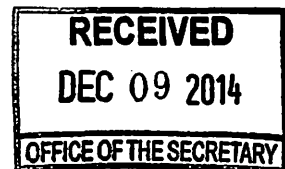


HARD COPY



UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16155

In the Matter of

Nicholas B. Rowe,

Respondent.

DIVISION OF ENFORCEMENT'S
MOTION FOR SUMMARY DISPOSITION

The Division of Enforcement ("Division"), pursuant to Rule 250 of the Commission Rules of Practice, 17 C.F.R. § 201.250, and with leave of the Administrative Law Judge ("ALJ"), hereby moves for summary disposition against Respondent Nicholas Rowe. All facts necessary for summary disposition have been previously resolved by the March 12, 2013 entry of consent order against Respondent by the New Hampshire Bureau of Securities Regulation. Respondent may not re-litigate the consent order's findings of fact and conclusions of law here. The Division therefore asserts that summary disposition is appropriate in this matter and that a permanent associational bar is in the public interest and should be imposed.

INTRODUCTION

On March 12, 2013, the State of New Hampshire Bureau of Securities Regulation (the "Bureau") entered a consent order (the "Consent Order") against Respondent Nicholas Rowe.¹ The Consent Order barred Respondent from securities licensure in the State of New Hampshire.

¹ A true and accurate copy of the March 12, 2013 Consent Order against Respondent is attached as Exhibit A to the Declaration of Marc J. Jones in Support of Division of Enforcement's Motion for Summary Disposition, filed herewith. This Exhibit A will hereinafter be referred to as "Consent Order."

Consent Order, p. 11, ¶ V.4. The Consent Order details how “Rowe’s trading in NH Customers’ accounts was reckless and grossly inconsistent with Focus Capital’s own recorded investment profiles and risk tolerances.” Consent Order, p. 3, ¶ II.5(a). It describes how “Rowe completely ignored the NH Customers’ individual and specific risk tolerances.” *Id.* The Bureau summarized Respondent’s conduct, stating, “Although Rowe claimed he was engaging in a legitimate and complicated trading strategy, analysis of the NH Customers’ accounts revealed that Rowe was essentially placing large, short-term and very speculative directional bets on the stock market while increasing the NH Customers’ risk tolerances over time.” The entry of the Consent Order establishes the statutory basis to impose an associational bar. As discussed below, the nature of the Respondent’s actions, his failure to recognize any wrongdoing on his part, his accusations against his former clients, and the likelihood of future violations all indicate that such a bar would be in the public interest.

PROPOSED FINDINGS OF FACT

Background

1. Respondent Nicholas Rowe, age 55, is a resident of Hollis, New Hampshire. Order Instituting Proceedings (“OIP”), at II.A.1 (not denied in Respondent’s Answer).
2. Between 2001 and 2012, Respondent was the owner of Focus Capital Wealth Management, Inc. OIP, at II.A.1; Answer at Ex. 1, p. 5 (Rowe “owned a firm, Focus Capital, Inc. from about 2001-2012.”).
3. Respondent is identified on Focus Capital’s Forms ADV during the period 2007-2012 as its President and Chief Executive Officer. OIP, at II.A.1 (not denied in Respondent’s Answer).

Consent Order from the NH Bureau of Securities

4. At the time of the alleged misconduct, Respondent was associated with an investment adviser, Focus Capital. Answer, Exhibit 1, p. 4 (“the State of NH took action to bar Nicholas Rowe and his firm Focus Capital, Inc. from working in the investment field.”); *see also* OIP, ¶ 1 (“Rowe was the owner of Focus Capital Wealth Management, Inc. ... Focus Capital was registered as an independent investment adviser with the Commission from 2005 to 2012, at which point it registered with New Hampshire and withdrew its registration with the Commission.”) (not denied in Respondent’s Answer); Consent Order, II.1 (“Prior to June 25, 2012, Focus was a federally covered investment adviser that was required to be registered with the Securities and Exchange Commission (“SEC”) and had been notice filed with the State of New Hampshire as required under RSA 412-B:7, 1-b). As of June 25, 2012, Focus became a state licensed investment adviser and was properly licensed with the State of New Hampshire... As an investment adviser, Focus was engaged in the business of recommending, buying and selling securities for the accounts of others and rendering investment advice for compensation.... Rowe was an owner and an investment adviser representative for Focus.”); Consent Order, III.1 (“Focus was an investment adviser within the meaning of RSA 421-B: 2, IX and Rowe was an investment adviser representative within the meaning of RSA 421-B: 2, IX-a.”).

