2011-2013), and Waddell and Reed (2007-2011). Stama passed his Series 66 and Series 7 exams in 2006.
 2. This matter involves trading strategies related to trading in inverse, and inverse and leveraged Exchange Traded Funds (ETFs) as outlined further in this petition. ETFs are exchanged-traded open-end investment companies or unit investment trusts that track an underlying benchmark or index. The shares represent an interest in a portfolio of securities and trade throughout the day at prices established by the market. These complex investments include various types of ETFs such as inverse, and inverse and leveraged ETFs. Inverse ETFs, also known as short ETFs, try and deliver the opposite of the performance of the benchmark or index that the fund tracks. Leveraged ETFs seek to deliver multiples of the benchmark or index's performance. Inverse and leveraged ETFs, or ultra-short funds, intend to deliver a multiple of the opposite of the performance of the underlying index or benchmark. Inverse, and inverse and leveraged ETFs are designed to

achieve their objectives daily, and reset the performance for the next day. Because of this daily resetting, the performance over longer periods of time can have significantly different results when compared to the daily performance, or to the actual benchmark or index they are tracking. This effect can be worse in a volatile market. Large losses can easily accrue when the ETF is held for longer periods of time; if the price of the ETF drops over a number of days the losses will compound instead of tracking the benchmark.

3. On August 1, 2009, the Securities and Exchange Commission (hereinafter "SEC") issued an investor alert titled "Leveraged and Inverse ETFs: Specialized Products with Extra Risks for Buy-and-Hold Investors¹," which stated that buy-and-hold investors with longer term time horizons should carefully consider whether inverse, and inverse and leveraged ETFs are appropriate, and warned of the risks with these specialized ETFs. In June 2009, the Financial Industry Regulatory Authority, Inc. (hereinafter "FINRA") released Regulatory Notice 09-31 "FINRA Reminds Firms of Sales Practice Obligations Relating to Leveraged and Inverse Exchange-Traded Funds²." Regulatory Notice 09-31 was circulated to all members and states that "inverse and leveraged ETFs that are reset daily typically are unsuitable for retail investors who plan to hold them for longer than one trading session."
4. The relevant time period of this action is from approximately January 1, 2014 to February 13, 2020, the date of the Interim Consent Order filed in this matter. During the relevant time period Stama, while acting as a fiduciary, engaged in unsuitable inverse, and inversed and leveraged ETF trading in his client's accounts, and failed to have in place written discretionary authority and investment advisory service contracts with many of his customers.
5. Folio Investments, Inc. ("Folio") is an online brokerage that offers asset custody along with online portfolio management and trade execution services to registered investment advisers. Starting at the end of 2013 and at the beginning of 2014, Stama and MKT utilized Folio services throughout the relevant time period. Folio provided no investment advice to Stama's customers. Through Stama's advisory business, Stama's customers bought various securities portfolios through Folio that are made up of various securities that Stama picked depending on what was happening in the markets. For example, if Stama thought that the markets would go down, Stama would buy various market hedging securities for the portfolios such as inverse, and inverse and leveraged ETFs. The portfolios were also periodically rebalanced depending on market outlook. During the relevant time period, Stama purchased inverse, and inverse and leveraged ETFs for 12 of his customers and held those securities beyond the recommended hold periods causing losses to these customers.
6. During the relevant time period Stama failed to execute or maintain required investment advisory service contracts and/or written discretionary authority for 10 of the 12 customers referred to in paragraph 5.

¹SEC, Investor Alerts and Bulletins, "Leveraged and Inverse ETFs: Specialized Products with Extra Risks for Buy-and-Hold Investors," Aug. 1, 2009, <https://www.sec.gov/investor/pubs/leveragedetfs-alert.htm>

²FINRA, Regulatory Notice 09-31, "FINRA Reminds Firms of Sales Practice Obligations Relating to Leveraged and Inverse Exchange-Traded Funds," June 2009, <https://www.finra.org/rules-guidance/notices/09-31>

