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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND SECURITIES

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PA DEPARTMENT OF  
BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND  
SECURITIES, BUREAU OF SECURITIES  
LICENSING, COMPLIANCE AND  
EXAMINATIONS

v.

ANTHONY DIAZ

Docket No. : 150012 (SEC-OSC)

**NOTICE TO ANSWER AND REQUEST A HEARING**

You, ANTHONY DIAZ have the right to challenge the attached Order to Show Cause ("Order") by filing an Answer, in writing, with the Banking and Securities Commission ("Commission") within 30 days of the date of this Order as required by 1 Pa. Code § 35.37. If you do not file an Answer within 30 days, then you will waive your right to a hearing and the Commission may enter a final order against you.

Your Answer must be in writing, specifically admit or deny the allegations in the Order, set forth the facts you rely upon and state concisely the law you rely upon. General denials of the allegations set forth in the Order are not sufficient; you must support your denials with specific facts. Failure to support your denials with specific facts may cause the Commission to deem the facts in the Order as admitted and to enter a final order against you, without a hearing.

The Answer and any other documents must be filed with:

Linnea Freeberg, Docket Clerk  
Department of Banking and Securities  
17 N. Second Street, Suite 1300  
Harrisburg, PA 17101

Further, you must serve a copy of the Answer and any other documents on the person who signed the Order by providing a copy to his or her counsel indicated below:

John Chiappetta  
Assistant Counsel, Office of Chief Counsel  
Attorney ID #62902  
FOR: Commonwealth of Pennsylvania  
Department of Banking and Securities  
301 Fifth Avenue, Room 290  
Pittsburgh, PA 15222

Once you file your Answer, you will be notified of pertinent information such as the name of the presiding officer designated by the Commission to hear this matter and, if a hearing is scheduled, the date, time and location of the hearing. You have the right to be represented by an attorney.

All procedural matters will be governed by the Pennsylvania Administrative Agency Law, 2 Pa. C.S. §§ 501-508, 701-704, and the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§ 31.1.-35.251.

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Docket No. : 150012 (SEC-OSC)

ORDER TO SHOW CAUSE

You, ANTHONY DIAZ, are notified that the Department of Banking and Securities ("Department") through the Bureau of Securities Licensing, Compliance and Examinations ("Bureau") hereby **ORDERS YOU TO SHOW CAUSE** why the Banking and Securities Commission ("Commission") should not impose the sanctions and remedies described below. Specifically, this proceeding is instituted pursuant to 1 Pa. Code § 35.14 to determine:

- (1) whether the allegations set forth below are true; and
- (2) if these allegations are true, whether there has been a violation of the Pennsylvania Securities Act of 1972 ("1972 Act") or of the regulations promulgated thereunder; and
- (3) if so, whether the sanctions and remedies proposed by the Bureau should be imposed by the Commission.

The Bureau alleges the following facts and violations of law for the purpose of tentatively framing the issues for consideration by the Commission. The Commission may consider this matter directly, or may designate a hearing officer to issue a recommended decision prior to the Commission issuing a final order.

**STATEMENT OF THE PARTICULARS AND MATTERS**  
**CONCERNING WHICH THE BUREAU IS INQUIRING**

**PARTIES**

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the 1972 Act.
2. The Bureau is primarily responsible for administering and enforcing the 1972 Act for the Department.
3. The Bureau operates from the Department's main office located at 17 North Second Street, Suite 1300, Harrisburg, PA 17101.
4. Anthony Diaz ("Diaz"), CRD # 4131948 was, at all times material herein, an individual with a residential address at 12 Spring Hill Farm Court, East Stroudsburg, Pennsylvania 18302 and a business address at 140 Rose Street, Scotrun, PA 18355.
5. From on or about June 13, 2005 to April 1, 2009, Diaz was registered as an "agent" pursuant to Section 301 of 1972 Act, 70 P.S. § 1-301 for First Allied Securities, Inc. ("FAS") CRD # 32444.
6. From in or about November 7, 2007 to April 1, 2009, Diaz was registered as an "investment adviser representative" pursuant to Section 301 of 1972 Act, 70 P.S. § 1-301 for FAS.

7. On or about April 1, 2009, Diaz was permitted to resign from FAS.
8. From in or about April 1, 2009 to March 3, 2010, Diaz was registered as an “agent” pursuant to Section 301 of 1972 Act, 70 P.S. § 1-301 for SII Investments, Inc. (“SII”) CRD # 2225.
9. From in or about April 1, 2009 to March 3, 2010, Diaz was registered as an “investment adviser representative” pursuant to Section 301 of 1972 Act, 70 P.S. § 1-301 for SII.
10. On or about March 3, 2010, Diaz was “discharged” by SII for violating SII’s “prohibition against unauthorized trading.”
11. From in or about March 10, 2010 to April 5, 2011, Diaz was registered as an “agent” pursuant to Section 301 of 1972 Act, 70 P.S. § 1-301 for Matrix Capital Group, Inc. (“Matrix”) CRD # 33364.
12. On or about April 5, 2011, Diaz voluntarily terminated his affiliation with Matrix.
13. From in or about April 8, 2011 to August 12, 2011, Diaz was registered as an “agent” pursuant to Section 301 of 1972 Act, 70 P.S. § 1-301 for Kovac Securities, Inc. (“Kovac”) CRD # 44848.
14. From in or about April 12, 2011 to August 12, 2011, Diaz was registered as an “investment adviser representative” pursuant to Section 301 of 1972 Act, 70 P.S. § 1-301 for Kovac Advisors, Inc. (“Kovac IA”) CRD # 140808.
15. On or about April 5, 2011, Diaz was discharged by Kovac and Kovac IA due to complaints alleging that Diaz engaged in “unauthorized trades.”
16. From in or about August 30, 2011 to March 7, 2012, Diaz was registered as an “agent” pursuant to Section 301 of 1972 Act, 70 P.S. § 1-301 for IFS Securities. (“IFS”) CRD # 40375.