5. On March 12, 2013, the Bureau, in In the Matter of Nicholas Rowe, et al., COM 2011-0037, entered a Consent Order against Respondent. OIP, ¶ 2 (not denied in Respondent’s Answer); Consent Order. Mr. Rowe admits he is subject to the Consent Order, but attempts to challenge the nature of his consent. Answer, p. 2.

6. Respondent signed the Consent Order on March 8, 2013. Consent Order, p. 11. By signing the Consent Order, Respondent agreed that he had: “voluntarily consented to the entry of

this Consent Order and represent[ed] and aver[red] that no employee or representative of the Bureau has made any promise, representation or threat to induce its execution.” Consent Order, p. 9, ¶ IV.1.

7. The Consent Order bars Respondent from engaging in the business of securities in the state of New Hampshire. Consent Order, p. 10, ¶ IV.7 (“Respondents agree to be permanently barred from any security licensure in the State of New Hampshire.”); p. 11, ¶ V.4 (“Respondents are barred from securities licensure in the State of NH.”);

8. The Consent Order is based on Respondent’s violations of New Hampshire laws prohibiting fraudulent, manipulative, or deceptive conduct in the purchase and/or sale of securities. Consent Order, p. 7, ¶ III.2 (detailing violated provisions of New Hampshire securities law RSA 421-B:4, V(a) & (h), which prohibit investment advisers from engaging in unethical business practices, including the recommendation of unsuitable investments and misrepresentations to advisory clients); Consent Order, p. 9, ¶ IV.3 (“Respondent’s agreed to cease and desist from any alleged violations of RSA 421-B:3 and 421-B:4).

9. In the Consent Order, Respondent agreed to, “not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation in this Consent Order or creating the impression that the Consent Order is without factual basis.” Consent Order, p. 10, ¶ IV.9.

PROPOSED CONCLUSIONS OF LAW

10. Advisers Act 203(f) authorizes the Commission to impose an associational bar against Rowe, if: (1) at the time of the alleged misconduct, he was associated with an investment adviser; (2) he is subject to a final order of a state securities commission that either bars him from association with an entity regulated by such commission or constitutes a final order based on

violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct as specified in Advisers Act Section 203(e)(9); and (3) the sanction is in the public interest. 15 U.S.C. § 80b-3(f).

11. At the time of his misconduct, Respondent was associated with investment adviser, Focus Capital. *See* ¶ 4, above.

12. The Consent Order constitutes a final order. OIP, ¶ 2 (not denied in Respondent's Answer); Consent Order, p. 9, ¶ IV.2 ("Respondents agree to waive their right to an administrative hearing and any appeal therein under this chapter.").

13. The Bureau of Securities Regulation, Department of State, State of New Hampshire, is a "State securities commission (or agency or officer performing like functions)" within the meaning of Advisers Act § 203(e)(9). N.H. Rev. Stat. Ann. § 421-B:21, I & I-a (granting Secretary of State and designees various securities-related authorities and jurisdictions); § 421-B:10 (granting power to deny, suspend, or revoke securities licenses).

14. The facts and legal conclusions above establish the statutory basis to impose an associational bar against Respondent.

