

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

CONSENT ORDER
IN THE MATTER OF:

Investors Capital Corporation, CRD # 30613
Christopher Bennett CRD # 3121468

and

Robert Estevez, CRD # 3161419

I-2013000011
COM-2013-00002-00004

- I. For purposes of settling the above-captioned matter, and in lieu of further administrative proceedings, Investors Capital Corporation (“ICC”), Robert Estevez (“RE”) and Christopher Bennett (“Bennett”) have submitted an offer of settlement which the State of New Hampshire, Department of State, Bureau of Securities Regulation (the “Bureau”) has determined to accept. Accordingly, without admitting or denying the facts or allegations contained herein, ICC, RE and Bennett do hereby consent to the following undertakings and sanctions:

THE FACTS REGARDING TELEMARKETING

1. The complainant in this matter is a Manchester, New Hampshire attorney who received an unwanted telephone solicitation from an ICC independent contractor agent. During the call, the complainant told the agent that he did not want to receive any further calls from ICC. The complainant received several subsequent calls from the agent, each time telling the agents calling that he wished not to receive further calls.
2. RE is a registered representative with ICC and has been with ICC since December 5, 2008. Prior to working for ICC, RE worked for First Republic Group, LLC (“First Republic”, CRD # 39781) from June 27, 2001 to December 5, 2008.
3. During RE’s tenure with First Republic the Bureau initiated an investigation of the firm based on a complaint the Bureau received from a New Hampshire attorney claiming he had received a violative telemarketing call from an agent at First Republic. During its investigation, the Bureau determined that RE and other agents of First Republic engaged in telemarketing

practices in violation of firm policies and NASD Rule 2212 (currently FINRA Rule 3230). The Bureau ultimately filed a Staff Petition in the First Republic matter, but resolved the matter through a Consent Order prior to hearing. Subsequently, the Bureau determined that First Republic did not comply with the terms of the Consent Order issued in the matter and moved to revoke First Republic's license to operate as a broker-dealer in the State of New Hampshire. The motion was ultimately granted and First Republic ceased operating soon thereafter. RE and several other agents at First Republic then moved to ICC. The complainant in this matter is the same individual as the complainant in the First Republic matter.

4. During the course of the Bureau's investigation in the instant matter, the Bureau was provided with call records from ICC's Greenwich, Connecticut office where RE is employed. In reviewing the call records provided by ICC, the Bureau was able to determine that not only did ICC's Greenwich, Connecticut office initiate hundreds of telemarketing calls to New Hampshire residents on the National Do Not Call Registry during the relevant time period, but RE may have initiated several of these calls to the complainant's office.
5. The strategy employed by RE and other agents at ICC's Greenwich, Connecticut office were the same strategies employed by RE and the other agents of First Republic that were ultimately the subject of the Bureau enforcement action. This strategy and the resulting volume of telemarketing calls to New Hampshire residents, despite being violative, was not discovered or remedied by ICC until the initiation of the Bureau's investigation in this matter. ICC maintained policies and procedures relative to telemarketing activities, which included requirements for representatives to refrain from calling individuals on the National Do Not Call Registry and individuals who request that they no longer be contacted. ICC failed to recognize red flags at the Greenwich branch office concerning noncompliance with the company's telemarketing rules and restrictions.

THE FACTS REGARDING ALTERNATIVE INVESTMENTS

6. Bennett, CRD# 3121468 with an office located at Abbott and Bennett Group, LLC, 41 South Main Street, Concord, New Hampshire was a broker-dealer agent of ICC from 4/11/2003 to 8/7/2009, and sold various high risk alternative investments to five clients in New Hampshire from 2004 to 2007.
7. Investors #1 and 2, an elderly married couple from Milford, New Hampshire were sold the following alternative investments by Bennett: Cornerstone Industrial Properties, Inc. in 2004 for \$200,000, 123 North Wacker, LLC in 2006 for \$200,000 and ICON Fund 10 in 2004 for \$177,500. At the time of these investments, Investors #1 and 2 committed about half of their entire net worth and almost all of their liquid net worth to these investments, which the Staff

found to be an excessive percentage of investable assets. Further, Investor #1 and 2 were elderly and retired with significant medical issues.