17. From in or about February 10, 2012 to March 7, 2012, Diaz was registered as an "investment adviser representative" pursuant to Section 301 of 1972 Act, 70 P.S. § 1-301 for IFS Advisory, LLC. ("IFS IA") CRD # 154680.

18. On or about March 7, 2012, Diaz was discharged by IFS and IFS IA for "failure to follow firm policy and procedures."

19. On or about March 14, 2012, an application for registration as an "agent" in Pennsylvania was filed for Diaz by Sandlapper Securities, LLC ("Sandlapper") CRD # 137906.

20. On or about April 5, 2012, while Diaz's application for registration as an "agent" in Pennsylvania with Sandlapper was pending and as a condition of approving that application, the former Pennsylvania Securities Commission (currently the Department), requested a written response from Sandlapper that would address the specific procedures that Sandlapper would employ for supervising Diaz's activities as an "agent" in lieu of his disclosure history on CRD.

21. On or about April 9, 2012, Sandlapper responded to the aforementioned request stating that: "As part of our agreement with Mr. Diaz he has been placed on 'Heightened Supervision' because of his disclosures."

22. On or about April 19, 2012, Diaz's application for registration in Pennsylvania was approved and Diaz was registered as an "agent" pursuant to Section 301 of 1972 Act, 70 P.S. § 1-301 for Sandlapper Securities, LLC ("Sandlapper") CRD # 137906.

23. From in or about August 6, 2012 to September 19, 2012, Diaz was registered as an "investment adviser representative" pursuant to Section 301 of 1972 Act, 70 P.S. § 1-301 for Sandlapper Wealth Management, LLC ("SL IA") CRD # 164443.

24. On or about September 19, 2012, Diaz was discharged by Sandlapper and SL IA for soliciting “sales of variable annuities to clients without being properly appointed with annuity company.”

25. On or about September 24, 2012, an application for registration as an “agent” in Pennsylvania was filed for Diaz by IBN Financial Services, Inc. (“IBN”) CRD # 42360.

26. On or about October 2, 2012, while Diaz’s application for registration as an “agent” in Pennsylvania with IBN was pending and as a condition of approving that application, the Department requested a written response from IBN that would address the specific procedures that IBN would employ to supervise Diaz’s activities as an “agent” in lieu of his disclosure history on CRD.

27. On or about November 14, 2012 and December 4, 2012, IBN provided written responses to the Department’s aforementioned request which included certain written procedures to supervise Diaz.

28. On or about December 5, 2012, Diaz’s application for registration in Pennsylvania as an “agent” pursuant to Section 301 of 1972 Act, 70 P.S. § 1-301 for IBN was approved.

29. On or about January 11, 2013, Diaz entered into an agreement with the New Jersey Office of the Attorney General, Bureau of Securities, whereby he agreed to, among other things, being subject to “strict supervision” by IBN, as a condition to his registration as an “agent” in the State of New Jersey.

30. On or about November 8, 2013, an application for registration as an “investment adviser representative” in Pennsylvania was filed for Diaz by IBN.

31. On or about June 11, 2014, Diaz agreed to the terms of a "Special Supervision Plan" with IBN, which had previously been in effect since November 6, 2013, pursuant to a Consent Agreement and Order between the Department and IBN, which was entered on July 1, 2014.

32. On or about July 11, 2014, Diaz's application for registration in Pennsylvania as an "investment adviser representative" pursuant to Section 301 of 1972 Act, 70 P.S. § 1-301 for IBN was approved.

33. In all, from in or about January 2000 to the present, Diaz has been registered as an "agent" or "investment adviser representative" pursuant to Section 301 of 1972 Act, 70 P.S. § 1-301 with approximately fifteen (15) different broker-dealers and investment advisers and has been discharged by eight (8) of these broker-dealers and investment advisers.

#### **FACTUAL ALLEGATIONS**

34. From at least in or about December 2006 through the present, Diaz has been engaged in the practice of selling alternative investment products to his securities clients which have specific suitability standards related to net worth and income and which are also subject to specific suitability requirements and guidelines established by the Department.

35. From at least in or about December 2006 through the present, in order to effectuate sales of the above mentioned products in compliance with these suitability requirements, Diaz has instructed numerous clients to sign blank documents and then provided false information concerning his clients' net worth, income and/or investment experience in order to make it appear that these clients met the net worth and or income requirements to invest.



36. As part of the aforementioned sales practice, Diaz failed to use reasonable diligence to know and retain the essential facts concerning his clients in regards to the sale of these products and also failed to explain that these products lacked liquidity, had no public market for resale and that distributions made to the clients may represent a return of their capital and not interest on their capital investment.

37. Diaz has engaged in the aforementioned practice in order to circumvent detection by the respective compliance departments for the broker-dealers with which he has been and is currently affiliated.

38. For the sale of these products, Diaz received a gross payout in the approximate amount of 7 to 8% of the amount invested.

39. A significant portion of Diaz's business as an agent has been generated from the sale of these products, such that from January 1, 2014 through October 18, 2014 these products have accounted for approximately two-thirds of Diaz's commissions.

40. On or about November 21, 2008, reflective of the business practice set forth above, findings from an FAS OSJ exam conducted at Diaz's office ("FAS 2008 Diaz Exam") noted the following:

**Issue:** Blank signed forms found in client file.

**Recommendation:** Though the DRP [Diaz] destroyed the documents during the audit and reviewed policies with his [Diaz] staff the Auditor must remind him [Diaz] that at no time may an office keep blank signed forms on file. The retention of blank signed forms opens the branch up to potential opportunities for fraud as well as increased regulatory scrutiny of the Advisors [Diaz] business."

