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DEPARTMENT OF BANKING AND SECURITIES

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COMMONWEALTH OF PENNSYLVANIA	:	
DEPARTMENT OF BANKING AND	:	
SECURITIES, BUREAU OF SECURITIES	:	
LICENSING, COMPLIANCE AND	:	
ENFORCEMENT	:	
	:	
	:	
v.	:	DOCKET NO. : 120097 (SEC-ORD)
	:	
TAC FINANCIAL, INC.	:	(Formerly Administrative Proceeding
ROY H. EDER	:	Docket No. 2011-12-16)
DAVID JOHN NAVA d/b/a SURF FINANCIAL	:	
GROUP LLC	:	
WILLIAM "BILLY" SAYERS	:	
ROBERT J. McNULTY	:	
RHETT J. McNULTY	:	
	:	
Respondents	:	

FINAL ORDER

AND NOW, this ^{8th} day of May 2013, based upon the pleadings filed in this case, all matters of record, the Recommended Decision, consisting of Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order attached hereto prepared by Hearing Officer Mark S. Riethmuller, Esquire, the failure of Robert J. McNulty and Rhett J. McNulty¹ to file exceptions to or otherwise oppose the Hearing Officer's Recommended Decision, consisting of Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order, the Hearing Officer's Recommended Decision is **ADOPTED**, however, with the following modification:

The Proposed Finding of Fact contained in paragraph 13(b) pertaining to the bar imposed upon Respondent Nava by the NASD in 1994, which is underlined and set forth below, should be deleted from the Findings of Fact, since the evidence contained within the record does not

¹ This Final Order applies only to Robert J. McNulty and Rhett J. McNulty

support the legal conclusion that Respondent Robert J. McNulty and Respondent Rhett J. McNulty violated Section 401(b) by omitting this particular Finding of Fact. The remaining Findings of Fact in paragraph 13 are supported.

“13. Respondents TAC, Eder, Nava, Sayers, Robert J. McNulty and Rhett J. McNulty omitted to disclose the following material facts which would have been necessary in order to make the statements made by them, in light of the circumstances under which their statements were made, not misleading:

- a. In or about September 2008, the United States District Court in the Southern District of California discharged Respondent Eder of his personal debts through a Chapter 7 bankruptcy proceeding;
- b. Respondent Nava was permanently barred in 1994 by the NASD (now FINRA) from the securities business as a result of giving false information regarding his criminal conviction for petty theft on his Form U-4;
- c. In a final order from the United States Securities and Exchange Commission (SEC) dated October 10, 1995, Respondent Robert J. McNulty was permanently enjoined from violation of the antifraud, issuer reporting, books and records, and beneficial ownership provisions of the federal securities laws, and the provision prohibiting misrepresentations to auditors as a result of SEC allegations that Respondent Robert J. McNulty orchestrated a scheme to defraud investors using the proceeds of various securities offerings; and
- d. The Promissory Note was neither registered nor exempt from registration with the Commission pursuant to Section 201 of the 1972 Act.”

The omission of paragraph 13(b) above from the Findings of Fact does not effect the legal conclusions reached in the Recommended Decision that Respondent Robert J. McNulty and Respondent Rhett J. McNulty violated Section 201 and Section 401(b).

ORDERED AND DECREED that

The Summary Order to Cease and Desist issued on January 25, 2012 is **AFFIRMED** as against Respondent Robert J. McNulty and Respondent Rhett J. McNulty, to include conforming the pleadings to the evidence of record.



BY:

Date of Mailing: May 8th, 2013

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WILLIAM E. SPEAKMAN, JR.
MARK S. RIETHMULLER

WILLIAM T. ALLISON, JR., Retired

COPY

HOUSTON, PENNSYLVANIA, OFFICE
BY APPOINTMENT ONLY

January 17, 2013

RECEIVED

JAN 22 2013

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

DEPT OF BANKING AND SECURITIES
PITTSBURGH - 5th Avenue

Re: TAC Financial, Inc., Roy H. Eder, David John Nava d/b/a
Surf Financial Group LLC, William "Billy" Sanders,
Robert J. McNulty and Rhett J. McNulty, Respondents
Docket 120097 (SEC)
(formerly Docket No. 2011-12-16)

Dear Ms. Freeberg:

Enclosed is my Recommended Decision, consisting of Proposed Findings of Fact,
Proposed Conclusions of Law and Proposed Order, in connection with the above proceedings.

If there is any question or need for further information, please call.

Very truly yours,

SEAMAN, RIETHMULLER & ALLISON

By: _____

Mark S. Riethmuller
mrs@sra-lawfirm.com

MSR/gf

Enc.

Copy: Carolyn Mendolson
Robert J. McNulty
Rhett J. McNulty

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF BANKING AND SECURITIES

(formerly PENNSYLVANIA SECURITIES COMMISSION)

IN THE MATTER OF

TAC Financial, Inc.
Roy H. Eder
David John Nava d/b/a
 Surf Financial Group LLC
William "Billy" Sayers
*Robert J. McNulty
*Rhett J. McNulty

RESPONDENTS

ADMINISTRATIVE PROCEEDING
Docket No. 120097(SEC)
(formerly Docket No. 2011-12-16)

Hearing Officer's Recommended Decision
Proposed Findings of Fact,
Proposed Conclusions of Law and Proposed Order

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Date: January 17, 2013

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I. STATEMENT OF THE CASE

This is an administrative proceeding resulting from the January 25, 2012 issuance of a Summary Order to Cease and Desist by the Pennsylvania Securities Commission pursuant to the authority of Section 606(c.1) of the Pennsylvania Securities Act of 1972, 70 P.S. §1-606(c.1), (hereinafter "1972 Act"). This proceeding has been conducted in accordance with the procedures prescribed by the General Rules of Administrative Practice and Procedure (GRAPP), 1 Pa. Code 31.1, et seq.