COLLATERAL ESTOPPEL

In his Answer and in the Wells response he attaches to his Answer, Respondent attempts to deny and deflect the findings of the Bureau and the terms of the Order to which he consented. Respondent states, "All allegations in the consent order with the state of New Hampshire Bureau of Securities Regulation 03-12-2012 are denied by Mr. Rowe." Answer, p. 2. Respondent continues, "Mr. Rowe did not consent to the ... Consent Order....Mr. Rowe could not have consented because in any contract apparent consent may be vitiated because of mistake, fraud,

innocent misrepresentation, duress, or undue influence. Mr. Rowe plans to ask the courts to vacate the consent decree after the conclusion of his bankruptcy cases” The thrust of Respondent’s Answer is that he is the victim of a corrupt state government and clients who he claims perjured themselves to inculcate him.

However, the Commission does not permit a respondent to re-litigate issues that were addressed in a previous civil proceeding against a respondent, whether resolved by consent, as Respondent did here; by summary judgment; or after a trial. See *Jeffrey L. Gibson*, Exchange Act Release No. 57266 (Feb. 4, 2008), 2008 WL 294717 (injunction entered by consent); *John Francis D’Acquisto*, Advisers Act Release No. 1696 (Jan. 21, 1998), 1998 WL 34300389, at *2 (injunction entered by summary judgment); *James E. Franklin*, Exchange Act Release No. 56649 (Oct. 12, 2007), 2007 WL 2974200, at *4 (injunction entered after trial); *Demitrios Julius Shiva*, Exchange Act Release No. 38389 (Mar. 12, 1997), 1997 WL 112328, at *2 & nn.6-7.

While Respondent would like here to revisit the circumstances that led to his consent to the Consent Order, at no time does he deny that he is subject to the Consent Order. Nor does he deny that the Consent Order bars him from participation in the securities industry in the state of New Hampshire.

SANCTION

A full associational bar against the Respondent is in the public interest. *Steadman v. SEC* sets forth the public interest factors guiding what remedial sanction is appropriate. Those factors are: (1) the egregiousness of the respondent’s actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of the respondent’s assurances against future violations; (5) the respondent’s recognition of the wrongful nature of his conduct; and (6) the likelihood of future violations. 603 F.2d 1126, 1150 (5th Cir. 1979), *aff’d on other*

grounds, 450 U.S. 91 (1981); *see Gary M. Kornman*, Exchange Act Release No. 59404 (Feb. 13, 2009); 2009 WL 367635, *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010); *Aaron Jousan Johnson*, Release No. 608, 2014 WL 2448901 (June 2, 2014). No one of the *Steadman* factors is dispositive. *Kornman v. SEC*, 592 F.3d 173, 181.

Here, the *Steadman* factors weigh heavily in favor of a permanent associational bar against Respondent. To begin with, Respondent's actions should be considered egregious. While Respondent claimed to his clients that he was engaging in a legitimate and complicated trading strategy, he essentially was placing large, short-term and very speculative directional bets on the stock market for clients whose risk tolerance was far less than would be appropriate for this speculative trading strategy. *See* Consent Order, p. 3, ¶ II.5. The Consent Order details eleven different investors for whom Rowe made unsuitable investments, completely ignoring his customers risk tolerances and investment horizons. *See* Consent Order, pp. 3-7. The Consent Order concludes that Rowe is largely responsible for \$2,376,087 in investment losses by his clients. *Id.*

Rowe's conduct, as alleged in the Consent Order, was recurrent and would likely have continued if Rowe had been left unchecked. For at least eleven investors, during the period 2007 through 2013, Rowe engaged in a continued course of very speculative trading, ignoring his clients' risk tolerances. *See* Consent Order, ¶ II.5-II.11. Even today, he fails to recognize the unsuitability of his trading strategies (involving leveraged and inverse ETFs for his moderate risk tolerance clients) and claims that these strategies were less risky than the market as a whole. *See* Answer, p. 2.

Rowe has neither recognized the wrongfulness of his conduct nor provided assurances against future violations. In his Wells response to the Division and in his answer to the OIP, Rowe

has continued to deny all responsibility for his actions. Answer, p. 2 (“All allegations in the consent order ... are denied by Mr. Rowe.”). He also denies that the securities trading practices he engaged in were unsuitable for his investors. *See, e.g.*, Answer, p. 2 (claiming statistical research that shows that leveraged and inverse ETFs were less risky than the market as a whole).

