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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND SECURITIES

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COMMONWEALTH OF PENNSYLVANIA	:	ADMINISTRATIVE PROCEEDING
DEPARTMENT OF BANKING AND	:	DOCKET NO. 2013-01-01
SECURITIES, BUREAU OF SECURITIES	:	
LICENSING, COMPLIANCE AND	:	
ENFORCEMENT	:	DOCKET NO. 13 <u>0025</u> (SEC)
v.	:	
	:	
KENNETH P. WALASCHEK	:	

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking and Securities ("Department"), Bureau of Securities Licensing, Compliance and Enforcement ("Bureau") has conducted an investigation of the securities activities of Kenneth P. Walaschek ("Walaschek") pursuant to the Pennsylvania Securities Act of 1972, 70 P.S. §1-101, et. seq. ("1972 Act"). Based upon the results of the investigation, the Bureau has concluded that Walaschek has violated the 1972 Act. Walaschek, in lieu of litigation and additional investigation by the Bureau, admitting the allegations herein, and intending to be legally bound, hereby agrees to the terms of this Consent Agreement and Order ("Order").

**BACKGROUND**

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. At all times material herein, Walaschek was an individual with an address at 110 Poplar Lane, Portersville, Pennsylvania 16051.

4. At all times material herein, Walaschek was soliciting investors to invest in a foreign currency trading program ("Program") in the Commonwealth of Pennsylvania.

5. At all times material herein, Walaschek placed various "advertisements"<sup>1</sup> ("Ads" or, as individually referenced, "Ad") and "offered"<sup>2</sup> a "security"<sup>3</sup>, the Program, in the Commonwealth of Pennsylvania, as these terms are defined by Sections 102(a), 102(r)(ii), and 102(t) of the 1972 Act, respectively.

6. At all times material herein, Walaschek placed an Ad, a paper flier, on vehicles in a strip mall parking lot located within the Commonwealth of Pennsylvania. Specifically, this Ad read:

If your (sic) tired of return on investment being only 1% to 5%, I need to hear from you today. If you have between 18k and \$200k to allocate to a business opportunity, I can guarantee you at least a 20%+ return. Greater returns are available for higher capitalization of business, ask for details. I will do all the work and pay for all the business overhead. The worldwide conditions are perfect for this business, act today. Please call Ken at 412-860-9888 to schedule a 15 min. appointment and learn the details and see proof of these returns.

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<sup>1</sup> "Advertisement means any communication used in connection with a sale or purchase or an offer to sell or purchase a security which is publicly disseminated by means of print, radio, television, Internet or other media." 70 P.S. § 1-102(r)(ii)

<sup>2</sup> "Offer" includes "every direct or indirect attempt to offer or sell or dispose of, or solicitation of an offer to purchase, a security." 70 P.S. § 1-102(a)

<sup>3</sup> "Security" means "any note; stock; bond; debenture; evidence of indebtedness; share of beneficial interest in a business trust; certificate of interest or participation in any profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; limited partnership interest; certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; membership interest in a limited liability company of any class or series, including any fractional or other interest in such interest, unless excluded by clause (v); or, in general, any interest or instrument commonly known as or having the incidents of a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing." 70 P.S. § 1-102(t)

7. In or about April and June 2012, Walaschek also placed Ads in *The Butler Eagle*, a newspaper that is distributed in Butler County, Pennsylvania, which read, in pertinent part: “If you are depending on the returns from your CD’s, bonds or treasuries... Then I can guarantee you a 20% return on that investment”.

8. In or about April 2012, Walaschek also placed an Ad in *The Horse Trader*, which is a publication distributed in Commonwealth of Pennsylvania, which stated: “Would you like a six figure income? I am looking for a financial business partner. \$50k req. You set your own ROI. I do all the work. We split the profit 50/50. Call Ken at 412-860-9888”.

9. At all times material herein, in addition to placing the Ads as denoted in Paragraphs 6-8, Walaschek met with at least two Pennsylvania residents and offered for sale the Program.

10. The Pennsylvania Securities Commission<sup>4</sup> issued a Summary Order to Cease and Desist in 2006 (“2006 Order”) against Walaschek. The 2006 Order required that Walaschek cease and desist from offering for sale a foreign currency trading program in Pennsylvania.

11. At all times material herein, Walaschek was in violation of the 2006 Order.

12. At all times material herein, the Program was a “security” within the meaning of Section 102(t) of the 1972 Act, 70 P.S. § 1-102(t).

13. At all times material herein, Walaschek was the “issuer” of the Program within the meaning of Section 102(l) of the 1972 Act, 70 P.S. § 1-102(l).

