

**STATE OF VERMONT  
DEPARTMENT OF FINANCIAL REGULATION**

**IN RE:** )  
          ) **D.A. DAVIDSON & CO.** ) **DOCKET NO. 18-029-S**  
          ) **CRD#199** )

**STIPULATION AND CONSENT ORDER**

This Stipulation and Consent Order (the “Order”) is entered this 26<sup>th</sup> day of July, 2018 by and among D.A. Davidson and Co. (“Respondent” or “the Firm”), and the State of Vermont Department of Financial Regulation (“Department”).

WHEREAS, the Commissioner of the Department (“Commissioner”) is responsible for administering and enforcing the Vermont Uniform Securities Act (“Securities Act”), Title 9, Chapter 150 of the Vermont Statutes Annotated, and the Vermont Securities Regulations, Order 06-43-S (replaced by Rule S-2016-01, effective July 1, 2016), pursuant to which the Department has conducted a review of Respondent; and

The Department has concluded that Respondent violated the Securities Act and Regulations by failing to have adequate supervisory systems and written procedures resulting in one broker effecting 9 unregistered transactions in the State of Vermont; and

The Department has accordingly sought, and Respondent, without the necessity of further formal proceedings, has agreed to take corrective and remedial measures as more specifically described herein;

Solely for the purpose of this matter’s resolution, Respondent neither admits nor denies the Findings of Fact and the Violations of Law set forth in the Order, and consents to the entry of the Order by the Department; and

Respondent elects to permanently waive any right to a hearing and appeal under the Vermont Administrative Procedure Act, Title 3, Chapter 25 of the Vermont Statutes Annotated; the rules, regulations, and orders of the Commissioner; and any right it may have to judicial review by any court with respect to this Order.

NOW THEREFORE, the parties so stipulate, and the Commissioner makes findings and conclusions as follows:

**FINDINGS OF FACT**

1. The Commissioner is responsible for administering and enforcing the Securities Act.
2. Respondent is a brokerage firm with a principal place of business at 8 Third Street North, Great Falls, MT 59401-3104. Respondent has been a registered broker in Vermont since December 14, 1994.
3. Terence Douglas Welsh was an agent (the Firm's agents are referred to as "financial advisors" ("FA")) with the Firm from August 2013 to October 2017. Welsh was not registered in Vermont at any time during his affiliation with the Firm.
4. Respondent applied to register Welsh in Vermont but due to the proposed conditions of registration in Vermont, Respondent withdrew the application.
5. Welsh conducted business prior to and/or during the Department's review of the application. Welsh effected 11 transactions for two clients located in Vermont while working as an agent of Respondent.
6. Client One was a trust account that was registered in California. The trust had co-trustees, one of whom lived in Vermont. Welsh corresponded with the co-trustee in Vermont to effect trades between October 2016 and May 2017. Respondent discovered the communication between Welsh and the Vermont co-trustee and directed Welsh to stop the activity because he was not registered in Vermont. Respondent subsequently reassigned the trust account.
7. Respondent has the following procedures relating to unregistered activity:
  - a. Respondent's system generates an "FA Missing Registration Report" when an agent initiates a transaction for a client whose address of record is in a state where the agent is not registered. The agent is then directed to contact the Registration Department to register in that state. The system does not stop the transaction.
  - b. Respondent's process encourages agents to contact Respondent's Registration Department when a client submits an address change form and the new address is in a state where the agent is not registered.

c. In August 2017, Respondent enhanced its workflow system so that client address changes could be processed through the system as opposed to being processed manually. The advantage to processing in changes in the workflow system is that the system automatically flags an agent when a client's new address is in a state where the agent is not registered. The agent is still responsible for initiating the registration process.

8. Client Two lived in Utah but relocated to Vermont. On September 28, 2017, Welsh effected two transactions for Client Two after the client relocated to Vermont. Respondent was monitoring Welsh's transactions after discovering the issue with Client One and flagged and cancelled the two trades.