Respondent has provided no assurances against future violations. To the contrary, he has expressed his desire to “ask the courts to vacate the consent decree.” Answer, p. 2. In combination, Respondent’s vehemence that his investment strategies were suitable and his desire to challenge his Consent Order indicate a high likelihood of future violations if Respondent is not permanently barred.

Rowe’s Answer places blame on everyone but Rowe himself. He repeatedly claims that his former clients are “perjurers and liars” and that the staff of the Bureau is “corrupt or inept.” *See, e.g.*, Answer, p. 2 (stating “The corrupt or inept representatives of the Bureau that dealt with Mr. Rowe made the mistake of believing the stories of perjurers and liars.”); p. 3 (stating the “corrupt or inept representatives of the Bureau” made it “clear he would not receive a fair hearing”); p. 3 (stating “If the SEC relies on the “Consent Order” then the SEC joins the State of NH Bureau of Securities Regulation in its criminal misconduct, mistakes, use of duress or undue influence, and fraud.”); p. 3 (claiming “the morally weak and greedy complainants lied”); p. 3 (claiming “the claimants perjured themselves well over 100 times in the arbitration”); Answer, Ex. 1, p. 4 (former clients were “flagrant liars”); p. 12 (claiming two of three FINRA arbitrators were “woefully incompetent”); p. 18 (claiming Bureau’s expert lied under oath). Respondent makes it absolutely clear that he has no intention of recognizing the wrongfulness of his conduct or taking steps to prevent future violations. His accusations also compound the egregiousness of his conduct.

The Commission also considers the deterrent effect of administrative sanctions. *See Schield Mgmt. Co.*, Exchange Act Release No. 53201 (Jan. 31, 2006), 87 SEC Docket 848, 862 & n.46. Industry bars have long been considered effective deterrence. *See Guy P. Riordan*, Exchange Act Release No. 61153 (Dec. 11, 2009), 97 SEC Docket 23445, 23478 & n.107 (collecting cases). In this case, a permanent, collateral bar will provide such deterrence.

All of the foregoing supports the imposition of a strong sanction – namely the imposition of a permanent associational bar, including all collateral bars, against Rowe.

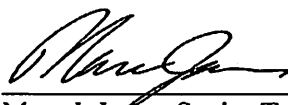
CONCLUSION

For the reasons stated above, the Division respectfully requests that the Court grant the Division Summary Disposition in its favor, and impose a permanent associational bar, including all collateral bars, against the Respondent.

