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SECRETARY OF STATE

**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE  
FOR THE STATE OF TENNESSEE**

TENNESSEE SECURITIES DIVISION, )

Petitioner, )

v. )

APD No.: 12.06-192395J

TSD No.: 20-009

ROBERT ROBBINS )  
AND ROBBINS CAPITAL )  
MANAGEMENT INC. )

Respondents. )

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**AGREED ORDER SETTLING AND DISMISSING THIS ACTION**

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The Securities Division of the Tennessee Department of Commerce and Insurance ("Division"), Robert Robbins, and Robbins Capital Management Inc. ("Respondents"), by and through undersigned counsel, agree to the entry and execution of this Agreed Order in accordance with Tennessee Code Annotated ("Tenn. Code Ann.") § 48-1-116 of the Tennessee Securities Act of 1980 ("Act"), as amended, and Tenn. Code Ann. §§ 48-1-101 to 48-1-201, subject to the approval of the Commissioner of the Department ("Commissioner").

1. Robbins Capital Management, Inc. ("Robbins Capital") is registered with the Division as an investment adviser with Central Registration Depository number ("CRD #") 134137.

2. Robert Robbins (collectively with Robbins Capital, "Respondents") is registered with the Division as an investment adviser representative with CRD # 1269785. He is the sole owner, officer, and investment adviser representative of Robbins Capital.

3. The Respondents' address on record with the Division is: 936 Mountain Creek Road, Suite 219, Chattanooga, Tennessee 37405-1748.

4. The Division is the lawful agent through which the Commissioner discharges the administration of the Act pursuant to Tenn. Code. Ann. § 48-1-115.

## II. GENERAL STIPULATIONS

1. It is expressly understood that this Agreed Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry and execution of this Agreed Order by the Commissioner. Entry and execution of this Agreed Order by the Commissioner shall occur when the Commissioner signs and dates this Agreed Order.

2. It is expressly understood that this Agreed 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.

3. This Agreed Order is executed by the Commissioner, the Division, and the Respondents to avoid further administrative action with respect to the findings of fact described herein. Should this Agreed Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Agreed Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

4. The Respondents fully understand that this Agreed Order will in no way preclude additional proceedings by the Commissioner against the Respondents for acts and/or omissions not specifically addressed in this Agreed Order nor for facts and/or omissions that do not arise from the facts or transactions herein.

5. The Respondents fully understand that this Agreed Order will in no way preclude proceedings by state government representatives, other than the Commissioner, for acts or

omissions addressed specifically in this Agreed Order, violations of law under statutes, rules, or regulations of the State of Tennessee that arise out of the facts, acts, or omissions contained in this Agreed Order, or acts or omissions addressed specifically herein that result from the execution of this Agreed Order.

6. The Respondents waive all further procedural steps and all rights to seek judicial review of, or otherwise challenge the validity of this Agreed Order, the stipulations and imposition of discipline contained herein, or the consideration and entry and execution of this Agreed Order by the Commissioner.

### **III. FINDINGS OF FACT**

7. On November 11, 2018, former Commissioner McPeak executed an Order that, once effective, summarily suspended the Respondents' registrations as investment adviser and investment adviser representative. Soon thereafter, on November 29, 2018, the Division filed a Notice of Hearing and Charges with a request for Summary Suspension.

8. In response, the Respondents exercised their rights to an informal hearing on the matter by timely requesting such hearing before former Assistant Commissioner Borger-Gilligan. The Division and former Assistant Commissioner Borger-Gilligan promptly held the informal hearing on December 11, 2018.

9. As a result of this informal hearing, former Commissioner McPeak rescinded her Order of Summary Suspension on January 2, 2019, prior to the Order of Summary Suspension becoming effective, to give the Respondents even more time to provide outstanding records and comply with the Act and Rules; however, the Notice of Hearing and Charges with a Request for Summary Suspension remained in place. Former Assistant Commissioner Borger-Gilligan then sent a letter to the Respondents that included the informal hearing findings on January 4, 2019.

10. In or about December 2018 or early 2019, the Division informed the Respondents that it would recommend to the Commissioner that this matter be resolved via a Consent Order, at which point the Respondents asked whether they would have to disclose the Consent Order on any of their forms. The Division unequivocally told the Respondents that they would have to disclose the Consent Order in their form ADV.

