

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

**CONSENT ORDER**

David F. Brochu (CRD#1164857)

INV2014-00020

- I. For purposes of settling the above-referenced matter and in lieu of further administrative proceedings, David F. Brochu (hereinafter “Brochu”) has submitted an offer of settlement, which the State of New Hampshire, Department of State, Bureau of Securities Regulation (hereinafter the “Bureau”) has determined to accept. Accordingly, without admitting or denying the allegations contained herein, Brochu does hereby consent to the entry of this Consent Order and the following undertakings and sanctions:

**STATEMENT OF FACTS**

1. Brochu currently resides in Wells, Maine. From about January 1989 to May 2010, Brochu was a registered investment adviser representative with Strategic Point Investment Advisors, LLC (“SPIA”), an investment adviser firm located in Providence, Rhode Island that was once owned by Brochu and later sold to another firm in 2006. On February 17, 2009 Brochu’s license as an investment adviser representative of SPIA was suspended by the Financial Industry Regulatory Association (“FINRA”) for fifteen business days and Brochu was fined twenty thousand dollars (\$20,000) related to Brochu’s supervision and dissemination of an inaccurate private placement memorandum. Brochu’s employment with SPIA was voluntarily concluded in May 2010.
2. On June 9, 2010, Brochu created Kleossum, Inc. (“KI”), a corporation registered with the State of New Hampshire and at the time owned solely by Brochu. At the time of creation,

Brochu granted himself all five thousand (5,000) outstanding shares of KI, making himself the sole owner. KI became licensed with the United States Securities and Exchange Commission (“SEC”) as a federal covered investment adviser on September 3, 2010. With the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act, KI had insufficient assets under management to remain licensed with the SEC and became licensed as a state investment adviser with the State of New Hampshire in June 2012. KI ceased operating shortly after Brochu’s arrest for unrelated criminal charges in February 2014 and the Bureau summarily suspended both Brochu’s and KI’s licenses on June 4, 2014. KI had been located at 53 Technology Lane, Conway, New Hampshire 03818.

3. From June 2011 through February 2012, Brochu sold two thousand, three hundred and twenty-five (2,325) shares of his five thousand (5,000) shares in KI to five different people, at least four of which were clients of KI, for a total of four hundred and fifty thousand dollars (\$450,000). At least two of the KI clients who purchased common stock of KI allege that they were promised by Brochu that their funds would be reinvested into KI and used to grow the business, but that never occurred; these two clients considered that misrepresentation as material to their decision to purchase common stock of KI.
4. On November 17, 2011, Brochu registered Brochu Family Farm LLC (“BFF”) with the State of New Hampshire Department of State, Corporation Division with a primary business purpose stated on the Certificate of Formation being a “family farm.” According to BFF’s Operating Agreement, BFF was owned solely by Brochu’s wife, Alexis Brochu, and Brochu was the Manager. From May of 2013 through February 2014, Brochu solicited five KI clients to invest a total of one hundred and eighty thousand dollars (\$180,000) into BFF through promissory notes. Two of the five investors received a signed promissory note with promised interest of ten percent on their funds while the other investors either received an unsigned promissory note or no note at all. Of the one hundred and eighty thousand dollars (\$180,000) raised, although some interest was paid over time, only ten thousand dollars (\$10,000) in principal has been returned to one investor with the remaining investors still owed their entire principal investments.

5. On October 12, 2012, Brochu registered KT1, LLC (“KT1”) with the New Hampshire Department of State, Corporation Division with a primary business purpose stated on the Certificate of Formation being “Agriculture – Tree Farm.” According to KT1’s Operating Agreement, Alexis Brochu owned 25% of KT1 with an initial contribution of one hundred thousand dollars (\$100,000) and Brochu was the Manager. In October 2012, Brochu solicited ten KI clients to purchase membership interests in KT1 and raised a total of four hundred and twenty-five thousand dollars (\$425,000). In April of 2013, Brochu purportedly sold half of Alexis Brochu’s interest in KT1 to two investors, who are husband and wife, for fifty thousand dollars (\$50,000), bringing the total number of investors in KT1 to twelve and a total raised of four hundred and seventy-five thousand dollars (\$475,000). As of the date of this Consent Order, KT1 investors have not recouped any of their principal investments.
  
6. On April 29, 2013, Brochu registered Sustainable Forests Fuel Wood, LLC (“SFFW”) with the New Hampshire Department of State, Corporation Division with a primary business purpose stated on the Certificate of Formation being “Agriculture – Sell Wood.” According to SFFW’s Operating Agreement, BFF is the sole owner of SFFW and Brochu was the Manager. From July of 2013 through November of 2013, Brochu solicited five KI clients to invest a total of three hundred thousand dollars (\$300,000) into SFFW. At least one SFFW investor received a promissory note that provided for interest payments while the other SFFW investors did not receive a note but were nonetheless also promised interest on their funds. Several of the SFFW investors believe that they were purchasing membership interests in SFFW but Brochu agrees that such membership interests were never consummated pursuant to the terms of the SFFW Operating Agreement and N.H. RSA 304-C. Although some interest was paid over time, all of the investors are still owed their entire principal investments.
  