14. The records of the Department disclose that the Program was (a) not registered under Section 201 of the 1972 Act, 70 P.S. § 1-201; (b) not exempt from registration under Section 202 of the 1972 Act, 70 P.S. § 1-202; and (c) not federally covered securities; and

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<sup>4</sup> Now known as the Pennsylvania Department of Banking and Securities.

further, the securities transactions relating to the Program are not exempt under Section 203 of the 1972 Act, 70 P.S. § 1-203.

15. At all times material herein, the Ads did not contain the disclosure set forth in Department Regulation 203.190, 64 Pa. Code § 203.190.

#### **VIOLATION**

16. By engaging in the acts and conduct set forth in paragraphs 3 through 15, Walaschek wilfully violated Section 201 of the 1972 Act, 70 P.S. § 1-201 and the 2006 Order, a prior order of the Department.

#### **AUTHORITY**

17. The Department has the authority in Section 512(a) of the 1972 Act to issue a statutory bar when it determines that a person wilfully violates the 1972 Act or any rule or order thereunder, *see* 70 P.S. §1-512(a) and 70 P.S. §1-102(w).

#### **RELIEF**

18. Pursuant to Section 512(a) of the 1972 Act, 70 P.S. § 1-512(a), the Department hereby PERMANENTLY bars Kenneth P. Walaschek from:

- a. Representing an issuer offering or selling securities in the Commonwealth of Pennsylvania;
- b. Acting as promoter, officer, director or partner of an issuer (or individual occupying a similar status or performing similar functions) offering or selling securities

in the Commonwealth of Pennsylvania 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;

d. Being an affiliate of any person registered under Section 301; and/or

e. Relying upon any exemption from registration contained in Sections 202, 203, or 302.

19. Kenneth P. Walaschek is ordered to comply with the 1972 Act, and Regulations adopted by the Department, and in particular, Section 201, 70 P.S. § 1-201.

20. Should Kenneth P. Walaschek fail to comply with any or all provisions of this Order, the Department may impose additional sanctions and costs and seek other appropriate relief subject to his right to a hearing pursuant to the 1972 Act.

#### **FURTHER PROVISIONS**

21. Consent. Walaschek hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Department's authority under the 1972 Act and agree that it understands all of the terms and conditions contained herein. Walaschek, by voluntarily entering into this Order, waives any right to a hearing or appeal concerning the terms, conditions and/or penalties set forth in this Order.

22. Entire Agreement. This Order contains the entire agreement between the Department and Walaschek. There are no other terms, obligations, covenants, representations, statements, conditions, or otherwise, of any kind whatsoever concerning this Order. This Order may be amended in writing by mutual agreement by the parties.

23. Binding Nature. The Department and Walaschek and all heirs and assigns of him intend to be and are legally bound by the terms of this Order.

24. Counsel. This Order is entered into by the parties upon full opportunity for legal advice from legal counsel.

25. Effectiveness. Walaschek hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order (“Effective Date”).

26. Other Enforcement Action.

a. The Department reserves all of its rights, duties, and authority to enforce all statutes, rules and regulations under its jurisdiction against Walaschek in the future regarding all matters not resolved by this Order; and

b. Walaschek acknowledges and agrees that this Order is only binding upon the Department and not any other local, state or federal agency, department or office regarding matters within this Order.

27. Authorization. The parties below are authorized to execute this Order and legally bind their respective parties.

28. Counterparts. This Order may be executed in separate counterparts, by facsimile and by PDF.

29. Titles. The titles used to identify the paragraphs of this document are for the convenience of reference only and do not control the interpretation of this document.

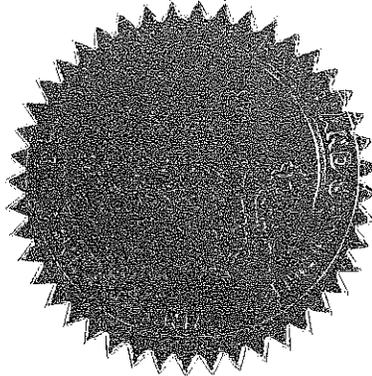
30. Finding. The Department finds that it is necessary and appropriate in the public interest and for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the 1972 Act to issue this Order.

WHEREFORE, in consideration of the foregoing, including the recital paragraphs, the Commonwealth of Pennsylvania, Department of Banking and Securities, Bureau of Securities, Licensing, Compliance and Enforcement and Kenneth P. Walaschak, intending to be legally bound, does hereby execute this Consent Agreement and Order.

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

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Aimee Toth  
Deputy Secretary for the Bureau of Securities

Date: 3/1/2013



**KENNETH P. WALASCHEK**

\_\_\_\_\_  
(Signature)

Kenneth P. Walaschek  
(Print Name)

Date: 2/28/13