11. On March 19, 2019, the Commissioner, the Division, and the Respondents entered into a Consent Order, which assessed a one thousand dollar (\$1,000) civil penalty against the Respondents for failing to maintain the minimum net capital requirements required of investment advisers in violation of Tenn. Comp. Rules & Regs. 0780-04-03-.01(6)(a).

12. Subsequently on March 25, 2019, based on the Consent Order, the Administrative Judge approved and entered an Agreed Order dismissing the Notice of Hearing and Charges with a Request for Summary Suspension that was filed in November 2018.

13. In September 2019, as authorized by Tenn. Code Ann. § 48-1-111(d)(1), Ethan Rosenberg ("Rosenberg"), Securities Examiner II for the Division, conducted an examination of the books and records of the Respondents.

14. Mr. Rosenberg's examination revealed that the Respondents were keeping better and more organized records compared to the condition in which their previous records were; however, the Respondents never disclosed the Agreed Order on their form ADV in "Item 11 Disclosure Information", Section D., by checking the relevant boxes with "yes" answers. Instead, they checked the boxes with "no" responses, indicating that no federal, state, or foreign regulatory agency ever found the Respondents to have violated investment-related regulations or statutes, and these agencies also never, in the past ten (10) years, entered an order against the Respondents in

connection with an investment-related activity. (Exhibit D - Copy of form ADV, Item 11 Disclosure Information, Section D.).

15. Additionally, the Respondents inaccurately described, misrepresented, and at times included false statements regarding the Consent Order in their disclosures to clients via their brochure.

16. The Respondents' disclosure in their brochures to clients is as follows (emphasis added):

*In March, 2019 RCM accepted a TN Securities Division consent order and \$1,000 fine for late submission of records during an exam, but there were no violations of any other regulations: The examiner escalated her exam many fold greater than prior exams after alleging that RCM failed to reply to her initial email, but RCM submitted proof of its two timely email replies, and that proof was not disputed. The examiner initially agreed to receive a flash drive, which was loaded with records, but, upon timely delivery, the examiner rejected the flash drive based on general virus risk not specific to RCM. In a subsequent hearing with five TN Securities Division lawyers, flash drives were deemed acceptable. The examiner left her job mid-way during the exam, and a 14-lb box of RCM's submissions was ignored for weeks — resulting in many charges that were later dropped. Although RCM appealed to the Commissioner that late submissions resulted from the examiner and Division actions, esp. "bait and switch" re the flash drive, the proposed Consent Order remained unchanged. Rather than incur thousands of dollars legal expenses and management time, RCM accepted the Consent Order and paid the fine. Otherwise, Robert S. Robbins, with a 46-year investment career, and Robbins Capital Management have never been subject of a regulatory disciplinary action.*

17. At year end, on December 31, 2019, the Respondents failed to renew their registrations as they are required to do by Tenn. Code Ann. § 48-1-109(d)(1)-(2). (See IV. Conclusions of Law for language.)

#### IV. CONCLUSIONS OF LAW

##### A. Registration as investment advisers and investment adviser representatives.

18. Tenn. Code Ann. §§ 48-1-109(d)(1)-(2), (4) and (e) prescribe:

- (d) (1) Every registration of a broker-dealer or investment adviser expires annually, unless timely renewed, on December 31 of each year.
  - (2) Every registration of an agent or investment adviser representative expires annually, unless timely renewed, on December 31 of each year.
  - ...
  - (4) A registration or notice filing is timely renewed if the renewal application, all required exhibits, and fees are on file with the [C]ommissioner by December 31 of each year.
- (e) The commissioner may, after notice and an 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 rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation, or in an amount not to exceed twenty thousand dollars (\$20,000) per violation if an individual who is a designated adult is a victim.

19. Tenn. Comp. R. & Regs. 0780-04-03-01(3)(c) 1. - 2. specifies:

All investment advisers who are eligible must apply for renewal of registration in Tennessee through the IARD by complying with the requirements of the IARD. Applications for renewal of other investment advisers must be submitted directly to the Division and must contain the following:

1. The appropriate renewal form as prescribed by the Division and all information and exhibits required by such form; and
2. The appropriate fee as set forth in the Act.

20. Tenn. Comp. R. & Regs. 0780-04-03-01(9)(d)1. – 2. establishes:

All investment adviser representatives who are eligible must apply for renewal of registration in Tennessee through the IARD and CRD System by complying with the requirements of the IARD and CRD System. Applications for renewal of all other investment adviser representatives must be submitted directly to the Division and must contain the following:

1. The appropriate renewal form as received from the Division and all information and exhibits required by such form; and
2. The appropriate fee as set forth in the Act.