7. Investor 1, from Hollis, New Hampshire, was 54 years old when he opened his account with Folio in 2014 and had two accounts with NWM and Stama, a trust account and a traditional IRA. Investor 1, was unhappy with Stama and closed his accounts with NWM in 2016 and complained to the Bureau. During the relevant time period, Investor 1, sustained approximately \$38,205 in losses in his accounts due to unsuitable inverse, and inverse and leveraged ETF trading by Stama. Additionally, Stama failed to execute and/or maintain a written investment advisory service contract and written discretionary authority for Investor 1.
8. Investor 2, from Bedford, New Hampshire, was 48 years old when he opened his account with Folio in 2014. Investor 2 moved from NWM to MKT with Stama, and took his three accounts: a traditional IRA, a Roth IRA, and an individual account. During the relevant time period, Investor 2, sustained losses in his accounts due to unsuitable inverse, and inverse and leveraged ETF trading by Stama.
9. Investor 3, from Bedford, New Hampshire, was 47 years old when he opened his account with Folio in 2014. Investor 3 had one IRA account with NWM. During the relevant time period, Investor 3 sustained losses in his account due to unsuitable inverse, and inverse and leveraged ETF trading by Stama. Also, Stama failed to execute and/or maintain a written investment advisory service contract and written discretionary authority for Investor 3.
10. Investor 4, from Amherst, New Hampshire, was 61 years old when he started with NWM in 2013. Investor 4 opened his accounts with Folio in 2014. Investor 4 had one IRA account with NWM. The account was transferred to MKT with Stama. During the relevant the period, Investor 4 sustained losses in his account due to unsuitable inverse, and inverse and leveraged ETF trading by Stama. Also, Stama failed to execute and/or maintain a written investment advisory service contract and written discretionary authority for Investor 4.
11. Investor 5, from Amherst, New Hampshire is a Trust. Investor 4 is the trustee for Investor 5. Investor 5 has one account, opened with Folio in 2014, and transferred to MKT with Stama. During the relevant time period, Investor 5, sustained losses in this account due to unsuitable inverse, and inverse and leveraged ETF trading by Stama. Also, Stama failed to execute and/or maintain a written investment advisory service contract and written discretionary authority for Investor 5.
12. Investor 6, from Bedford, New Hampshire, had one traditional IRA account with NWM held by Folio in 2014. In 2017 Investor 6 added a second IRA Trust account with NWM. Both accounts were transferred to MKT with Stama. During the relevant time period, Investor 6 sustained losses in his accounts due to unsuitable inverse, and inverse and leveraged ETF trading by Stama. Also, Stama failed to execute and/or maintain written discretionary authority for Investor 6.
13. Investors 7 and 8, a married couple from Raymond, New Hampshire, started with Folio in 2014. Investor 7 had a Roth IRA account and a joint account with Investor 8. Investor 8 had a Traditional IRA account. During the relevant time period, Investors 7 and 8

sustained losses in their accounts due to unsuitable inverse, and inverse and leveraged ETF trading by Stama. Also, Stama failed to execute and/or maintain written discretionary authority for investors 7 and 8.

14. Investors 9 and 10, a married couple from Manchester, New Hampshire, opened accounts with Folio in 2015. Investor 9 had two accounts with NWM and Stama, an IRA account and a joint account with Investor 10. Both accounts were transferred to MKT. During the relevant time period, Investors 9 and 10 sustained losses due to unsuitable inverse, and inverse and leveraged ETF trading by Stama. Also, Stama failed to execute and/or maintain a written investment advisory service contract and written discretionary authority for investors 9 and 10.
15. Investor 11, from Amherst, New Hampshire, had six accounts when he opened his account with Folio in 2014. Investor 11 had three traditional IRA accounts, one revocable trust account, one Roth IRA account, and an individual account. All accounts were transferred to MKT in 2018. During the relevant time period, Investor 11 sustained losses due to unsuitable inverse, and inverse and leveraged ETF trading by Stama.
16. Investor 12, from Bedford, New Hampshire, was 55 years old when he opened his account with Folio in 2014. Investor 12 had one traditional IRA account, which was transferred from NWM to MKT. In 2019, with MKT, Investor 12 opened an individual account. During the relevant time period, Investor 12 sustained losses due to unsuitable inverse, and inverse and leveraged ETF trading by Stama. Also, Stama failed to execute and/or maintain written discretionary authority for investor 12.
17. During the relevant time period Investors 1-12 were clients of Stama and NWM. Investors 2, 4, 5, 6, 9, 10, 11 and 12 transferred their accounts to MKT in 2018.
18. During the relevant time period, Stama did not maintain a formal written risk assessment for Investors 1-12. Stama indicated to the Bureau that Investors 1-12 had either a "moderate risk profile, or had a risk profile that was slightly below the balanced portfolio risk profile."
19. During the relevant time period Stama and MKT utilized Folio as broker-dealer for the accounts of Investors 1-12. Stama recommended inverse, and inverse and leveraged ETFs to be purchased in the accounts of Investors 1-12.
 - a. Stama either purchased or caused to be purchased inverse, and inverse and leveraged ETFs for Investors 1-12 and held the inverse, and inverse and leveraged ETFs for more that the recommended hold period. In the relevant time period, the inverse, and inverse and leveraged ETFs that Stama purchased exceeded the recommended hold period by days, weeks, and months.

