

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA	:	
DEPARTMENT OF BANKING AND	:	
SECURITIES, BUREAU OF SECURITIES	:	
COMPLIANCE AND EXAMINATIONS	:	Docket No.: 23 <u>0022</u> (SEC-OSC)
	:	
v.	:	
	:	
ETHOS CAPITAL MANAGEMENT, INC.	:	
STEVEN TOTO	:	

NOTICE TO ANSWER AND REQUEST A HEARING

You have the right to challenge the attached Order to Show Cause (“Order”) by filing an Answer, in writing, with the Docket Clerk **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 Banking and Securities Commission (“Commission”) may enter a final order against you.**

Your Answer must be in writing. Your Answer must specifically admit or deny the allegations in this Order, set forth the facts you rely upon, and state concisely the law upon which you rely. 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 via first-class mail and electronic mail with the Docket Clerk:

Brandon Brown, Docket Clerk
Pennsylvania Department of Banking and Securities
17 North Second Street, Suite 1300
Harrisburg, Pennsylvania 17101
Email: RA-BNDOCKETCLERK@pa.gov

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

Veronica N. Hoof
Office of Chief Counsel
Pennsylvania Department of Banking and Securities
17 North Second Street, Suite 1300

Harrisburg, Pennsylvania 17101
Email: RA-BNChiefCounsel@pa.gov

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.

The hearing and all other 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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ORDER TO SHOW CAUSE

You, Ethos Capital Management, Inc. (“Respondent Ethos”) and Steven Toto (“Respondent Toto”), are notified that the Department of Banking and Securities (“Department”), through the Bureau of Securities 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
INTO 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, Pennsylvania 17101.

4. Respondent Ethos, CRD # 313145, was, at all times material herein, a Pennsylvania corporation with an address at 111 South State Street, Newtown, Pennsylvania.

5. Respondent Toto, CRD # 1698379, was, at all times material herein, an individual with an address at Redacted . Respondent Toto was, at all times material herein, the co-owner, president, and chief compliance officer of Respondent Ethos.

FACTUAL ALLEGATIONS

6. From in or about April 2021 until the present, Respondent Ethos was registered pursuant to Section 301(c) of the 1972 Act, 70 P.S. § 1-301(c), as an investment adviser.

7. From in or about April 2021 until the present, Respondent Toto was registered pursuant to Section 301(c) of the 1972 Act, 70 P.S. § 1-301(c), as an investment adviser representative of Respondent Ethos.

8. As the co-owner, president, and chief compliance officer of Respondent Ethos, Respondent Toto acted as an "affiliate" of Respondent Ethos within the meaning of Section 102(b)

of the 1972 Act, 70 P.S. § 1-102(b), and, as such, caused Respondent Ethos to commit the herein stated acts which violated the 1972 Act.

9. Regulation 305.019(c)(3)(viii), 10 Pa. Code § 305.019(c)(3)(viii), prohibits an investment adviser from engaging in dishonest or unethical practices in the securities business by misrepresenting to an advisory client, or prospective advisory client, the fees to be charged for services, or to omit to state a material fact necessary to make the statements made regarding services or fees, in light of the circumstances under which they are made, not misleading.

10. From in or about June 2021 to June 2022, Respondent Ethos, in at least 9 investment advisory accounts belonging to 9 investors, imposed excess service fees inconsistent with the “Assets Under Management” annual fee schedule in the investment advisory agreements.

11. From in or about June 2021 to June 2022, Respondent Ethos received at least \$10,172.42 in excess compensation from at least 9 investment advisory accounts belonging to 9 investors.

12. Out of at least 9 investment advisory accounts belonging to at least 9 investors for which Respondent Ethos imposed service fees inconsistent with investment advisory agreements, at least 8 investment advisory accounts belonged to investors over the age of 60 years old.

13. Regulation 305.019(c)(3)(xvi), 10 Pa. Code § 305.019(c)(3)(xvi), prohibits an investment adviser from entering into, extending, or renewing an investment advisory contract unless the contract is in writing and discloses, in substance, the advisory fee and the formula for computing the fee.