21. The Findings of Fact detailed above establish that the Respondents failed to renew their registrations on December 31, 2019, in violation of Tenn. Code Ann. §§ 48-1-109(d)(1)-(2), (4) and (e), Tenn. Comp. R. & Regs. 0780-04-03-01(3)(e) 1. – 2., and Tenn. Comp. R. & Regs. 0780-04-03-01(9)(d)1. – 2.

**B. Willful violation and willful failure to comply with provisions of the Act and Rules, dishonest and unethical practices in the securities business, and authority to impose civil penalties.**

22. Tenn. Code Ann. § 48-1-112 sets forth:

- (a) The [C]ommissioner may by order deny, suspend, or revoke any registration under this part if the [C]ommissioner finds that:
  - (1) The order is in the public interest and necessary for the protection of investors; and
  - (2) The applicant or registrant or, in the case of a broker-dealer or investment adviser, any affiliate, partner, officer, director, or any person occupying a similar status or performing similar functions:  
...  
(B) Has willfully violated or willfully failed to comply with any provision of this part or a predecessor chapter or any rule or order under this part or a predecessor chapter, including, without limitation, any net capital requirements;

- ...
- (G) Has engaged in dishonest or unethical practices in the securities business;

- ...
- (d) In any case in which the [C]ommissioner is authorized to deny, revoke, or suspend the registration of a broker-dealer, agent, investment adviser, investment adviser representative, or applicant for broker-dealer, agent, investment adviser, or investment adviser representative registration, the [C]ommissioner may, in lieu of or in addition to such disciplinary action, impose a civil penalty in an amount not to exceed five thousand dollars (\$5,000) for all violations for any single transaction, or in an amount not to exceed ten thousand dollars (\$10,000) per violation if an individual who is a designated adult is a victim.

23. The Findings of Fact detailed above establish that the Respondents engaged in willful violations of the Act and dishonest and unethical practices in the securities business.

**C. Fraud or misrepresentation and authority to impose civil penalties.**

24. Tenn. Code Ann. § 48-1-121 provides:

- (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:

- ...
- (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

- ...
- (c) It is unlawful for any person to make or cause to be made, in any document filed with the [C]ommissioner 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 [C]ommissioner 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 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, or in an amount not to exceed twenty thousand dollars (\$20,000) per violation if an individual who is a designated adult is a victim.

25. Pursuant to Tenn. Code Ann. § 48-1-115(a), the responsibility for the administration of the Act is vested in the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility pursuant to Tenn. Code Ann. § 48-1-115(b).

26. Tenn. Code Ann. § 48-1-116 sets forth that the Commissioner may make, promulgate, amend, and rescind such orders as are necessary to carry out the provisions 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.

27. Tenn. Code Ann. § 48-1-111(a) provides that every investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the Commissioner by rule prescribes.

28. Pursuant to Tenn. Code Ann. § 48-1-111(d)(1), all records referred to in Tenn. Code Ann. § 48-1-111(a) are subject to such reasonable examinations by representatives of the Commissioner, as the Commissioner deems necessary or appropriate in the public interest or for the protection of investors.

29. Tenn. Code Ann. § 48-1-121(c) sets forth that 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.”

30. Per Tenn. Code Ann. § 48-1-121(d), “[t]he [C]ommissioner 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 rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation, or in an amount not to exceed twenty thousand dollars (\$20,000) per violation if an individual who is a designated adult is a victim.

31. The Findings of Fact detailed above also establish that the Respondents violated Tenn. Code Ann. § 48-1-121(c) by making or causing to be made, brochures filed with the Commissioner that contain untrue statements of material facts. The Respondents also omitted to state material facts to its clients .

32. The Commissioner finds the following relief appropriate, in the public interest, and necessary for the protection of investors.

#### **V. ORDER**

**NOW, THEREFORE**, based on the foregoing, including the Respondents’ waiver of the right to a hearing and appeal under the Act and the Tennessee Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 *et seq.*, and the Respondents’ admission to the jurisdiction of the Commissioner, the Commissioner finds that the Respondent agrees to the entry and execution of this Agreed Order to settle this matter as evidenced by the Respondents’ signature.

