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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 BRIEF IN OPPOSITION TO RESPONDENT'S BRIEF IN SUPPORT OF PETITION FOR REVIEW OF INITIAL DECISION**

Respondent Nicholas Rowe challenges the Initial Decision imposing a permanent associational bar. Rowe does not dispute that he is subject to an order of the New Hampshire Bureau of Securities Regulation. He does not dispute that the order bars him from engaging in the business of securities in New Hampshire, that it is a final order, or that the New Hampshire Bureau of Securities Regulation is a state securities commission. He does not dispute that the New Hampshire order is based on his violations of law prohibiting fraudulent conduct as specified in the Investment Advisers Act of 1940, or that at the time of that conduct that he was associated with an investment adviser. Instead, Rowe asks the Commission to ignore the Consent Order he signed in New Hampshire, the findings of that order, and his egregious fraudulent conduct described therein, and to "abandon its pursuit of Mr. Rowe in this matter...." Brief in Support of Petition for Review, p. 5. Rowe meets the legal requirements for an associational bar. His misconduct, abject denial of the wrongfulness of that misconduct, and the resulting harm justify the imposition of a permanent

associational bar. The Division respectfully requests that the Commission impose that permanent bar.

## I. BACKGROUND

### A. The New Hampshire Consent Order

Between 2001 and 2012, Rowe owned and operated an investment adviser, Focus Capital, Inc., also known as Focus Capital Wealth Management, Inc. He served as Focus' president and chief executive officer.

On March 12, 2013, the New Hampshire Bureau of Securities Regulation (the "Bureau") entered a consent order (the "Consent Order") against Respondent Nicholas Rowe.[1] According to that Consent Order, Rowe had completely ignored his customers' individual and specific risk tolerances. The Consent Order states, "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 Consent Order describes eleven different investors for whom Rowe made unsuitable investments, completely ignoring his customers' risk tolerances and investment horizons. It details how Rowe failed to disclose the risks of his "strategy" to two elderly widows who lost more than $900,000 combined, and how he charged his clients heightened, undisclosed fees for false reasons. The Consent Order concludes that Rowe is largely responsible for $2,376,087 in investment losses by his clients.

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[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.

### B. The Administrative Proceeding

On September 23, 2014, the Securities and Exchange Commission issued an Order Instituting Proceedings ("OIP") against Rowe pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"). The administrative law judge granted the Division leave to file a motion for summary disposition. *See Nicholas Rowe*, Admin. Proc. Rulings Release No. 2018 (Nov. 13, 2014). After completion of the summary disposition briefing by both parties, the administrative law judge issued an Initial Decision on February 27, 2015. The Initial Decision granted the Division's Motion for Summary Disposition and permanently barred Rowe from associating with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (collectively, "associational bar").

### C. The Petition for Review

On March 21, 2015, Rowe filed a Petition for Review of Initial Decision. The Petition attached a new affidavit purporting to be from Attorney Peter Tamposi. On April 10, 2015, the Division filed a Motion for Summary Affirmance. On April 15, 2015, the Commission (by the Office of General Counsel pursuant to delegated authority), granted Rowe's Petition for Review. Rowe filed his Brief in Support of his Petition for Review of Initial Decision on May 14, 2015, again attaching the Tamposi Affidavit as well as a copy of his previously-filed "Arguments Against Division's Motion for Summary Disposition."

## II. ROWE'S BASES FOR HIS PETITION ARE WITHOUT LEGAL MERIT.

### A. The "Opportunity for a Hearing" Provision of Section 203(f) Does Not Preclude a Grant of Summary Disposition Where Appropriate.