The Summary Order to Cease and Desist was a Final Order as to Respondents David John Nava and William "Billy" Sayers. Securities Commission Staff reached a settlement with Respondents TAC Financial Inc. (hereinafter "TAC" or "TAC Financial") and Roy H. Eder (TAC's Chairman and CEO). On April 17, 2012, the Securities Commission issued Findings of Fact, Conclusions of Law and an Order in connection with Respondents TAC Financial and Roy H. Eder consistent with that settlement.

The Summary Order to Cease and Desist included findings that Respondents Robert J. McNulty and Rhett J. McNulty violated Sections 201 and 401(b) of the 1972 Act. In summary, the Order included findings that both had violated the 1972 Act by having offered an unregistered security for sale in Pennsylvania.

Both Robert J. McNulty and Rhett J. McNulty submitted timely requests for administrative hearings and on June 4, 2012, a hearing was held before the undersigned Hearing Officer in Pittsburgh. Both Robert J. McNulty and Rhett J. McNulty appeared and testified at the hearing without counsel.

The Brief of Commission Staff was filed on or about August 20, 2012 by Attorney Mendelson. In response to an October 3, 2012 email request from Rhett J. McNulty, the undersigned

advised Rhett J. McNulty by email on October 3, 2012, that it was agreed at the time of the hearing that his recommended Findings of Fact, Conclusions of Law and Order would be submitted by Friday, October 19, 2012. On October 19, 2012, by email, both Rhett J. McNulty and Robert J. McNulty submitted responses to Attorney Mendelson's Brief.

On or about October 26, 2012, Attorney Mendelson requested scheduling for the filing of a Post-Hearing Reply Brief. On November 6, 2012, Robert J. McNulty inquired of the undersigned, by email, as to whether the request by Attorney Mendelson in connection with the filing of a Reply Brief was part of the normal process and whether he and Rhett J. McNulty would have the opportunity to respond. By email, the undersigned advised Robert J. McNulty (with a copy to Rhett J. McNulty) that the General Rules of Administrative Practice and Procedure, Section 35.191, provide for the filing of a Reply Brief by the party with the burden of proof. The undersigned issued an Order allowing filing of the Post-Hearing Reply Brief on or before November 27, 2012. Attorney Mendelson filed the Post-Hearing Reply Brief on or about November 27, 2012 and it appears from the cover letter that copies were sent to both Respondents that same day.

No further requests from Robert J. McNulty or Rhett J. McNulty in connection with that Reply Brief or any further brief were received by the undersigned.

The role which the Pennsylvania Securities Commission had in this matter is now being fulfilled by the Pennsylvania Department of Banking and Securities. In November, 2012, the docket number changed from 2011-12-16 to 120097 (SEC).

II. DISCUSSION

The evidence, consisting of the testimony and exhibits presented during the June 4, 2012 hearing, is well summarized at pages 1 through 8 of Attorney Mendelson's August 20, 2012 Brief of Commission Staff under the heading "Abstract of the Evidence." A copy of that 8 page section of her Brief is attached hereto and incorporated herein by reference. This proceeding centers around Respondents' actions with respect to the offering for sale of a promissory note, labeled as "TAC FINANCIAL, INC. SENIOR PROMISSORY NOTE" (hereinafter "Note" or "Promissory Note"), a copy of which is in the record as part of Exhibit 1. The face amount of the Note is \$164,873.00 and the stated interest rate is 5%. However, the Note was described in an advertisement appearing through the Internet as being a "Discounted note" for sale at \$110,000.00, with "18% yearly returns" and "50,000 option shares at .50 cents each." The text of this advertisement is in the record as part of Exhibit 1.

Section 201 of the 1972 Act

The Order to Show Cause includes findings that Respondents Robert J. McNulty and Rhett J. McNulty (hereinafter, collectively, "Respondents McNulty") violated Section 201 of the 1972 Act. Section 201 of the 1972 Act provides:

"It is unlawful for any person to offer or sell any security in this State unless the security is registered under this act, the security or transaction is exempted under section 202 or 203 hereof or the security is a federally covered security."

In order to prove a violation of Section 201, it must be shown that (1) a respondent offered in Pennsylvania (2) a security (3) that was not registered under the 1972 Act, exempt under section 202 or 203 or federally covered. The Securities Commission, acting through its staff and counsel had the overall burden of proof and met this burden. All three of these elements were proven with respect to Respondents McNulty. Both violated Section 201 of the 1972 Act.

First, Respondents McNulty offered to sell the Note in Pennsylvania. An offer, as defined in Section 102(r)(ii) of the 1972 Act is "every direct or indirect attempt to offer or sell or dispose of, or solicitation of an offer to purchase, a security or interest in a security for value."

Communications to Securities Investigator Daniel Meinert, using the undercover name of _____, were direct attempts to sell or dispose of the Note in Pennsylvania. Respondent Robert J. McNulty telephoned Mr. Meinert at an undercover telephone number with a Pittsburgh, Pennsylvania area code. Mr. Meinert, a Pennsylvania resident, was in Pennsylvania at the time he participated in the call. It was stated during that call to Mr. Meinert that he could receive 20% interest per year through the Note, that the Note had a four year term, that the issuer of the Note was TAC Financial, Inc., that this was an opportunity for Mr. Meinert to get into a great company, and that it would not be long before TAC Financial, Inc. would have one of the top ten debit cards available to the public. Mr. Meinert was instructed in the steps for investing in the Note which included wiring funds to purchase it.