41. On December 5, 2008, Diaz responded in writing to the above:

“As stated, the office destroyed the forms during audit. During the audit, the broker [Diaz] informed his staff the correct procedures for processing and retaining paperwork. After the audit, we received extensive training on all office procedures and informed failure to comply will result in termination. Staff reviewed all client files and found no other blank forms.”

42. On October 27, 2009, reflective of the practice set forth above, findings from an SII announced exam conducted at Diaz’s office noted the following:

“Upon review of various random client files, it was noted that various client files contained forms that were signed by the client but otherwise blank. Please note that this practice is prohibited at SII and one we take very seriously. Please make sure this practice is discontinued and rid any client files of blank forms that I may have missed.”

43. On December 28, 2009, Diaz responded in writing to the aforementioned:

“In regards to blank forms in the client Files, we have reviewed our files to make sure that we have removed all blank forms and have reviewed procedures with all office staff to ensure this no longer happening.”

#### **Form U-4 Allegations**

44. Pursuant to the Agent Registration Procedures set forth in Regulation 303.013(c) 10 Pa. Code §303.013(c), Diaz is required to take necessary steps to ensure that material information contained in his Uniform Application for Securities Industry Registration or Transfer Form U-4 (Form U-4) remains current and accurate.

45. Question 14M on Form U-4 states: “Do you have any unsatisfied judgments or liens against you?”

46. On or about June 20, 2013, Diaz filed an amended Form U-4 and checked "No" to question 14M.

47. At the time that he completed the amended Form U-4, Diaz was the subject of at least the following unsatisfied judgments or liens:

a. A state tax lien filed in or about May 21, 2013 at Monroe County, 4190CV2013 in the matter of *Commonwealth of Pennsylvania v. Anthony Diaz*, involving a state tax lien for unpaid personal income taxes for 2009 and 2011 in the total amount of \$7,688.92.

b. A state tax lien filed in or about May 21, 2013 at Monroe County, 4185CV2013, in the matter of *Commonwealth of Pennsylvania v. Anthony Diaz*, involving a state tax lien for unpaid personal income taxes for 2010 in amount of \$22,698.47.

48. On or about June 20, 2013, Diaz executed an amended Form U-4.

49. The amended Form U-4 was filed with FINRA and Pennsylvania on or about June 20, 2013.

50. Thereafter, from in or about June 20, 2013 through March 11, 2014, Diaz completed ten (10) amended Form U-4s and represented in executing all ten (10) amended Form U-4s that he would "update this form [Form U-4] by causing an amendment to be filed on a timely basis whenever changes occur to answers previously reported."

51. None of the ten (10) amended Form U-4s included the disclosure of the above liens.

52. On or about March 21, 2014, Diaz filed an amended Form U-4 to correctly reflect that he was subject to the liens set forth in paragraph 47.

53. On or about May 30, 2014, Diaz satisfied the tax lien set forth at paragraph 47(a) for Monroe County, 4190CV2013 in the matter of *Commonwealth of Pennsylvania v. Anthony Diaz*.

54. On or about December 5, 2014, a state tax lien was filed in Monroe County at docket 10250CV2014 in the matter of *Commonwealth of Pennsylvania v. Anthony Diaz*, for unpaid personal income taxes for 2012 in the total amount of \$26,314.89.

55. On or about March 17, 2015, the Department notified IBN of the existence of the lien mentioned in paragraph 54.

56. On or about April 1, 2015, Diaz amended his Form U-4 to correctly reflect that he was subject to the lien set forth in paragraph 54.

#### Sales Practices

#### Investor VM

57. On or about December 6, 2013, VM, a Pennsylvania resident ("PA Resident"), at the instruction of Diaz, executed an IBN Financial Services, Inc. New Account Information Form ("IBN NAIF") and became a securities client of Diaz.

58. At the time that VM executed the IBN NAIF she was unemployed, had an approximate net worth, excluding the value of her home, home furnishings and automobile, of \$115,000, of which approximately \$80,000 was in retirement accounts subject to substantial penalty and income tax upon immediate liquidation.

59. VM was never questioned by Diaz concerning her income or net worth.

60. Information entered on the IBN NAIF by Diaz or at Diaz' instruction indicated that VM had Income of \$102,000, net worth of \$420,000, net worth less real estate and autos of \$250,000 and securities of \$200,000.

61. Upon noticing that the information entered on the IBN NAIF was inaccurate, VM notified Diaz and his office staff and was informed:

- a. That she (VM) didn't need to worry about it;
- b. It didn't mean anything; and
- c. They were just numbers they had to provide for her (VM) to be able to invest.

62. The information entered in or about December 2013, on the IBN NAIF was false and caused the books and records of IBN to be false.

63. Diaz, who was responsible for ensuring that information concerning the income and net worth of VM was accurate, knew or should have known that the information entered in the IBN NAIF was false.

64. On or about January 3, 2014, Diaz submitted a \$10,000 purchase order for shares of common stock in the Carter Validus Mission Critical REIT, Inc. ("CV REIT Stock") on behalf of VM.

65. The prospectus ("CV REIT Stock Prospectus") for the CV REIT Stock sets forth investor suitability standards ("CV REIT Standards") which state that investors must have a net worth, excluding "the value of the investor's home, home furnishings and automobiles" of "either

- a. net worth of at least \$250,000 or
- b. an annual gross annual income of at least \$70,000 and a minimum net worth of at least \$70,000."

66. The CV REIT Stock Prospectus further provided that Pennsylvania investors must have a liquid net worth of at least 10 times their investment in the CV REIT Stock.

67. According to the terms of the CV REIT Stock Prospectus, VM did not meet the CV REIT Standards for investing in the CV REIT Stock and did not qualify as an investor.