9. Despite Respondent's actions, Welsh effected nine unregistered trades for the trust account between October 2016 and May 2017. Respondent questioned him and reported Welsh's unregistered activity to the Department.

10. When Respondent questioned Welsh about the unregistered activity, Welsh voluntarily resigned his position with Respondent.

#### **CONCLUSIONS OF LAW**

11. The Vermont Uniform Securities Act prohibits an individual from transacting business in Vermont as an agent unless the individual is registered as an agent or is exempt from registration. 9 V.S.A. § 5402(a).

12. Broker-dealers must establish and maintain supervisory procedures reasonably designed to assist in detecting violations of, preventing violations of, and achieving compliance with the Vermont Uniform Securities Act, the Department's regulations, and other applicable laws, regulations, and rules of self-regulatory organizations. VSR § 3-3(a)(2).

13. A broker-dealer who fails to establish and maintain adequate supervisory procedures is deemed to have "failed to reasonably supervise" its agents in violation of 9 V.S.A. § 5412(d)(9).

14. Despite the ability to track unregistered transactions and to flag an agent when a client's address changes to a state where the agent is not registered, Respondents did not prevent the agent from initiating eleven unregistered trades, nine of which were completed, in violation of 9 V.S.A. § 5402(a).

15. Respondent's written supervisory procedures (WSPs) relating to trust accounts were inadequate because the trades effected for the co-trustee located in Vermont did not trigger a registration report because the account registration for the trust was listed in California. The failure to prevent the trades was a violation of VSR § 3-3(a)(2) and 9 V.S.A. § 5412(d)(9).

### **CONSENT ORDER**

NOW, THEREFORE, based on Respondent's stipulation, and on the basis of the Findings of Fact and Conclusions of Law, the Commissioner issues the following Order, to be fully complied with following receipt by the Commissioner of the duly executed Consent to Entry of Administrative Order:

1. Respondent will pay an administrative penalty in the amount of \$40,000 to the Vermont Department of Financial Regulation and contribute \$20,000 to the "VT DFR – Financial Services Education & Training Special Fund" within 10 days of the execution of this Stipulation and Consent Order.

2. Respondent will revise policies to ensure that when an unregistered Vermont transaction is identified, either (1) the transaction will be placed on hold until the agent's registration is verified or (2) the transaction will be effected by another agent who is registered in Vermont.

3. Respondent agrees to revise its policies and procedures to reasonably address the allegations in paragraph 15 of this Order and provide a written description of the revisions to the Department within ninety (90) days of this Order.

4. If Respondent fails or neglects to comply with any of the terms, conditions or undertakings set forth in this Order, the Department may, upon written notice to Respondent, institute any legal or administrative proceedings it deems appropriate to enforce same and to seek such other appropriate sanctions, and Respondent shall consent to the entry of judgment for any unpaid balance.

5. The Order is not intended to form the basis for any disqualifications under the laws of any state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands; under the rules or regulations of any securities or commodities regulator or self-regulatory organizations; or under the federal securities laws, including but not limited to, Section 3(a)(39) of the Securities Exchange Act of 1934; under the FINRA rules prohibiting continuance in membership or disqualification under other SRO rules prohibiting continuance in membership.

Furthermore, pursuant to U.S. Securities and Exchange Commission Rule 506(d)(2)(iii) of Regulation D, Rule 262(b)(3) of Regulation A and Rule 503(b)(3) of Regulation CF, disqualification under Rules 504 and 506(d)(1) of Regulation D and Rule 262(a) of Regulation A under the Securities Act of 1933 and Rule 503 of Regulation CF should not arise as a consequence of this Order.

6. The Order is not intended to be a final order based upon violations of any Vermont statute, rule, or regulation that prohibits fraudulent, manipulative, or deceptive conduct, and the Order waives any disqualification in the Vermont laws, or rules or regulations hereunder, including any disqualification from relying upon the registration exemptions or safe harbor provisions to which D.A. Davidson or any of its affiliates may be subject. The Order is not intended to form a basis of a disqualification under Section 204(a)(2) of the Uniform Securities Act of 1956 or Section 412(d) of the Uniform Securities Act of 2002.