8. Investor #3, a married man from Sandown, New Hampshire, in 2004 was sold Cornerstone Industrial Properties, Inc. for \$135,000, which was his entire 401K retirement account and almost all of his liquid net worth. The Staff found this to be an excessive percentage of investable assets.
9. Investors #4 and 5, a married couple from Massachusetts, refinanced their primary residence and invested a portion of the proceeds, \$266,600, in alternative investments. Investor #4 and 5 were sold the following high risk alternative investments by Bennett: NNN Netpark II, LLC for \$100,000 in 2005, Lease Equity Appreciation Fund II, LP for \$100,000 in 2006, 123 North Wacker, LLC for \$60,000 in 2005 and Cole Credit Property Trust II for \$6,600 in 2007. Those sales were unsuitable given that Investors #4 and 5 refinanced their primary residence and invested proceeds from the refinancing in these high risk investments and because the Staff found that the concentration levels were excessive.
10. All of these sales evidence a lack of supervision by ICC of Bennett's sale activities for alternative investments in New Hampshire during this time period given that all of these sales were reviewed and approved by an ICC supervisor even though the sales were unsuitable and beyond reasonable and acceptable concentration levels.

THE LAW

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. ICC is a "person" within the meaning of N.H. RSA 421-B:2, XVI and is a "broker-dealer" within the meaning of RSA 421-B:2, III and is a registered member of FINRA.
2. RE and Bennett are "persons" within the meaning of N.H. RSA 421-B:2, XVI and "agents" of ICC within the meaning of RSA 421-B:2, II.
3. Pursuant to RSA 421-B:3-a, [i]n 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. ICC and Bennett are in violation of this section for recommending and selling risky alternative investments to Investors #1 through 5 that were unsuitable and well beyond industry concentration level standards and their ability to accept the risks.

4. FINRA Rule 3230(a)(2) states, specifically, that “no member or person associated with a member shall initiate any outbound telephone call to . . . [a]ny person that previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the member. . . .”
5. FINRA Rule 3230(a)(3) explains that “no member or person associated with a member shall initiate any outbound telephone call to . . . [a]ny person who has registered his or her telephone number on the Federal Trade Commission’s national do-not-call registry.” However, there are three possible exceptions to this restriction under subsection (b) of the rule:

A member making telephone solicitations will not be liable for violating paragraph (a)(3) if: 1) The member has an established business relationship with the recipient of the call. A person’s request to be placed on the firm-specific do-not-call list terminates the established business relationship exception to that national do-not-call list provision for that member even if the person continues to do business with the member; 2) The member has obtained the person’s prior express invitation or permission. Such permission must be evidenced by a signed, written agreement between the person and member which states that the person agrees to be contacted by the member and includes the telephone number to which the calls may be placed; or 3) The associated person making the call has a personal relationship with the recipient of the call.

6. Pursuant to N.H. RSA 421-B:8, X, persons licensed under this chapter to conduct securities business shall abide by the rules of the SEC, National Association of Securities Dealers (NASD, now FINRA), national and regional stock exchanges, and other self-regulating organizations which have jurisdiction over the licensee, which set forth standards of conduct in the securities industry. Further, N.H. RSA 421-B:11, I-b(c) and N.H. RSA 421-B:17, V state that “[i]n any judicial or administrative proceeding under this chapter, *the burden of proving an exemption, preemption or an exception from a definition is upon the person claiming it.*” (emphasis added) ICC and RE re subject to these provisions and re liable under New Hampshire securities law for violations of applicable FINRA Rules. According to documents produced by ICC and the Bureau’s analysis of the information provided, RE placed repeated telemarketing or sales calls to New Hampshire residents whose numbers appear on the National Do Not Call Registry. Further, RE initiated telemarketing calls to New Hampshire residents who had previously requested not to be contacted. Each call placed to a New Hampshire number appearing on the National Do Not Call Registry that does not fall within one of the FINRA Rule 3230 exceptions is a violation of N.H. RSA 421-B:8, X and, thus, is subject to an administrative fine of \$2,500 pursuant to N.H. RSA 421-B:26, III. Further, each call made to a New Hampshire resident who has previously requested not to receive further calls is a violation

of N.H. RSA 421-B:8, X and, thus, is subject to an administrative fine of \$2,500 pursuant to N.H. RSA 421-B:26, III.

