

**OFFICE OF THE MISSISSIPPI SECRETARY OF STATE  
SECURITIES DIVISION**

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<b>IN THE MATTER OF:</b>	)	
	)	
	)	
<b>EDUARDO GUILLERMO DIAZ</b>	)	<b>Administrative Consent Order</b>
<b>DIAZ RETIREMENT CONSULTANTS</b>	)	<b>Number LS-13-0862</b>
	)	
	)	
<b>Respondent</b>	)	

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**CONSENT ORDER**

**WHEREAS**, the Securities Division of the Mississippi Secretary of State (“Division”), having the authority to administer and provide for the enforcement of all provisions of the Mississippi Securities Act (“Act”) codified at Mississippi Code Annotated Sections 75-71-101 et. seq.,

**WHEREAS**, Eduardo Diaz, individually and on behalf of Diaz Retirement Consultants (“Respondent”) has advised the Division of his agreement to resolve the matter,

**WHEREAS**, Respondent, solely for the purpose of concluding this open matter with the Division and without admitting or denying the Findings of Fact and Conclusions of Law set forth herein, agrees to take certain actions described herein and to make certain payments, and consents to the terms and conditions of this Administrative Consent Order (“Order”); and

**WHEREAS**, Respondent elects to permanently waive any right to a hearing and appeal under the Act in Sections 75-71-604 and 75-71-609 with respect to this Order;

**NOW, THEREFORE**, the Division, as Administrator of the Act, hereby enters this Order:

**I. FINDINGS OF FACT**

1. The Act gives authority to the Secretary of State to administer and enforce the Act and regulate the offer and sale of securities in Mississippi including the firms and persons who offer or sell securities or who provide investment advice regarding securities.

2. Eduardo G. Diaz ("Diaz") is an individual with a last known residence at 107 San Souci Avenue in Biloxi, Mississippi. The Central Registrations Depository ("CRD") number for Diaz is 1621873.

**Events**

3. From December 19, 2008 to October 19, 2012, Diaz was employed at NEXT Financial Group, Incorporated ("NEXT") as a broker-dealer agent at its branch office located at 2635 Pass Road in Biloxi, Mississippi.

4. On or about October 19, 2012, NEXT terminated Diaz's employment according to Diaz's U5 filed by NEXT on the CRD system.

5. On or about December 12, 2012, the Division received information that the Financial Regulatory Authority ("FINRA") had received a complaint and subsequently had begun an investigation into Diaz's broker dealer activities that resulted in the termination of his employment from NEXT.

6. On January 14, 2013, the Division issued a notice to Diaz informing him that the Division had opened an investigation of the circumstances surrounding the termination of his employment from NEXT.

7. On January 31, 2013, the Division conducted a conference call with Diaz and made a verbal request for all documents that Diaz had submitted to FINRA pursuant to the FINRA investigation.

8. In or around February 2013, Diaz formed Diaz Retirement Consultants, located at 2113 Government Street, Suite D2, in Ocean Springs, Mississippi, as a sole proprietorship with Diaz designated as sole proprietor and Chief Compliance Officer. The CRD number for Diaz Retirement Consultants is 166935.

9. In or around February 2013, Diaz hired an outside Firm to assist with the completion of the necessary forms for registration in Mississippi for the sole proprietorship, Diaz Retirement Consultants, as an Investment Adviser, and for himself as an Investment Adviser Representative of Diaz Retirement Consultants.

10. On February 25, 2013, Diaz applied through the CRD system for registration in Mississippi for the sole proprietorship, Diaz Retirement Consultants, as an Investment Adviser, and for himself as an Investment Adviser Representative of Diaz Retirement Consultants.

11. In the registration application, Diaz responded “no” to the Uniform Application for Securities Industry Registration or Transfer (Form “U4”) Question 14 G which asks:

Have you been notified, in writing, that you are now the subject of any:

(1) regulatory complaint or proceeding that could result in a “yes” answer to any part of 14C, D, or E? (If yes, complete the Regulatory Action Disclosure Reporting Page.)

(2) investigation that could result in a “yes” answer to any part of 14A, B, C, D, or E? (If yes, complete the Regulatory Action Disclosure Reporting Page.)