This ORDER shall become effective immediately upon the date set forth below.

**BY ORDER OF THE COMMISSIONER**

Entered at Montpelier, Vermont, this 26<sup>th</sup> day of July, 2018.



MICHAEL S. PIECIAK, Commissioner  
Vermont Department of Financial Regulation

**CONSENT BY D.A. DAVIDSON & CO. TO THE ENTRY OF AN ORDER BY THE  
COMMISSIONER IMPOSING TERMS, CONDITIONS AND UNDERTAKINGS UNDER  
THE VERMONT SECURITIES LAWS**

1. D.A. Davidson & Co. (“Respondent”), hereby admits the jurisdiction of the Commissioner over the subject matter of this proceeding; and solely with respect to this matter, knowingly and voluntarily waives any and all rights to a hearing before the Commissioner or his designee, and all other procedures otherwise available under Vermont law, the rules of the Department, the provisions of Chapter 25 of Title 3 regarding contested cases, or any right he may have to judicial review by any court by way of suit, appeal, or extraordinary remedy with respect to the terms of the Order set forth herein.

2. Respondent acknowledges that this Order constitutes a valid order duly rendered by the Commissioner and agrees to be fully bound by it.

3. Respondent acknowledges and agrees that the Order is entered into freely and voluntarily and that no promise was made, nor was any coercion used, to induce the Respondent to enter into the Order.

4. Respondent acknowledges its understanding of all terms, conditions, and obligations contained in the Order and further acknowledges that should it fail to comply with any and all provisions of the Order, the Commissioner may impose additional sanctions and seek other appropriate relief subject to the Respondent’s right to a hearing pursuant to Vermont’s securities laws.

5. The Order is not intended to form the basis for any disqualifications under the laws of any state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands; under the rules or regulations of any securities or commodities regulator or self-regulatory organizations; or under the federal securities laws, including but not limited to, Section 3(a)(39) of the Securities Exchange Act of 1934; under the FINRA rules prohibiting continuance in membership or disqualification under other SRO rules prohibiting continuance in membership. Furthermore, pursuant to U.S. Securities and Exchange Commission Rule 506(d)(2)(iii) of Regulation D, Rule 262(b)(3) of Regulation A and Rule 503(b)(3) of Regulation CF, disqualification under Rules 504 and 506(d)(1) of Regulation D and Rule 262(a) of Regulation A under the Securities Act of 1933 and Rule 503 of Regulation CF should not arise as a consequence of this Order.

6. The Order is not intended to be a final order based upon violations of any Vermont statute, rule, or regulation that prohibits fraudulent, manipulative, or deceptive conduct, and the Order waives any disqualification in the Vermont laws, or rules or regulations hereunder, including any disqualification from relying upon the registration exemptions or safe harbor provisions to which D.A. Davidson or any of its affiliates may be subject. The Order is not intended to form a basis of a disqualification under Section 204(a)(2) of the Uniform Securities Act of 1956 or Section 412(d) of the Uniform Securities Act of 2002.

Dated this 19 day of ~~June~~ <sup>July 8AB</sup> 2018.

AGREED AND ACCEPTED BY:

Authorized agent for D.A. Davidson & Co.

Printed Name: JACQUELINE BEAUPREZ

Title: SVP & GENERAL COUNSEL

Signature: Jacqueline A Beauprez

BEFORE ME this 19<sup>th</sup> day of July, 2018, personally appeared Jacqueline Beauprez who acknowledged that he executed the foregoing for the purposes therein contained, and that such act of execution is his free act and deed.

VIRGINIA L CRAIG  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20024024536  
MY COMMISSION EXPIRES 07/31/2022

Virginia L. Craig  
Notary Public

My Commission Expires: 7-31-22

Agreed and accepted:  
William Carrigan

William Carrigan,  
Deputy Commissioner of Securities  
Vermont Department of Financial Regulation