Respectfully submitted,

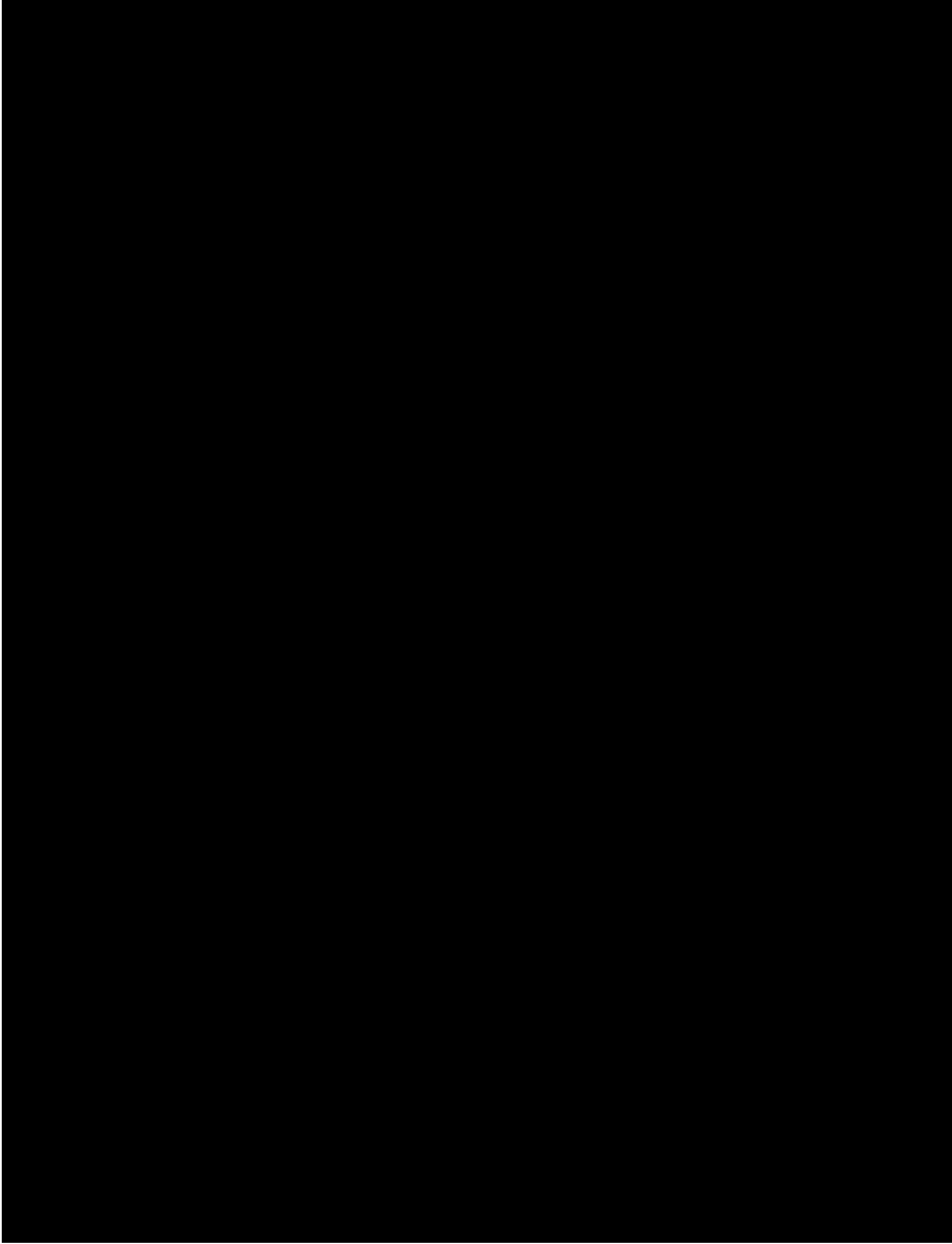
DIVISION OF ENFORCEMENT

By its attorneys,



Marc J. Jones, Senior Trial Counsel
Lawrence Pisto, Senior Counsel
U.S. Securities and Exchange Commission
Boston Regional Office
33 Arch Street, 23d Floor
Boston, MA 02110
Tel: (617) 573-8947
Fax: (617) 573-4590
Email: jonesmarc@sec.gov

Date: December 8, 2014





UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Boston Regional Office
33 Arch St., 23rd Floor
Boston, MA 02110-1424
Telecopier: (617) 573-4590
Telephone: (617) 573-8900



DIVISION OF ENFORCEMENT

Marc J. Jones
Senior Trial Counsel
(617) 573-8947

December 8, 2014

By Overnight Delivery

Mr. Brent Fields
Securities and Exchange Commission
Office of the Secretary
100 F Street, N.E.
Washington, DC 20549

Re: *In the Matter of Nicholas Rowe*
Administrative Proceeding File No. 3-16155

Dear Mr. Fields:

Enclosed please find an original and three copies of the Division of Enforcement's Motion for Summary Disposition with accompanying Declaration in Support. Also enclosed is the Division's Motion to Correct the OIP.

Very truly yours,

A handwritten signature in blue ink that reads "Marc J. Jones". The signature is stylized and cursive.

Marc J. Jones

Enclosures

cc: Honorable Jason S. Patil (by email and overnight delivery)
Nicholas Rowe (by overnight delivery)