Likewise, Respondent Rhett J. McNulty's communications to Mr. Meinert were direct attempts to sell or dispose of the Note in Pennsylvania. On December 11, 2011, Rhett J. McNulty sent an email to Mr. Meinert indicating that in exchange for \$27,500, he would be receiving a Note in TAC Financial, Inc. for \$41,218.25 at 5% interest for four years. This was part of an exchange of several emails between Mr. Meinert and Rhett J. McNulty. On December 19, 2011, a copy of the Note along with a related agreement were emailed to Mr. Meinert by Rhett J. McNulty. Instructions on procedure for signing and for wiring the purchase price were also sent by Rhett J. McNulty by email. These emails were sent to Mr. Meinert while he was in Pennsylvania.

It is clear from the testimony and the exhibits that Respondents McNultys' communications were directed to a Pennsylvania resident, in Pennsylvania. Respondents McNulty each made a direct attempt to sell the Note in Pennsylvania. Accordingly, their actions constituted an offer under Section 102(r)(ii) of the 1972 Act.

Second, the Note is a Security under Pennsylvania law. Section 102(t) of the 1972 Act defines a security as, among other things, a “note” or “evidence of indebtedness.” The terms of the Note clearly indicate that TAC Financial would owe a debt of \$164,873.00 to whoever held the Note, along with an obligation to pay interest. The Note is evidence of indebtedness by TAC Financial. Respondents McNulty did not dispute this.

Third, the Note was not registered in Pennsylvania. A certification from the Securities Commission showing that the Note was not registered is part of the evidence as Exhibit 18. Respondents did not dispute this point either.

Fourth, no exemption from registration is applicable. The burden of proving the applicability of an exemption lay with Respondents McNulty. They did not offer any evidence as to the applicability of any exemption.

Fifth, the Note is not a federally covered security. The evidence does not indicate that there has been any registration or filing with the United States Securities and Exchange Commission in connection with the Note.

Section 401(b) of the 1972 Act

The Order to Show Cause also includes findings that Respondents McNulty violated Section 401(b) of the 1972 Act. Section 401(b) of the 1972 Act provides:

“It is unlawful for any person, in connection with the offer, sale or purchase of any security in this State, directly or indirectly:.....

b) To make any untrue statement of a material fact or to omit 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...”

As with Section 201, the Securities Commission, acting through its staff and counsel, had the burden of proof. As with Section 201, it met this burden. Neither Respondent advised Mr. Meinert that: 1) the Note had not been registered with the Pennsylvania Securities Commission, 2) Respondent, David John Nava, (who in speaking to Mr. Meinert about the Note described it as a good investment), had been permanently barred from working in the securities industry, 3) Respondent, Roy Eder, the CEO of TAC, had recently gone through bankruptcy and 4) Robert J. McNulty had been enjoined from certain activity in connection with securities because of matters in which he was once involved.

All four of these circumstances would be relevant, material facts in the mind of a reasonable investor. Three of the four circumstances would have been relevant in the reasonable investor's consideration of the credibility and reliability of people connected with the Note. The fourth, regarding bankruptcy, would be relevant in the reasonable investor's reflection about TAC's financial condition. All four are circumstances which a reasonable investor would consider important -- important specifically in his reflection on the risk of default, and important generally in his decision about whether to put his money into acquiring the Note. Disclosure of any of these four circumstances could have justified further inquiry from a reasonable investor. Respondents' failure to advise Mr. Meinert of these circumstances quite clearly arose during the period when they were offering to sell the Note to him. By not disclosing these circumstances, Respondents McNulty rendered their other representations to Mr. Meinert misleading. Respondents' failure to advise Mr. Meinert of these circumstances constituted a violation of Section 201 of the 1972 Act.

Admission of Commonwealth Exhibit One, the Investigative Report

Both Respondents McNulty argued in their responses to Ms. Mendelson's Brief that admission of the investigation report prepared by Mr. Meinert into evidence was an error. However, when asked at the hearing whether they had any objection to the investigative report being admitted, both Respondents McNulty separately said "No." Neither indicated a belief that they had inadequate time to review the report. There being no objection, Mr. Meinert's investigative report, identified

as Commonwealth Exhibit One, and also referred to as case development, or case development item, was admitted into evidence. Moreover, the content of Exhibit One was consistent with Mr. Meinert's testimony.

II. Abstract of the Evidence

A. Testimonial Evidence

TAC purports to be a financial services company that sells pre-paid debit cards to the public. On November 23, 2011, Securities Investigator Daniel Meinert (Meinert)² viewed an advertisement (Ad) on an Internet online message board stating that TAC was offering a "discounted note" paying 18% interest annually. (C Exhibits 1-2) (T 29, L 17-25) (T 30, L 1-8) The Ad directed potential investors to contact Sayers and provided a telephone number and e-mail address for that purpose. (C Exhibit 2) (T 30, L 1-8) After viewing the Ad, in an undercover capacity as a Pennsylvania resident, Meinert e-mailed the address provided in the Ad using the undercover name of _____ (T 30, L 16-21) (T 31, L 18-25) (T 32, L 1-5) (C Exhibit 3) The same day, Meinert received a reply e-mail from Sayers, who, over the course of multiple e-mails and telephone calls offered the Note to Meinert. (T 32, L 6-12) (T 33,

¹ The Commission's C&D against David John Nava (Nava) and William "Billy" Sayers (Sayers) is a Final Order. Staff of the Commission (Staff) reached a settlement with TAC Financial, Inc. (TAC) and TAC's Chairman and CEO, Roy H. Eder (Eder). On April 17, 2012, the Commission issued a Findings of Fact, Conclusions of Law and Order to TAC and Eder pursuant to the settlement recommended by Staff. (C Exhibit 19)

² Meinert is currently employed by the Pennsylvania Securities Commission as a Securities Investigator (T 19, L 5-14). Prior to that, Meinert was employed as a police officer for Allegheny County for twenty years (T 19, L 5-21). He holds a Master's degree in Criminology (T 20, L 2-4) and currently is an adjunct professor in Criminology for Point Park University (T 20, L 1-4).