14. From in or about June 2021 to June 2022, Respondent Ethos entered into at least 9 investment advisory contracts for 9 investment advisory accounts belonging to 9 investors that

contained inconsistent terms related to the collection of investment advisory fees, which would be charged annually, monthly, and possibly “in arrears.”

15. Out of at least 9 investment advisory accounts belonging to at least 9 investors for which Respondent Ethos entered into investment advisory agreements that contained inconsistent terms related to the collection of investment advisory fees, at least 8 investment advisory accounts belonged to investors over the age of 60 years old.

COUNTS

Conduct Forming Basis to Deny, Suspend, Revoke, or Condition the Registration of or Censure Respondent Ethos and Respondent Toto Pursuant to Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulation 305.019(c)(3)(viii), 10 Pa. Code § 305.019(c)(3)(viii), Promulgated Thereunder

9 Counts

16. Paragraphs 1 through 15 are incorporated herein by reference as if set forth in their entirety.

17. By engaging in the acts and conduct set forth in paragraphs 6 through 12 above, Respondent Ethos and Respondent Toto engaged in dishonest or unethical practices in the securities business by misrepresenting to an advisory client, or prospective advisory client, the fees to be charged for services, or to omit to state a material fact necessary to make the statements made regarding services or fees, in light of the circumstances under which they are made, not misleading, which acts and conduct form a basis to deny, suspend, revoke, or condition the registration of Respondent Ethos and Respondent Toto or censure Respondent Ethos and Respondent Toto pursuant to Section 305(a)(ix) of the 1972 Act, 70 P.S. § 1-305(a)(ix), and Regulation 305.019(c)(3)(viii), 10 Pa. Code § 305.019(c)(3)(viii), promulgated thereunder.

**Conduct Forming Basis to Deny, Suspend, Revoke, or Condition the Registration of or
Censure Respondent Ethos and Respondent Toto Pursuant to Section 305(a)(v) of the 1972
Act, 70 P.S. § 1-305(a)(v), and Regulation 305.019(c)(3)(xvi), 10 Pa. Code §
305.019(c)(3)(xvi), Promulgated Thereunder**

9 Counts

18. Paragraphs 1 through 17 are incorporated herein by reference as if set forth in their entirety.

19. By engaging in the acts and conduct set forth in paragraphs 6 through 8 and 13 through 15 above, Respondent Ethos and Respondent Toto engaged in dishonest or unethical practices in the securities business by entering into investment advisory contracts that did not disclose, in substance, the advisory fee and the formula for computing the fee, which acts and conduct form a basis to deny, suspend, revoke, or condition the registration of Respondent Ethos and Respondent Toto or to censure Respondent Ethos and Respondent Toto pursuant to Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulation 305.019(c)(3)(xvi), 10 Pa. Code § 305.019(c)(3)(xvi), promulgated thereunder.

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 305 of the 1972 Act, 70 P.S. § 1-305, that the registration of Respondent Ethos and Respondent Toto be suspended, revoked, or conditioned, or that Respondent Ethos and Respondent Toto be censured.

2. That an order be issued pursuant to Section 512 of the 1972 Act, 70 P.S. § 1-512, which bars, conditionally or unconditionally, and either permanently or for such period of time as may be determined, Respondent Ethos and Respondent Toto 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.

3. That Respondent Ethos and Respondent Toto 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).

4. That Respondent Ethos and Respondent Toto be ordered to pay an administrative assessment of up to \$100,000.00 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 COMPLIANCE AND
EXAMINATIONS

Redacted

Eric Pistilli
Deputy Secretary for Securities

Dated: 07/11/2023

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *Order to Show Cause* 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 CERTIFIED AND FIRST-CLASS MAIL

Ethos Capital Management
111 South State Street
Newtown, PA 18940

Steven Toto

Redacted

Date: July 13th, 2023

Redacted

Eileen Smith
Legal Office Administrator
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