



jurisdiction for the purpose of resolving all issues involving the subject matter of this Consent Order. 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 the Respondent for acts or omissions not specifically addressed in this Consent Order for facts and/or omissions that do not arise from the facts or transactions herein addressed. By entering into this Consent Order the Respondent is not waiving any affirmative defense that may be asserted in any other proceeding.

4. The Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner for the Department of Commerce and Insurance or any other state government representative against the Respondent for violations of law under other 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. By entering into this Consent Order the Respondent is not waiving any affirmative defense that may be asserted in any other proceeding.

5. Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of

the Consent Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Consent Order by the Commissioner.

### **FINDINGS OF FACT**

1. The Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. § 48-2-101, et seq. (the "Act"), places the responsibility for the administration of the Act on the Commissioner of Commerce and Insurance ("Commissioner"). The Division is the lawful agent through which the Commissioner discharges this responsibility. Tenn. Code Ann. § 48-2-115.

2. David S. Higgins ("Higgins") is a citizen and resident of Tennessee. He is a former employee, agent, officer, director, owner or other affiliated person of I & I Services of Tennessee. Higgins maintains his address at 711 Clinton Street, Harriman, TN 37748. Higgins was not and is not registered with the Division in any capacity pursuant to the Act.

3. In June of 1999, Higgins met with Ruth L. Ruth ("Ruth") and discussed with her certain financial opportunities. Ruth is a citizen and resident of the State of Tennessee. One of the financial opportunities discussed involved the sale of pay telephones through ETS Payphones ("ETS") and the placement of the payphones in public locations through a contract manager, Communications Marketing Assoc.

4. Higgins had learned of ETS from brochures that he had received in the mail. ETS was a Florida corporation run by Charles Edwards and Thomas Murray. Higgins visited the company in Florida. Higgins inquired as to whether the opportunity was considered a business opportunity or a security. He was told that the investment was a business opportunity and not a security.

5. Higgins proceeded to sell the ETS opportunity to Tennessee residents. Higgins received a 10% commission on the sale of the opportunity as a representative of to ETS. Ruth invested \$175,000.00 in ETS.

6. ETS was subsequently investigated and shut down by the SEC. ETS was forced into involuntary bankruptcy.

7. Higgins also discussed with Ruth an investment in viaticals. A viatical involves the sale of a participation in an insurance contract on the life of one or more persons believed to be terminally ill where the sick individual could realize a cash benefit during their sickness and the policy would pay through an assignment of the contract at the death of the sick individual. Ruth invested \$40,000.00 in viaticals in June of 1999.

8. In January of 1999, Higgins met with Willis Corum ("Corum"). Higgins presented Corum the opportunity to invest in viaticals. Corum is a citizen and resident of the State of Tennessee. Corum invested \$30,000.00 in three viaticals. The viaticals were sold through Legacy Capital Corporation ("Legacy") through Legacy's agent, Charles Mattox of ViatiCom.

9. A Cease and Desist Order was entered in 2002 that prevents Legacy from the further sale of viaticals in Tennessee. By affidavit, neither Legacy, ViatiCom, nor Charles Mattox has sold viaticals in Tennessee since 2001 and the date of the Cease and Desist Order.

10. Corum's viatical contracts are currently administered through the CPA firm of Mills, Potoczak & Company. Once the insured passes, the viaticals are scheduled to pay off.

11. The Division has determined that the opportunity offered in ETS was a security in the form of an investment contract. At the time of the sale to Ruth, the ETS security was not registered with the Division pursuant to the Act. At the time of the sale to Ruth, David S. Higgins was not a registered agent or broker-dealer with the Division pursuant to the Act.

12. The Division has determined that viaticals are securities under the Act. At the time of the sale to Ruth, as well as at the time of the sale to Corum, the viaticals offered through Legacy and/or ViatiCom were not registered with the Division pursuant to the Act. At the time of the sales to Ruth and Corum, David S. Higgins was not a registered agent or broker-dealer with the Division pursuant to the Act.

13. The Division has determined that Higgins offered to sell and sold securities, to wit: investment contracts through ETS Payphones and viaticals through Legacy Capital and ViatiCom, at a time when Higgins was not registered with the Division pursuant to the Act as a broker-dealer or agent of a broker-dealer. The Division has determined that Higgins offered to sell and sold securities, to wit: investment contracts through ETS Payphones and viaticals through Legacy Capital and ViatiCom, which investment contracts were securities required to be registered under the Act, at a time when the securities were not registered with the Division pursuant to the Act.

### **CONCLUSIONS OF LAW**

14. Pursuant to Tenn. Code Ann. §48-2-115(a), the responsibility for administration of the Act is upon the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility.

15. Tennessee Code Annotated §48-2-104(a) provides that it is unlawful for any person to sell any security in this state unless (1) it is registered, (2) the security or transaction is exempted under Tenn. Code Ann. §48-2-103, or (3) the security is a covered security.

16. Tennessee Code Annotated §48-2-109(a) provides that it is unlawful for any person to transact business from or in this state as a broker-dealer or agent or investment advisor unless such person is registered as a broker-dealer or agent or investment advisor under this part.

17. The averments in paragraphs two - thirteen of this Consent Order constitute practices by David S. Higgins, which would provide grounds under Tenn. Code Ann. § 48-2-104 for the entry of an order of sanctions against David S. Higgins.