7. N.H. RSA 421-B:10, I(b)(10) provides that the secretary of state may by order deny, suspend, or revoke any license or application, or bar any person from licensure if he finds that such person has failed reasonably to supervise his agents if he is a broker-dealer or issuer-dealer, or his employees if he is an investment adviser. ICC is subject to this provision and has violated this provision by failing reasonably to supervise the telemarketing activities of the agents at its Greenwich, Connecticut branch office. ICC is subject to this provision and has violated this provision by failing to supervise the sale of alternative investments by Bennett in New Hampshire.
8. 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. ICC, RE and Bennett are subject to this provision.
9. 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 or order under this chapter, the secretary of state 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. ICC, RE and Bennett, are subject to this provision.
10. Pursuant to 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. ICC, RE and Bennett are subject to a suspension, revocation, or denial, and a fine for violations of RSA 421-B:3-a, 421-B:8 and 421-B:10.
11. Pursuant to RSA 421-B:26,III-a, every person who directly or indirectly controls a person liable under paragraph III, every principal executive officer, or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in the act or transaction constituting the violation, and every broker-dealer or agent who materially aids in the acts or transactions constituting the violation either knowingly or negligently, may, upon hearing, and in addition to any other penalty provided by law, be subject to such suspension, revocation, or denial of any registration or license, or

administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal penalties imposed pursuant to RSA 421-B:24 or civil liabilities imposed pursuant to RSA 421-B:25. ICC, RE and Bennett are subject to this section.

II. In view of the foregoing, ICC, RE and Bennett agree to the following undertakings and sanctions:

1. ICC, RE and Bennett agree to cease and desist from further violations of N.H. RSA 421-B.
2. ICC, RE and Bennett agree that this Order is entered into for purposes of resolving only the matter as described herein. This order shall have no collateral estoppel effect in any other lawsuit, proceeding, or action, not described herein. Likewise, this order shall not be construed to restrict the Bureau's right to initiate an administrative investigation or proceeding relative to conduct by ICC, RE or Bennett which the Bureau has no knowledge of at the time of the date of final entry of this order.
3. ICC, RE and Bennett agree not to take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation in this Consent Order or create the impression that the Consent Order is without factual basis. Nothing in this provision affects ICC, RE or Bennett's testimonial obligations or right to take any factual or legal positions in administrative proceedings or in litigation, in which the State of New Hampshire is not a party.
4. RE agrees to voluntarily withdraw his licensure in the State of New Hampshire and agrees not to pursue securities licensure in the State of New Hampshire for a period of three years from the date of execution of this Consent Order.
5. Bennett is barred from securities licensure in the State of New Hampshire for a three-year period with credit for two years already served. The remaining year of the bar shall commence upon execution of this Consent Order. Bennett shall be subject to a two year period of heightened supervision following any relicensing in New Hampshire.
6. RE agrees to never again initiate telemarketing calls to New Hampshire residents.
7. ICC agrees to implement or modify compliance and supervisory systems and procedures to remedy the telemarketing violative behavior outlined herein and to report to the Bureau within six (6) months from the date of execution of this Consent Order regarding implementation or modification of such system or procedures.
8. ICC agrees to initiate and complete a rescission offer to Investors #1 through 5 pursuant to RSA 421-B:25, VIII for each alternative investment purchased. Said rescission offers must be preapproved by the Bureau and comply with the provisions of RSA 421-B:25, VIII. Said

rescission offers shall commence no later than 30 days from the date this Consent Order is executed. Said rescission offers shall, in the case of investors 4 and 5, pro rate the arbitration settlement amount of \$175,000 over the three alternative investments for which claims were sought including NNN Netpark II, LLC, Lease Equity Appreciation Fund II, LP and 123 North Wacker, LLC. Said rescission offers shall be net of any income, distribution or settlement money received for each investment.