Respondent argues that the portion of the Advisers Act § 203(f) [15 U.S.C. § 80b-3(f)] requiring "notice and opportunity for hearing" requires the Commission to allow him to present live testimony and exhibits, and that the grant of summary disposition was contrary to this statute. This argument misunderstands what constitutes an opportunity for hearing. "It is well-established that the Commission's summary disposition procedures satisfy the 'notice and opportunity for hearing' requirement in the Commission's administrative proceedings." *China-Biotics, Inc.*, Exchange Act Release Nol. 70800, 2013 SEC LEXIS 3451, at *62 (Nov. 4, 2013). "The Commission's rule [Rule 250] reflects a well-established distinction between a hearing on the pleadings and an evidentiary hearing at which witnesses testify and are subject to cross-examination." *Kornman v. SEC*, 592 F.3d 173, 182 (D.C. Cir. 2010) (construing language of Advisers Act § 203(f)). The D.C. Circuit Court of Appeals has found that Advisers Act § 203(f) does not "require an evidentiary hearing where there is no genuine and substantial issue of fact that requires a hearing." *Id., citing John D. Companos & Sons, Inc. v. Food & Drug Admin.*, 854 F.2d 510, 518 (D.C. Cir. 1988).

Where, as here, Respondent has not raised a genuine and substantial issue of fact requiring a hearing, a decision on summary disposition is appropriate. The Commission has repeatedly upheld use of summary disposition in cases such as this, where the respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction. *See Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *40-41 (Feb. 13, 2009), *pet. denied* 592 F.3d 173 (D.C. Cir. 2010); *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 SEC

LEXIS 236, at *19-20 & nn.21-24 (Feb. 4, 2008) (collecting cases), *pet. denied* 561 F.3d 548 (6th Cir. 2009). The Commission has opined that the circumstances in which summary disposition in a follow-on proceeding involving fraud is not appropriate "will be rare." *John S. Brownson*, Exchange Act Release No. 46161, 2002 SEC LEXIS 3414, at *9 n.12 (July 3, 2002), *pet. denied*, 66 F. App'x 687 (9th Cir. 2003).

**B. The Commission Is Entitled to Rely on the Factual Findings of the Consent Order In Deciding This Matter.**

Rowe protests the use of the factual findings of the Consent Order to find that he is eligible for an associational bar and that a permanent associational bar is the appropriate remedial sanction. First, Rowe argues that the Commission cannot rely on the Consent Order because "Mr. Rowe was forced to sign the Consent Order by use of threats of a fixed hearing, assuring an adverse outcome, and monetary damages so insurmountable that it threatened the very existence of Mr. Rowe and his wife."[2] But, Rowe may not use this proceeding to collaterally attack his Consent Order. *See Blinder, Robinson & Co.*, 837 F.2d 1099, 1108-09 (D.C. Cir. 1988); *James E. Franklin*, Exchange Act Release No. 56649, 2007 SEC LEXIS 2420, at *11 (Oct. 12, 2007), *pet. denied*, 285 F. App'x 761 (D.C. Cir. 2008); *Joseph P. Galluzzi*, Exchange Act Release No. 46405, 2002 SEC LEXIS 3423, at *10-11 (Aug. 23, 2002). A respondent may not re-litigate issues that were addressed in a previous civil proceeding against the 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

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[2] By signing the Consent Order, Rowe 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 at 9.

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. If Rowe believes that his Consent Order is the product of duress, his remedy is in the New Hampshire courts, not with the Commission.[3]

Second, Rowe appears to argue that he cannot be bound by the factual findings in the Consent Order. While the Consent Order did not affect Rowe's "right to take contrary legal or factual positions in litigation or other proceedings in which the State of New Hampshire is not a party," Consent Order at 10, Rowe's right to take such positions does not affect the application of factual preclusion where he unambiguously agreed not to deny the Consent Order's allegations. *See Siris v. SEC*, 773 F.3d 89, 96 (D.C. Cir. 2014) ("[T]he Commission's application of factual preclusion in the follow-on proceeding was appropriate because the judgment unambiguously barred [the respondent] from making any future challenges to the allegations."). Rowe could have put forward mitigating evidence concerning the circumstances surrounding his misconduct (yet did not). But Rowe is not permitted to re-litigate factual questions conclusively decided in the underlying proceeding, as he consented to the Consent Order and agreed not to deny any allegations in the order or create the impression that the order was without factual basis. *See Siris v. SEC*, 773 F.3d 89, 91, 95-96 (D.C. Cir. 2014); Consent Order at 10. Thus, the Commission may rely on the factual findings of the Consent Order and apply them to the finding of applicability of

