UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16155

In the Matter of

Nicholas B. Rowe,

Respondent.

DECLARATION OF MARC J. JONES IN SUPPORT OF DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

1. I am a Senior Trial Counsel in the Division of Enforcement ("Division") of the Securities and Exchange Commission's Boston Regional Office. I am one of the Division attorneys in the above-captioned proceeding against Nicholas Rowe. I make this declaration based upon my personal knowledge and in support of the Division's Motion for Summary Disposition.

2. On March 8, 2011, Rowe consented to an order issued on March 12, 2013 ("Consent Order") by the New Hampshire Bureau of Securities Regulation in In the Matter of Nicholas Rowe, et al., COM2011-0037, barring Rowe and Focus Capital from securities licensure in the state of New Hampshire. Attached hereto as Exhibit A is a true and accurate copy of the Consent Order in that matter.

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

[redacted]

Marc J. Jones, Senior Trial Counsel

[redacted]

EXHIBIT A

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

CONSENT ORDER
IN THE MATTER OF:

Nicholas Rowe [redacted]
Focus Capital Wealth Management, Inc. [redacted]

COM2011-0037

I. For purposes of settling the above-referenced matter and in lieu of further administrative proceedings, Nicholas Rowe (hereinafter referred to as "Rowe") and Focus Capital Wealth Management, Inc. aka Focus Capital, Inc. (hereinafter referred to as "Focus") have submitted an offer of settlement, which the Bureau of Securities Regulation, Department of State, State of New Hampshire (hereinafter referred to as "the Bureau") has determined to accept. Accordingly, and without admitting or denying the Statement of Facts and Conclusions of Law, Respondents do hereby consent to the entry of this Consent Order as set forth below:

STATEMENT OF FACTS

II. The Staff of the Bureau alleges the following facts:

Background

1. Focus was formed in January 2001. 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 421-B:7, I-b. As of June 25, 2012, Focus became a state licensed investment adviser and was properly licensed with the State of New Hampshire. Focus' registration with the SEC was terminated as of June 28, 2012. 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. Focus and Rowe have declared bankruptcy and their licenses have been terminated. Their business location was located at 166 South River Road, Suite 235, Bedford, NH. Rowe was an owner and an investment advisor representative for Focus. Prior to founding Focus in 2001, Rowe was employed as a broker-dealer registered representative by Jefferson Pilot Securities Corporation (now Lincoln Financial Securities Corporation) from October 1990 through January 2006. There is no record of Rowe being employed in the

securities industry prior to 1990.

2. This matter involves various strategies related to trading in inverse and leveraged Exchange Traded Funds (ETFs) employed in client accounts, for example in the client accounts of Investors #1 - #11 (collectively referred to as the "NH Customers"), as outlined in this petition. ETFs are registered investment companies whose shares represent an interest in a portfolio of securities that track an underlying benchmark or index. ETFs are highly complex and are unlike traditional mutual funds since they trade throughout the day at market prices as opposed to traditional mutual funds that are priced at the end of each trading day based on net asset value. Inverse and leveraged ETFs have different performance objectives than regular ETFs. Regular ETFs track the underlying index or benchmark whereas inverse and leveraged ETFs are designed to reach their stated performance objectives on a daily basis. Leveraged ETFs seek to return multiples of the performance of the index or benchmark they track, and inverse ETFs seek to deliver the opposite of the performance of the index or benchmark they track. Inverse ETFs are marketed as a way to profit in a declining market. Since inverse and leveraged ETFs seek to achieve their performance on a daily basis, their performance over longer periods of time, such as weeks, months or years, can have significantly different results. This negative effect can be made worse in a volatile market. Large losses can accrue through what's known as "compounding". Compounding occurs when the price of inverse and leveraged ETFs drop over a number of days and the losses compound rather than track the index or benchmark. Therefore, inverse and leveraged ETFs are unsuitable for retail investors who cannot sustain the high risk of loss and who are better suited for a buy and hold strategy.

