

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 9440 / August 13, 2013**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 70165 / August 13, 2013**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3647 / August 13, 2013**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15413**

**In the Matter of**

**RICHARD D. HICKS,**

**Respondent.**

**CORRECTED ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTION 8A OF THE SECURITIES ACT OF  
1933, SECTIONS 15(b) AND 21C OF THE  
SECURITIES EXCHANGE ACT OF 1934  
AND SECTIONS 203(f) AND 203(k) OF THE  
INVESTMENT ADVISERS ACT OF 1940  
AND NOTICE OF HEARING**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Richard D. Hicks (“Respondent” or “Hicks”).

**II.**

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

**Richard D. Hicks** (“Hicks”), 51, is a resident of Tyler, Texas. He is the founder and controlling person of Elder Advisory Services, LLC (“Elder Advisory”). He and his wife are its only members. Hicks has never held a securities license. He has operated Elder Advisory and its predecessor business since 1995.

B. OTHER RELEVANT ENTITIES

1. **Elder Advisory Services, LLC**, is a Texas limited liability company located in Tyler, Texas and owned by Hicks and his wife. Elder Advisory’s business involves assisting people whose family members need to enter care facilities, in protecting estate assets and qualifying for Medicaid benefits. It has never been registered as either a broker-dealer or investment adviser. In 2001 Hicks consented to an injunctive order issued by the Texas Supreme Court, for practicing law without a license through Elder Advisory.<sup>1</sup> Thereafter, he affiliated with an attorney in Tyler whose firm agreed to review all recommendations of a legal nature made through Elder Advisory.

In June 2013, the attorney discovered that Hicks had been using his name to provide legal advice to Elder Advisory clients without his knowledge. He obtained an ex parte temporary restraining order against Hicks, and Hicks agreed to a temporary injunction.<sup>2</sup>

2. **National Note of Utah, LC** (“National Note”) is a Utah limited liability company formerly with its principal place of business in West Jordan, Utah. National Note claimed to purchase, manage, and sell real property and also buy and sell loans backed by real property interests. From at least 2004 to mid-2012, National Note sold over \$100 million in promissory notes to approximately 600 investors in a purported Regulation D offering. National Note promised investors a guaranteed return of 12% a year, paid quarterly from the company’s profits from real estate investments and lending. It raised these new investor funds, however, by means of a private placement memorandum (“PPM”) and sales materials that contained material misstatements and omissions.

By the fall of 2010, National Note was having difficulty making some payments to investors. By approximately September 2011, it was no longer able to make payments on a timely basis, and within a few months it had ceased making payments altogether. On June 25, 2012, the Commission filed an emergency action against National Note and its principal in federal district court, alleging that National Note was a widespread offering fraud and Ponzi scheme.<sup>3</sup> On August 17, 2012, National Note and its principal consented to a preliminary injunction in that case. The assets of both continue to be subject to a freeze, and a receiver is in control of the company’s business.

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<sup>1</sup> Unauthorized Practice of Law Committee for the Supreme Court of Texas v. Richard Hicks, Individually and d/b/a Elder Advisory Services, Case No. 01-0118B.

<sup>2</sup> Peter G. Milne vs. Richard Hicks et al., cause no. 13-1388B, 114<sup>th</sup> Judicial District, Smith County, TX.

<sup>3</sup> SEC v. National Note of Utah, LC, Civil Action No. 2:12-cv-00591 (D. Utah).

### C. FACTS

1. Between December 2006 and February 2012, Hicks offered and sold over \$1.8 million of National Note securities to 12 investors. Their investments came largely from their savings and retirement funds.

2. Hicks offered and sold these securities without a registration statement being filed or in effect.

3. Hicks first learned of National Note in 2005 or 2006 from a personal friend who was a registered representative at a brokerage firm. This friend explained to Hicks that he himself would not be permitted to sell this kind of investment by his firm. This was a potential indication that National Note was not a sound investment.

4. Hicks called National Note and obtained its sales materials, which consisted of a folder containing a glossy brochure and a copy of its PPM. He then provided the PPM and sales brochure to potential investors.

5. Hicks located potential investors in National Note through his company, Elder Advisory. He used a questionnaire to gather background information from new clients, including detailed information regarding the client's assets, in order to determine the client's eligibility for Medicaid. He then created a recommendation for the client. In the course of reviewing his clients' estates, he was also able to gather information about their retirement funds and other assets.

6. Beginning in 2006, Hicks began recommending to some of his clients that they invest in National Note. Hicks stressed to them that they were going to need National Note's purported 12% guaranteed return in order to afford nursing homes for themselves or their family members.

7. Of the 12 investors Hicks placed in National Note, at least half were not accredited and were also unsophisticated. Hicks never discussed accreditation with his clients and did not himself understand the concept. Nevertheless, he filled out the National Note accreditation questionnaire for most of his clients.