**IT IS ORDERED**, pursuant to Tenn. Code Ann. § 48-1-116, that the Respondent shall:

1. **COMPLY** with the Act, as amended, and all rules promulgated thereunder;

2. **PAY A CIVIL PENALTY** to the State of Tennessee of one thousand five hundred dollars (\$1,500.00) on behalf of the Respondents. The payment of such civil penalty shall be made by check payable to the Tennessee Department of Commerce and Insurance. Page one (1) of this Agreed Order must accompany the payment for reference. Payment shall be remitted within thirty (30) days after the entry and execution of this Agreed Order, as evidenced by the Commissioner's signature, and mailed to the attention of:

State of Tennessee  
Department of Commerce and Insurance  
Attn: Virginia Smith  
Davy Crockett Tower  
500 James Robertson Parkway  
Nashville, Tennessee 37243

3. **ENGAGE AND CONTRACT, EMPLOY, OR RETAIN** a professional compliance firm to advise the Respondents regarding record keeping and related compliance matters and to guide them on how to better comply with the Division's statutes, rules, regulations, examinations and information requests;

4. **AGREE TO PARTICIPATE IN MORE FREQUENT EXAMINATIONS BY THE DIVISION**, but no more than two (2) every fiscal year, for a period of three (3) years, unless the Division advises the Respondents prior to the end of the proposed three (3) year period that it will perform examinations less frequently;

5. Mr. Robbins only **SHALL PARTICIPATE IN AND COMPLETE** the following four (4) training courses offered by the Financial Industry Regulatory Authority ("FINRA") within two (2) years of the Commissioner's execution of this Agreed Order, as exhibited by the date the Commissioner includes on this Agreed Order and the Commissioner's signature: Ethical Considerations for Institutional Sales Representatives (EL-ELC173), Ethical Considerations for

Operations Professionals (EL-ELC172); Ethical Considerations for Registered Representatives (EL-ELC170), and Ethical Considerations for Supervisors (EL-ELC171);<sup>1</sup>

6. **PROVIDE PROOF OF COMPLETION OF EACH COURSE** listed on Page 11, ¶ 5. of this Agreed Order to the Division<sup>2</sup>, within sixty (60) days after completion of each course;

7. Once all four (4) courses listed on Page 11, ¶ 5. of this Agreed Order are completed by Mr. Robbins, Mr. Robbins **SHALL COMPLETE AND SIGN THE ATTACHED SWORN ATTESTATION** ("Attachment A"), and provide it to the Division no later than two (2) years after the execution and entry of this Agreed Order, as exhibited by the date the Commissioner includes on this Agreed Order and the Commissioner's signature;

8. **AMEND, FIX, AND RESOLVE** the disclosure issues listed in this Agreed Order's Section III, Findings of Fact, as deemed resolved and fixed by the Division; and

9. **COMPLETE** the registration process, as deemed sufficiently and adequately completed by the Division.

10. Once Executed by the Commissioner and filed with the Administrative Procedures Division, this Agreed Order dismisses the above-mentioned matter.

11. The Respondents' failure to comply with the terms of this Agreed Order, including the manner and method of payment of the civil penalty described above, shall result in further administrative disciplinary action, including but not limited to an **AUTOMATIC**

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<sup>1</sup> FINRA's course catalog can be found here: <http://www.finra.org/sites/default/files/e-learning-course-catalog.pdf>

<sup>2</sup> Proof of completion shall be e-mailed and/or mailed, to Elizabeth Bowling, April Odom, Steven Patterson, and Virginia Smith. Each of these individual's email addresses are as follows: [Elizabeth.Bowling@finra.gov](mailto:Elizabeth.Bowling@finra.gov); [April.X.Odom@tn.gov](mailto:April.X.Odom@tn.gov); [Steven.Patterson@tn.gov](mailto:Steven.Patterson@tn.gov); and [Virginia.Smith@tn.gov](mailto:Virginia.Smith@tn.gov). If mailed, the proof of completion shall be sent to, and received by, each named individual at the following address: 500 James Robertson Parkway, Davy Crockett Tower, Nashville, Tennessee 37243.

REVOCATION of the Respondents' registrations, without the opportunity for an informal hearing before the Division or a formal contested case hearing.

12. **IT IS FURTHER ORDERED** that this Agreed Order represents the complete and final resolution of and discharge of all administrative and civil claims, demands, actions, and causes of action by the Commissioner against the Respondents for violations of the Act with respect to the transactions involved in the above-referenced facts. However, excluded from and not covered by this paragraph, are any claims by the Division arising from or relating to the enforcement of the Agreed Order provisions contained herein.