68. Pennsylvania Department of Banking and Securities Division of Corporation Finance Release No. 89-CF-3 Real Estate Investment Trust Staff Review Guidelines sets forth investor suitability guidelines for REITs which supplements NASAA REIT guidelines (collectively "PA REIT Suitability Guidelines") filed under Section 205 and 206 of the 1972 Act and provides that such investments must have a minimum investor suitability requirement of \$70,000 income and \$70,000 net worth "(exclusive of home furnishings and automobiles) and a limitation that the investment be no more than 10% of an investor's net worth (exclusive of home furnishings and automobiles)." ("PA 10% Limit").

69. VM did not meet the PA REIT Suitability Guidelines for investing in the CV REIT Stock.

70. Upon noticing that she did not qualify as an investor for the CV REIT Stock based upon her income and net worth, VM brought this to the attention of Diaz and his office and was informed:

- a. That she (VM) didn't need to worry about it;
- b. It didn't mean anything; and
- c. They were just numbers they had to provide for her (VM) to be able to invest in the CV REIT Stock.

71. The information entered in or about January 2014, by Diaz or at Diaz's instruction for the purchase of CV REIT Stock for VM was false and caused the books and records of IBN to be false.

72. Diaz, who was responsible for ensuring that information entered for the purchase of the CV REIT Stock for VM was accurate, knew or should have known that the information was false.

73. On or about December 6, 2013, in conjunction with the purchase of the CV REIT Stock for VM, at Diaz's instruction, VM initialed and executed a blank IBN "Alternative Investment Acknowledgment" form ("IBN Ack Form").

74. The information subsequently entered by Diaz or at Diaz's instruction on the IBN Ack Form indicated that VM had a current net worth less principal residence of \$450,000 and that the investment in the CV REIT Stock was 2.2% of the portion of VM's "net worth (less my principal residence.)"

75. The information entered on or about December 6, 2013 on the IBN Ack Form for VM was false and caused the books and records of IBN to be false.

76. Diaz, who was responsible for ensuring that information entered on the IBN Ack Form for VM was accurate, knew or should have known that the information was false.

77. On or about February 3, 2014, Diaz submitted a \$10,000 purchase order for shares of common stock in American Realty Capital Global Trust, Inc. ("AR REIT Stock") on behalf of VM.

78. The prospectus for the AR REIT Stock ("AR REIT Stock Prospectus") sets forth investor suitability standards ("AR REIT Standards") which state that investors must have a net worth, excluding "the investor's home, home furnishings and automobiles" of "either:

- a. a net worth of at least \$250,000; or
- b. An annual gross income of \$70,000 and a minimum net worth of \$70,000."

79. According to the terms of the AR REIT Stock Prospectus, VM did not meet the AR REIT Standards for investing in the AR REIT Stock and did not qualify as an investor.

80. According to the PA REIT Guidelines, VM did not meet either the PA REIT Suitability Standards for investing in the AR REIT Stock.

81. Upon noticing that she did not qualify as an investor for the AR REIT Stock based upon her income and net worth, VM informed Diaz and his office staff that she did not qualify and was informed:

- a. That she (VM) didn't need to worry about it;
- b. It didn't mean anything; and
- c. They were just numbers they had to provide for her (VM) to be able to invest in the AR REIT Stock.

82. The information entered in or about January 2014 by Diaz or at Diaz's instruction for the purchase of the AR REIT Stock for VM was false and caused the books and records of IBN to be false.

83. Diaz, who was responsible for ensuring that information entered for the purchase of the AR REIT Stock for VM was accurate, knew or should have known that VM did not qualify and that the information was false.



84. At the time that VM invested in the CV REIT Stock and the AR REIT Stock, IBN Written Supervisory Procedures (IBN WSP) provided that "IBN Financial Services, Inc. also does not allow, without prior compliance department approval, of more than 5% of a client's liquid assets (not to include primary residence) be invested in one [of] these products. No more than 20% of a client's overall investment portfolio can be invested in these products without prior written approval by the compliance department."

85. Diaz had placed over 5% of VM's liquid assets in the CV REIT Stock without prior compliance department approval from IBN pursuant to the IBN WSP set forth in paragraph 84.

86. Diaz had placed over 5% of VM's liquid assets in the AR REIT Stock without prior compliance department approval from IBN pursuant to the IBN WSP set forth in paragraph 84.

#### **Investor BK and GK**

87. BK and GK, are a married couple and PA Residents, who opened FAS brokerage accounts with Diaz in 2006 and 2007.

88. On or about December 22, 2006, BK executed a First Allied Securities, Inc. – Account Information Forms ("FAS-AIF") for a BK individual account (BK Diaz A) with Diaz at FAS.

89. The information subsequently entered on the FAS-AIFs by Diaz or at Diaz's instruction for the BK Diaz A indicate that BK's net worth excluding primary residence was \$1.3 million and his liquid net worth was \$1 million and that he had 14 years of experience investing in bonds, equities and mutual funds.

90. In or about February 2007, BK & GK executed a First Allied Securities, Inc. – Account Information Forms (“FAS-AIF”) for a joint account (“BK/GK Jt Diaz Account”) with Diaz at FAS.

91. Information was subsequently entered by Diaz or at Diaz’ instruction on the FAS-AIF for the BK/GK Jt Diaz Account indicating that BK and GK had a net worth excluding primary residence of \$1.8 million and a liquid net worth of \$1.3 million and that they had 25 years of experience investing in bonds, equities and mutual funds.

92. The information entered in or about February, 2007, on the FAS AIF for the BK/GK Jt Diaz Account was false and caused the books and records of FAS to be false.

93. Diaz, who was responsible for ensuring that information entered on the FAS AIF for the BK/GK Jt Account was accurate, knew or should have known that the information was false.

94. In or about February 2008, information entered on a First Allied Securities NAF History Report (“FAS HR”) by Diaz or at Diaz’s instruction for an IRA account titled in the name of BK, indicate that BK’s approximate liquid net worth was \$1.3 million and his net worth exclusive of residence was changed from \$1.8 million to \$2.5 million.

