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

Allen Darby)).))	No. COM.2011-0026-0029
Respondent)))	

CONSENT ORDER

I. For purposes of settling the above-referenced matter and in lieu of further administrative proceedings, Allen Darby (hereinafter referred to as "Darby"), has submitted an offer of settlement, which the State of New Hampshire, Department of State, Bureau of Securities Regulation (hereinafter referred to as "the Bureau") has determined to accept. Accordingly, the Respondent, without admitting or denying the allegations does hereby consent to the following findings, conclusions, undertakings and sanctions:

ALLEGATIONS OF FACTS

- 1. Hunter Advisor LLC ("HA") was an investment advisory business located at 500 Market Street, Portsmouth, New Hampshire 03801. The CRD number is 129071. HA was a state licensed investment advisory business which traded securities through a broker-dealer known as Commonwealth Financial Network. Holly Hunter ("Hunter") was the owner and principal until October 2009 when HA was sold to Aegis Capital, LLC, ("Aegis") a federally covered advisor firm based in Charlotte, North Carolina. The Aegis CRD number is 125376 and SEC number is 801-63063. In October 2009, HA became part of Aegis. At the time, Darby was the Chief Executive Officer of a parent company that owned Aegis called Aegis Adviser Alliance.
- 2. In conjunction with the sale of HA, Hunter signed a Consulting Agreement with Aegis to transition HA clients to Aegis. As part of that effort, Darby promoted

Aegis recommended products to HA clients at the Aegis offices located on Market Street in Portsmouth. One in particular was the Aegis Diversified Real Estate Fund, LLC ("ADREF").

- 3. In about December 2009 through March 2010, Darby, Hunter and other Aegis employees introduced HA clients to Aegis personnel and Aegis recommended products, includingcertain investment funds managed by Aegis personnel. Darby also met with Aegis employees to review HA client portfolios to determine what amounts would be recommended to be invested into the ADREF and other funds that were managed by Aegis personnel. The ADREF invested in one commercial building called Grove Plaza located in southern Florida. It was purchased by ADREF in 2008 for ten million dollars. Recommendations and offers were made to purchase the ADREF and the other funds as part of an overall investment strategy. Between January and March 2010, five HA client households consisting of seven investors who had transitioned to Aegis purchased various amounts of ADREF, totaling two hundred and thirty thousand dollars. In 2011, after Darby's departure from Aegis, the ADREF fund lost all its value.
- 4. At the time of the above described offers, sales and recommendations, Darby was not licensed as an investment advisor or broker-dealer agent in New Hampshire. At the time of the above described offers, sales and recommendations, Aegis was not noticed filed in New Hampshire as a federally covered investment advisor. At the time of the ADREF sales, ADREF was not a registered or exempt security filed with the State of New Hampshire. Darby, CEO of Aegis, failed to supervise the offer, purchase and sale of the ADREF investments.

STATEMENTS OF LAW

- 1. Aegis is an "investment advisor" within the meaning of RSA 421-B:2.
- 2. Darby is a "investment advisor" representative and broker-dealer agent within the meaning of RSA 421-B:2.
- 3. The ADREF membership interests are "securities" within the meaning of RSA 421-B:2.
- 4. The sale of the ADREF membership interests from the Portsmouth Aegis office constitutes an "offer" and "sales" in New Hampshire within the meaning of RSA 421-B:2.
- 5. Darby acted as an unlicensed investment adviser and broker-dealer agent with respect to the sale of the ADREF membership interests pursuant to RSA421-B:6.

- 6. Darby, as CEO of Aegis, failed to supervise its employees pursuant to RSA 421-B:10,I(a)(b)(10).
- 7. Pursuant to RSA 421-B:11, it is unlawful for any person to offer or sell any security in this state unless it is registered under this chapter, the security or transaction is exempted under RSA 421-B:17, or it is a federally covered security. Darby participated in the offer and sale of unregistered securities in New Hampshire.
- Pursuant to 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. Darby is subject to this section for violations of 421-B.
- 9. 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. Darby is subject to a suspension, revocation, or denial, and a fine for violations of RSA 421-B:6, 421-B:10 and 421-B:11.
- 10. Pursuant to RSA 421-B:26,III-a, every person who directly or indirectly controls a person liable under 421-B:26,III, may upon hearing, and in addition to any other penalty provided for by law, upon hearing, be subject to a fine and such suspension, revocation, or denial of any registration or license. Darby is subject to this section.
- 11. Pursuant to RSA 421-B:26,V the Bureau can order restitution for violations of 421-B.
- II. In view of the foregoing, the Respondent agrees to the following undertakings and sanctions:
 - Respondent agrees that that he has voluntarily consented to the entry of this Order and represent and aver that no employee or representative of the Bureau has made any promise, representation or threat to induce his execution.
 - 2. Respondent agrees to waive his right to an administrative hearing and any appeal therein under this chapter.

- 3. Respondent agrees to cease and desist from violations under this chapter.
- 4. Respondent is barred from licensure in the State of New Hampshire for a three year period commencing upon the execution of this Consent Order.
- 5. Respondent shall pay restitution upon execution of this Consent Order in the amount of \$20,000 on a pro rated basis to each of the seven investors based upon the amount of their investments over 36 months at the rate of \$500 per month to the seven investors as follows: Investors #1 and #2 and #3 \$108.69 each, Investors 4 and 5 \$54.35 each, Investor #6 \$32.61, and Investor #7 \$32.61. Payment shall be by certified check or money order delivered to the Investors on the first day of every month until paid in full. The names addresses of the Investors will be provided to the Respondent's counsel to be held confidentially, and only to be used by the Respondent for the purpose of sending the monthly restitution checks.
- 6. Respondent agrees that this Order is entered into for purposes of resolving the matter as described herein. This order shall not be construed to restrict the Bureau's right to initiate an administrative investigation or proceeding relative to conduct by Respondent which the Bureau has no knowledge at the time of the date of final entry of this order. Should the Respondent fail to abide by this Consent Order, the Bureau in its discretion may withdraw this Order and proceed to a legal proceeding on the merits of this matter or seek to enforce this Order in court and or bring a separate action for a violation of this Order. The Respondent will also cooperate in providing information and testimony for the Bureau in this matter.
- 7. The Respondent may not take any action or make or permit to be made any public statements, (a) denying, directly or indirectly, any allegation in this consent agreement or (b) create the impression that the consent agreement is without factual basis; provided that nothing in this provision affects the Respondent's testimonial rights and obligations or right to take any factual or legal positions in administrative proceedings or in litigation where the Bureau is not a party.
- 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. Respondent cease and desist from further violations of the act.
 - 2. Respondent pay restitution in the amount of \$20,000 as stated above.
 - 3. Respondent is barred from licensure in the State of New Hampshire for a three year period upon execution of this Consent Order.
 - 4. Respondents comply with the above-referenced undertakings.

Executed this 28 Docusigned by Aller Day	y:	May	_, 2013.
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Entered this 30 th Samuel Barry Glennon, Directors	Hen	1 py	_, 2013.