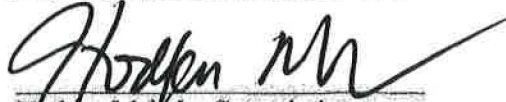
13. This Agreed Order is in the public interest and the best interests of the Parties. It represents a settlement of the controversy between the Parties and is for settlement purposes only. By the signatures affixed below, or in two (2) or more counterparts, the Respondents affirmatively state the following: the Respondents freely agree to the entry and execution of this Agreed Order; the Respondents waive the right to a hearing on, or a review of, the matters, the Findings of Fact, and the Conclusions of Law underlying this Agreed Order or the enforcement of this Agreed Order; and the Respondents encountered no threats or promises of any kind by the Commissioner, the Division, or any agent or representative thereof.

14. By signing this Agreed Order, the Commissioner, Division, and the Respondents affirmatively state their agreement to be bound by the terms of this Agreed Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement as set forth in this Agreed Order, are binding upon them.


15. This Agreed Order may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. The facsimile, email or other electronically delivered signatures of the parties shall be deemed to

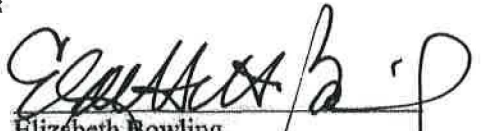
constitute original signatures, and facsimile or electronic copies shall be deemed to constitute duplicate originals.

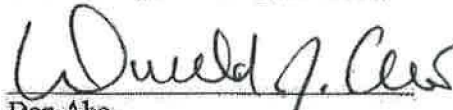
ENTERED AND EXECUTED this 6<sup>th</sup> day of MARCH, 2020.

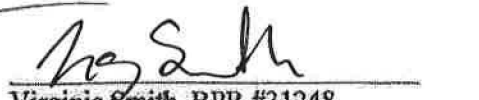
  
Hodgen Maida, Commissioner  
Department of Commerce and Insurance

**APPROVED FOR ENTRY AND EXECUTION:**

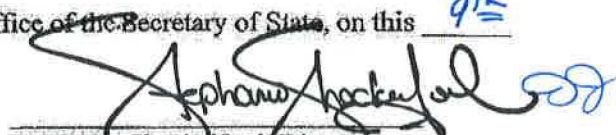
  
Robert Robbins,  
Individually and on behalf of  
Robbins Capital Management Inc.

  
Elizabeth Bowling  
Assistant Commissioner for Securities  
Department of Commerce and Insurance

  
Don Aho,  
Attorney for the Respondents

  
Virginia Smith, BPR #31248  
Associate General Counsel  
Department of Commerce and Insurance

Filed in the Administrative Procedures Division, Office of the Secretary of State, on this 9<sup>th</sup> day of March, 2020.

  
Stephanie Shackelford, Director  
Administrative Procedures Division

**CERTIFICATE OF SERVICE**

I hereby certify that I will serve a copy of this Agreed Order upon the Respondents' counsel via regular mail and e-mail on March 9, 2020.

Don Aho  
Attorney for Respondents  
832 Georgia Avenue  
Volunteer Building  
Suite 1200  
Chattanooga, TN 37402

AND

Don.Aho@millermartin.com



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Virginia Smith



BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE  
FOR THE STATE OF TENNESSEE

TENNESSEE SECURITIES DIVISION, )

Petitioner, )

v. )

ROBERT ROBBINS )  
AND ROBBINS CAPITAL )  
MANAGEMENT INC. )

Respondents. )

APD No.: 12.06-192395J  
TSD No.: 20-009

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ATTACHMENT A

SWORN AFFIDAVIT OF ROBERT ROBBINS PURSUANT TO AGREED ORDER APD  
No. 12.06-192395J AND TSD NO. 20-009

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1. I, Robert Robbins, on behalf of myself, individually, and Robbins Capital Management Inc., do solemnly swear that I participated in, and completed, the four (4) ethics courses listed in the Agreed Order entered into in the above captioned matter;
2. Additionally, the Respondents have engaged, contracted, employed and/or retained a compliance firm per the Agreed Order entered into in the above captioned matter; and
3. Lastly, I am over eighteen (18) years of age, competent, and a citizen of \_\_\_\_\_ County, Tennessee, with actual and personal knowledge of the matters stated herein.

SWORN this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Robert Robbins, individually and on  
behalf of, Robbins Capital  
Management Inc.  
The Respondents