95. In or about February 2008, BK and GK had a joint liquid net worth of approximately \$1,060,000, and BK’s liquid net worth was below \$1 million, of which \$850,000 was in a retirement account subject to substantial penalty and income tax upon immediate liquidation.

96. The information entered in or about February 2008, on the FAS HR for BK was false and caused the books and records of FAS to be false.

97. Diaz, who was responsible for ensuring that information entered on the FAS HR for BK was accurate, knew or should have known that the information was false.

98. In or about March 2008, information entered on the FAS HR by Diaz or at Diaz's instruction indicate that BK's net worth exclusive of residence was changed from \$2.5 million to \$3.5 million.

99. The information entered in or about March 2008, on the FAS HR for BK was false and caused the books and records of FAS to be false.

100. Diaz, who was responsible for ensuring that information entered on the FAS HR for BK was accurate, knew or should have known that the information was false.

101. In or about March 2008, information entered on the FAS HR by Diaz or at Diaz's instruction indicate that GK's approximate liquid net worth was changed from \$300,000 to \$1.3 million and her net worth exclusive of residence was changed from \$500,000 to \$3.5 million.

102. The information entered in or about March 2008, on the FAS HR for GK was false and caused the books and records of FAS to be false.

103. Diaz who was responsible for ensuring that information entered on the FAS HR for GK was accurate, knew or should have known that the information was false.

104. In or about March 2008, Diaz submitted a \$127,500 purchase order for shares of common stock in Inland American Real Estate Trust, Inc. ("IA REIT Stock") on behalf of BK for BK's IRA with FAS.

105. On or about March 10, 2008, in conjunction with the purchase order for the IA REIT Stock on behalf of BK, Diaz also instructed BK to place his initials and sign an "Investor Representation Letter" for the IA REIT Stock (IA REIT Stock Letter) which was left blank in the areas of the form concerning BK's income and net worth.

106. Information entered on the IA REIT Stock Letter by Diaz or at Diaz's instruction after BK initialed and signed the blank IA REIT Stock Letter, indicate that BK's net worth was \$3.5 million.

107. The information entered on the IA REIT Stock Letter in or about March 2008, was false and caused the books and records of FAS to be false.

108. Diaz, who was responsible for ensuring that information entered on the IA REIT Stock Letter for BK was accurate, knew or should have known that the information was false.

109. The prospectus for the IA REIT Stock ("IA REIT Stock Prospectus") sets forth investor suitability standards ("IA REIT Standards") which state that the IA REIT Stock would only be sold to residents of Pennsylvania if the investment does "not exceed 10%" of the investors "liquid net worth."

110. According to the terms of the IA REIT Stock Prospectus, BK did not meet the IA REIT Standards for investing in the IA REIT Stock and did not qualify as an investor.

111. The March 2008, purchase by Diaz of the IA REIT Stock for BK in the amount of \$127,500 was in excess of the PA 10% Limit in the PA REIT Suitability Guidelines.

112. BK did not meet the PA REIT Suitability Guidelines for investing in the IA REIT Stock.

113. In or about March 2008, Diaz submitted a \$127,500 purchase order for shares of limited liability company interests in ICON Leasing Fund Twelve, LLC ("ICON REIT Interests") on behalf of BK in BK's IRA with FAS.

114. The prospectus ("ICON REIT Interests Prospectus") for the ICON REIT Interests sets forth investor suitability standards ("ICON REIT Standards") which provide in part that:

"If you are a resident of...Pennsylvania your investment may not exceed 10% of your net worth"

115. According to the terms of the ICON REIT Interests Prospectus, BK did not meet the ICON REIT Standards and did not qualify as an investor.

116. The March 2008, purchase by Diaz of the ICON REIT Interests for BK in the amount of \$127,500 was in excess of the PA 10% Limit set forth in the PA REIT Suitability Guidelines.

117. BK did not meet the PA REIT Suitability Guidelines for investing in the IA REIT Stock.

118. During the FAS 2008 Diaz Branch Exam it was noted by the FAS compliance analyst that BK had invested in an "Alternative Investment product" which "by their very nature...are considered to be of a higher risk. Please revisit this NAF and review the account as the clients [BK] moderate risk tolerance raises concern."

119. On or about December 5, 2008, in response to the aforementioned, Diaz stated:

"Upon review, the client [BK] has less than 10% of his worth in alternative investment products; therefore, we [Diaz] feel his [BK] risk tolerance is fine at this time."

#### Investor TK

120. In or about December 2008, TK, a PA Resident, became a securities client of FAS with Diaz as the representative. At the time in question, TK was 87 years old.

121. On or about April 3, 2015, TK passed away.

122. For the 2008 tax year, TK had an annual income of approximately \$26,719, and she had approximately \$22,000 per year in medical expenses.

123. In or about December 2008, TK had an approximate liquid net worth of \$167,000.

124. In or about December 2008, information entered by Diaz or at Diaz's instruction on a First Allied Securities NAF History Report ("TK FAS HR") indicate that TK's income was \$49,500, her liquid net worth was \$225,000 and her approximate net worth exclusive of residence, was \$1,200,000.

125. The information entered in or about December 2008, on the TK FAS HR was false and caused the books and records of FAS to be false.

126. Diaz, who was responsible for ensuring that the information entered on the TK FAS HR was accurate, knew or should have known that the information was false.

127. BK is TK's son and was designated as her attorney-in-fact at all times material herein and was Diaz's contact person in dealing with all of her investments.

128. Diaz never questioned BK about TK's income or net worth.

129. On or about January 26, 2009, Diaz submitted a \$11,790 purchase order for ICON REIT Interests on behalf of TK.

130. The ICON REIT Standards provide in part that an investor must have:

- "(1) a net worth of at least \$60,000 plus \$60,000 of annual gross income; or
- (2) a net worth of at least \$225,000."

131. According to the terms of the ICON REIT Interests Prospectus, TK did not meet the ICON REIT Standards and did not qualify as an investor.