12. Questions 14C, D, and E ask if any regulatory entity has ever found the registrant to have made a false statement or omission, to have been involved in a violation of its regulations or statutes, or to have been the cause of an investment-related business having its authorization to

do business denied, suspended, revoked, or restricted or has the regulatory entity entered an order against the registrant in connection with investment-related activity.

13. In the registration application, Diaz responded “no” to the Uniform Application for Investment Adviser Registration and Report by Exempt Reporting Advisers (Form ADV) Item 11 Disclosure Information, subpart G that asks, “Are you or any advisory affiliate now the subject of any regulatory proceeding that could result in a “yes” answer to any part of Item 11.C, 11.D, or 11.E?”

14. Form ADV Item 11.C, 11.D, and 11.E ask if a regulatory entity has ever found the registrant or advisory affiliate has made a false statement or omission, has been involved in a violation of the entity’s regulations or statutes, or has been the cause of an investment related business having its authorization to do business altered, or has the entity entered an order against the registrant or advisory affiliate in connection with investment related activity, imposed a civil money penalty on the registrant or advisory affiliate, or ordered the registrant or advisory affiliate to cease and desist from any activity.

15. In the registration application, Diaz filed a firm brochure pursuant to Form ADV Part 2A that stated “Item 9 is not applicable to this Disclosure Brochure because there are no legal or disciplinary events that are material to a client’s or prospective client’s evaluation of our business or integrity.”

16. Item 9 of Form ADV Part 2A requires disclosure of disciplinary events that are material to an evaluation of the advisory business or the integrity of management, specifically including an administrative proceeding before the Security and Exchange Commission, any other federal regulatory agency, state regulatory agency, or financial regulatory authority. Item 9

states, "If your advisory firm or a management person has been involved in one of these events, you must disclose it under this Item for ten years following the date of the event..."

17. On February 25, 2013, FINRA issued a letter to Diaz informing him that, as the subject of a FINRA investigation, he had an obligation to update his U4 form if he was registered or was seeking registration.

18. On March 25, 2013, the Division issued a letter to Diaz, reminding him that in order to proceed with the review and consideration of his application, the Division must receive the previously requested investigation documents.

19. On April 24, 2013, the Division again contacted Diaz through an e-mail to remind him that in order to proceed with the review and consideration of his application, the Division must receive the investigation documents.

20. On or about May 16, 2013, Diaz suffered a heart attack and was in a period of rehabilitation for a period of 90 days.

21. On June 28, 2013, FINRA began a proceeding against Diaz by filing complaint number 2012034594402 regarding Diaz and created a U6 disclosure filing on the CRD system.

22. On September 30, 2013, the Division received the investigation documents from Diaz.

23. As of November 18, 2013, Diaz had not updated his U4 form to reflect that he is the subject of any regulatory investigation or that he is named as a respondent in a regulatory proceeding.

24. As of November 18, 2013, Diaz had not updated Form ADV to reflect that he is the subject of any regulatory proceeding.

25. As of November 18, 2013, Diaz had not updated Form ADV Part2A to reflect that he is the respondent of any regulatory proceeding.

26. On December 3, 2013, pursuant to Section 75-71-601 of the Act, the Division issued a Notice of Intent to Deny Registration Application and Impose Civil Penalty.

### Applicable Law

27. Miss. Code Ann. §75-71-406(b) sets forth:

Amendment. If the information or record contained in an application filed under subsection (a) is or become inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

28. Miss. Code Ann. §75-71-406 promulgates Mississippi Securities Act Rule 617

which states:

Change of Material Information; Amendments: The Division shall be notified within thirty (30) days whenever the information contained in any application or amendment for registration as a investment adviser or representative changes in a material way or is or become inaccurate or incomplete in any respect. Events requiring notification shall include, but are not limited to, the following:

\* \* \*

E. The naming of an investment adviser, principal, officer, and/or employee as a defendant or respondent in one or more of the following instances:

(3) Administrative allegations involving a security or any aspect of the securities business or any activity alleging a breach of a fiduciary trust, or fraud.