3. On August 18, 2009, the SEC issued a news release warning all investment advisers that leveraged and inverse ETFs reset daily, meaning that they are "designed to achieve their stated objectives on a daily basis." The SEC further explained that leveraged ETFs "seek to deliver multiples of the performance of the index or benchmark they track" and inverse ETFs "seek to deliver the opposite of the performance of the index or benchmark they track." Financial Industry Regulatory Authority ("FINRA") Regulatory Notice 09-31 explains that inverse and leveraged ETFs, "[d]ue to the effects of compounding, their performance over longer periods of time can differ significantly from their stated daily objective" and "inverse and leveraged ETFs that are reset daily typically are unsuitable for retail investors who plan to hold them for longer than one trading session, particularly in volatile markets."

4. The relevant time period of this action is from January 1, 2007 to the present. During the relevant time period, Rowe and Focus engaged in a trading strategy involving inverse and leveraged ETFs for the NH Customers that were unsuitable for these customers.

Rowe and Focus engaged in highly risky and unsuitable trading

5. Throughout the relevant time period, Rowe and Focus employed different trading strategies that Rowe referred to as the Basil Strategy, Behavioral Strategy, and the FAAS Strategy. Each of these strategies involved investing in leveraged and inverse ETFs. Despite varying risk tolerances, Rowe employed these strategies in a virtually identical manner across the NH Customers' accounts. Many of Rowe's clients had moderate risk tolerances, which in a model investment portfolio would typically consist of approximately 60-70% invested in stocks and 30-40% invested in bonds. 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.

    a. Rowe purchased inverse and leveraged ETFs for the NH Customers' and in some instances held them for more than the recommended hold period for retail accounts. In some instances, Rowe exceeded these recommended hold periods by several days, weeks, and even months. Rowe completely ignored the NH Customers' individual and specific risk tolerances. Rowe's trading in NH Customers' accounts was reckless and grossly inconsistent with Focus Capital's own recorded investment profiles and risk tolerances.

6. Investor #1 is a 67 year old widow from New Castle, NH. Investor #1 is unemployed and entirely dependent upon the estate left to her by her late husband. The money she invested with Focus and Rowe came from this estate. Investor #1 had very little investment experience, especially with regard to complex securities such as ETFs, and relied entirely on Rowe. Investor #1 maintains that she began investing with Focus and Rowe in 2004 after she was told by Rowe that he was the number one financial advisor in New Hampshire.

    a. In April 2004, Investor #1 indicated that she has a moderate risk tolerance and a long-term investment objective. In an investment questionnaire dated February 12, 2008, Investor #1 indicated that she has a moderately aggressive risk tolerance. She also indicated that she intended to take withdrawals from her account within two years and for the next twenty-five years or more. Investor #1 asserts that this investment questionnaire was filled out by Focus and subsequently signed by Investor #1. Investor #1 lost approximately seven hundred and ninety-three thousand, seven hundred and forty-one dollars ($793,741) between January 2008 and September 2011. Much of these losses are attributable to Rowe employing his highly aggressive trading strategy with leveraged and inverse ETFs that resulted in significant losses to Investor #1 without regard to her individual suitability,

investment experience, or income needs. Rowe also charged Investor #1 an increased fee for opting to take part in his inverse and leveraged ETF strategies versus his traditional account management services. Investor #1 asserts that she was told by Rowe that a portion of the fee he charged her was being paid to a person or entity associated with Wall Street for trading signals. According to Investor #1, Rowe failed to disclose to Investor #1 that this increase in fees was being assessed across her entire account, including funds invested in a money market. Investor #1 further maintains that Rowe failed to disclose how inverse and leveraged ETFs work or the risks associated with them.

7. Investor #2 is a 74 year old widow and retiree from Bedford, NH who began investing with Rowe and Focus in 2002. Investor #2 has very little investment experience and relied solely on Rowe's advice. In an investment questionnaire dated May 3, 2007, Investor #2 indicated that she has a moderately conservative risk tolerance. She also indicated that she intended to take withdrawals from her account within two years and for the next twenty-five years or more. She further indicated that she was "willing to withstand some fluctuations in the value of my portfolio, but I prefer to be invested in less risky investments that reduce the likelihood of large losses." Investor #2 asserts that this investment questionnaire was filled out by Focus and subsequently signed by Investor #2.

   a. Investor #2 lost approximately one hundred and thirty-three thousand, three hundred and seventy dollars ($133,370) between January 2007 and May 2010. Much of these losses are attributable to Rowe employing his highly aggressive trading strategy with leveraged and inverse ETFs that resulted in significant losses to Investor #2 without regard to her individual suitability, investment experience, or income needs. Investor #2 maintains that Rowe failed to disclose to her what an ETF was and failed to disclose the risks associated with inverse and leveraged ETFs. Investor #2 maintains that Rowe also failed to disclose that fees for participation in his ETF strategies were being assessed across her entire account, including the funds invested in a money market.