L 7-25) (T 34, L 1-25) (T 35, L 1-10) (C Exhibits 4 - 6) Sayers also e-mailed offering materials (Materials), including a copy of the Note, to Meinert. (C Exhibits 4 and 6)

Meinert examined the offering materials for the Note and checked the Commission's records for registration of the Note. (T 59, L 12-25) He found that the Note was not registered as a security in Pennsylvania. (T 59, L 12-25) (C Exhibit 18) (C Exhibit 1).

On December 7, 2011, Respondent Robert McNulty telephoned Meinert and stated that his son, Respondent Rhett McNulty, had invested in TAC but had now asked him [Respondent Robert McNulty] to find a buyer for the Note because Respondent Rhett McNulty wanted money for another project.³ (T 126, L 17-20) (C Exhibit 1). Respondent Robert McNulty told him during the telephone conversation that: (1) Meinert would receive twenty percent interest per year; (2) the Note had a four year term; (3) the issuer of the Note was TAC; (4) this was an opportunity for Meinert to get into a great company; and (5) it would not be long before TAC would have one of the top ten debit cards available to the public. (C Exhibit 1) (T 40, L 17-25) (T 41, L 1-25) Also, Respondent Robert McNulty told Meinert the Note has stock options too. (T 41, L 1-16)

Subsequently, on December 11, 2011, Meinert received an e-mail from Respondent Rhett McNulty offering the Note to him. (T 47, L 15-25) (T 48, L 1-9) (C Exhibit 1) (C Exhibits 9 - 10) Respondent Rhett McNulty followed up with another e-mail to Meinert on December 19,

³ Both Respondents provided the hearing officer with similar information during their own testimony. At the hearing, Respondent Rhett McNulty testified,

So I had this promissory note ... in TAC ... I circulated this note to a few friends ..., and said would you ... be interested in buying a portion of the note. And I wasn't getting a quick response. I then contacted my father in ... November [2011] ... and said I'm looking to make an acquisition of these mobile applications and I need some capital, I need some cash. Do you know anybody who might be interested in purchasing the note. And he said he would get back ... to me and ask around about it.
(T 153, L 1-18)

Respondent Robert McNulty testified,

Sometime in November [2011] I got a call from my son [Rhett McNulty] saying that he was looking to acquire a company and he needed to raise some capital. And he had a note that he was holding from TAC ... for approximately \$164,000. And he asked me what I thought he'd have to do to sell the note. I told him I think he'd have to discount the present value of the note, give somebody about an 18 percent return to make it attractive for them. ... He [Rhett] said it sounded good to him. I then made four or five phone calls to four or five different people.
(T 126, L 17-25, T 127, L 1-11)

2011 and again offered the Note to Meinert.⁴ (T 50, L 19-25) (T 51, L 1-25) (T 52, L 1-9) (T 155, L 19-25) (T 156, L 1-4) (C Exhibit 1, p. 17-18)

Throughout these discussions and e-mails between each of the Respondents and Meinert, neither of the Respondents (nor any other Respondent, such as TAC, Eder, Sayers, or Nava) disclosed certain material information to him about the Note. (T 60, L 3-20) (T 61, L 21-25) (T 62, L 1-9) (T 63, L 5-25) (T 64, L 1-25) (T 65, L 1-13) (T 66, L 9-17) (T 67, L 23-25) (T 68, L 1-25) (T 69, L 1-25) (T 70, L 18-23) (T 74, L 15-25) (T 75, L 1-25) (T 76, L 1-18) (T 72, L 2-25) (T 73, L 1-14) (C Exhibits 12 - 17) Specifically, the Respondents failed to disclose the following: (1) The Note was not registered with the Commission (T 59, L 12-25) (T 60, L 1-2) (C Exhibit 18) (C Exhibit 1); (2) Nava had a criminal history and had been permanently barred by FINRA from the securities industry in the United States of America (T 60, L 3-20) (T 61, L 21-25) (C Exhibit 12) (C Exhibit 18) (C Exhibit 1); (3) Respondent Robert McNulty has been permanently enjoined from further violation of federal securities law due to a massive scheme he orchestrated to defraud investors in the 1990s; (T 64, L 1-25) (T 65, L 1-13) (T 66, L 9-17) (T 67, L 23-25) (T 68, L 1-25) (T 69, L 1-25) (T 70, L 18-23) (T 74, L 15-25) (T 75, L 1-25) (T 76, L 1-18) (T 72, L 2-25) (T 73, L 1-14) (C Exhibits 15 - 17) (C Exhibit 1) and (4) Eder, the person charged with the executive responsibility for operating TAC had recently had a personal bankruptcy discharged (T 62, L 1-9) (T 63, L 5-25) (C Exhibit 13) (C Exhibit 1)

Based upon the testimony and evidence provided to the hearing officer on June 4, 2012, Respondent committed violations of Sections 201 and 401(b) of the 1972 Act and Staff is respectfully requesting that the C&D become a final order as to the Respondents.