8. Hicks also acted as purchaser representative under Regulation D for at least three investors. In the Purchaser Representative Questionnaire Hicks filled out and signed for his clients, he made the following misrepresentations:

- a. that he had had prior experience in advising clients with respect to investments similar to National Note;
- b. that he, either alone or together with the investor, had such knowledge and experience in financial and business matters generally and in similar investments in particular so as to be capable of evaluating the merits and risks of the proposed investment; and

- c. that he had disclosed to the investor all compensation he was to receive from National Note.

9. Hicks had been told by his friend in the brokerage industry that National Note investors had a collateral interest in real property to secure their investment. Although he only received such a collateral document from National Note for the first few of his clients, Hicks assumed that all his clients had such a security interest. He took no steps to verify this assumption, however.

10. National Note paid Hicks a commission of 2% of the amount invested by people he solicited, for a total of \$33,591 in commissions. Hicks did not tell his clients that National Note was paying him a commission.

11. Hicks provided his clients with the National Note sales packet, which included its sales brochure, the PPM and other related documents. These materials, however, contained the following material misrepresentations:

- a. the brochure, PPM and attached financial statements represented that National Note paid investor returns from the profits it earned from its real estate business; but in reality National Note was a Ponzi scheme;
- b. the brochure and PPM stated that National Note was able to guarantee its investors 12% annually because it was successfully investing the funds in projects earning annual returns of 15-20%, but in fact National Note was earning no such returns;
- c. the PPM, and the promissory notes investors received, stated that investor funds were secured by notes and trust deeds and/or security agreements secured by real estate, mobile homes and/or vehicles. This was untrue. Investors had no lien or security interest and were unsecured creditors;

12. The National Note materials also omitted to state material facts:

- a. National Note was insolvent; and
- b. since approximately 2010, National Note's real estate transactions had been exclusively with related parties.

13. In addition to giving National Note's PPM and brochure to prospective investors, Hicks repeated some of the above misrepresentations to his clients. He told them that National Note made its money in real estate; that their investments would be collateralized; and that they would receive a 12% return, guaranteed.

14. National Note's claim of a guaranteed 12% return was too good to be true, and Hicks repeated it to potential investors without a reasonable basis to believe that the claimed rate of return was true.

15. The National Note PPM Hicks gave his clients included financial statements that were unaudited and out of date. Hicks never requested additional financial statements from National Note.

16. National Note was an unsuitable investment for Hicks' elderly clients. Hicks knew that his clients were seeking to preserve assets to meet care facility costs, and in many cases were investing their retirement savings. By contrast, National Note was an extremely speculative, unsecured investment.

17. In October 2010, the note held by a client of Hicks matured. That client had decided that he wanted National Note to return his \$500,000 principal. Hicks and the client contacted an employee of National Note together to request the return of the principal; however, the National Note employee responded that National Note was unable to return the client's principal at that time. When the client contacted Hicks shortly thereafter, Hick informed his client that National Note was having cashflow problems and could not return the principal. Hicks' client never received even a partial return of his principal.

18. Consequently, Hicks was aware, as early as October 2010, that National Note did not have sufficient funds to make payments to certain investors. Nevertheless, he subsequently solicited two clients to invest without mentioning this material fact. One of these clients invested \$229,000 in November 2010. The other, who was an existing National Note investor, made an additional principal investment of \$25,000 in January 2011.

19. By approximately September 2011, National Note was no longer able to make payments on a timely basis, and within a few months it had ceased making payments altogether.

20. From the fall of 2011 through the spring of 2012, Hicks exchanged numerous e-mails with National Note inquiring as to when his clients could expect their interest payments. He explained that his clients were anxiously awaiting these payments. Nevertheless, he solicited one more client to invest in National Note without telling him that National Note was no longer making payments. This client invested \$55,000 in February 2012.

#### D. VIOLATIONS

1. As a result of the conduct described above, Respondent willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.

2. As a result of the conduct described above, Respondent willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct on the part of an investment adviser.

3. As a result of the conduct described above, Respondent willfully violated Sections 5(a) and 5(c) of the Securities Act which prohibits the sale of unregistered securities.

4. As a result of the conduct described above, Respondent willfully violated Section 15(a) of the Exchange Act which prohibits acting as an unregistered broker.

### **III.**

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement and prejudgment interest, and civil penalties pursuant to Section 21B of the Exchange Act and Section 203(i) of the Advisers Act; and,

C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

D. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act and Sections 203(f) and 203(k) of the Advisers Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 5(a), 5(c) and 17(a) of the Securities Act, Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, and whether Respondent should be ordered to pay disgorgement and prejudgment interest pursuant to Section 8A(e) of the Securities Act, Section 21C(e) of the Exchange Act and Section 203 of the Advisers Act.

### **IV.**

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against

him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy  
Secretary