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[3] In the unlikely event that Rowe convinces a court to overturn the Consent Order he signed, he could request that the Commission vacate his associational bar. *See, e.g., Jilaine H. Bauer, Esq.*, Securities Act Release No. 9464, 2013 LEXIS 3132 (Oct. 8, 2013); *Kenneth E. Mahaffy, Jr.*, Exchange Act Release No. 68462, 2012 SEC LEXIS 4020 (Dec. 18, 2012).

Section 203(f) and the suitability of a remedial sanction, and Rowe is prohibited from denying or challenging the Consent Order's findings.

Third, Rowe attacks the factual findings of the Consent Order and the process that led to it. *See* Respondent's Ex. A to Rowe's Arguments Against Division's Motion for Summary Disposition,[4] pp. 1-3 (purportedly quoting various individuals connected with the NH Bureau of Securities Regulation proceedings, the FINRA arbitration, and his own lawyer), p. 4 (unsupported assertions concerning Respondent's view of the NH proceedings against him and the SEC); pp. 7-9 (challenging various portions of the NH Consent Order); pp. 10-13 (concerning Respondent's decision to sign the Consent Order); pp.13-20 (challenging the factual findings in the Consent Order and the veracity of those who provided evidence against him). Like Rowe's argument that he did not truly consent to the Consent Order, this argument is a collateral attack and an attempt to re-litigate the facts of the Consent Order, and is not permitted here. See, *e.g.*, *Jeffrey L. Gibson*, Exchange Act Release No. 57266 (Feb. 4, 2008), 2008 WL 294717.

Finally, Rowe states that reliance on the Consent Order "would make the SEC a party to the crimes or mistakes of the NH Bureau." In essence, Rowe claims that the Division in under an obligation to independently verify the findings of the Consent Order. Respondent's Brief, at 2, 3 ("The SEC ... looked to an inept or unlawful action by the state of New Hampshire. This approach denies Mr. Rowe a fair hearing and cannot result in a just or fair result."). Rowe's argument ignores the statutory language of Advisers Act Sections 203(e)(9) and 203(f), authorizing

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[4] Attached to Respondent's Brief in Support of His Petition for Review of Initial Decision.

an associational bar based on a final order of a state securities commission that imposes an associational bar.

## III. THE STATUTORY BASIS TO IMPOSE AN ASSOCIATIONAL BAR HAS BEEN ESTABLISHED, WHICH RESPONDENT DOES NOT CONTEST.

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).

### A. At the Time of Rowe's Misconduct, He Was Associated with an Investment Adviser.

Between 2001 and 2012, Rowe owned and operated an investment adviser, Focus Capital, Inc., a.k.a. Focus Capital Wealth Management, Inc. Answer, Ex. 1 at 4 ("[T]he State of NH took action to bar Nicholas Rowe and his firm Focus Capital, Inc. from working in the investment field." & 5 (Rowe "owned a firm, Focus Capital, Inc. from about 2001-2012); Consent Order at 1 ("Prior to June 25, 2012, Focus was a federally covered investment adviser that was required to be registered with the ... Commission ... and had been notice filed with the State of New Hampshire as required under RSA 421-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 advisor representative for Focus."); *see also id.* at 7; OIP at 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 Rowe's Answer). He was identified on Focus Capital's Forms ADV during the period 2007-2012 as its president and chief executive officer. OIP at 1 (not denied in Rowe's Answer); Form ADV, Schedule A, Focus Capital Wealth Management, Inc., Aug. 6, 2012, available at http://www.adviserinfo.sec.gov. Rowe's misconduct was from January 2007 to the entry of the Consent Order in 2013, and thus overlapped with his time as an investment adviser. Consent Order at 2.

