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DEPT OF COMMERCE AND INSURANCE
LEGAL OFFICE

STATE OF TENNESSEE
BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE

TENNESSEE SECURITIES and INSURANCE DIVISIONS,	)	
Petitioners.	)	
	)	
v.	)	**Docket No. 12.01-134794J**
	)	**TSD No. 16-0004**
	)	**TID No. 16-007**
SCOTT B. CHITWOOD,	)	
Respondent.	)	
	)	

CONSENT ORDER

The Tennessee Securities Division ("TSD") and the Tennessee Insurance Division of the Department of Commerce and Insurance ("TID"), Scott B. Chitwood (hereinafter "Respondent") hereby stipulate and agree to the entry of this Consent Order, subject to the approval of the Commissioner of the Tennessee Department of Commerce and Insurance ("Commissioner") as follows:

GENERAL STIPULATIONS

1. It is expressly understood that this Consent Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry of an order by the Commissioner.

2. This Consent Order is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this

Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

3. Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner against Respondent for acts or omissions not specifically addressed in this Consent Order or for facts and/or omissions that do not arise from the facts or transactions herein addressed.

4. Respondent fully understands that this Consent Order will in no way preclude proceedings by state government representatives, other than the Commissioner for violations of the law addressed specifically in this Consent Order, against the Respondent for violations of the law under statutes, rules, or regulations of the State of Tennessee, which may arise out of the facts, acts, or omissions contained in the Findings of Fact and Conclusions of Law stated herein, or which may arise as a result of the execution of this Consent Order by the Respondent.

5. Respondent expressly waives all further procedural steps and all rights to seek judicial review or to otherwise challenge or contest the validity of this Consent Order, the stipulations and imposition of discipline expressly contained herein, and the consideration and entry of said Consent Order by the Commissioner.

6. Respondent fully understands that this Consent Order, when entered, will constitute a public document for purposes of any applicable statutes governing access by the public to government records.

7. Respondent agrees that a facsimile of his respective signature on this Consent Order—scanned in portable document format (PDF) or similar format—returned by electronic means, if accepted by the TSD and/or the TID, is effective as an original signature and that the Consent Order may be issued with such a facsimile signature.

AUTHORITY AND JURISDICTION

8. The Commissioner has jurisdiction over this matter pursuant to the Tennessee Securities Act ("Act"), Title 48 of the Tennessee Code Annotated ("TENN. CODE ANN."), specifically, TENN. CODE ANN. §§ 48-1-101, *et seq.*, and the Tennessee Insurance Law ("Law"), Title 56 of the Tennessee Code Annotated ("TENN. CODE ANN."), specifically, TENN. CODE ANN. §§ 56-1-101, 56-1-202, 56-2-305, and 56-6-112. The Act and the Law place on the Commissioner the responsibility of the administration of these provisions.

PARTIES

9. The TSD and the TID are the lawful agents through which the Commissioner administers the Act and the Law and are authorized to bring this action for the protection of the public.

10. Respondent is a Tennessee resident with an address of 5805 Old Tullahoma Road Estill Springs, TN 37330, which is presently on file with the Insurance Division.

FINDINGS OF FACT

11. Respondent was previously registered with the TSD as a broker-dealer agent (CRD#4469472) during a period from 2006 through 2013.

12. Respondent was a licensee of the TID (No. 0861439) who has, at all times relevant hereto, been responsible for compliance with the insurance laws, rules and regulations of the State of Tennessee. Respondent's insurance producer license is scheduled to expire on November 30, 2017.

13. On or about May 6, 2013 the Respondent entered into a Letter of Acceptance, Waiver and Consent ("AWC") with the Financial Industry Regulatory Authority ("FINRA") permanently barring him from associating with any member of FINRA in any capacity.

14. The AWC further finds, in the discussion of Facts and Violative Conduct, that in 2011, the Respondent purchased mutual fund shares for eight (8) non-discretionary accounts without the required client consent, placing orders for the eight (8) accounts in January and again in February for a total of sixteen (16) unauthorized transactions. In addition, on February 22, 2011, the Respondent purchased shares of a mutual fund for another client account without the client's required authorization, bringing the total to seventeen (17) unauthorized transactions.

15. The AWC found that between 2006 and 2010, the Respondent unlawfully recorded inaccurate investment objectives in new account documents for three (3) couples and three (3) individuals. Instead of stating that the clients wanted to preserve principal as they indicated in their discussions with the Respondent regarding suitability and investment objectives, the Respondent wrote in the opening file documents that the clients' objectives were growth, income, and/or aggressive.

16. According to the AWC, the Respondent also failed to adequately disclose the surrender fees associated with some of these customers' variable annuity purchases, and he inaccurately represented to such customers that the principal of their investments would be protected from loss.

