

COMMONWEALTH OF KENTUCKY  
PUBLIC PROTECTION CABINET  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
AGENCY CASE NO. 2009-AH- 018



COMMONWEALTH OF KENTUCKY, EX. RE. THE  
COMMISSIONER OF THE  
DEPARTMENT OF FINANCIAL INSTITUTIONS

PETITIONER

V.

HIGHLAND FINANCIAL MANAGEMENT, INC.

RESPONDENT

\*\*\*\*\*

**AGREED ORDER**

\*\*\*\*\*

The Commonwealth of Kentucky, by and through the Commissioner of the Department of Financial Institutions, and Highland Financial Management, Inc. hereby enter into this Agreed Order as follows:

1. The Department of Financial Institutions (“DFI”) is the agency of Kentucky state government charged with enforcement of the provisions of KRS Chapter 292 (the “Kentucky Securities Act”) and the rules and regulations enacted thereunder. This Order is entered in the interest of the citizens of this Commonwealth in the public interest.
2. Highland Financial Management, Inc. (“Highland Financial”) is a registered investment adviser with the DFI subject to those portions of KRS Chapter 292 and the regulations adopted thereunder applicable to investment advisers. The principal

office of Highland Financial is located at 1104 Juliana Court, Elizabethtown, Kentucky 42701. The Managing Member of Highland Financial is Lewis Newton.

3. On January 20 and 22, 2009, the DFI, Division of Securities (the “Division”), conducted a routine examination of Highland Financial (Examination No. IA-027), pursuant to 292.330(12)(d), to determine whether Highland Financial was conducting its business in conformity with the requirements of KRS Chapter 292 and 808 KAR 10:110 and 808 KAR 10:200, including whether Highland Financial had met the recordkeeping requirements established in 15 USC 80b-3, whether it had maintained its books and records in accordance with the applicable federal regulations, including 17 CFR 275.204-2, and Generally Accepted Accounting Principles, and whether it had maintained a positive net worth or was insolvent.
4. On February 1, 2009, the Division issued written Statement of Findings (“Statement of Findings”) indicating areas of concern regarding Highland Financial. A copy of the Division’s letter dated February 1, 2009 and accompanying Statement of Findings is attached as Exhibit A.
5. In Paragraph 1 of the Statement of Findings, the Division maintains that Highland Financial is in violation of 808 KAR 10:200, Section 3(2) which states that an adviser who has discretionary authority over client funds or securities, but does not have custody of client funds or securities shall maintain a minimum net worth of \$10,000 or be bonded for that amount by a bonding company that is qualified to do business in Kentucky. Section 3(1) of the same regulation states that an adviser who has custody shall maintain a minimum net worth of \$35,000 and may substitute \$25,000 of the net worth with a bond. During the examination it was disclosed and confirmed that

Highland Financial is not in compliance with capital requirements, and this is a repeat violation from the July 2007 examination.

6. In Paragraph 4 of the Statement of Findings, the Division states that under 808 KAR 10:040, Section 4(2) (since replaced by 808 KAR 10:450), it is a dishonest and unethical practice for an investment adviser to borrow money from a customer unless the customer is a broker-dealer, an affiliate of the investment adviser, or a financial institution. Highland Financial has a long term note payable to two clients in the amount of \$37,123.93 as of December 31, 2008. These individuals are also clients of Highland Financial resulting in a violation of the regulation.
7. KRS 292.330(13)(a) authorizes the Commissioner to by order deny, suspend, or revoke the registration of any investment adviser or investment adviser representative or restrict or limit a registrant as to any function or activity of the business for which registration is required in the Commonwealth of Kentucky, if he finds that the order is in the public interest and that the applicant or registrant, or any person directly or indirectly controlling the investment adviser has willfully violated or willfully failed to comply with any provision of the Securities Act or any rule or order thereunder, or has engaged in dishonest or unethical practices in the securities business.
8. Without admitting or denying the allegations contained in the Division's Statement of Findings, the Department of Financial Institutions and Highland Financial agree to enter into the following administrative Agreed Order to address and rectify any violations of the Kentucky Securities Act and the regulations thereunder as set forth above and to resolve this matter without the necessity of further legal action.

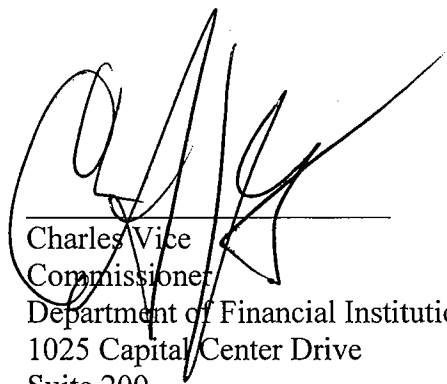
## AGREED ORDER

By agreement of the parties, the Respondent, Highland Financial, agrees to relinquish discretion over its client accounts effective as of the date of entry of this order. Highland Financial agrees to cease to provide investment adviser services to the two clients with which it has entered into long term notes as referenced above and in the Statement of Findings dated February 1, 2009.

In regard to this matter, Highland Financial waives its right to demand a hearing, at which Highland Financial would be entitled to legal representation, to confront and cross examine witnesses for the Department of Financial Institutions, and to present evidence on its own behalf. Further, Highland Financial consents to and acknowledges the jurisdiction of the Department of Financial Institutions over this matter and that this Agreement is a matter of public record and may be disseminated as such.

This is a final order.

Entered this 20<sup>th</sup> day of February, 2009.



Charles Vice  
Commissioner  
Department of Financial Institutions  
1025 Capital Center Drive  
Suite 200  
Frankfort, KY 40601  
(502) 573-3390

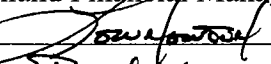
AGREED TO:



Director of Securities

for Division

Highland Financial Management, Inc.

BY: 

ITS: President