7. Other transactions that Brochu entered into with clients of KI include personally borrowing two hundred thousand dollars (\$200,000) from a married couple from Florida and soliciting a married couple from Rhode Island to invest twenty thousand dollars (\$20,000) into a “wood

company” that was in the “firewood business.” Neither the couple from Florida or Rhode Island received a return of their principal.

8. The following table depicts the total amount of principal still owed to Brochu’s former KI clients:

Name	From	Date Invested	Company Invested	Amount Owed
Investor #1 & #2	Pembroke, NH	04/2013 & 02/2014	KT1 & BFF	\$100,000
Investor #3	Woodlands, TX	04/2013 & 07/2013	BFF & SFFW	\$100,000
Investor #4	Canterbury, CT	01/2014	BFF	\$50,000
Investor #5	Providence, RI	05/2013	BFF	\$20,000
Investor #6 & #7	Bartlett, NH	10/2013	SFFW	\$50,000
Investor #8	Jamestown, RI	08/2013	SFFW	\$100,000
Investor #9	Madison, NH	10/2012 & 11/2013	KT1 & SFFW	\$150,000
Investor #10 & #11	North Kingston, RI	10/2012	KT1	\$50,000
Investor #12	Barrington, RI	10/2012	KT1	\$75,000
Investor #13	Cranston, RI	10/2012	KT1	\$50,000
Investor #14 & #15	Glen, NH	04/2011 & 10/2012	KI & KT1	\$300,000
Investor #16	Indian Shores, FL	10/2012	KT1	\$50,000
Investor #17 & #18	Triverton, RI	10/2012	KT1	\$50,000
Investor #19 & #20	Warwick, RI	10/2012	unknown	\$20,000
Investor #21 & #22	Cape Coral, FL	10/2010 & 10/2011	Personal loan	\$200,000
<b>TOTAL</b>				<b>\$1,365,000</b>

9. The Bureau determined that Brochu defrauded Investors #1 - #22 above, all of whom were KI clients that he owed a fiduciary duty. The Bureau determined that the fraud committed by Brochu against these investors included the following:

- Failure to disclose, in writing, Brochu’s several material conflicts of interest with respect to the investments in KI, BFF, KT1, and SFFW and his role as Manager of these entities, including that these entities would be directly benefiting Brochu by paying Alexis Brochu, transferring funds between each other, sharing equipment, sharing employees, and engaging in business transactions between each other;
- Misrepresentations with respect to the represented use of investment funds;

- Misappropriation of investor funds;
- Withdrawing large amounts of investor funds in cash with little to no accounting for the intended purpose;
- Misrepresentations regarding the viability, business dealings, and projected future business revenues of BFF, SFFW, KI, and KT1;
- Unsuitable investment recommendations; and
- Unlawfully borrowing funds from clients;

10. Brochu has cooperated in turning over available assets of SFFW and Alexis Brochu, including his possible interests in the real and personal property of SFFW and Alexis Brochu, which the Bureau will liquidate to apply as a credit to the restitution amount established by this Consent Order, after a reduction for reasonable costs.

#### STATEMENTS OF LAW

1. Brochu is a “person” within the meaning of N.H. RSA 421-B:2, XVI.
2. KI is an “investment adviser” within the meaning of N.H. RSA 421-B:2, IX and Brochu is an “investment adviser representative” within the meaning of N.H. RSA 421-B:2, IX-a.
3. Pursuant to N.H. RSA 421-B:4, 1, 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, to employ any device, scheme, or artifice to defraud another person or to engage in any act, practice, or course of business which operates as a fraud or deceit upon the other person. The Bureau finds that Brochu is in violation of this provision for failing to disclose conflicts of interest in writing, failing to disclose the direct benefit he would receive through Alexis Brochu being paid by the entities, misrepresentations with respect to the use of investment funds, misappropriation of investor funds, withdrawing large amounts of investor funds in cash with little to no accounting for the intended purpose, and misrepresentations

regarding the viability, business dealings, and projected future business revenues of BFF, SFFW, KI, and KT1.

4. Pursuant to N.H. RSA 421-B:4,V(a), a person who is an investment advisor or investment advisor agent 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 advisor agent shall not engage in unethical business practices which constitute violations of paragraph I 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 after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser or investment advisor agent. The Bureau finds that Brochu is in violation of this provision for recommending the purchase of high risk alternative investments in BFF, SFFW and KT1 to his KI clients when many of those clients were conservative or moderate investors. These high risk alternative investments were not suitable for many of these KI clients, particularly in a high risk start-up entity that had no operating history, no operating controls, and inadequate disclosure.
  