**B. Rowe is Subject to a Final Order of a State Securities Commission.**

On March 12, 2013, the Bureau entered the Consent Order against Rowe. Consent Order at 11; OIP at 2 (not denied in Rowe's Answer). The Consent Order was based on an offer of settlement by Rowe and Focus Capital that the Bureau accepted. Consent Order at 1. Rowe signed the Consent Order on behalf of himself and Focus Capital. Consent Order at 11. Rowe admits he is subject to the Consent Order. Answer, p. 2,

The Consent Order is a final order. Consent Order at 9 ("Respondents agree to waive their right to an administrative hearing and any appeal therein under this chapter."); OIP, ¶ 2 (not denied in Respondent's Answer). Rowe has stated that he intends to seek judicial review of the Consent Order at a future date, after his bankruptcy case is resolved. Rowe's intention does not undo the Consent Order's status as a final order. *See John Francis D'Acquisto*, Advisers Act Release No. 1696, 1998 SEC LEXIS 91, at *7 n.9 (Jan. 21, 1998); *cf. Blinder, Robinson & Co. v. SEC*, 837

F.2d at 1104 n.6 ("[T]he fact that a judgment is pending on appeal ordinarily does not detract from its finality (and therefore its preclusive effect) for purposes of subsequent litigation.").

The Bureau is a "State securities commission (or agency or officer performing like functions)" within the meaning of Advisers Act Section 203(e)(9). 15 U.S.C. § 80b-3(e)(9); *see* 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).

### C. The Consent Order Bars Rowe from the Securities Business in New Hampshire.

The Consent Order bars Rowe from engaging in the business of securities in New Hampshire. Consent Order at 10 ("Respondents agree to be permanently barred from any security licensure in the State of New Hampshire.") & 11 ("Respondents are barred from securities licensure in the State of NH."); *see* N.H. Rev. Stat. Ann. § 421-B:6 ("It is unlawful for any person to transact business in this state as a broker-dealer, issuer-dealer, investment adviser, or agent unless such person is licensed under this chapter.")

### D. The Consent Order is Based on Violations of Anti-Fraud Securities Laws.

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 Rev. Stat. Ann. § 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 ("Respondents agree to cease

and desist from any alleged violations of RSA 421-B:3 and 421-B:4."). These legal violations on include N.H. Rev. Stat. Ann.§ 421-B:4, ¶ V(h), which prohibits:

> 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.

Consent Order at 7-8. The Consent Order is thus based on violations of laws that prohibit fraudulent, manipulative, or deceptive conduct as specified in Advisers Act Section 203(e)(9).

Respondent's brief offers unsupported arguments and assertions about the nature of the Bureau's actions and whether he truly consented to the Consent Order. He does not, however, deny:

1) that he was associated with an investment adviser. OIP at II.A.1 (not denied in Answer); 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.");

2) that an order was issued against him by the Bureau, a state securities commission. OIP, ¶ 2 (not denied in Answer); Answer, p. 2 (admitting he is subject to Consent Order but challenging the nature of his consent);

3) that the order barred him from engaging in the business of securities in New Hampshire; OIP at II.A.2-3 (not denied in Answer); 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"); or

4) that the order is based on violations of New Hampshire laws prohibiting fraudulent, manipulative, or deceptive conduct in the purchase and/or sale of securities. OIP at II.A.3 (not denied in Answer).

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

## IV. A PERMANENT ASSOCIATIONAL BAR IS THE APPROPRIATE 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.

### A. Rowe's Misconduct Was Egregious.

Rowe's actions were egregious. While Rowe 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. For example, Rowe failed to disclose the risks of his "strategy" to two elderly widows who lost more than $900,000 combined. Consent Order, pp. 3-4. The Consent Order concludes that Rowe is largely responsible for $2,376,087 in investment losses by his clients. *Id.* pp. 3-7.

Moreover, Rowe failed to tell his clients that he was assessing fees across clients' entire accounts, including funds invested in money markets. *Id.* pp. 4-7.

**B. Rowe's Misconduct Was Recurrent.**

Rowe's conduct 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.

