

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

IN THE MATTER OF:

Kleossum, Inc. CRD #154685,  
David F. Brochu CRD #1164857

Respondent s

)  
) ORDER TO CEASE AND DESIST,  
) ORDER TO SHOW CAUSE  
)  
) INV2014-00020  
)

**NOTICE OF ORDER**

This Order commences an adjudicative proceeding under the provisions of RSA 421-B:26-a.

**LEGAL AUTHORITY AND JURISDICTION**

Pursuant to RSA 421-B:23, the Secretary of State has the authority to issue and cause to be served an order requiring any person appearing to him to be engaged or about to be engaged in any act or practice constituting a violation of RSA 421-B or any rule or order thereunder, to cease and desist from violations of RSA 421-B.

**Pursuant to RSA 421-B:24, I, any person who willfully violates a cease and desist order issued pursuant to RSA 421-B:23 shall be guilty of a class B felony.**

Pursuant to RSA 321-B:10, III, 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 suspended, denied or revoked.

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 New Hampshire securities law and rules.

## **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:23, I, if respondents fails to request a hearing on this order within 30 calendar days of receipt of this order, respondents shall be deemed in default, and this order to cease and desist 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 circumstances require.

## **STATEMENT OF ALLEGATIONS**

The allegations contained in the Staff Petition for Relief dated April 10, 2015 (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. Respondents are hereby ordered to immediately cease and desist from the above indicated acts and from in any other way violating RSA 421-B;
2. Respondents shall show cause why its investment advisory licenses should not be subject to suspension, revocation, or bar from licensure.
3. Respondents shall pay restitution in the amount of one million eight hundred thousand Dollar (\$1,000,080.00).
4. Respondents shall, in accordance with RSA 421-B:26,1, pay an administrative penalty and investigative costs totaling two hundred thousand dollars (\$200,000).
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 and administrative penalties being imposed upon the defaulting Respondent.

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



**BARRY J. GLENNON, DIRECTOR,**  
**N.H. BUREAU OF SECURITIES REGULATION**

Dated: 4/16/15

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

**AMENDED STAFF PETITION FOR SUMMARY SUSPENSION**  
**IN THE MATTER OF:**

Kleossum, Inc. CRD#154685  
David F. Brochu CRD#1164857

INV2014-00020

**STATEMENT OF FACTS**

- 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:

**Introduction**

1. Kleossum, Inc., (hereinafter referred to as "KI") was a federally covered investment adviser firm as of 2010 located at 53 Technology Lane, Conway, New Hampshire 03818. KI rented space at this listed address, however, failed to pay rent and abandoned the office space on or about May 8<sup>th</sup>, 2014. KI was licensed in New Hampshire as a state adviser on or about June 25<sup>th</sup>, 2012. The Bureau's information indicates that the sole investment advisor agent that ran KI, David F. Brochu, (hereinafter referred to as "DF"), was also KI's President and Chief Compliance Officer, has not managed KI since his arrest on February, 22<sup>nd</sup>, 2014, is financially insolvent, and has been residing out of the State of New Hampshire since at least April 13<sup>th</sup>, 2014. It is believed that DF resides in Wells, Maine. DF had been licensed in New Hampshire since about July 30<sup>th</sup>, 2010. KI had two employees that are related parties for the purposes of determining DF's conflicts of interest: DF's wife was KI's marketing director and KI also had a business manager which will be referred to as MC.
2. On August 21<sup>st</sup>, 2014, a Staff Petition For Show Cause Relief was filed by the Bureau in the above-captioned matter seeking a show cause hearing on the status of the investment adviser license of KI and the investment adviser representative license of DF. The Bureau requested in the Petition that KI and DF show cause why their licenses should not be revoked as they were no longer in business anywhere in New Hampshire. On September 4<sup>th</sup>, 2014, the Bureau filed a Staff Petition For Summary Suspension alleging that DF continued to solicit his clients with false representations after KI had closed, and an Order issued dated September 4<sup>th</sup>, 2014 summarily suspending the investment adviser license of KI and the investment adviser representative license of DF, ordering KI and DF to cease and desist, ordering KI and DF to show cause why their licenses should not be revoked and ordering other monetary relief. Following the Petition For Summary Suspension, Respondents requested to preserve their right to a hearing and to postpone

the scheduling of a hearing. For the reasons alleged in this Amended Petition, the Staff of the Bureau now requests permanent revocation of the advisory licenses of KI and DF along with other monetary relief. The Staff Petition For Show Cause Relief along with the Staff Petition For Summary Suspension and the additional allegations contained in this Amended Petition form the basis of the Bureau's securities violation allegations against KI and DF.