132. On or about January 26, 2009, Diaz submitted an \$11,790 purchase order for shares IA REIT Stock on behalf of TK.

133. The IA REIT Stock Prospectus further provides that purchasers have either “minimum net worth of at least \$250,000; or minimum annual gross income of at least \$70,000 and a minimum net worth of at least \$70,000.”

134. TK did not meet the IA REIT Standards for investing in the IA REIT Stock and did not qualify as an investor.

135. The January 26, 2009, purchase by Diaz of the IA REIT Stock Interests for TK in the amount of \$11,790 was not in compliance with the PA REIT Suitability Guidelines.

#### **Investors SJ & LJ**

136. On or about October 30, 2009, SJ, a PA Resident, met with KA (October 2009 SJ-KA Meeting), an agent of SII, who at that time was the registered representative on her (SJ) securities accounts with SII.

137. During the October 2009 SJ-KA Meeting, KA introduced SJ to Diaz and explained that KA and Diaz would be working together, for the purpose of handling the accounts of SJ and her husband, LJ. LJ is also a PA resident.

138. At the time of the October 2009 SJ-KA Meeting, KA provided SJ with an “Investment Summary” calculating the investment assets owned by SJ and LJ at the time which indicated that SJ and LJ had \$270,483 in combined net worth of which approximately \$202,379 was in retirement accounts subject to substantial penalty and income tax upon immediate liquidation.

139. According to the Investment Summary, SJ had an individual net worth of \$181,829 of which \$147,777 was in retirement accounts subject to substantial penalty and income tax upon immediate liquidation.

140. In or about December 2009, Diaz contacted SJ and requested that SJ come to his [Diaz] office so that Diaz could review and provide his [Diaz] opinion concerning the securities and securities related accounts of SJ and LJ.

141. On or about December 14, 2009, SJ met with Diaz in his office ("December 2009 SJ- Diaz Meeting") during which:

a. Diaz provided SJ with 52 pages of SII investment forms ("SII Forms"), including SII New Account Form/Application(s) ("SII NAF"), which were blank, advising SJ that he needed the signatures and initials of her and LJ so that he could work on their [SJ and LJ] existing accounts with SII along with KA; and

b. Diaz instructed SJ to sign and/or initial the SII Forms where they were highlighted in pink and to take the SII Forms home to her husband, LJ, to sign and/or initial where they [the SII Forms] were highlighted in blue.

142. During the December 2009 SJ-Diaz Meeting, Diaz never disclosed to SJ that he had purchased KA's book of business and that the real purpose of obtaining signatures and initials from SJ and LJ on the SII Forms was to transfer the SJ and LJ SII Accounts over to Diaz.

143. Diaz has never met with or spoken to LJ.

144. Diaz never questioned SJ or LJ concerning their net worth or income.

145. During the December 2009 SJ-Diaz Meeting, SJ and LJ had approximately \$378,000 in combined net worth, of which approximately \$322,000 was in retirement accounts, subject to substantial penalties and income tax upon immediate liquidation.

146. At the time in question, SJ had a net worth of approximately of \$254,000, of which approximately \$234,000 was in retirement accounts, subject to substantial penalties and income tax upon income upon immediate liquidation, and her income was approximately \$27,000.



147. The SII NAF's for SJ and LJ were submitted by Diaz to SII and falsely represented that SJ and LJ had a joint estimated liquid net worth of \$1million to \$2,499,999 million and that they individually had, respectively, an estimated liquid net worth of \$1 million to \$2,499,999 million.

148. The information entered on the SII NAF by Diaz or at Diaz's instruction in or about December 2009, for SJ was false and caused the books and records of SII to be false.

149. Diaz, who was responsible for ensuring that the information entered on the SII NAF for SJ was accurate, knew or should have known that the information was false.

150. The information entered in or about December 2009, on the SII NAF for LJ was false and caused the books and records of SII to be false.

151. Diaz, who was responsible for ensuring that the information entered on the SII NAF for LJ was accurate, knew or should have known that the information was false.

152. On or about February 8, 2010, Diaz's office mailed investment related paperwork to SJ and LJ, which included a Grubb & Ellis Apartment REIT Subscription Agreement ("GE Agreement"), SII Public Direct Participation Programs Suitability Checklist ("SII Checklist") and ICON Equipment and Corporate Infrastructure Fund Fourteen, L.P. Subscription Agreement ("ICON 14 Agreement") (the GE Agreement, the SII Checklist and the ICON 14 Agreement are collectively referred to as the "SJ/LJ February 2010 Forms"), with the written instruction:

"Please sign and initial all the pink highlighted areas and have Mr. ... [LJ] initial in all the blue highlighted areas."

153. Those areas on the SJ/LJ February 2010 Forms which Diaz had instructed SJ and LJ to initial, included those areas on the SJ/LJ February 2010 Forms representing that SJ met minimum net worth requirements for investing when she in fact, did not.

154. In or about February, 2010, SJ and LJ signed and initialed the SJ/LJ February 2010 Forms in reliance upon Diaz's instructions and mailed them back to Diaz's office.

155. When SJ mailed the SJ/LJ February 2010 Forms back to Diaz, all net worth information on the SII Checklist was blank.

156. The SII Checklist that was subsequently submitted by Diaz to SII, represented that SJ's net worth was \$1.5 million and that she had a liquid net worth of \$1 million.

157. The information entered by Diaz or at Diaz's instruction on the SII Checklist for SJ was false and caused the books and records of SII to be false.

158. Diaz, who was responsible for ensuring that the information entered on the SII Checklist was accurate, knew or should have known that the information was false.

159. On or about February 10, 2010, Diaz submitted a \$27,000 purchase order for limited partnership interests in the ICON Equipment and Corporate Infrastructure Fund Fourteen, L.P. ("ICON 14 Interests") on behalf of SJ.