9. ICC agrees, upon execution of this Consent Order, to pay an administrative fine for telemarketing violations in the amount of Twenty-Five Thousand Dollars (\$25,000) and the Bureau's costs of the telemarketing investigation in the amount of Twenty-Five Thousand Dollars (\$25,000). ICC agrees, upon execution of this Consent order, to pay an administrative fine for violations in the sale of alternative investments in the amount of Fifty Thousand dollars (\$50,000) and Bureau costs of the investigation in the amount of Twenty-Five thousand dollars (\$25,000). ICC agrees to pay the total amount of One Hundred and Twenty-Five Thousand Dollars (\$125,000) to the State of New Hampshire, which will be applied to settlement of the above-captioned matter. Payment must be made by 1) business check, certified check, or postal money order; 2) made payable to the State of New Hampshire; and 3) mailed to the Bureau of Securities Regulation, Department of State, State House, Room 204, Concord, New Hampshire, 03301.
10. RE agrees, upon execution of this Consent Order, to pay an administrative fine in the amount of Fifty Thousand Dollars (\$50,000). RE agrees to pay the total amount of Fifty Thousand Dollars (\$50,000) to the State of New Hampshire, which will be applied to settlement of the above-captioned matter. Payment must be made by 1) business check, certified check, or postal money order; 2) made payable to the State of New Hampshire; and 3) mailed to the Bureau of Securities Regulation, Department of State, State House, Room 204, Concord, New Hampshire, 03301.

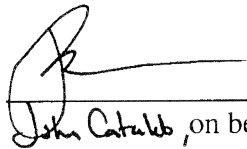
III. Based on the foregoing, the Bureau deems it appropriate and in the public interest to accept and enter into this Order. **THEREFORE, IT IS HEREBY ORDERED THAT:**

1. ICC, RE and Bennett cease and desist from further violations of the New Hampshire Securities Act pursuant to RSA 421-B:23.
2. ICC pay the Bureau's costs of investigation in the amount of Fifty Thousand Dollars (\$50,000) and administrative fines in the amount of Seventy-Five Thousand Dollars (\$75,000) for a total amount of One Hundred Twenty Five Thousand Dollars (\$125,000).
3. RE pay an administrative fine in the amount of Fifty Thousand Dollars (\$50,000).
4. RE undertakes to never again initiate telemarketing calls to New Hampshire residents and to voluntarily withdraw his licensure in the State of New Hampshire and agrees not to pursue

securities licensure in the State of New Hampshire for a period of three years from the date of execution of this Consent Order.

5. Bennett shall be barred from licensure in the State of New Hampshire for a three year period and undergo heightened supervision as described above. Bennett is credited with having served two years of the three year bar.
6. ICC, RE and Bennett comply with all other undertakings and sanctions outlined herein.

Executed this 18 day of August, 2014.



John Cataldo, on behalf of Investors Capital Corporation

(Please print name below:

John Cataldo, Chief Compliance Officer

Executed this _____ day of _____, 2014.

Robert Estevez

Executed this _____ day of _____ 2014.

Christopher Bennett

Entered this _____ day of _____, 2014.

Barry Glennon, Director
N.H. Bureau of Securities Regulation

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6. ICC, RE and Bennett comply with all other undertakings and sanctions outlined herein.

Executed this ____ day of _____, 2014.

on behalf of Investors Capital Corporation

(Please print name below:

Executed this 19 day of AUGUST, 2014.



Robert Estevez

Executed this ____ day of _____ 2014.

Christopher Bennett

Entered this ____ day of _____, 2014.

Barry Glennon, Director
N.H. Bureau of Securities Regulation

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Executed this _____ day of _____, 2014.

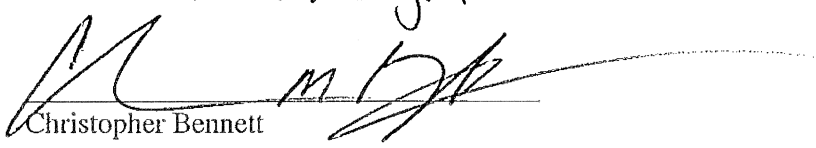
on behalf of Investors Capital Corporation

(Please print name below:

Executed this _____ day of _____, 2014.

Robert Estevez

Executed this 7th day of August 2014.



Christopher Bennett

Entered this _____ day of _____, 2014.

Barry Glennon, Director
N.H. Bureau of Securities Regulation

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Executed this _____ day of _____, 2014.

on behalf of Investors Capital Corporation

(Please print name below:

Executed this _____ day of _____, 2014.

Robert Estevez

Executed this _____ day of _____ 2014.

Christopher Bennett

Entered this 25th day of August, 2014.



Barry Glennon, Director
N.H. Bureau of Securities Regulation