

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9511 / January 14, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 71298 / January 14, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3755 / January 14, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15413

In the Matter of

RICHARD D. HICKS,

Respondent.

**ORDER MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER 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**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest to enter this Order Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order 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.

Following the institution of these proceedings on August 13, 2013, Respondent submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent consents to the Commission’s jurisdiction over him and the subject matter of these proceedings and to the entry of this Order Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order 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 as to Richard D. Hicks (“Order”), as set forth below.

III.

On the basis of this Order and the Respondent’s Offer, the Commission finds that:

Summary

These proceeding arise out of an investigation conducted by the Division of Enforcement (“Division”).

Respondent

1. Hicks, 51, is a resident of Tyler, Texas. He is the founder and controlling person of Elder Advisory Services, LLC (“Elder Advisory”). Hicks has never held a securities license. He has operated Elder Advisory and its predecessor business since 1995.

Other Relevant Entities

2. Elder Advisory Services, 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.¹ 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.²

3. 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 purported 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. 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

¹ 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.

² Peter G. Milne vs. Richard Hicks et al., Cause No. 13-1388B, 114th Judicial District, Smith County, TX.

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.³ On August 17, 2012, National Note and its principal consented to a preliminary injunction in that case. Both assets continue to be subject to a freeze, and a receiver is in control of the company’s business.

Background

4. 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.

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

6. 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.

7. 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.

8. 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.

9. 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.

10. 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

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

did not himself understand the concept. Nevertheless, he filled out the National Note accreditation questionnaire for most of his clients.

11. 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.

12. 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.

13. 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.

14. 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;

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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, Hicks 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.

21. 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.

22. 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.

23. 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.

24. As a result of the conduct described above, Hicks willfully violated Sections 5(a), 5(c) and 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and

Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

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

Disgorgement and Civil Penalties

26. Respondent has submitted a sworn Statement of Financial Condition dated September 29, 2013 and other evidence and has asserted his inability to pay disgorgement plus prejudgment interest or a civil penalty.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, to impose the sanctions agreed to in Respondent Hicks' Offer.

Accordingly, pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act and Sections 203(f) and 203(k) of the Advisers Act it is hereby ORDERED that:

A. Respondent Hicks cease and desist from committing or causing any violations 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 promulgated thereunder, and Sections 206(1) and 206(2) of the Advisers Act.

B. Respondent Hicks be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and,

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for

the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent shall pay disgorgement of \$33,591.00 and prejudgment interest of \$15,106.36, but payment of such amount is waived and the Commission is not imposing a civil penalty based upon Respondent's sworn representations in his Statement of Financial Condition dated September 29, 2013 and other documents submitted to the Commission.

E. The Division may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement, together with prejudgment interest thereon, and the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings of this Order; (2) assert that payment of disgorgement, prejudgment interest thereon, and a penalty should not be ordered; (3) contest the amount of disgorgement and prejudgment interest ordered; (4) contest the imposition of the maximum penalty allowable under the law; or (5) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Elizabeth M. Murphy
Secretary