160. The prospectus for the ICON 14 Interests ("ICON 14 Prospectus") sets forth investor suitability standards ("ICON 14 Standards") which state:

"When evaluating your suitability for this investment using the standards below, keep in mind that net worth does not include the value of your home furnishings, personal automobiles or your home..." and "You must meet our basic suitability requirements to invest. In general, you must have either:

- a. A net worth of at least \$70,000 plus \$70,000 of annual gross income; or
- b. net worth of at least \$250,000"; and
- c. an investment in the ICON 14 Interests by a Pennsylvania investor may not exceed 10% of the investor's net worth.

161. According to the terms of the ICON 14 Prospectus, SJ did not meet the ICON 14 Standards for investing in the ICON 14 Interests and did not qualify as an investor.

162. The February 2010, purchase by Diaz of the ICON 14 Interests for SJ in the amount of \$27,000 was not in compliance with PA REIT Suitability Guidelines.

163. On or about February 10, 2010, at Diaz's instruction, SJ signed and initialed the ICON 14 Agreement in connection with her purchase of the ICON 14 Interests and represented that she met the minimum qualifications to invest when in fact, she did not.

164. The ICON 14 Agreement was submitted by Diaz to SII and falsely represented that SJ met the minimum qualifications to invest in the ICON 14 Interests.

165. The information entered on the ICON 14 Agreement for SJ was false and caused the books and records of SII to be false.

166. Diaz, who was responsible for ensuring that the information entered on the ICON 14 Agreement for SJ was accurate, knew or should have known that the information was false.

167. The purchases effected herein by Diaz for VM, BK, TK and SJ, above, further reduced the liquid net worth of the aforementioned investors since the above mentioned investments had no public market, were illiquid and required holding periods anticipated to be approximately nine years.

### COUNTS

Section 305(a)(ix), 70 P.S. 1-305(a)(ix) and Regulation 305.019(c), 10 Pa. Code

### §305.019(c)

168. Paragraphs 1 through 167 are incorporated herein by reference as if set forth in their entirety.

169. By engaging in the acts and conduct set forth in paragraphs 34 through 43 and 57 through 167 of the Factual Allegations, Diaz has engaged in dishonest or unethical practices in the securities business or has taken unfair advantage of a customer in violation of Section 305(a)(ix) of the 1972 Act, 70 P.S. §1-305(a)(ix) and Regulation 305.019(c), 10 Pa. Code §305.019(c).

**Section 305(a)(ix), 70 P.S. § 1-305(a)(ix) and Regulation 305.019(c)(2)(iii), 10 Pa. Code**

**§305.019(c)(2)(iii)**

170. Paragraphs 1 through 169 are incorporated herein by reference as if set forth in their entirety.

171. By engaging in the acts and conduct set forth in paragraphs 34 through 43 and 57 through 167 of the Factual Allegations, Diaz, has engaged in dishonest or unethical practices in the securities business or has taken unfair advantage of a customer by maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited in violation of Section 305(a)(ix) of the 1972 Act, 70 P.S. §305(a)(ix) and Regulation 305.019 (c)(2)(iii), 10 Pa. Code §305.019(c)(2)(iii).

**Section 305(a)(ix) 70 P.S. § 1-305(a)(ix) and Regulations 305.019(c)(2)(vi),**

**305.019(c)(1)(xiv), 10 Pa. Code §§305.019(c)(2)(vi), 305.019(c)(1)(xiv)**

172. Paragraphs 1 through 171 are incorporated herein by reference as if set forth in their entirety.

173. By engaging in the acts and conduct set forth in paragraphs 34 through 43 and 57 through 167 of the Factual Allegations, Diaz, has engaged in dishonest or unethical practices in the securities business or has taken unfair advantage of a customer by effecting transactions in or

inducing the purchase or sale of securities by means of a manipulative deceptive or fraudulent device, practice, plan, program design or contrivance in violation of Section 305(a)(ix) of the 1972 Act, 70 P.S. §1-305(a)(ix) and Regulation 305.019 (c)(2)(vi), through Regulation 305.019 (c)(1)(xiv), 10 Pa. Code §§305.019(c)(2)(vi), 305.019(c)(1)(xiv)

**Section 305(a)(ix) 70 P.S. § 1-305(a)(ix) and Regulations 305.019(c)(2)(vi),**

**305.019(c)(1)(xxi), 10 Pa. Code §§305.019(c)(2)(vi), 305.019(c)(1)(xxi)**

174. Paragraphs 1 through 173 are incorporated herein by reference as if set forth in their entirety.

175. By engaging in the acts and conduct set forth in paragraphs 34 through 43 and 57 through 167 of the Factual Allegations, Diaz, has engaged in dishonest or unethical practices in the securities business or has taken unfair advantage of a customer by failing to comply with FINRA Rule 2010 and 2090, and or their predecessor rules, in violation of Section 305(a)(ix) of the 1972 Act, 70 P.S. §1-305(a)(ix) and Regulation 305.019 (c)(2)(vi), through Regulation 305.019 (c)(1)(xxi), 10 Pa. Code §§305.019(c)(2)(vi), 305.019(c)(1)(xxi).

**Section 305(a)(ix) 70 P.S. § 1-305(a)(ix) and Regulations 305.019(c)(2)(vi),**

**305.019(c)(1)(xxii), 10 Pa. Code §§305.019(c)(2)(vi), 305.019(c)(1)(xxii)**

176. Paragraphs 1 through 175 are incorporated herein by reference as if set forth in their entirety.

177. By engaging in the acts and conduct set forth in paragraphs 34 through 43 and 57 through 167 of the Factual Allegations, Diaz, has engaged in dishonest or unethical practices in the securities business or has taken unfair advantage of a customer by failing to comply with investor suitability standards imposed as a condition of the registration of securities under section 205 or 206 of the act (70 P.S. §1-205 or §1-206), in connection with the offer, sale or purchase of a security in the Commonwealth of Pennsylvania, in violation of Section 305(a)(ix) of the 1972 Act, 70 P.S. §1-305(a)(ix) and Regulation 305.019 (c)(2)(vi), through Regulation 305.019 (c)(1)(xxii), 10 Pa. Code §§305.019(c)(2)(vi), 305.019(c)(1)(xxii).