### **Business Formations By David Brochu**

3. From about January 1989 to May 2010, DF was a registered investment adviser representative with Strategic Point Investment Advisors, LLC, (hereinafter referred to as "SPIA"), located in Providence, Rhode Island. DF's agent license was suspended by the Financial Industry Regulatory Association for fifteen business days starting on February 17<sup>th</sup>, 2009, and DF's relationship with SPIA was terminated in May 2010. When DF was with SPIA, he maintained a vacation home in North Conway, New Hampshire, and upon leaving SPIA, DF established KI with many of his clients from SPIA. The KI clients were charged a percentage of assets under management for investment advice. When KI was established in 2010, DF was the sole owner, however, in 2011, DF sold to five investors about half of the ten thousand shares issued by KI for \$420,000.
4. Following the establishment of KI, from September 2011 to April 2013, DF established and sold interests to his KI clients in three limited liability companies called Brochu Family Farms, LLC, (hereinafter referred to as "BFF"), KT1, LLC, (hereinafter referred to as "KT1") and Sustainable Forrest Fuels Wood, LLC (hereinafter referred to as "SFFW"). KT1 membership interests were investments held as part of KI customer accounts and DF and KI charged an advisory fee to manage these interests. BFF was formed on or about September 29<sup>th</sup>, 2011, and DF was designated as the sole manager. According to the Certificate of Formation filed with the secretary of state, the primary business purpose of BFF was a "family farm," although according to the information obtained by the Bureau, BFF was never actually operated as a working farm business. SFFW was formed on or about April 19<sup>th</sup>, 2013. According to the Certificate of Formation filed with the secretary of state, the primary business purpose of SFFW was the "sale of wood and agriculture." According to the Operating Agreement of SFFW, BFF is listed as the sole owner of SFFW with no dollar amount contribution. DF is listed as a manager of SFFW. KT1 was formed on or about October 12<sup>th</sup>, 2012. According to the Certificate of Formation filed with the secretary of state, the primary business purpose of KT1 was "tree farm and agriculture." According to the Operating Agreement of KT1, DF's wife was a twenty-five percent owner of KT1 with a contribution of \$100,000. When DF's wife was interviewed by the Bureau on November 19<sup>th</sup>, 2014, she testified under oath that she did not recall putting any cash into KT1. DF is listed as a manager of KT1. MC assisted DF in managing all three LLCs and received a salary from KI for doing so. MC was also paid as a laborer for the three LLCs. DF's wife was the marketing manager of KI and received a salary for doing so. DF's wife would also withdraw substantial sums of money from the LLC bank accounts for living expenses. All three LLCs, KI, DF and DF's wife had TD Bank accounts located in North Conway, New Hampshire.
5. According to Bureau information, it is believed that KT1 was started by DF as a wood harvesting business whereby KT1 owns the land upon which KT1 harvested pulp and lumber for sale to

local wood processing mills. SFFW was formed later in time to turn the unused timber remnants on the KT1 land into firewood. However, SFFW was run by DF to the detriment of KT1 in that KT1 produced firewood for SFFW at the sale price of \$100 per cord, which was the cost of the production, and SFFW would sell the firewood to retail customers at \$250 per cord. KT1 gained nothing from this arrangement. In addition, as is described below, SFFW was operated at a loss. BFF was a farm with land contiguous to the land of KT1. DF was the manager of these three entities up until his arrest in February 2014. Following his arrest, KT1 was taken over by investors in KT1 and SFFW is no longer in operation. The investors and limited liability company members of KT1 ousted DF as its manager in about March of 2014 and it is believed that DF no longer has any involvement in BFF, SFFW and KT1. The operations of KT1 have ceased. SFFW operated at a substantial deficit and KT1 had significant revenue, but didn't make a profit. In 2013 into 2014, as these businesses began to fail, investor money was misappropriated by DF and much of it was used to fund the personal expenses of DF.

