



Pursuant to RSA 421-B:10, VI, in lieu of, or in addition to, any such order to suspend or revoke any license or application, the Secretary of State may, upon hearing, assess an administrative fine of not more than \$2,500 per violation.

Pursuant to 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 RSA 421-B:23, I, if Respondent fails to request a hearing on this order within 30 calendar days of receipt of this order, 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 circumstance require.

### **STATEMENT OF ALLEGATIONS**

The allegations contained in the Staff Petition for Relief dated March 14, 2013 (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. The Respondent's license to conduct business as a broker-dealer agent is summarily suspended;

2. The Respondent shall pay an administrative fine in an amount to be determined by the hearings officer in accordance with RSA 421-B:10, VI and RSA 421-B:26, III;
3. Any registration privileges of Respondent are hereby denied, suspended, and revoked pursuant to RSA 421-B:26, III;
4. The foregoing Order summarily suspending Respondents' license shall remain in effect until such time as the hearing officer in this matter renders a final decision; and
5. Failure to request a hearing within 30 days of the date of receipt of this Order shall result in a default judgment being rendered, including imposition of fines and penalties upon the defaulting Respondent.

WILLIAM M. GARDNER  
SECRETARY OF STATE  
BY HIS DESIGNEE:

Dated: 3/20/13

  
\_\_\_\_\_  
David M. Scanlan  
Deputy Secretary of State

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

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

Brett Ian Friedberg. CRD#5012184

INV2013-0007

**STATEMENT OF ALLEGATIONS**

I. The staff of the Bureau of Securities Regulation, Department of State, State of New Hampshire (hereinafter referred to as the "Bureau") alleges the following issues of fact:

1. Brett Ian Friedberg (hereinafter referred to as "Friedberg") is a broker-dealer agent with HFP Capital Markets LLC of New York, New York. Friedberg was granted a broker-dealer agent license in New Hampshire on or about 2/26/2009. His CRD number is 5012184. Friedberg resides at 2 Cooper Square-Apt 9G, New York, New York 10003.
2. On or about February 5<sup>th</sup> 2013, Friedberg's license was revoked for three years by the State of Arkansas for selling unsuitable securities and making misrepresentations about those securities and about investor's suitability profile. An order issued from the Arkansas Securities Commission on 2/5/2013. (See Exhibit 1 attached)

II. The staff of the Bureau of Securities Regulation, Department of State, State of New Hampshire alleges the following issues of law:

1. RSA 421-B:10,I(a) and (b)(5-a) allows the secretary of state to revoke a broker-dealer agent's license if he finds that it is in the public interest and that the agent is subject of an adjudication or order entered after notice and opportunity for a hearing by an administrator of another state that reflects that the person has violated the securities laws of another state. Friedberg is subject to his section.
2. Pursuant to RSA 421-B:10,I(a) and (b)(14), the secretary of state has the power to revoke a license by order if the order is in the public interest and for other good cause shown. Friedberg is subject to this section.
3. Pursuant to RSA 421-B:10,I(a) and (b)(6), the secretary of state has the power to revoke a license of an agent if they are the subject of an order entered within the past 5 years by the securities administrator of any other state suspending or revoking the license. Friedberg is subject to this section.

3. RSA 421-B:10,III provides that the Secretary of State may issue an order requiring the person to whom any license has been granted to show cause why the license should not be revoked. Further, the Secretary of State may by order summarily suspend any license pending final determination of any order to show cause if he finds that the public interest would be irreparably harmed by delay in issuing such order.
4. RSA 421-B:10,VI provides that the secretary of state, may upon hearing, assess an administrative fine of not more than \$2,500 per violation, in lieu of or in addition to, an order to revoke a license. Friedberg is subject to this section.
5. 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. Friedberg is subject to a suspension, revocation, and a fine under this section.

#### **RELIEF REQUESTED**

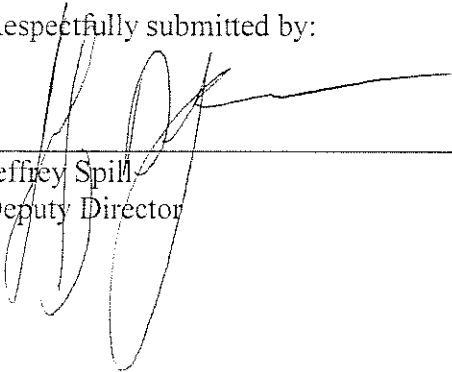
The staff of the Bureau of Securities Regulation requests the Director take the following action:

6. Find as fact the allegations contained in section I of the Statement of Allegations of this petition.
7. Make conclusions of law as stated in section II relative to the allegations contained in section I of this petition.
8. Summarily suspend the broker-dealer license of Friedberg and issue an order to show cause why the broker-dealer license of Friedberg should not be revoked, in accordance with RSA 421-B:10,III.
9. Find that it is in the public interest, and that Friedberg violated the laws, and that there is good cause to suspend or revoke the broker-dealer license of Friedberg in accordance with RSA 421-B:10,I.
10. Pursuant to RSA 421-B:10,VI fine Respondent if deemed appropriate.
11. Take such other actions as necessary for the protection of New Hampshire investors and 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.