STATEMENT OF LAW

II. The unlawful conduct described in this Staff Petition spans the “relevant time period” of approximately January 1, 2014 to February 13, 2020. 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, including those in effect both before (pre-2016) and after (2016) the law change effective January 1, 2016:

1. MKT is an investment adviser within the meaning of RSA 421-B:1-102(26) (2016) and RSA 421-B:2(IX) (pre-2016) and Frank Stama is an investment adviser representative within the meaning of RSA 421-B:1-102(27) (2016) and RSA 421-B:2(IX-a) (pre-2016). MKT and Stama are persons under RSA 421-B:1-102(39) (2016) and RSA 421-B:2(XVI) (pre-2016).
2. Pursuant to RSA 421-B:5-502(a) (2016) and RSA 421-B:4(I) (pre-2016), it is unlawful for any person that advises others for compensation as to the value of securities or the advisability of investing in, purchasing, or selling securities: to employ a device, scheme, or artifice to defraud another person; or to engage in an act, practice or course of business that operates or would operate as a fraud or deceit upon another person. Further, Pursuant to 421-B:505-2(b)(2) (2016) and RSA 421-B:4(V) (pre-2016), a person who is an investment adviser or investment adviser representative is a fiduciary and has a duty to act primarily for the benefit of the person’s clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser and the clients and the circumstances of each case, an investment adviser or investment adviser representative shall not engage in unethical business practices which constitute violations of subsection (a), including the following: 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 objectives, financial situation and needs, and any other information known by the investment adviser or investment adviser representative. Stama and MKT are in violation of these provisions for engaging in an act, practice, or course of business which operates as a fraud or deceit upon Investors 1-12 by acting as a fiduciary while trading in unsuitable and high-risk inverse, and inverse and leveraged ETFs in the retail accounts of Investors 1-12 without regard to the appropriate hold periods of the product.
3. Pursuant to RSA 421-B:5-502(b)(2)(P) (2016), it shall constitute an unethical business practice to enter into, extend, or renew any investment adviser service contract unless such contract is in writing. Stama and MKT are in violation of these provisions with regards to Investors 1, 3, 4, 5, 8, 9, and 10.
4. Pursuant to RSA 421-B:5-502(b)(2)(B) (2016), it shall constitute an unethical business practice to exercise any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral

discretionary authority. Stama and MKT are in violation of this provision with regard to purchases and sales made by Stama in the accounts of Investors 1, 3, 4, 5, 8, 9, and 10.