### **Solicitation of Advisory Clients of Kleossum, Inc.**

6. After KI was established, DF solicited his KI clients to invest in the three LLC's identified above in paragraph #4 as well as in KI. DF told his clients that he was concerned about the collapse of the monetary system, wanted to get back to "sane" investing, and wanted to put his client's money into sustainable forestry products such as lumber, firewood and pulp. DF failed, however, to disclose in writing and on his ADV his material conflicts of interest in recommending these investments to his clients, and that he would derive a substantial financial benefit not only in the management fee he obtained in managing the KT1 investment through KI, but in the financial benefit he and his KI employees would derive from his role as manager for all three LLCs. DF also failed to disclose to his KI clients his disciplinary record of FINRA license loss of 15 days, that he would take money from these entities to fund his lavish life style, and that he had no experience in the tree harvesting industry. Further, these investments were not suitable for many of DF's clients as these investments were nontraditional and alternative, and a large percentage of his client's available investment money was placed into these investments at substantial risk.

### **BFF**

7. Five KI clients, Investor #1 through #5 invested in BFF following solicitation to invest by DF. Investor #1 and #2 are a married couple from Pembroke, New Hampshire. They had been clients of DF since he was with SPIA, trusted him, and considered him a close friend. They transferred their funds into KI and do not recall being told by DF that he lost his license when he was with SPIA. Investor #1 and #2 described themselves to DF as conservative investors. In February 2014, Investors #1 and #2 were approached by DF to invest \$50,000 into SFFW so that it could purportedly buy a kiln for drying wood. A promissory note dated February 11<sup>th</sup>, 2014 was signed by DF and given to Investors #1 and #2 in exchange for their investment. The promissory note states that Investors #1 and #2 would receive \$417 per month and a 10% return on their investment. They were told to make the check out to BFF as BFF was 100% owner of SFFW. DF did not make any payments after his arrest in February 2014.
8. Investor #3 is from Woodlands, Texas. He had been a client of DF since DF was with SPIA,

trusted DF, and considered him as a brother. In April 2013, DF solicited Investor #3 to invest \$50,000 into BFF. DF issued a promissory note to Investor #3 dated May 1<sup>st</sup>, 2013, indicating a payment of \$416.67 per month and a 10% return on investment. Investor #3 wrote a check out for the \$50,000 which was deposited into the BFF TD Bank account on or about May 10<sup>th</sup>, 2013. DF stopped making payments on the note. Prior to making this investment, DF did not inform Investor #3 that he had lost his securities license for 15 days when he was with SPIA. Investor #3 describes himself as a conservative investor.

9. Investor #4 is from Canterbury, Connecticut, and Investor #4 has known DF since DF was with SPIA. Investor #4 transferred his investment funds into KI from SPIA. In January 2014, DF solicited Investor #4 to invest in BFF. DF touted the virtues of the timber business. Investor #4 invested \$50,000 into BFF and received a promissory note in return. The terms of the note are that Investor #4 would receive \$417 per month and a 10% return on investment. On January 24<sup>th</sup>, 2014, Investor #4 wrote a check to BFF for \$50,000 and it was deposited into BFF's account at TD Bank on or about January 27<sup>th</sup>, 2014. DF stopped making payments on the note after he got arrested in February 2014. Investor #4 is a conservative investor. He was unaware and not told by DF that he lost his license for 15 days when he was with SPIA.
10. Investor #5 is from Providence, Rhode Island. She describes herself as a conservative to moderate risk taker. Investor #5 has known DF since DF was with SPIA and she moved her money over to KI when DF left SPIA. She described DF as a friend. DF touted the benefits of the wood business, the profit that could be made from the sale of firewood, and solicited investor #5 for \$30,000 to buy wood. On May 28<sup>th</sup>, 2013, Investor #5 made a check out to BFF for \$30,000 and wrote in the memo line, "wood purchase". DF told Investor #5 she could get her money back in one to two years. Investor #5 received only \$10,000 back.