29. Miss. Code Ann. § 75-71-412(a) sets forth:

§ 75-71-412. Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration.

(a) Disciplinary conditions-applicants. If the administrator finds that the order is in the public interest and subsection (d) authorizes the action,

an order issued under this chapter may deny an application, or may condition or limit registration of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative, and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

30. Miss. Code Ann. § 75-71-412(d) sets forth:

(d) Grounds for discipline. A person may be disciplined under subsections (a) through (c) if the person:

(1) Has filed an application for registration in this state under this chapter or the predecessor act within the previous ten (10) years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;

31. The Division may employ remedies set out in Miss. Code Section 75-71-604 of the Act which sets forth:

Administrative enforcement.

(a) Issuance of an order or notice. If the administrator determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter, the administrator may:

(1) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter;

(2) Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under Section 75-71-401(b)(1)(D) or (F) or an investment adviser under Section 75-71-403(b)(1)(C); or

(3) Issue an order:

(A) Under Section 75-71-204;

(B) Imposing a civil penalty in the case of an issuer of registered securities, broker-dealer, investment adviser, agent, investment adviser representative, or other person who violated this chapter;

- (C) Barring or suspending the person from association with a broker-dealer or investment advisor registered in this state; or
- (D) Requiring the person to pay restitution for any loss or disgorge any profits arising from the violation, including interest.

\* \* \*

(d) Civil penalty. In a final order under subsection (c), the administrator may impose a civil penalty in an amount set forth in Section 75-71-613 for each violation and each violation shall be considered a separate offense in a single proceeding or a series of related proceedings.

32. Miss. Code Ann. § 75-71-613 sets forth:

Amounts of civil and criminal penalties.

(d) Amount of civil penalty and further civil penalty under Section 75-71-604--administrative enforcement.

(1) The amount of the civil penalty described in Section 75-71-604(d) is a maximum of Twenty-five Thousand Dollars (\$25,000.00) for each violation, provided that an additional civil penalty may be imposed up to a maximum of Fifteen Thousand Dollars (\$15,000.00) for violations of the chapter committed against elders or disabled persons.

#### **Action Necessary to Protect the Public**

33. Action by the Division to halt further conduct by Respondent in violation of the Act is necessary and appropriate in the public interest and for the protection of investors, and is consistent with the purposes fairly intended by the policy and provisions of the Act.

34. The undersigned Respondent agrees that this Order contains, constitutes, and embodies the entire agreement between the undersigned, there being no agreement of any kind, verbal or otherwise, which varies, alters, or adds to this Order; and that this Order supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Order.

35. Respondent, by execution of this Order, affirmatively states that he has freely agreed to the signing of this Order, and that no threats, promises, representations, inducements, or offers of any kind, other than as stated in this document, have been made by the Division or any member of the staff of the Division, or any agent or employee of the Division in connection with the signing of this Order.

36. Based upon the foregoing Findings of Fact, and consistent with the consent of the Respondent, the Division makes the following:

## **II. CONCLUSIONS OF LAW**

37. The Administrator has jurisdiction over the subject matter of securities-related registration in Mississippi, of Eduardo Diaz, and of Diaz Retirement Consultants.

38. Respondent violated §75-71-412(d) by filing a statement that was materially incomplete in the U4 section of the registration application when he stated that he was not the subject of a regulatory investigation.

39. Respondent violated §75-71-406(b) by failing to update the Diaz Retirement Consultants Form ADV Part 1A in which Diaz answered “No” on Item 11(G) that asked if the firm or any affiliates, which would include Diaz, were the subject of any regulatory proceeding that could lead to a “Yes” answer on Items 11(C, D, or E).

40. Respondent also violated 75-71-406(b) by failing to update Item 9 in the Diaz Retirement Consultants Form ADV Part 2A (The Firm’s Public Brochure) to reflect he was the subject of a regulatory investigation by FINRA and the Mississippi Secretary of State’s Office.

41. Respondent also violated 75-71-412(d) by making inaccurate and incomplete statements of material fact by stating on Item 9 in the Diaz Retirement Consultants Form ADV

Part 2A (The Firm's Public Brochure) that "there are no legal or disciplinary events that are material to a client's or prospective client's evaluation of our business or integrity."