1. Offers made to Meinert for purchase of the Note

a. Preliminary testimony and offers made by Sayers and Nava

Meinert viewed the Ad on an online Internet message board. (C Exhibits 1-2) (T 29, L 17-25) (T 30, L 1-8) The Ad stated:

Discounted note available from a private limited financial firm located in La Jolla, California. Our face value of the four year note is \$164,873 and selling for \$110,000. The company I represent is called TAC Financial. Please visit the company website at www.theamericascard.com. In addition to 18 percent yearly returns, investors will receive 50,000 option shares at \$.50 per each. Currently, our net asset value is around \$1.50 per share. TAC Financial recently has attracted investment from the cofounders of a multibillion dollar financial

⁴ While presenting his own case, Respondent Rgett McNulty admitted that he offered the Note to Meinert, stating, "I reached out to _____, confirmed what I was able to offer, and he agreed that that's what he had talked to my father about." (T 155, L 19-21) This Respondent then stated in his own testimony, "[I] continued to state that the offer that I gave to him in writing in the note was all I could offer - that's all I had to offer him." (T 156, L 2-4)

institution. Call Billy for more details at (858) 531-1367 or bjsayers@att.net.
(C Exhibit 2) (C Exhibit 1) (T 29, L 21-25) (T 30, L 1-9)⁵

As a Pennsylvania resident (PA Resident) and investigator for the Commission, Meinert sent an e-mail to Sayers requesting additional information about the Note. (T 30, L 16-21) (T 31, L 18-25) (T 32, L 1-5) (C Exhibit 3) (C Exhibit 1) That e-mail identified Meinert as a Pennsylvania resident, (T 32, L 2-5) (C Exhibit 3) (C Exhibit 1) Sayers responded to Meinert via e-mail and offered the Note for sale. (T 32, L 6-12) (T 33, L 7-25) (T 34, L 1-25) (T 35, L 1-10) (C Exhibits 4 - 6) (C Exhibit 1)

In his e-mail, Sayers stated that (1) the Note is issued by TAC, a four-year-old financial firm located in La Jolla, California; (2) Meinert could invest \$55,000 in a Note with a face value of \$82,000; (3) Meinert would receive 50,000 worth of stock options exercisable at fifty cents per share within 24 months; and (4) the prospect of TAC going public within 24 months is likely. (T 32, L 6-12) (T 33, L 7-25) (T 34, L 1-25) (T 35, L 1-10) (C Exhibit 4) (C Exhibit 1)

Subsequently, on December 7, 2011, Nava telephoned Meinert and also offered the Note for sale. Nava stated that TAC is the issuer of the Note and that Meinert could invest \$27,500 in the Note for a face value on the Note of \$41,218, meaning that Meinert would be owed \$41,218 at the end of four years but would be paid 20% per year for "putting the money up." Further, Meinert would receive 5% quarterly payments from the Note and then receive the face value of the Note at the end of four years. Additionally, Meinert would have the option to purchase 25,000 shares of TAC stock at fifty cents per share even if TAC went public at several dollars a share. Most notably, Meinert testified that Nava stated to him that "This Note is not BS or toilet paper [sic]. This is a good investment in a good company." (T 38, L 20-25) (T 39, L 1-25) (T 40, L 1-11) (C Exhibit 19) (C Exhibit 1)

⁵ Meinert testified that that the Ad (C Exhibit 2) did not include any type of prohibition or disclaimer for Pennsylvania residents (T 30, L 10-15) required by Regulation 203.190 which states

Certain internet offers exempt

(a) Under section 203(r) of the act (70 P. S. § 1-203-(r)), the Commission finds it neither necessary nor appropriate for the protection of investors to require registration under section 201 of the act (70 P. S. § 1-201) for offers of securities by an issuer which are communicated electronically by means of a proprietary or common carrier electronic delivery system, the Internet, the World Wide Web or similar media (Internet Offer) when the issuer does not intend to offer and sell the securities in this Commonwealth and meets the following conditions:

(1) The Internet Offer indicates, directly or indirectly, that the securities are not to be offered to persons in this Commonwealth.

(2) An offer is not otherwise specifically directed to any person in this Commonwealth, by or on behalf of the issuer.

(3) No sales of the issuer's securities are made in this Commonwealth as a result of the Internet Offer.

(b) Nothing in this section prohibits, in connection with an Internet Offer, the availability of another exemption which otherwise does not prohibit general solicitation.

64 Pa. Code 203.190

b. Offer made by Respondent Robert McNulty

On December 7, 2011, after Meinert had spoken to Nava, Respondent Robert McNulty telephoned him and offered the Note for sale. Neither Meinert nor his undercover identity of had any prior relationship with Respondent Robert McNulty (T 59, L 8-11) (or with any of the other Respondents in the case). Respondent Robert McNulty stated during this call that (1) Meinert would receive twenty percent interest per year; (2) the Note had a four year term; (3) the issuer of the Note was TAC; (4) this was an opportunity for Meinert to get into a great company; and (5) it would not be long before TAC would have one of the top ten debit cards available to the public.⁶ (C Exhibit 1) (T 40, L 17-25) (T 41, L 1-25) Respondent Robert McNulty also instructed Meinert regarding the next steps for investing in the Note which included wiring funds in order to purchase the Note (T 41, L 20 - 24) (C Exhibit 1)

During this telephone call, Respondent Robert McNulty did not ask Meinert any questions about what he [Edwards] did for a living, how much income he made, whether he had prior investment experience, his education, and/or his net worth.⁷ (T 58, L 13-25) (T 59, L 1-7)