#### SFFW

11. Five KI clients invested in SFFW. They are Investor #3 and Investor #6 through #9. Investor #6 and #7 are husband and wife from Bartlett, New Hampshire. Investors #6 and #7 were referred to KI and DF from members of the community. In 2013, they transferred \$450,000 into KI. DF touted the benefits of the firewood and lumber business to Investors #6 and #7. DF emphasized the return on investment. Investors #6 and #7 were given an option to invest directly into the business or get a note and 10% return on investment. They chose the note. On October 10<sup>th</sup>, 2013, they took a note back from DF issued by SFFW for \$50,000. The note specified \$417 per month and 10% interest per year return on investment. DF stopped paying on the note after he was arrested. Investors #6 and #7 were not informed of DF's license loss for 15 days. Their risk tolerance is moderately aggressive.
12. In July 2013, Investor #3 invested an additional \$50,000 into SFFW. He was promised a 10% return on this investment. DF touted the benefits of profiting off of selling firewood. Investor #3 indicates that this investment was not in writing.
13. Investor #8 is from Jamestown, Rhode Island. In July 2013, Investor #8 was presented with a business plan for SFFW which promised a 10% return on investment. The business plan touted

the profit that could be made from the sale of firewood. The business plan states that SFFW purchases wood for \$100 per cord and sells it for \$250 per cord. The investment would be debt financing that could be converted to equity. Investor #8 made a check out to SFFW for \$100,000 on August 17<sup>th</sup>, 2013 which was deposited into the TD Bank checking account of SFFW. Investor #8 did not get any return on investment and lost his investment money.

14. Investor #9 is from Madison, New Hampshire. She placed her investment money with KI. Investor #9 was referred to DF as she was told he was a well-established investment advisor. Investor #9 also knew DF as touting survivalist living practices in preparation for the end of civilization. DF solicited Investor #9 to invest in SFFW. In 2012, Investor #9 had transferred \$750,000 into KI from a prior advisor in Maine. Investor #9 does not recall receiving an ADV disclosure document for Kleossum or being made aware by DF of his license loss when he was with SPIA. In November 2013, Investor #9 invested \$100,000 into SFFW. She describes herself as a conservative investor. DF touted the benefits of the wood business to Investor #9. Investor #9 lost most of her investment in SFFW.

### KT1

15. KT1 has twelve investors. They are Investors #1 and #2, Investors #9, #10, #11, #12, #13, #14, #15, #16, and #17 and #18. Investors #1, #2 and #9 have been identified above. All but Investors #1 and #2 invested in KT1 in October 2012. In October 2012, DF solicited and received from ten KI clients \$450,000 to buy a piece of land for KT1 consisting of 117 acres in Chatham, New Hampshire. The land was purchased by DF in December 2012 for \$400,000 with \$300,000 being paid in cash with investor funds and \$100,000 being a promissory note for future payment to the seller by DF and the wife of DF. The land is near the land of BFF which consists of about 40 acres. DF intended to harvest trees off of the land and promised these investors a 4% to 5% return on investment over a harvest period of five to seven years.
16. Investors #1 and #2 also invested in KT1. In April of 2013, Investors #1 and #2 were solicited by DF to buy what DF described as his wife's interest in KT1. In actuality, DF's wife did not put any money into KT1. On April 3<sup>rd</sup>, 2013, Investors #1 and #2 made a check out to DF's wife in the amount of \$50,000 to purportedly buy an interest in KT1. The memo line states "land". In return Investors #1 and #2 received an LLC membership certificate in KT1.
17. Investor #9 invested \$50,000 into KT1. She received an LLC membership interest in return.
18. Investors #10 and #11, husband and wife from North Kingstown, Rhode Island invested \$50,000 into KT1. DF touted a doom and gloom economic outlook and recommended they invest in the land. Investors #10 and #11 invested in KT1 on the premise that DF and his wife each put in \$50,000. DF touted a 4% to 5% return on investment and a 5 to 7 year tree harvest period. DF's plan was to reharvest the land in 10 to 15 years. DF did not disclose that he was selling KT1 firewood to his other companies. It was not necessary to have SFFW sell firewood from KT1. The price firewood sold for to SFFW was too low. KT1 failed to turn a profit. Investors #10 and #11 are conservative investors. They also were unaware that DF had lost his license for 15 days when he was with SPIA.