Respectfully submitted by:

A handwritten signature in black ink, appearing to read 'Jeffrey Spill', is written over a horizontal line. The signature is stylized and somewhat cursive.

Jeffrey Spill  
Deputy Director

March 14, 2013

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RECEIVED

BEFORE THE ARKANSAS SECURITIES COMMISSIONER  
CASE NO. S-12-0102  
ORDER NO. S-12-0102-12-OR01

FEB -5 PM 1:31  
ARKANSAS SECURITIES DEPARTMENT

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IN THE MATTER OF:

BRETT IAN FRIEDBERG

RESPONDENT

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**CONSENT ORDER**

This Consent Order ("Order") is entered pursuant to the Arkansas Securities Act ("Act"), codified at Ark. Code Ann. §§ 23-42-101 through 23-42-509, the Rules of the Arkansas Securities Commissioner promulgated pursuant to the Act ("Rules"), and the Arkansas Administrative Procedures Act, codified at Ark. Code Ann. §§ 25-15-201 through 25-15-219, in accordance with an agreement between the Staff of the Arkansas Securities Department ("Staff") and the Respondent, Brett Ian Friedberg ("Friedberg").

It is expressly understood and agreed that this Order is a compromise of disputed claims and entered into for the sole purpose of resolving the issues between the parties and avoiding costly litigation. Friedberg admits the jurisdiction of the Act and the Arkansas Securities Commissioner ("Commissioner"), waives his right to a formal hearing and appeal, consents to the entry of this Order without admitting or denying the findings of fact or conclusions of law made herein, and agrees to abide by its terms in settlement of any possible violations committed by Friedberg concerning the matters detailed herein.

**FINDINGS OF FACT**

1. Brett Ian Friedberg, CRD No. 5012184, is a New York resident registered with the Arkansas Securities Department ("Department") as a broker-dealer agent with HFP Capital Markets LLC ("HFP"), CRD No. 44351.



2. On or about May 9, 2012, Friedberg contacted an Arkansas resident ("ARI") on a cold call recommending the purchase of certain corporate bonds issued by Exide Technologies, Inc. ("Exide"). At the time of the call, the Exide bonds carried an average credit rating of "B" from the major credit rating agencies. Friedberg pitched the Exide bonds as a short-term investment with a six-year maturity date trading at eighty-eight cents on the dollar and paying an 8.625% coupon. However, Friedberg said the payment of interest was not the main reason for recommending the bonds. The main reason was that he was hearing that Johnson Controls, Inc. ("Johnson Controls"), an A+ credit-rated company, was planning a takeover of Exide. According to Friedberg, a takeover of Exide by Johnson Controls would elevate the Exide bonds to A+ status and lead to them trading at a 1.10 value. Therefore, ARI would not only receive 10% annual interest on the initial bond purchase but also would stand to make a substantial profit selling the bonds after the takeover by Johnson Controls.

3. During his conversation with ARI, Friedberg failed to disclose the risks associated with purchasing a "B" rated bond. Further, while Friedberg did ask ARI a few income-related questions at the end of the conversation, Friedberg failed to conduct a proper suitability analysis with ARI prior to recommending the bonds for purchase.

4. After the initial phone conversation, Friedberg sent ARI an investment packet containing an account application form. Friedberg had prepopulated the investor information on the account application and merely submitted it to ARI for signature. While ARI had provided certain income information to Friedberg during their conversation, the income information prepopulated by Friedberg was inflated in comparison to the figures provided by ARI. ARI provided Friedberg with an annual income of \$50,000.00, a total investment amount of \$75,000.00, and an estimated net worth of \$25,000.00. The account form listed ARI as having

an annual income of over \$50,000.00, a liquid net worth of over \$100,000.00, and a total net worth of over \$500,000.00. The application further listed ARI's investment objective as "speculation" and risk tolerance as "high" without Friedberg ever having discussed these matters with his prospective client.

#### LEGAL AUTHORITY

5. Ark. Code Ann. § 23-42-308(a)(2)(G) provides in part that the Commissioner may by order deny, suspend, make conditional or probationary, or revoke any registration if he finds that an applicant has engaged in unethical practices in the securities business.