5. Pursuant to RSA 421-B:4-411(c)(4)(J) (2016), every investment adviser licensed under RSA 421-B shall make and keep true, accurate and current all written agreements entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such. Stama and MKT are in violation of this provision with regard to Investors 1, 3, 4, 5, 6, 7, 8, 9, 10, and 12.
6. Pursuant to RSA 421-B:4-411(c)(4)(I) (2016), every investment adviser licensed under RSA 421-B shall make and keep true, accurate and current all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser, or copies thereof. Stama and MKT are in violation of this provision with regard to Investors 1, 3, 4, 5, 6, 7, 8, 9, 10 and 12.
7. Pursuant to RSA 421-B:6-604(b) (2016), RSA 421-B:23 (pre-2016), if the secretary of state determines that a person has engaged, is engaging or is about to engage, in an act, practice, or course of business constituting a violation of this chapter or an order issued under this chapter, or that person has, is, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or an order issued under this chapter, the secretary of state may: issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter. Stama and MKT are subject to this provision and should be ordered to cease and desist from purchasing inverse, and inverse and leveraged ETFs in retail client accounts. Stama and MKT should also be ordered to cease and desist from providing investment advisory services without maintaining written investment advisory service contracts and cease and desist from exercising discretionary trading without maintaining written discretionary authority.
8. Pursuant to RSA 421-B:6-604(d) (2016), in a final order, the secretary of state may impose a civil penalty up to a maximum of \$2,500 for a single violation. In addition, every such person who is subject to such civil penalty, 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 be barred from registration or licensure, including the forfeiture of any application fee. Stama and MKT are subject to this provision and should be ordered to pay a fine of up to \$2,500 for every violation and Stama and MKT's securities licenses should be suspended for a period of time as determined by the hearing officer.
9. Pursuant to RSA 421-B:6-604(e) (2016), and RSA 421-B:26(V) (pre-2016) after notice and hearing, the secretary of state may enter an order of rescission, restitution, or disgorgement directed to a person who has violated this chapter. Rescission, restitution, or disgorgement shall be in addition to any other penalty provided for under this chapter. Stama and MKT are subject to this provision.
10. Pursuant to RSA 421-B:6-604(g) (2016) and RSA 421-B:22 (pre-2016), the secretary of state may charge the actual cost of an investigation or proceeding for a violation of the

chapter or an order issued under the chapter. Stama and MKT are subject to this provision and should be ordered to pay the cost of this investigation and proceeding.

11. Pursuant to RSA 421-B:4-412(b) (2016), an order under the chapter may condition the registration of a registrant if the secretary of state finds that the order is in the public interest. Further pursuant to RSA 421-B:4-412(d)(2) (2016) a person may be disciplined under RSA 421-B:4-412 if the person has willfully violated or willfully failed to comply with this chapter or predecessor act within the previous 10 years. Stama and MKT are subject to this provision.

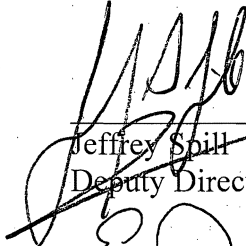
RELIEF REQUESTED

- III. The staff of the Bureau of Securities Regulation requests the Director take the following action:
 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 Stama and MKT to cease and desist from trading in inverse, or inverse and leveraged ETFs in retail client accounts, in accordance with RSA 421-B:6-604.
 4. Order Stama and MKT to cease and desist from providing investment advisory services without executing and/or maintaining written investment advisory service contracts and cease and desist from exercising discretionary trading without executing and/or maintaining written discretionary authority.
 5. Order Stama and MKT to pay an administrative fine in an amount to be determined by the hearing officer and in accordance with RSA 421-B:6-604 and RSA 421-B:26, but no less than \$80,000.
 6. Order Stama and MKT to pay for the costs of the investigation of this matter and the costs of the hearing process, in an amount to be determined by the hearing officer and in accordance with RSA 421-B:6-604.
 7. Order Stama and MKT to pay restitution to the Investors 1-12 in an amount to be determined by a hearing officer in accordance with 421-B:6-604.
 8. Order Stama and MKT's securities licenses suspended for a period of time as determined by the hearing officer
 9. Condition the registration of MKT and Stama on the prohibition of recommending inverse, and inverse and leveraged ETFs in retail client accounts.
 10. Take other such actions as necessary for the protection of New Hampshire investors and the enforcement of the Act.

RIGHT TO AMEND

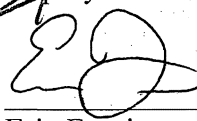
The Bureau's Staff reserves the right to amend this Petition for Relief and to request that the Director of Securities take additional administrative action. Nothing herein shall preclude the Staff from bringing additional enforcement action under this NH RSA 421-B or the regulations thereunder.

Dated: 5/19/20



Jeffrey Spill
Deputy Director

Dated: 5/19/20



Eric Forcier
Staff Attorney