19. Investor #12 is from Barrington, Rhode Island. She had been a client of DF for over ten years. She moved her account to KI to stay with DF after he left SPIA. She trusted DF with her money. Investor #12 was not made aware that DF lost his license when he was with SPIA. She described herself as a moderate to conservative investor. She retired in 2013. She told Investor #12 that the economy was unstable and to invest in real goods. DF touted the benefit of investing in logging and firewood. DF solicited Investor #12 to invest \$75,000 into KT1. She received an LLC membership certificate in return. When DF got arrested and was removed from KT1 as manager, she learned that KT1 didn't make any money because it was selling firewood wholesale to other DF companies, such as BFF.
20. Investor #13 is DF's mother from Wells, Maine and she invested \$25,000 into KT1.
21. Investor #14 is from Cranston, Rhode Island. He had been a client of DF for many years. He moved to KI when DF left SPIA. DF touted the benefits of the KT1 wood business because it was not affected by the stock markets and there was a steady return to be made. He touted the profits to be made from lumber. DF promised a return of 10% to 12% and touted it as a long term investment. Investor #14 described himself as a conservative investor. DF did not disclose that he had lost his license for 15 days. If he did, he would not have invested with him. Investor #14 invested \$50,000 into KT1 which was approximately half of his entire portfolio. He does not recall receiving a disclosure document from KI when he signed his client contract with KI. He was not made aware of KT1 doing business with SFFW or BFF until after DF's arrest.
22. Investor #15 is from Glen, New Hampshire. Investor #15 has been a client of DF since he was with SPIA. Investor #15 did not know that DF had lost his license for 15 days, and he did not receive an ADV from Kleossum. DF touted the logging and timber business to Investor #15. He touted an 8% to 10% return on investment. Investor #15 is a moderate investor.
23. Investor #16 is from Indian Shores, Florida. Investor #16 was referred to DF from a friend in July 2012 after her husband passed away. Investor #16 describes herself as a conservative investor. Investor #16 described DF as anti-government and touted the purchase of gold and KT1 as a long term investment. Investor #16 transferred her investable assets to KI. When she became a client, she does not recall DF telling her he had lost his license with SPIA. DF did mention that he left Rhode Island because of a falling out with the people he worked for. Investor #16 put \$50,000 into KT1 for an ownership interest on the promise of a 3% to 5% return on investment.
24. Investor #17 and #18 are husband and wife from Triverton, Rhode Island. They stayed with DF when he left SPIA and formed KI. DF touted to Investors #16 and #17 the benefits of investing in the forestry industry and getting back to the earth. DF did not tell Investors #16 and #17 about BFF and SFFW buying KT1 wood at cost. Investors #16 and #17 invested \$50,000 in KT1. They received a certificate of membership in exchange. Investors #16 and #17 describe themselves as conservative investors. They were sold on KT1 with the promise of a 3% to 5% percent gain on investment. Investors #16 and #17 were not told about DF's license loss and they do not recall getting an ADV disclosure document from DF or KI.

### **Unknown Investment**

25. Investors #19 and #20 are from Warwick, Rhode Island. They are conservative investors and had \$100,000 under management at KI. That was their entire net worth. They were with DF since he was with SPIA. They trusted him with their money. In September 2013, DF solicited Investor #18 and #19 to invest in a "wood company" that was a "firewood business". They do not know the name of it. On September 18<sup>th</sup>, 2013, they wrote a check to DF for \$20,000 on his assertion that he could double their money. DF agreed to pay back the investment at \$2,000 per month and he did so for four months and then stopped paying. They did not think they could lose the investment. It was all done with a hand shake and there were no documents from DF or KI. They have lost the remainder of their investment. Investors #19 and #20 did know that DF's license was suspended when he was with SPIA.

### **Investments In KI**

26. Investor #15 invested in KI. He put in \$100,000. He was promised by DF that he would be paid back in five years at the rate of 10% per year on his investment. Investor #15 was also not made aware of DF's disciplinary history and if he was told he would not have invested.