8. Investor #3 is from Concord, NH. In August 2004, Investor #3 indicated that he has a moderate risk tolerance and a long-term investment objective. In an investment questionnaire dated July 28, 2008, Investor #3 indicated that he has a moderately aggressive risk tolerance. Investor #3 asserts that this investment questionnaire was filled out by Focus and subsequently signed by Investor #3. Investor #3 claims that he began investing with Focus and Rowe in 2004 after he was told by Rowe that he was among the top three investment advisers in the country.

   a. Investor #3 incurred significant losses after being solicited by Rowe to participate in his various leveraged and inverse ETF strategies. Rowe

charged Investor #3 an increased fee for opting to take part in these ETF strategies versus his traditional account management services. Investor #3 asserts that he was told by Rowe that a portion of the fee Rowe charged him was being paid to a trader on Wall Street for trading signals. Investor #3 further asserts that when he questioned Rowe further about the identity of the Wall Street trader, Rowe explained that he couldn't reveal the name as he had signed a confidentiality agreement with the Wall Street trader and revealing the name could be harmful to other Focus clients. Investor #3 maintains that Rowe also failed to disclose that this increase in fees for participation in his ETF strategies was being assessed across his entire account, including the funds invested in a money market. Investor #3 further maintains that Rowe failed to disclose how inverse and leveraged ETFs work or the risks associated with them.

9. Investor #4 is a 63 year old individual from Bow, NH and is also Investor #3's father. In an investment questionnaire dated March 17, 2006, Investor #4 indicated that he has a moderate risk tolerance. He also indicated that he was "willing to withstand some fluctuations in the value of my portfolio, but I prefer to be invested in less risky investments that reduce the likelihood of large losses." Investor #4 asserts that this investment questionnaire was filled out by Focus Capital and subsequently signed by Investor #4. Investor #5 is Investor #4's wife, who is 62 years old and also from Bow, NH. In an investment questionnaire dated March 17, 2006, Investor #5 indicated that she has moderately conservative risk tolerance. She also indicated that she felt most comfortable with "stable investments that generate consistent, but lower returns year-to-year." Investor #5 asserts that this investment questionnaire was filled out by Focus Capital and subsequently signed by Investor #5. Investor #4 and Investor #5 began investing with Focus Capital and Rowe in 2006.

   a. Investor #4 and #5 incurred significant losses after being solicited by Rowe to participate in his various leveraged and inverse ETF strategies. Rowe charged Investor #4 and #5 an increased fee for opting to take part in these ETF strategies versus his traditional account management services. Investor #4 and #5 assert that they were told by Rowe that a portion of the fee he charged them was being paid to a trader on Wall Street for trading signals. Investor #4 and #5 maintain that Rowe also failed to disclose that the increase in fees for participation in his ETF strategies was being assessed across their entire account, including the funds invested in a money market. Investor #4 and #5 further maintain that Rowe failed to disclose how inverse and leveraged ETFs work or the risks associated with them.

   b. A combined analysis of Investor #3, Investor #4 and Investor #5's accounts show combined losses of approximately four hundred and fifty-six thousand, two hundred and thirty-eight dollars ($456,238) between January 2008 and May 2011.