5. Pursuant to N.H. RSA 421-B:4,V(f), a person who is an investment advisor or investment advisor agent 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 advisor agent shall not engage in unethical business practices which constitute violations including the following: Borrowing money or securities from a client unless a client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds. The Bureau finds that Brochu is in violation of this provision for borrowing funds from KI clients.

6. Pursuant to N.H. RSA 421-B:4,V(k), a person who is an investment advisor or investment advisor agent 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 advisor agent shall not engage in unethical business practices which constitute violations including the following: Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser, investment advisor agent, or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice. The Bureau finds that Brochu is in violation of this provision for failing to disclose, in writing, his several material conflicts of interest with respect to the investments in KI, BFF, KT1, and SFFW and his role as Manager of these entities, including that these entities would be directly benefiting Brochu by paying Alexis Brochu, transferring funds between each other, sharing equipment, sharing employees, and engaging in business transactions between each other.
7. 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. Brochu is subject to this provision.
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. Brochu is 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 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. Brochu is subject to this provision.

10. 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. Brochu is subject to this provision.

11. 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. Brochu is subject to this provision.

II. In view of the foregoing, Brochu agrees to the following undertakings and sanctions:

#### UNDERTAKINGS AND SANCTIONS

1. Brochu agrees that he voluntarily consented to the entry of this Consent Order and represents and avers that no employee or representative of the Bureau has made any promise, representation, or threat to induce his signing of this order.
2. Brochu agrees to waive his right to an administrative hearing and any appeal thereof under this chapter.
3. Brochu agrees that this Consent Order is entered into for the purpose of resolving only the matter as described herein. This Consent Order shall not be construed to restrict the Bureau's right to initiate an administrative investigation or proceeding relative to conduct by Brochu which the Bureau has no knowledge of at the time of the date of the final entry of this Consent Order.



4. Brochu may not 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 contained in this Consent Order or create the impression that the Consent Order is without factual basis. However, nothing in this provision affects Brochu's testimonial obligations or right to take contrary legal or factual positions in litigation or other legal proceedings in which the Bureau is not a party, but not including the non-dischargeability penalties discussed in undertaking number 12 below.
5. Brochu agrees to permanently cease and desist from further violations under this chapter, pursuant to N.H. RSA 421-B:23.
6. Brochu agrees to a permanent bar from any securities licensure in any capacity in the State of New Hampshire.
7. Brochu agrees to a permanent bar from issuing securities in the State of New Hampshire
8. Brochu agrees to pay restitution totaling one million, three hundred and sixty-five thousand dollars (\$1,365,000) to Investors #1 - #22 based on the amounts of principal still owed to these investors, as described in Statements of Fact number 8 above. Brochu also agrees to pay a fine of one hundred thousand dollars (\$100,000) and cost recovery of twenty-five thousand dollars (\$25,000) to the Bureau. Brochu represents that he currently has an inability to pay this restitution, fine, and costs in full but agrees to make periodic payments every month until the entire balance of restitution, fine, and costs is paid. In his schedules of assets and liabilities made under penalty of perjury in his pending Chapter 7 bankruptcy case (Case 15-20559), Brochu claimed to have very few assets and that he only receives approximately one thousand, two hundred dollars to one thousand, five hundred dollar (\$1,200 - \$1,500) per month, from a declining source that will expire within nine months of this date. Based on a review of Brochu's available assets (none) and current income (currently none after five months), the Bureau and Brochu agree to an initial payment plan of

fifty dollars (\$50.00) to be received by the Bureau by the first of every month. If payment is not received by the Bureau by the first of each month the Bureau shall notify Brochu of his failure to pay by mail to the last known address provided to the Bureau by Brochu. Brochu shall have fifteen (15) days from the date of such notice to make the required payment. If payment is not received within fifteen (15) days from the date of such notice, such failure to pay will be considered in default of this Consent Order. Brochu agrees that if he fails to make a payment on or before the first of each month in more than three instances in any consecutive thirty-six month timeframe then such repeated failure to make timely payments will be considered a default of this Consent Order. Payments sent by mail on at least the second business day before the first day of the following month shall be considered timely. Payments shall be made by United States postal money order, certified check, bank cashier's check, or bank money order. The funds shall be made payable to the State of New Hampshire and be hand delivered or mailed to the Bureau of Securities Regulation, Department of State, State House Room 204, Concord, NH 03301. On at least an annual basis, the Bureau will make a pro rata distribution of these funds to Investor #1 - #22 and the Bureau, based on the amounts still outstanding.