### **Fraudulent and Ponzi Transactions**

27. In addition to failing to disclose in writing DF's conflicts of interests with respect to his role with BFF, SFFW and KT1, along with the role of his employees including his wife and business manager MC in said businesses, DF engaged in money transactions with those businesses that worked to the detriment of his KI clients and their investments in KI, BFF, SFFW and KT1. DF being a fiduciary and obligated to act in the best interest of his clients, mismanaged these businesses by withdrawing from these businesses and allowing his wife to withdraw from these businesses large sums of money for personal expenses and for salaries beyond what was sustainable and good business judgment. For example, DF transferred \$166,920 out of BFF's TD Bank account through cash withdrawals or checks to his personal account when the revenues of BFF were only \$62,507. An additional \$71,304 was spent from the BFF TD bank account for apparent personal expenses such as restaurants, drug stores, movies, clothing and food, stores, hotels, strip clubs, gold and jewelry. The revenues of SFFW were calculated to be \$48,085, which was only 14% of total deposits of \$353,837, and a total of \$59,000 was transferred by DF to his personal bank account and \$5,661 was spent on apparent personal expenses. The revenues of KT1 were \$182,352 and a total of \$57,200 was withdrawn by DF and an additional \$25,030 was spent by DF for apparent personal expenses. With respect to KI, the TD Bank account had a total of \$1,014,332 in deposits and of that amount \$207,299 was withdrawn by DF in money transfers, pay checks, reimbursement and cash. An additional \$105,096 was spent on apparent personal expenses such as movies, restaurants, hotels, coins, gold, car expenses, cable, and strip clubs. Some of the above cash withdrawals may have been used to purchase equipment but there is poor record keeping and little documentation to trace these cash expenditures.

28. The below listed spread sheet demonstrates that DF and/or employees of KI at DF's direction transferred investor money between business entities, spent investor money for personal expenditures, and used it to pay off other investors, depriving the KI clients of their investment money and jeopardizing the success of their investment. This activity was directly contrary to DF's fiduciary duty to act at all times in the best interest of the client. The below spreadsheet shows that when DF solicited and received client money to invest in one of the DF LLCs, it was shortly thereafter either transferred to an account of a different DF LLC or KI, DF or the wife of DF, used to pay personal expenses or to pay other investors.

<u>Investor</u>	<u>Amt.</u>	<u>Date of Check</u>	<u>LLC Invested In</u>	<u>Account of Deposit</u>	<u>Date of Deposit</u>	<u>Balance Time of Deposit</u>	<u>Use of Investor Money</u>	<u>Combined Account Balances*</u>
Investor #1 and #2	\$50,000	2/10/14	BFF	BFF	2/11/14	\$33.90	Transfer to DF account, transfer to KI account and to pay other investors	\$387.00
Investor #3	\$50,000	5/6/13	BFF	BFF	5/10/13	\$5,908.17	Transfer to account of DF, transfer to KI account and to pay other investors	\$24,867.19
Investor #3	\$50,000	8/2/14	SFFW	SFFW	8/8/14	\$99.27	45K was transferred to BFF account	\$181.62
Investor #4	\$50,000	1/24/14	BFF	BFF	1/27/14	\$466.29	Personal expenses and to pay other investors	\$3,654.68
Investor #5	\$30,000	5/28/13	BFF	BFF	6/4/13	\$2,680.66	Personal expenses and to pay other investors	\$19,213.00
Investor #6 and #7	\$50,000	10/16/13	SFFW	SFFW	10/16/13	\$569.32	Transfer to BFF account, pay other investors, personal	\$16,526.67

							expenses and transfer to account of DF	
Investor #8	\$100,000	8/17/13	SFFW	SFFW	8/23/13	\$2,587.55	Transfer to BFF account, withdrawal by DF, personal expenses, transfer to account of wife of DF, transfer to DF account, to pay other investors	\$22,537.82

\*Combined account balances means the TD Bank accounts of SFFW, BFF, KT1, KI, DF, and DF's wife

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

1. KI and DF are a licensed investment adviser and investment adviser representative respectively as defined by RSA 421-B:2, IX and 421-B:2, IX-a, and are licensed as such in the State of New Hampshire. They are also persons as defined by RSA 421-B:2, XVI.
2. Pursuant to RSA 421-B:4, I, 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. DF and KI are in violation of this provision for misappropriating investor funds and misrepresenting the viability, business dealings and future business revenues of BFF, SFFW and KT1.
3. Pursuant to RSA 421-B:4, IV-a(b) [i]t shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of paragraph I for any investment adviser licensed or required to be licensed to fail to disclose to any client or prospective client all material facts with respect to: A legal or disciplinary event that is material to an evaluation of the advisers integrity or ability to meet contractual commitments to clients. DF and KI are in violation of this provision for failing to disclose to KI clients that DF had lost his license for 15 days when he was with SPIA.