17. In the transactions where Chitwood sold the investment contracts, Chitwood failed to disclose their non-compliance with the requirements of the Act and the Rules promulgated thereunder to investors and/or potential investors with the intent of misrepresenting the investment contracts as viable and valid investments.

18. On November 20, 2013, and again on November 29, 2015, the Respondent answered no ("N") to the following question on his Tennessee insurance license renewal application submitted to the TID online:

> "Have you ever been named or involved as a party in an administrative proceeding including a FINRA sanction or arbitration proceeding regarding any professional or occupational license or registration, which has not been previously reported to tis insurance department?"

19. Respondent's answers to this question on the online insurance renewal applications he submitted to the TID on November 20, 2013, and November 29, 2015, were materially untrue and misleading, because he had never reported the FINRA AWC entered against him to this Department, and had never informed the Department that he was a party to a FINRA proceeding.

CONCLUSIONS OF LAW

20. TENN. CODE ANN. § 48-1-116 provides that the Commissioner may make, promulgate, amend, and rescind such rules, forms and Orders as are necessary to carry out this part of the Act, upon a finding that such Order is in the public interest, necessary for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act.

21. TENN. CODE ANN. § 48-1-102(17)(A) of the Act defines a security in pertinent part as:

> … any note, stock, treasury stock, bond, debenture, evidence of indebtedness … investment contract … or, in general, any interest or instrument commonly known as a "security"…

22. TENN. CODE ANN. § 48-1-104 provides:

(a) It is unlawful for any person to sell any security in this state unless:

(1) It is registered under this part;
(2) The security or transaction is exempted under § 48-1-103; or

(3) The security is a covered security.

(b) The commissioner may, after notice and opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any regulation, rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars ($10,000) per violation.

23. TENN. CODE ANN. § 48-1-109 provides in pertinent part:

(a) It is unlawful for any person to transact business from or in this state as a broker-dealer or agent unless such person is registered as a broker-dealer or agent under this part ...

(b) It is unlawful for any person to transact business from or in this state as an investment adviser or investment adviser representative unless:

(1) The person is registered as an investment adviser or investment adviser representative under this part...

24. TENN. CODE ANN. § 48-1-121 provides in pertinent part:

(a) It is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, directly or indirectly, to:

(1) Employ any device, scheme, or artifice to defraud;
(2) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
(3) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(b) 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, in this state, to:

(1) Employ any device, scheme, or artifice to defraud the other person;
(2) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person...

(c) It is unlawful for any person to make or cause to be made, in any document filed with the commissioner or in any proceeding under this part, any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

(d) The commissioner may, after notice and opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil

penalty against any person found to be in violation of this section, or any regulation, rule or order adopted or issued under this section, in an amount not to exceed five thousand dollars ($5,000) per violation.

25. At all times relevant hereto, TENN. CODE ANN. § 56-6-112(a) (2011) has provided that the Commissioner may place on probation, suspend, revoke, or refuse to issue or renew a license issued under Title 56, Chapter 6, Part 1, or issue a civil penalty for the following reasons:

> . . .
>
> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of doing business in this state or elsewhere;
>
> . . .

26. For all violations occurring on or after July 1, 2011, TENN. CODE ANN. § 56-6-112 (2011), states in pertinent part:

> . . .
>
> (e) The commissioner shall retain the authority to enforce this part and impose any penalty or remedy authorized by this part and this title against any person who is under investigation for or charged with a violation of this part or this title, even if the person's license has been surrendered or has lapsed by operation of law.
>
> (g) If . . . the commissioner finds that any person required to be licensed, permitted, or authorized by the division of insurance pursuant to this chapter has violated any statute, rule or order, the commissioner may, at the commissioner's discretion, order:
>
> (1) The person to cease and desist from engaging in the act or practice giving rise to the violation;
>
> (2) Payment of a monetary penalty of not more than one thousand dollars ($1,000) for each violation, but not to exceed an aggregate penalty of one hundred thousand dollars ($100,000). This subsection (g)(2) shall not apply where a statute or rule specifically

provides for other civil penalties for the violation. For purposes of this subdivision (g)(2), each day of continued violation shall constitute a separate violation; and

(3) The suspension or revocation of the person's license.

(h) In determining the amount of penalty to assess under this section, the commissioner shall consider:

(1) Whether the person could reasonably have interpreted such person's actions to be in compliance with the obligations required by a statute, rule or order;

(2) Whether the amount imposed will be a substantial economic deterrent to the violator;

(3) The circumstances leading to the violation;

(4) The severity of the violation and the risk of harm to the public;

(5) The economic benefits gained by the violator as a result of noncompliance;

(6) The interest of the public; and

(7) The person's efforts to cure the violation.

27. As enumerated in the Findings of Fact above and the Conclusions of Law contained herein, Respondents violated TENN. CODE ANN. § 56-6-112 (a)(8).