**C. Rowe Acted With a High Degree of Scienter**

Rowe's misconduct demonstrates that he acted with scienter, "a mental state embracing intent to deceive, manipulate, or defraud." *Aaron v. SEC*, 446 U.S. 680, 686 n.5 (1980) (internal quotation marks omitted). Rowe knew he was engaged in a fraudulent and deceptive scheme and knew he was making repeated misrepresentations to his investment clients. The Consent Order is based on Rowe's violations of state law prohibiting these types of misrepresentations. Consent Order at 7-8 (citing N.H. Rev. Stat. Ann. § 421-B:4, ¶ V(h)).

Rowe knowingly gambled on risky investments, while charging his clients heightened undisclosed fees. He induced an elderly widow to invest money with him by boasting, dishonestly, that "he was the number one financial adviser in New Hampshire." Consent Order at 3. That lie resulted in the widow losing almost $800,000. *Id.* Rowe told at least five clients that he had to charge them a heightened fee so he could pay an unnamed "Wall Street" trader for "trading signals." Consent Order at 3-6. When one client "questioned Rowe further about the

identity of the Wall Street trader, Rowe explained 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." *Id.* at 5. Based on the findings of the Consent Order, which Rowe is precluded from denying, there can be no question that he acted with scienter and intended to defraud his clients.

### D. Rowe Provides No Assurances against Future Violations and No Recognition of the Wrongfulness of His Misconduct.

Rowe has neither recognized the wrongfulness of his conduct nor provided assurances against future violations. 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); Ex. A. to Brief in Support of Petition, p. 4 ("The verifiable facts found in the (honorable) expert testimony on risk .. show Mr. Rowe and his firm acted correctly and in his clients['] best interest.").

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. *See Christopher A. Lowry,* Investment Company Act Release No. 2052, 2002 SEC LEXIS 2346, at * 19 (Aug. 30, 2002) (failure to make assurances against future violations and to recognize wrongdoing demonstrates the threat of future violations), *aff'd,* 340 F.3d 501 (8th Cir. 2003).

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.

### E. Unchecked, Rowe Would Have the Interest and Opportunity to Continue His Violations And Commit New Ones.

Rowe is adamant that he has done nothing wrong. He fails to recognize the unsuitability of his trading strategies (involving leveraged and inverse ETFs for his moderate risk tolerance clients) and continues to claim that these strategies were less risky that the market as a whole. Answer at 2; Ex. A at 15. He fails to address any of the misrepresentations he made to his investors. And his conduct took place over a period of at least six years for at least eleven investors. If Rowe is not subject to a permanent associational bar, he will have the interest and opportunity to resume his fraudulent schemes with new victims.

### F. An Associational Bar Will Be Effective Deterrence.

Associational bars have long been considered effective deterrence. *See Guy P. Riordan,* Exchange Act Release No. 61153, 2009 SEC LEXIS 4166, at *81 & n.107 (Dec. 11, 2009) (collecting cases), *pet. denied,* 627 F.3d 1230 (D.C. Cir. 2010). In this case, a permanent, associational 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.

## V. CONCLUSION

For all of the foregoing reasons, the Commission should find that an associational bar is authorized under Advisers Act Section 203(f) and that a permanent associational bar against Respondent Rowe is the appropriate sanction and in the public interest. Accordingly, the Division requests that the Commission permanently bar Rowe from associating with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating agency.

Respectfully submitted,

**DIVISION OF ENFORCEMENT**

By its attorneys,

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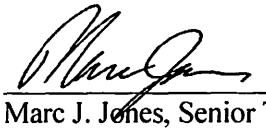
Date: June 15, 2015

**Certificate of Service**

I certify that on June 15, 2015, in addition to filing the same with the Secretary of the Commission, I caused true and correct copies of the foregoing to be served on the following parties and other persons entitled to notice by overnight mail delivery to the following addresses:

Nicholas Rowe
30 Van Dyke Rd.
Hollis, NH 03049
(Respondent)



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June 15, 2015

**By Fax and 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's Opposition to the Respondent's Brief in Support of Petition for Review.

Very truly yours,

Marc J. Jones

Enclosures

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