6. Rule 308.01 of the Rules sets out specific unfair, misleading, or unethical conduct that shall be considered as grounds for denial, suspension, or revocation of an agent registration. Rule 308.01(b) of the Rules prohibits a broker-dealer or agent from making unjustified or untruthful representations that securities sold will subsequently become listed or traded, or making representations that a market will be established or that the securities will be subject to an increase in value.

7. Rule 308.01(d) of the Rules requires that a registered agent, before recommending the purchase, sale, or exchange of any security, have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings, financial situation, and needs.

8. Rule 308.01(y) of the Rules prohibits a broker-dealer or agent from engaging in unfair, misleading, or unethical practices and allows the Commissioner to suspend or revoke a registration when necessary or appropriate in the public interest.

9. Ark. Code Ann. § 23-42-308(g) states that the Commissioner may for each violation of the Act fine a broker-dealer or agent in an amount not to exceed ten thousand dollars

or an amount equal to the total amount of money received in connection with each separate violation.

### CONCLUSIONS OF LAW

10. Friedberg violated Rule 308.01(b) of the Rules when he represented to AR1 without reasonable justification that Exide would be acquired by Johnson Controls causing an elevation in the Exide bond rating and an increase in the value of the security, as set forth in paragraphs 2 through 3 above.

11. Friedberg violated Rule 308.01(d) of the Rules when he recommended the Exide bonds to AR1 without having reasonable grounds to believe that the recommendation was suitable for purchase by the prospective client, as set forth in paragraphs 2 through 4 above.

12. Friedberg violated Rule 308.01(y) of the Rules when he prepopulated an account form with inaccurate financial information and objectives then submitted it to AR1 for signature, as set forth in paragraph 4 above.

13. The violations committed by Friedberg as detailed above constitute a violation of Ark. Code Ann. § 23-42-308(a)(2)(G). These violations justify the imposition of a fine in conjunction with Ark. Code Ann. § 23-42-308(g).

### UNDERTAKINGS

In settlement of this matter, but without admitting or denying the findings of fact set forth herein, Friedberg agrees to pay a \$5,000.00 fine to the Department within ten days of the entry of this Order. Additionally, Friedberg agrees to not apply for registration with the Department in any capacity for a period of three years from the entry date of this Order. After the expiration of the three-year period, any registrations of Friedberg shall be conditioned upon his employing firm conducting heightened supervision of his activities for a period of at least one year. A plan

for heightened supervision shall be submitted for the Commissioner's approval along with any new registration application for Friedberg.

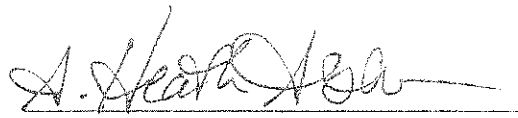
#### OPINION

This Order is in the public interest. The facts as set forth in paragraphs one through four support the violations of the Act and Rules as set forth in paragraphs ten through thirteen.

#### ORDER


IT IS THEREFORE ORDERED that in accordance with Friedberg's undertaking the Department shall hereby deem Friedberg's registration as a broker-dealer agent revoked in accordance with Ark. Code Ann. § 308(a)(2)(G) and the Department shall not accept or grant any application from Friedberg for registration pursuant to the Act for a period of three years from the entry date of this Order. After the expiration of the three-year period, any registrations of Friedberg shall be conditioned upon his employing firm conducting heightened supervision of his activities for a period of at least one year. A plan for heightened supervision shall be submitted for the Commissioner's approval along with any new registration application for Friedberg. Friedberg shall pay a fine to the Department in the amount of \$5,000.00 within ten days of the entry date of this Order. The payment shall be made by check payable to the Arkansas Securities Department, 201 East Markham Street, Suite 300, Little Rock, Arkansas 72201.

WITNESS MY HAND AND SEAL this the 5<sup>th</sup> day of February, 2013.

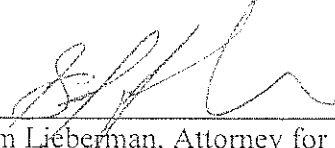


A. Heath Abshure  
Arkansas Securities Commissioner

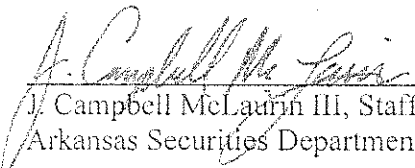
Approved as to Content and Form:

  
\_\_\_\_\_  
Brett Ian Friedberg, Respondent

11/29/13  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Sam Lieberman, Attorney for Respondent

1/30/13  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
J. Campbell McLain III, Staff Attorney  
Arkansas Securities Department

2/5/13  
\_\_\_\_\_  
Date