At no time, including during the telephone call, did Respondent Robert McNulty provide Meinert with any of the following information: (1) The Note had not been registered (T 59, L 12-25) (T 60, L 1-2) (C Exhibit 18) (C Exhibit 1); (2) Nava had a criminal history and had been permanently barred by FINRA from the entire securities industry in the United States of America (T 61, L 21-25) (C Exhibit 12) (C Exhibit 18) (C Exhibit 1); (3) he himself has been permanently enjoined from further violation of federal securities law due to a complex scheme he orchestrated to defraud investors in the 1990s (T 64, L 1-25) (T 65, L 1-13) (T 66, L 9-17) (T 67, L 23-25) (T 68, L 1-25) (T 69, L 1-25) (T 70, L 18-23) (T 74, L 15-25) (T 75, L 1-25) (T 76, L 1-18) (T 72, L 2-25) (T 73, L 1-14) (C Exhibits 15 - 17) (C Exhibit 1); and (4) Eder, the person charged with the executive responsibility for operating TAC, had recently had a personal bankruptcy discharged (T 62, L 1-9) (T 63, L 5-25) (C Exhibit 13) (C Exhibit 1)

c. Offers made by Respondent Rhett McNulty

Subsequent to the offer made by Respondent Robert McNulty, Respondent Rhett McNulty sent two e-mails to Meinert both of which offered the Note to Meinert. (T 47, L 15-25) (T 48, L 1-9) (T 50, L 19-25) (T 51, L 1-25) (T 52, L 1-9) (T 155, L 19-25) (T 156, L 1-4) (C Exhibit 9) (C Exhibit 10) (C Exhibit 1)

⁶ Meinert testified that he took notes during his phone call with Respondent Robert McNulty and during his calls with Respondent Rhett McNulty (T 83, L 5-25) (T 84, L 1-16) and that he prepared a Case Development Item (CDI) immediately from those notes. (T 84, L 1-16)

⁷ Meinert provided testimony as to the undercover profile used for which renders unsophisticated and non-accredited. (T 20, L 14-25) (T 21, L 1-10) See Rule 501 of Regulation D, 17 CFR 230.501 and Rule 506, 17 CFR 230.506.

Meinert testified as to the content of these e-mails and also established the fact that Respondent Rhett McNulty did not ask him any question regarding (1) Edward's income; (2) net worth; (3) occupation; (4) prior investment experience; or (5) education. (T 58, L 13-25) (T 59, L 1-7) (C Exhibit 1) Moreover, Respondent Rhett McNulty, when questioned by Hearing Officer Riethmueller as to whether he qualified Meinert as an "accredited" or "sophisticated" purchaser for the Note, confirmed the testimony of Meinert and admitted that he did not do so. (T 170, L 10-24)⁸

Finally, Meinert testified that at no time did Respondent Rhett McNulty provide him with any of the following information: (1) The Note was not registered (T 59, L 12-25) (T 60, L 1-2) (C Exhibit 18) (C Exhibit 1); (2) Nava had a criminal history and had been permanently barred by FINRA from the entire securities industry in the United States of America (T 60, L3-20) (T 61, L 21-25) (C Exhibit 12) (C Exhibit 18) (C Exhibit 1); (3) Respondent Robert McNulty has been permanently enjoined from further violation of federal securities law due to a complex scheme he orchestrated to defraud investors in the 1990s; (T 64, L 1-25) (T 65, L 1-13) (T 66, L9-17)(T 67, L 23-25) (T 68, L 1-25) (T 69, L 1-25)(T 70, L 18-23) (T 74, L 15-25)(T 75, L 1-25) (T 76, L 1-18)(T 72, L 2-25) (T 73, L 1-14) (C Exhibits 15 - 17) (C Exhibit 1) and (4) Eder, the person charged with the executive responsibility for operating TAC, had recently had a personal bankruptcy discharged (T 62, L 1-9) (T 63, L 5-25) (C Exhibit 13) (C Exhibit 1)

⁸ Federal securities law defines the term "accredited investor" in Rule 501 of Regulation D of the 1933 Securities Act as:

1. a bank, insurance company, registered investment company, business development company, or small business investment company;
2. an employee benefit plan, within the meaning of the Employee Retirement Income Security Act, if a bank, insurance company, or registered investment adviser makes the investment decisions, or if the plan has total assets in excess of \$5 million;
3. a charitable organization, corporation, or partnership with assets exceeding \$5 million;
4. a director, executive officer, or general partner of the company selling the securities;
5. a business in which all the equity owners are accredited investors;
6. a natural person who has individual net worth, or joint net worth with the person's spouse, that exceeds \$1 million at the time of the purchase, excluding the value of the primary residence of such person;
7. a natural person with income exceeding \$200,000 in each of the two most recent years or joint income with a spouse exceeding \$300,000 for those years and a reasonable expectation of the same income level in the current year; or
8. a trust with assets in excess of \$5 million, not formed to acquire the securities offered, whose purchases a sophisticated person makes.

Moreover, the term "sophisticated" investor is defined in Section 4(2) of the 1933 Securities Act as an investor who has "enough knowledge and experience in finance and business matters to evaluate the risks and merits of the investment."

B. Documentary Evidence

Commonwealth Exhibit 1 (C Exhibit 1): Case Development Item

Commonwealth Exhibit 2 (C Exhibit 2): Internet Advertisement for the Note

Commonwealth Exhibit 3 (C Exhibit 3): Email Response to Advertisement from Meinert to Sayers

Commonwealth Exhibit 4 (C Exhibit 4): Email Response from Sayers to Meinert

Commonwealth Exhibit 5 (C Exhibit 5): Email Response from Meinert to Sayers

Commonwealth Exhibit 6 (C Exhibit 6): Email Response from Sayers to Meinert

Commonwealth Exhibit 7 (C Exhibit 7): Email from Meinert to Nava

Commonwealth Exhibit 8 (C Exhibit 8): Email from Nava to Robert McNulty

Commonwealth Exhibit 9 (C Exhibit 9): Email from Rhett McNulty to Meinert

Commonwealth Exhibit 10 (C Exhibit 10): Email from Rhett McNulty to Meinert with Offering Material

Commonwealth Exhibit 11 (C Exhibit 11): Internet Advertisement for Note dated May 24, 2012

Commonwealth Exhibit 12 (C Exhibit 12): Certified FINRA record barring Nava

Commonwealth Exhibit 13 (C Exhibit 13): Record of the United States Bankruptcy Court of the Southern District of California Regarding Bankruptcy Discharge of Roy H. Eder

Commonwealth Exhibit 14 (C Exhibit 14): Final Judgment of Permanent Injunction and Other Relief by Consent Against Robert J. McNulty in the United States Securities & Exchange Commission Matter 94 Civ. 7114.