28. The Findings of Fact contained herein constitute grounds for a Consent Order imposing a permanent bar against the Respondent from participation in the Securities Industry in any capacity in accordance with TENN. CODE ANN. § 48-1-116. The Findings of Fact contained herein constitute grounds for a Consent Order revoking Respondent Scott B. Chitwood's Insurance Producer license in accordance with TENN. CODE ANN. § 56-6-112(g)(3). Such facts also provide grounds for an order imposing civil penalties against Respondent in accordance with TENN. CODE ANN. §§ 48-1-116 (2012) and 56-6-112(g) (2011).

ORDER

NOW, THEREFORE, based on the foregoing and Respondent's waiver of his rights to a hearing and appeal under the Law and Tennessee's Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101 *et. seq.*, and the admission by Respondent of the jurisdiction of the Commissioner, the Commissioner finds that Respondent admits to the Findings of Fact and Conclusions of Law contained herein, has agreed to the entry of this Consent Order, and that this Consent Order is appropriate, in the best interest of the public, and necessary for the protection of the public.

IT IS ORDERED, pursuant to TENN. CODE ANN. §§ 48-1-116 (2012) and 56-6-112 (2011) that:

1. Respondent Scott B. Chitwood shall fully **COMPLY** with the Act and the Law, and all rules promulgated thereunder.

2. Respondent Scott B. Chitwood shall be **PERMANENTLY BARRED** from any further conduct as a broker-dealer, agent of a broker-dealer, investment adviser, or investment adviser representative from or in the State of Tennessee, beginning on the date this Order is executed by the Commissioner for the Department.

3. Respondent Scott B. Chitwood shall **BE PERMANENTLY BARRED** from conducting securities transactions on behalf of themselves or others from, in, or into the State of Tennessee.

4. All persons in any way assisting, aiding, or helping the aforementioned Respondent in any of the aforementioned violations of the Act shall **CEASE AND DESIST** all such activities in violation of the Act and the Law.

5. The Insurance Producer license, No. 0861439, issued to Respondent Scott B. Chitwood, is hereby **REVOKED**, beginning immediately upon final execution of this agreed Consent Order; and

6. Respondent Scott B. Chitwood, shall not, while without a license, conduct further business for which an insurance license is required under the Law.

7. Respondent shall pay the Division a **monetary civil penalty** in the total sum of **one thousand dollars ($1,000)**. This penalty is to be paid prior to the entry of this Consent Order.

8. The failure to timely make payment under the terms of this agreed Consent Order may result in additional disciplinary action being taken against Respondent including, but not necessarily limited to, the assessment of additional civil monetary penalties.

9. A payment shall be considered timely made if it is **received** by the Tennessee Department of Commerce and Insurance within seven (7) calendar days of the date such payment is due. Payment shall include a copy of the first page of this Order and shall be made payable to "State of Tennessee." Payment shall be mailed to the following address:

Tennessee Department of Commerce and Insurance
Legal Division, Attn: Charles Herrell
Davy Crockett Tower
500 James Robertson Parkway, 8th Floor
Nashville, TN 37243

10. **IT IS FURTHERED ORDERED** that all persons in any way assisting, aiding, or helping Respondent Scott B. Chitwood in any of the aforementioned violations of TENN. CODE ANN. §§ 48-1-104, 48-1-109, 48-1-112, 48-1-121, or 56-6-112, shall **CEASE AND DESIST** from all such activities in violation of the Act and/or the Law.

11. **IT IS ORDERED** that this Consent Order represents the complete and final resolution and discharge of administrative remedies available to the Commissioner under TENN.

CODE ANN. §§ 4-5-305 (2008) 48-1-101, *et seq.* and 56-6-112 against Respondent for violations of the Law arising out of the Findings of Fact set forth in Paragraphs 12 through 19 above. However, this Consent Order shall in no way preclude a third party or other authority from pursuing civil remedies or criminal action against Respondent which may otherwise be available.

12. This Consent Order is in the best interest of both the public and the parties and represents a compromise and settlement of the controversy between the parties. By his signature affixed below, Respondent Scott B. Chitwood states that he has: (1) freely agreed to the entry of this Consent Order; (2) had the opportunity to effectively consult with legal counsel in this matter; (3) reviewed the Findings of Fact and Conclusions of Law contained herein; and (4) waived his right to a hearing on the matters underlying this Consent Order. Respondent further states that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof with regard to this Consent Order.

13. By signing this Consent Order, the parties affirm their agreement to be bound by the terms of this Consent Order and confirm that no promises or offers relating to the circumstances described herein, other than the terms of the settlement set forth in this Consent Order, are binding upon them.

IT IS SO ORDERED.

ENTERED this the 8th day of July, 2016.

Julie Mix McPeak, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

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