9. Brochu agrees that if any periodic payment under this Consent Order is not paid when due (including the notice period), pursuant to Undertaking number 8 above, the entire unpaid balance shall become due and payable immediately, at the election of the Bureau. Additionally, upon default pursuant to Undertaking number 8 above, Brochu authorizes and empowers the Bureau to enter judgment by confession against Brochu, in favor of the Bureau, for the amount due plus all costs of collection, including without limitation court costs and reasonable attorney's fees. Brochu expressly waives any notice or other process, consents to immediate execution of the judgment, and expressly waives any right to a hearing or appeal thereunder concerning a default as defined in Undertaking number 8. Brochu also acknowledges that, should he default on any obligations set forth in this Consent Order, he may be subject to a separate enforcement action and additional fines and penalties for violations of the Consent Order.

10. Until all outstanding restitution, fine, and cost recovery are paid in full, Brochu shall inform the Bureau of any change of address within thirty (30) days of moving. Brochu shall also submit tax returns (including any amendments of prior years' returns) to the Bureau on a yearly basis and shall provide the tax returns to the Bureau within thirty (30) days of filing with the Internal Revenue Service. Brochu shall, until his complete satisfaction of the undertaking and sanctions contained herein, further notify the Bureau of receipt of any asset or financial windfalls of any kind in excess of five hundred dollars (\$500) in value within thirty (30) days of receipt. Brochu agrees to notify the Bureau when he gains employment of any kind within thirty (30) days of hiring and provide a copy of any documents necessary for the Bureau to understand his employment compensation, including but not limited to copies of employment contracts and payroll checks. Brochu also agrees that if the Bureau determines, at any time, that Brochu can afford to make more payments towards the outstanding restitution, cost recovery, and fines owed, the Bureau reserves the right to demand a payment or negotiate a higher monthly payment plan with Brochu. Similarly, if Brochu's circumstances change, Brochu may negotiate a lower monthly payment plan with the Bureau. If Brochu and the Bureau cannot agree to a payment amount or new payment plan amount, the Bureau or Brochu may petition the Director of the Bureau for a determination of the amount of the payment or the payment plan terms, based on a finding of Brochu's ability to pay. The Director, or a hearing officer assigned by the Director, may hold a hearing to determine the amount that Brochu must pay and any such hearing will be limited to the terms of the payment plan only and will not be an opportunity for Brochu to argue any of the facts or sanctions contained in this Consent Order.
11. The Bureau acknowledges that there may remain certain assets of Brochu, BFF, KT1, SFFW, and Alexis Brochu that may be liquidated in the future. The proceeds of such liquidations will be applied as an offset to the amount of restitution owed by Brochu in this Consent Order after a reduction for reasonable costs and may result in distributions to Investors #1 – Investors #22. Should Investors #1 - #22 receive any future distributions from KT1, SFFW, or Alexis Brochu, the Bureau agrees to reduce the total amount of restitution owed by Brochu.
12. Brochu acknowledges and agrees that the fine, costs, and restitution payments as outlined

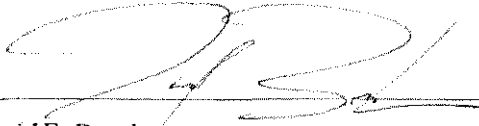
herein are non-dischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a)(19)(A)(i) and (B)(i). Brochu agrees not to seek discharge of the restitution, fine, or cost payments outlined herein in the pending bankruptcy matter or any future bankruptcy proceeding. The Bureau reserves the right to reopen this matter if payment in full is not received by the Bureau according to the terms of this Consent Order. Brochu agrees that the entry of this Order is a judgment, order, consent order, settlement agreement, within the meaning of 11 U.S.C. § 523(a)(19)(B), and that the Bureau has all necessary power and jurisdiction to enter this Order, including a determination of non-dischargeability of all obligations pursuant hereto.

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

1. Brochu shall permanently cease and desist from further violations under this chapter, pursuant to N.H. RSA 421-B:23;
2. Brochu is permanently barred from any securities licensure in any capacity in the State of New Hampshire as presently codified in N.H. RSA 421-B;
3. Brochu is permanently barred from issuing securities in the State of New Hampshire;
4. Brochu shall pay restitution to investors totaling one million, three hundred and sixty-five thousand dollars (\$1,365,000), as described in Undertaking #8 above;
5. Brochu shall pay a fine of one hundred thousand dollars (\$100,000) and costs of twenty-five thousand dollars (\$25,000) to the Bureau, as described in Undertaking #8 above;
6. The restitution and fines ordered are non-dischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a)(19)(A)(i) and (B)(i); and
7. Brochu shall comply with all other Undertakings outlined above.

**SO ORDERED.**

Executed this 11 day of February, 2016



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David F. Brochu

Executed this 17<sup>th</sup> day of February, 2016



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Barry Glennon, Director