4. Pursuant to 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 adviser agent. DF and KI are in violation of this provision for recommending the purchase of investments in KI, BFF, SFFW and KT1 to KI clients when they were conservative or moderate investors and not appropriate investors for a start-up LLC that had no operating history, no operating controls and inadequate disclosure.
5. Pursuant to 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. DF and KI are in violation of this provision for borrowing money from Investors #3, #4, #5, #6, #7, #8 and #9.
6. Pursuant to RSA 421-B:4, V(j) 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: Charging a client an unreasonable advisory fee. DF and KI are in violation of this provision for charging an advisory fee to managing their client investments in KT1 at a time when DF and KI were not providing any ongoing investment advice regarding this investment.
7. Pursuant to RSA 421-B:4,V(k), when DF and KI accepted the above described investments in the BBF, SFFW and KT1, DF and KI should have disclosed in writing the material conflicts of interest DF and KI had in those business arrangements before rendering advise. DF and KI received an advisory fee based upon a percentage of those assets managed by DF and KI and in violation of RSA 421-B:4,V(k) failed to disclose in writing and in KI's ADV disclosure document the material conflicts of interest.
8. Pursuant to RSA 421-B:10, I(a), (b)(2), the secretary of state may by order suspend or revoke any license, or bar any person from licensure if he or she finds that the order is in the public interest,

and that the licensee, has willful violated and failed to comply with any provision of this title. DF and KI are subject to this provision and should be barred for violating RSA 421-B:4 and 421-B:10.

9. Pursuant to RSA 421-B:10,I(a)(b)(7), the secretary of state may by order suspend or revoke any license, or bar any person from licensure if the person has engaged in dishonest and unethical practices in the securities business. DF and KI are subject to this provision.
10. Pursuant to RSA 421-B:22, in any investigation to determine whether any person has violated or is about to violate the New Hampshire Securities Act, upon the secretary of state prevailing at the hearing, or the person charged with the violation being found in default, the secretary of state shall be entitled to recover the costs of the investigation, in addition to any other penalty provided for under this chapter. DF and KI are subject to this provision.
11. 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. DF and KI are subject to this provision for violations of 421-B:4 and 421-B:10.
12. 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. DF and KI are subject to a suspension, revocation, or denial, and a fine for violations of RSA 421-B:4 and 421-B:10.
13. Pursuant to RSA 421-B:26,III-a, every person who directly or indirectly controls a person liable under paragraph III, every partner, 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. DF and KI are subject to this provision.
14. Pursuant to 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 RSA 421-B. DF and KI are subject to this provision for violations of RSA 421-B.

**RELIEF REQUESTED**

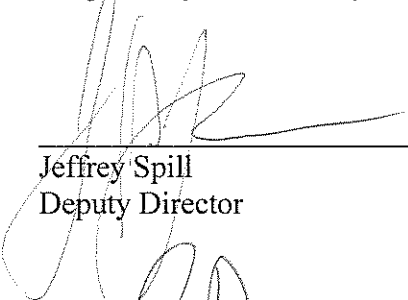
III. The staff of the Bureau of Securities Regulation requests the Director takes the following action:

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. Pursuant to RSA 421-B:10, bar the advisory licenses of DF and KI.
4. Pursuant to RSA 421-B:23 order DF and KI to cease and desist.
5. Order a show cause hearing pursuant to RSA 421-B:10 and find that DF and KI violated RSA 421-B:10(a)(b)(2) and (7) and RSA 421-B:4,I, RSA 421-B:IV-a(b), and RSA 421-B:4,V(a), 421-B:V(b), 421-B:V,(f) and 421-B:V(j) and (k).
6. Order restitution of one million eighty thousand dollars (\$1,080,000).
7. Pay an administrative penalty and costs totaling two hundred thousand dollars (\$200,000).
8. Take such other actions as necessary for the protection of New Hampshire investors and enforcement of the NH Securities Act, RSA 421-B.


**RIGHT TO AMEND**

The Bureau's Staff reserves the right to amend this Petition for Relief and to request that the Director of the Bureau of Securities Regulation 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:

  
\_\_\_\_\_  
Jeffrey Spill  
Deputy Director

4/10/15  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Eric Forcier  
Staff Attorney

4/10/15  
\_\_\_\_\_  
Date