Commonwealth Exhibit 15 (C Exhibit 15): Attestation of the United States Securities & Exchange Commission for Litigation Release #14274 in Matter 94 Civ. 7114

Commonwealth Exhibit 16 (C Exhibit 16): Attestation of the United States Securities & Exchange Commission of a Litigation Release #14413 in Matter 94 Civ. 7114

Commonwealth Exhibit 17 (C Exhibit 17): Attestation of the United States Securities & Exchange Commission of Litigation Release #14696 in Matter 94 Civ. 7114

Commonwealth Exhibit 18 (C Exhibit 18): Certification of Records of the Pennsylvania Securities Commission and CRD Record

Commonwealth Exhibit 19 (C Exhibit 19): Certification of Records of the Pennsylvania Securities Commission

III. PROPOSED FINDINGS OF FACT

1. Respondent TAC was, at all times material hereto, an entity with an address of 4080 Paradise Road, Suite 15-130, Las Vegas, Nevada 89169. At all times material hereto, Respondent TAC was purportedly a financial services company that offered prepaid debit cards to the public and had issued a certain Promissory Note in Respondent TAC.
2. Respondent Eder was, at all times material hereto, an individual with an address of 4080 Paradise Road, Suite 15-130, Las Vegas, Nevada 89169. At all times material hereto, Respondent Eder was the Chairman and CEO of Respondent TAC.
3. Respondent Nava was, at all times material hereto, an entity with an address of 8843 Villa La Jolla Drive, Suite 208, La Jolla, California 92037. At all times material hereto, Respondent Nava sought an investor to purchase the Promissory Note or portions thereof.
4. Respondent Sayers was, at all times material hereto, an individual with an address of 8843 Villa La Jolla Drive, Suite 208, La Jolla, California 92037. At all times material hereto, Respondent Sayers was employed by Respondent Nava. Respondent Sayers placed an advertisement entitled, "Earn 18% per year on discounted note" (hereinafter "Ad"), on an internet message board through which he was soliciting investors to purchase the Promissory Note.
5. Respondent Robert J. McNulty was, at all times material hereto, the founder of Respondent TAC and an individual with an address of 1000 N. Green Valley Parkway, Suite 440, Henderson, Nevada 89074. At all times material hereto, Respondent Robert J. McNulty was offering for sale the Promissory Note.

6. Respondent Rhett J. McNulty was, at all times material hereto, an individual with an address of 3435 Ocean Park Boulevard, #107-469, Santa Monica, California 90405. At all times material hereto, Respondent Rhett J. McNulty was offering for sale the Promissory Note.
7. During or before November, 2011, at least one Pennsylvania resident, while in Pennsylvania, viewed the Ad. The Ad stated, "Discounted note available from a private limited financial firm ... the company I represent is called tac financial..... In addition of 18% yearly returns, investor will receive 50,000 option shares at .50 cents each.....". Using an email address provided in the Ad, the Pennsylvania resident sent an email to Respondent Sayers requesting additional information.
8. On or about November, 30, 2011, Respondent Sayers emailed the Pennsylvania resident and offered for sale the Promissory Note. In the email, Respondent Sayers stated:
 - a. The Promissory Note is issued by Respondent TAC, a four year old financial firm located in La Jolla, California;
 - b. The Pennsylvania resident could invest \$55,000 in a Promissory Note with a face value of \$82,000;
 - c. Investors in the Promissory Note will receive 50,000 stock options exercisable at fifty cents per share within 24 months; and
 - d. The chances of Respondent TAC going public within 24 months is likely.
9. On or about December 7, 2011, Respondent Nava telephoned the Pennsylvania resident and offered for sale the Promissory Note. During this or during other conversations that day with the Pennsylvania resident, Respondent Nava stated:
 - a. Respondent TAC is the issuer of the Promissory Note;
 - b. The Pennsylvania resident could invest \$27,500 in the Promissory Note, which would give the Pennsylvania resident a Promissory Note with a face value of \$41,218;
 - c. The Pennsylvania resident would be owed \$41,218 at the end of four years but would be paid 20% per year;

- d. The Pennsylvania resident would receive 5% quarterly payments from the Promissory Note and then receive the face value of the Promissory Note at the end of four years;
 - e. The Pennsylvania resident would have the option to purchase 25,000 shares of stock in Respondent TAC at fifty cents per share, even if the company goes public at several dollars a share;
 - f. This is a good investment in a good company; and
 - g. Respondent Robert J. McNulty had founded Respondent TAC and had involved his son, Respondent Rhett J. McNulty, in the company.
10. On or about December 7, 2011, Respondent Robert J. McNulty telephoned the Pennsylvania resident. During that conversation, Respondent Robert J. McNulty stated:
- a. He was the founder of Respondent TAC and had subsequently turned TAC over to his sons;
 - b. It would not be long before Respondent TAC would have one of the top ten debit cards; and
 - c. The Promissory Note would yield 5% per quarter and, at the end of a four year term, the Pennsylvania resident would receive about \$41,000.
11. On or about December 11, 2011, Respondent Rhett J. McNulty sent an email to the Pennsylvania resident and offered to sell the Promissory Note to him. In that email, Respondent Rhett J. McNulty stated that for an investment of \$27,500, the Pennsylvania resident would receive a Promissory Note in the amount of \$41,218.25 at an interest rate of 5% annually for four years.
12. On or about December 19, 2011, Respondent Rhett J. McNulty sent an email with documents, including a "Promissory Note," to the Pennsylvania resident. The Promissory Note was in the amount of \$41,218.25, had a maturity date of September 27, 2016, and provided for interest of 5% annually which would be paid quarterly.