10. Investor #6 is a 60 year old widow from Amherst, NH. Investor #6 had no prior investment experience and relied entirely on the advice provided by Rowe. Investor #6 maintains that she began investing with Focus and Rowe in 2005 after being told by Rowe that he was one of the top three investment advisors in the country.

    a. In an investment questionnaire dated July 18, 2005, Investor #6 indicated that she has a moderate risk tolerance. She also indicated that she intended to take withdrawals from her account within two years and for the next twenty-five years or more. She further indicated that she was "equally concerned with avoiding losses and experiencing high long-term appreciation." Investor #6 asserts that this investment questionnaire was filled out by Focus and subsequently signed by Investor #6. By early 2009, and after already experiencing losses with Rowe, Investor #6 was solicited by Rowe to participate in his various leveraged and inverse ETF strategies. Rowe charged Investor #6 an increased fee for opting to take part in these ETF strategies versus his traditional account management services. Investor #6 asserts that she was told by Rowe that a portion of the fee he charged her was being paid to a trader on Wall Street for trading signals. Investor #6 maintain that Rowe also failed to disclose that this increase in fees for participation in his ETF strategies was being assessed across their entire account, including the funds invested in a money market. Investor #6 further maintains that Rowe failed to disclose how inverse and leveraged ETFs work or the risks associated with them.

    b. Investor #6's three children, Investor #7, Investor #8, and Investor #9 were also clients of Focus Capital and Rowe. Investor #7, #8 and #9 incurred significant losses after being solicited by Rowe to participate in his various leveraged and inverse ETF strategies. A combined analysis of Investor #6, Investor #7, Investor #8, and Investor #9's accounts show combined losses of approximately nine hundred and ninety thousand, five hundred and thirteen dollars ($990,513) between January 2008 through June 2010.

11. Investor #10 is from Gilmanton, NH. In an investment questionnaire dated November 3, 2008, Investor #10 indicated that he has a moderately aggressive risk tolerance. He also indicated that he intended to take withdrawals from his account within two years and for the next twenty-five years or more. Investor #11 is Investor #10's wife and also from Gilmanton, NH. In an investment questionnaire dated November 3, 2008, Investor #11 indicated that she has a moderate risk tolerance. She also indicated that she intended to take withdrawals from her account within the next two years and for the next twenty-five years or more. She further indicated that "while accepting a low level of risk, my goal is to earn slightly more than inflation." Both Investor #10 and Investor #11 assert that these investment questionnaires were filled out by Focus and subsequently signed by Investor #10 and Investor #11.

Investor #10 and Investor #11 began investing with Focus and Rowe in 2009. Investor #10 and #11 incurred significant losses after being solicited by Rowe to participate in his various leveraged and inverse ETF strategies. Rowe charged Investor #10 and #11 an increased fee for opting to take part in these ETF strategies versus his traditional account management services. Investor #10 and #11 maintain that Rowe failed to disclose that this increase in fees for participation in his ETF strategies was being assessed across their entire account, including the funds invested in a money market. Investor #10 and #11 further maintain that Rowe failed to disclose how inverse and leveraged ETFs work or the risks associated with them. A combined analysis of Investor #10 and #11's accounts show losses of approximately fifty-six thousand, two hundred and twenty-five dollars ($56,225) from April 2009 through November 2011.

STATEMENT OF LAW

III. The Staff of the Bureau alleges the following issues of law:

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.

2. Pursuant to RSA 421-B:4, V, a person who is an investment adviser or investment adviser 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 adviser agent shall not engage in unethical business practices which constitute violations of paragraph I, including the following:

   (a) 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 on the basis of information furnished by 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;

   (h) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser agent, or any employee of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such services, or omitting to state a material fact necessary to make the statements made regarding

qualifications, services or fees, in light of the circumstances under which they are made, not misleading;

Rowe and Focus are in violation of these provisions.

3. RSA 421-B:10, III, provides that the secretary of state may issue an order requiring the persons to whom any license has been granted to show cause why the license should not be revoked. Rowe and Focus are subject to this provision.

4. 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 or, in the case of an investment adviser, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling investment adviser, has willfully violated or failed to comply with any provision of this title or a predecessor law or the Investment Advisers Act of 1940. Rowe and Focus are subject to this provision and they should be barred for failing to comply with RSA 421-B:4.

5. Pursuant to RSA 421-B:10, VI, the secretary of state may, upon hearing, assess an administrative fine of not more than $2,500 per violation, in lieu of or in addition to, an order to revoke or suspend any license or application. Rowe and Focus are subject to this provision.

6. Pursuant to RSA 421-B:22, IV, in any investigation to determine whether any person has violated or is about to violate this title or any rule under this title, upon the secretary of state's prevailing at hearing, or the person charged with the violation being found in default, or pursuant to a consent order issued by the secretary of state, the secretary of state shall be entitled to recover the costs of the investigation in addition to any other penalty provided under this chapter. Rowe and Focus are subject to this provision.