18. The averments in paragraphs two - thirteen of this Consent Order constitute practices by David S. Higgins, which would provide grounds under Tenn. Code Ann. § 48-2-109(a) for the entry of an order of sanctions against David S. Higgins.

### **ORDER**

**NOW, THEREFORE**, on the basis of the foregoing, and the Respondent's waiver of right to a hearing and appeal under the Tennessee Securities Act and Tennessee's Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101 et seq., and the Respondent's admission of jurisdiction of the Commissioner, the Commissioner finds that Respondent, David S. Higgins, for the purpose of settling this matter, has agreed to the entry of this Order and that the following Order is appropriate, in the public interest and necessary for the protection of investors.

**IT IS ORDERED AND RESPONDENT AGREES**, pursuant to Tennessee Code Annotated §48-2-116(a) of the Tennessee Securities Act that:

1. Respondent shall fully comply with the Tennessee Securities Act, as amended, and all rules promulgated thereunder.

2. Respondent shall permanently cease and desist from committing violations of the Tennessee Securities Act of 1980, as amended. Respondent shall cease and desist in further conduct as a broker-dealer and/or agent of a broker-dealer from, into, or in the State of Tennessee until such time as he is registered to do so pursuant to the Act. Respondent shall cease and desist offering to sell or selling securities from, into, or in the State of Tennessee until such time as he is registered to do so pursuant to the Act and only if the security being offered or sold is registered, unless exempt, with the Division pursuant to the Act.

3. Respondent shall state on Form U-4 this action, pursuant to the instructions of said form and as required by the NASD, and file the appropriate Disclosure Reporting Page to disclose the details of this filed administrative action should Respondent seek registration with the Division as a broker-dealer, agent of a broker-dealer, investment adviser, or agent of an investment adviser. Respondent shall disclose of the existence and terms of this Consent Order in any offer to sell, private placement memoranda, or other sales tool which in any manner relates to the issuance, sale, or offer to sell a security.

4. Respondent shall pay five thousand dollars (\$5,000.00) to the State of Tennessee Investor Education Fund. Said sum shall be due and payable upon execution of this document; said sum shall be paid at a rate of \$350.00/month on the 1<sup>st</sup> day of each

month until said sum is paid in full with the first monthly payment paid upon execution of this document, but in no event later than April 1, 2005 . Payment in the form of a money order or cashier's check, made payable to the State of Tennessee Investor Education Fund, shall be mailed or delivered to:

State of Tennessee  
Department of Commerce and Insurance  
Securities Division  
Attention: Michele K. Elliott, Staff Attorney  
500 James Robertson Parkway, 5<sup>th</sup> Floor  
Nashville, Tennessee 37243.

5. Respondent acknowledges that failure to comply with all of the requirements and prohibitions contained in this Order shall result in the denial of any application by Respondent for any registration and/or licensure of any type, which registration and/or licensure is administered by the Division of Securities and/or the Department of Commerce and Insurance.

Execution of this Consent Order is due on or before March 31, 2005.

**IT IS ORDERED** that this Order represents the complete and final resolution of, and discharge with respect to all administrative and civil, claims, demands, actions and causes of action by the Securities Division against David S. Higgins for violations of the Tennessee Securities Act of 1980, as amended, alleged to have occurred with respect to facts contained herein. Nothing herein may be construed as preventing a separate division or section of the Department of Commerce and Insurance or a separate entity of the State of Tennessee from taking other appropriate action against the Respondent based on the Findings of Fact and Conclusions of Law enumerated herein or the existence of this executed Consent Order.



This Consent Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signature affixed below, David S. Higgins affirmatively states that he has freely agreed to the entry of this Consent Order, that he waives his right to a hearing on the matters underlying this Consent Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof. The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Consent Order, are binding upon them.

ENTERED this 22<sup>nd</sup> day of April, 2005.

Paula A. Flowers  
Paula A. Flowers, Commissioner  
Department of Commerce and Insurance

**APPROVED FOR ENTRY:**

David S. Higgins  
David S. Higgins

Daphne D. Smith  
Daphne D. Smith,  
Assistant Commissioner for Securities  
Department of Commerce and Insurance

John A. Beam, III  
John A. Beam, III (BPR#11796)  
Attorney for Respondent, Higgins

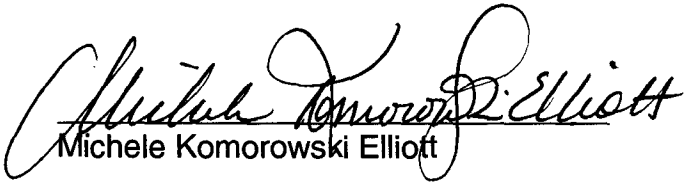
Michele K. Elliott  
Michele K. Elliott (BPR#022618)  
Staff Attorney  
Department of Commerce and Insurance  
500 James Robertson Parkway, Fifth Floor  
Nashville, Tennessee 37243  
(615) 741-2199

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the final, executed Consent Order has been served to counsel of record for Respondent in accordance with the Tennessee Rules of Civil Procedure via certified mail, return receipt requested to:

John A. Beam, III  
Attorney at Law  
P.O. Box 280240  
Nashville, TN 37228

this 27th day of April, 2005.

  
Michele Komorowski Elliott