13. Respondents TAC, Eder, Nava, Sayers, Robert J. McNulty and Rhett J. McNulty omitted to disclose the following material facts which would have been necessary in order to make the statements made by them, in light of the circumstances under which their statements were made, not misleading:
- a. In or about September 2008, the United States District Court in the Southern District of California discharged Respondent Eder of his personal debts through a Chapter 7 bankruptcy proceeding;
 - b. Respondent Nava was permanently barred in 1994 by the NASD (now FINRA) from the securities business as a result of giving false information regarding his criminal conviction for petty theft on his Form U-4;
 - c. In a final order from the United States Securities and Exchange Commission (SEC) dated October 10, 1995, Respondent Robert J. McNulty was permanently enjoined from violation of the antifraud, issuer reporting, books and records, and beneficial ownership provisions of the federal securities laws, and the provision prohibiting misrepresentations to auditors as a result of SEC allegations that Respondent Robert J. McNulty orchestrated a scheme to defraud investors using the proceeds of various securities offerings; and
 - d. The Promissory Note was neither registered nor exempt from registration with the Commission pursuant to Section 201 of the 1972 Act.
14. The Pennsylvania resident had no substantive, pre-existing relationship with any of the Respondents.
15. The Pennsylvania resident was not an accredited investor under rule 501 of Regulation D, and did not have sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of the investment.

16. The Ad did not contain the disclosure set forth in Commission Regulation 203, 190, 64 Pa. Code §203, 190.

17. The records of the Securities Commission disclose that the Promissory Note (a) was not registered under Section 201 of the 1972 Act, 70 P.S. § 1-201; (b) is not exempt from registration under Section 202 of the 1972 Act, 70 P.S. §1-202; and c) is not a federally covered security; and that the transactions relating to the Promissory Note are not exempt under Section 203 of the 1972 Act, 70 P.S. §1-203.

IV. PROPOSED CONCLUSIONS OF LAW

1. The Promissory Note constitutes a "security" within the meaning of Section 102(t) of the Pennsylvania Securities Act of 1972 (1972 Act), 70 P.S. §1-102(t).
2. Respondent Robert J. McNulty is a "person" offering for sale the Promissory Note in Pennsylvania within the meaning of Section 102(n) of the 1972 Act, 70 P.S. §1-102(n).
3. Respondent Rhett J. McNulty is a "person" offering for sale the Promissory Note in Pennsylvania within the meaning of Section 102(n) of the 1972 Act, 70 P.S. §1-102(n).
4. The acts and conduct of Robert J. McNulty, as set forth in the above Findings of Fact constitute violations of Section 201 of the 1972 Act, 70 P.S. §1-201.
5. The acts and conduct of Robert J. McNulty, as set forth in the above Findings of Fact constitute violations of Section 401(b) of the 1972 Act, 70 P.S. §1-401(b).
6. The acts and conduct of Rhett J. McNulty, as set forth in the above Findings of Fact constitute violations of Section 201 of the 1972 Act, 70 P.S. §1-201.
7. The acts and conduct of Rhett J. McNulty, as set forth in the above Findings of Fact constitute violations of Section 401(b) of the 1972 Act, 70 P.S. §1-401(b).

V. PROPOSED ORDER

AND NOW, this _____ day of _____, 2013, the Pennsylvania Department of Banking and Securities further finds that it is necessary and appropriate in the public interest, for the protection of the investors, and consistent with the purposes fairly intended by the policy and provisions of the 1972 Act to issue the following:

1. The Summary Order to Cease and Desist issued on January 25, 2012 is AFFIRMED as against Respondent Robert J. McNulty and Respondent Rhett J. McNulty;
2. Respondent Robert J. McNulty and Respondent Rhett J. McNulty are ORDERED to comply with the 1972 Act and with regulations adopted by the Pennsylvania Securities Commission and by the Pennsylvania Department of Banking and Securities, including but not limited to Sections 201 and 401(b) of the 1972 Act; and
3. Should either Respondent Robert J. McNulty or Respondent Rhett J. McNulty fail to comply with any of the provisions of this Order, the Pennsylvania Department of Banking and Securities may impose additional sanctions and costs and seek other appropriate relief against them, subject to their respective rights to a hearing pursuant to the 1972 Act.

BY ORDER OF THE DEPARTMENT OF BANKING AND SECURITIES

Date issued and entered: _____

VI. CONCLUSION

The Hearing Officer recommends that the Department of Banking and Securities adopt the foregoing Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order.

Mark S. Riethmuller, Attorney at Law
Hearing Officer
30 East Beau Street, Suite 430
Washington Trust Bldg.
Washington, PA 15301

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

FILED

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

v.

TAC FINANCIAL, INC.
ROY H. EDER
DAVID JOHN NAVA d/b/a SURF FINANCIAL :
GROUP LLC
WILLIAM "BILLY" SAYERS
ROBERT J. McNULTY
RHETT J. McNULTY

Respondents

DOCKET NO. : 120097 (SEC-ORD)

(Formerly Administrative Proceeding
Docket No. 2011-12-16)

CERTIFICATE OF SERVICE

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

BY FIRST CLASS MAIL

Robert J. McNulty
1000 N. Green Valley Parkway, Suite 440
Henderson, NV 89074

Rhett J. McNulty
3435 Ocean Park Boulevard, #107-469
Santa Monica, CA 90405

Dated this 8th day of May, 2013.

John Chiappetta
Counsel to the Commission
Office of Chief Counsel
FOR: Commonwealth of Pennsylvania
Department of Banking and Securities
Market Square Plaza
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Harrisburg, PA 17101
(717) 787-1471