7. Pursuant to RSA 421-B:23, I, 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. Rowe and Focus are subject to this provision.

8. 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. Rowe and

Focus are subject to this provision.

9. Pursuant to RSA 421-B:26, III-a. Every person who directly or indirectly controls a person liable under paragraph I, II, or 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 for by law, be subject to such suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or an 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. Rowe and Focus are subject to this provision.

10. 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. Rowe and Focus are subject to this provision.

11. Pursuant to 11 U.S.C. 362(b)(4) the automatic stay in bankruptcy does not apply to exercises by the Bureau of its police and regulatory powers including the enforcement of judgments, other than money judgment, and including the assessment of penalties.

12. Pursuant to 11 U.S.C. 523(a)(7) and applicable case law, fines, penalties, and the costs of a disciplinary investigation by the Bureau are non-dischargeable in bankruptcy, and the Bureau has jurisdiction to so determine.

IV. In view of the foregoing, the Respondent agrees to the following undertakings and sanctions:

1. Respondents agree that that they have voluntarily consented to the entry of this Consent Order and represent and avers that no employee or representative of the Bureau has made any promise, representation or threat to induce its execution.

2. Respondents agree to waive their right to an administrative hearing and any appeal therein under this chapter.

3. Respondents agree to cease and desist from any alleged violations of RSA 421-B:3 and 421-B:4.

4. Respondents agree to the imposition and assessment of an administrative fine in the amount of five thousand dollars ($5,000) to the State of New Hampshire.

5. Respondents agree to the imposition and assessment of the cost of the investigation by the Bureau into this matter in the amount of fifteen thousand dollars ($15,000) as an additional penalty.

6. The Respondents agree to pay restitution to the NH Customers and all other customers similarly situated as determined by the NH Bankruptcy Court in cases numbered 12-13684-JMD and 12-13683-JMD. Should these bankruptcy cases be dismissed and not adjudicated for any reason in the NH Bankruptcy Court, this matter may be reopened administratively by the Bureau to determine the amount of restitution owed and who it is owed to, which may include customers not identified in this Consent Order.

7. Respondents agree to be permanently barred from any securities licensure in the State of NH.

8. Respondents agree that the five thousand dollar ($5,000) fine and fifteen thousand dollar ($15,000) cost recovery agreed to in undertaking number 4 and 5 above are non-dischargeable debts in the United States Bankruptcy Court and Respondents will not take a contrary position in the United States Bankruptcy Court. Respondents further agree that they will negotiate a reasonable payment plan with the Bureau for the twenty thousand dollars ($20,000) after any determination of discharge or withdrawal of the pending United States Bankruptcy Court matters (12-13684-JMD and 12-13683-JMD), but no later than one year from the date of this Consent Order. The Bureau reserves the right to re-open this matter if a payment plan is not agreed upon.

9. The Respondent may 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. However, nothing in this provision affects the Respondent's testimonial obligations or right to take contrary legal or factual positions in litigation or other legal proceedings in which the State of New Hampshire is not a party, but not including the non-dischargeable penalties discussed in undertaking number 8 above.

V. Based on the foregoing, the Bureau deems it appropriate and in the public interest to accept and enter into this Consent Order. THEREFORE, IT IS HEREBY ORDERED THAT:

1. Respondents shall cease and desist from any violations of the provisions of the act discussed above, specifically RSA 421-B:4.

2. Respondents are assessed an administrative fine in the amount of $5,000 and the costs of the investigation in the amount of $15,000. Respondents shall negotiate a payment plan for twenty thousand dollars ($20,000) after any determination of discharge or withdrawal of the pending United States Bankruptcy matters, but no later than one year from the date of this Consent Order.

3. Respondents shall pay restitution as stated above.

4. Respondents are barred from securities licensure in the State of NH.

5. Respondents shall comply with the above-referenced undertakings.

NRowe
Nicholas Rowe
on behalf of Respondents
(Please print name, title below:)

dated: 3.8.13 NR NR 3.8.13

Bureau of Securities Regulation
Barry Glennon, Director

dated: _____