**Violation of Section 401(a) of the 1972 Act, 70 P.S. §1-401(a)**

178. Paragraphs 1 through 177 are incorporated herein by reference as if set forth in their entirety.

179. By engaging in the acts and conduct set forth in paragraphs 34 through 43 and 57 through 167 above, Diaz has, in connection with the offer, sale or purchase of a security in the State, directly or indirectly employed a device, scheme or artifice to defraud, in wilful violation of Section 401(a) of the 1972 Act, 70 P.S. § 401(a).

**Violation of Section 401(b) of the 1972 Act, 70 P.S. §1-401(b)**

180. Paragraphs 1 through 179 are incorporated herein by reference as if set forth in their entirety.

181. By engaging in the acts and conduct set forth in paragraphs 34 through 43 and 57 through 167 of the Factual Allegations, Diaz has, in connection with the offer, sale or purchase of a security in the State, directly or indirectly, made untrue statements of material fact or omitted to

state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, in wilful violation of Section 401(b) of the 1972 Act, 70 P.S. §1-401(b).

**Violation of Section 401(c) of the 1972 Act, 70 P.S. §1-401(c)**

182. Paragraphs 1 through 181 are incorporated herein by reference as if set forth in their entirety.

183. By engaging in the acts and conduct set forth in paragraphs 34 through 43 and 57 through 167 of the Factual Allegations, Diaz has, in connection with the offer, sale or purchase of a security in the State, engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person, in wilful violation of Section 401(c) of the 1972 Act, 70 P.S. §1-401(c).

**Violation of Section 403 of the 1972 Act, 70 P.S. §1-403**

184. Paragraphs 1 through 183 are incorporated herein by reference as if set forth in their entirety.

185. By engaging in the acts and conduct set forth in paragraphs 34 through 43 and 57 through 167 of the Factual Allegations, Diaz has effected transactions in, or induced or attempted to induce the purchase or sale of, any security in the Commonwealth of Pennsylvania by means of a manipulative, deceptive or fraudulent scheme, device or contrivance, fictitious quotation, or in violation of the 1972 Act or any regulation or order thereunder, in wilful violation of Section 403 of the 1972 Act, 70 P.S. §1-403.

## SANCTIONS AND REMEDIES

WHEREAS, the Bureau respectfully requests the penalties and relief pursuant to its authority under the 1972 Act:

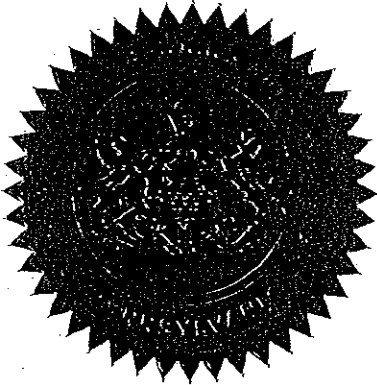
1. That an order be issued pursuant to Section 512 of the 1972 Act, 70 P.S. § 1-512, permanently barring Diaz from:
  - a. Representing an issuer offering or selling securities in this State;
  - b. Acting as a promoter, officer, director or partner of an issuer (or an individual occupying a similar status or performing similar functions) offering or selling securities in this State or of a person who controls or is controlled by such issuer;
  - c. Being registered as a broker-dealer, agent, investment adviser or investment adviser representative under Section 301 of the 1972 Act;
  - d. Being an affiliate of any person registered under Section 301 of the 1972 Act; or
  - e. Relying upon an exemption from registration contained in Section 202, 203 or 302 of the 1972 Act;
2. That an order be issued revoking the agent registration of Diaz;
3. That an order be issued revoking the investment adviser representative registration of Diaz;
4. That Diaz be ordered to effect a rescission offer to investors pursuant to Section 513 of the 1972 Act, 70 P.S. § 1-513;
5. That Diaz be ordered to pay the costs of the investigation pursuant to Section 602.1 (b) of the 1972 Act, 70 P.S. § 1-602.1 (b); and



6. That Diaz be ordered to pay an administrative assessment of up to \$100,000 for each act or omission constituting a wilful violation of the 1972 Act, pursuant to Section 602.1(c) of the 1972 Act, 70 P.S. § 1-602.1 (c).

**IT IS SO ORDERED.**

**FOR THE COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND SECURITIES  
BUREAU OF SECURITIES LICENSING, COMPLIANCE AND EXAMINATIONS**



James Klutinoty, Chief, Western Region  
Pennsylvania Department of Banking and Securities  
Bureau of Securities Licensing, Compliance and Examinations

Date: 4/17/2015

FILED

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND SECURITIES

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PA DEPARTMENT OF  
BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND  
SECURITIES, BUREAU OF SECURITIES  
LICENSING, COMPLIANCE AND  
EXAMINATIONS

v.

ANTHONY DIAZ

Docket No. : 15 0012 (SEC-OSC)

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing Order upon the party below, who constitute the only party of record in this proceeding, in accordance with the requirements of 1 Pa. Code §§ 33.35, 33.36 and 33.37:

**BY CERTIFIED AND FIRST CLASS MAIL**

Anthony Diaz  
12 Spring Hill Farm Court  
East Stroudsburg, PA 18302

&

Anthony Diaz  
140 Rose Street  
Scotrun, PA 18355

Dated this 29<sup>th</sup> day of April, 2015

Fran Beers, Administrative Officer  
Office of Chief Counsel  
FOR: Commonwealth of Pennsylvania  
Department of Banking and Securities  
Market Square Plaza  
17 North Second Street, Suite 1300  
Harrisburg, PA 17101  
(717) 787-1471