### **III. ORDER**

#### **IT IS HEREBY ORDERED:**

1. This Order concludes the open matter with the Division with respect to Respondent's registration application. However, nothing herein limits the ability of the Division, individually or jointly with other agencies, in pursuing any investigation with respect to any other securities-related matter involving the Respondent.

2. This Order is entered into solely for the purpose of resolving the previously referenced allegations and is not intended to be used for any other purpose.

3. Within thirty (30) days following the entry of this Order, Respondent shall pay to the Mississippi Secretary of State's Securities Division an administrative penalty in the amount of Two Thousand Dollars (\$2,000.00).

4. Respondent shall fully and fairly comply with all of the following requirements:

a. Respondent shall refrain from seeking Investment Adviser or Administrative Adviser Representative registration for nine (9) months immediately following the entry of this Order.

b. Respondent shall submit to either Series 65 or Series 66 and Series 7 retesting prior to seeking Investment Adviser registration.

c. Respondent shall complete six (6) hour of financial industry related seminars/training of which three (3) hours shall be in the area of compliance and three (3) hours shall be in the area of ethics.

d. Respondent shall, upon request by the Administrator, provide all documentation and information reasonably necessary for the Administrator to verify compliance with this Order.

e. Respondent shall not take any action, or make or permit to be made any public statement, denying, directly or indirectly, any finding in this Order or creating the impression that this Order is without factual basis. Nothing in this paragraph affects Respondent's (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Administrator is not a party; and

f. Respondent shall fully, fairly, and truthfully disclose all information and producing all records and other evidence in its possession, custody, or control relevant to all inquiries made by the Division concerning the subject matter of this Order, except to the extent such inquiries call for the disclosure of information protected by the attorney-client and/or work product privileges.

5. If Respondent defaults in any of his obligations set forth in this Order, the Division may vacate this Order, at its sole discretion, upon fifteen (15) days' notice to Respondent and without opportunity for administrative hearing and refer this matter for enforcement as provided in Section 75-71-604 (g) of the Act.

6. This Order is not intended to indicate that Respondent shall be subject to any disqualifications contained in the federal securities law, the rules and regulations thereunder, the rules and regulations of self-regulatory organizations or various states' securities laws. In addition, this Order is not intended to form the basis for any such disqualifications.

7. This Order shall not disqualify Respondent from any business that he otherwise is qualified or licensed to perform under applicable state law and this Order is not intended to form the basis for any disqualification.

8. This Order contains, constitutes, and embodies the entire agreement between the undersigned, there being no agreement of any kind, verbal or otherwise, which varies, alters, or adds to this Order; and this Order supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Order.

9. In the event that one or more provisions contained in this Order shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Order.

10. By his consent to and execution of this Order, Respondent affirmatively represents that he freely agrees to the signing of this Order by the Division, and that no threats, promises, representations, inducements, or offers of any kind, other than as stated in this document, have been made by the Division, any member of the staff of the Division, or any agent or employee of the Division in connection with the negotiations and signing of this Order.

Dated this the 4<sup>th</sup> February day of January 2014.

C. DELBERT HOSEMANN, JR.  
Secretary of State  
State of Mississippi

By: \_\_\_\_\_

JESSICA LEIGH LONG  
Senior Attorney  
Securities Division

**CONSENT TO ENTRY OF FINAL ORDER**

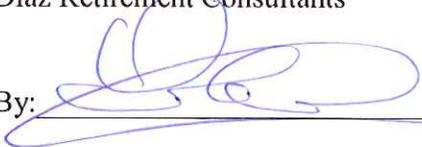
Eduardo Diaz, individually and on behalf of Diaz Retirement Consultants, hereby acknowledges that he has been served with a copy of this Administrative Consent Order (“Order”) has read this Order, is aware of his right to a hearing and appeal in this matter, and has waived the same.

Eduardo Diaz admits the jurisdiction of the Division, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order, and consents to entry of this Order by the Division solely for purposes of settlement.

Eduardo Diaz states that no promise of any kind or nature whatsoever was made to him to induce him to enter into this Order and that he has entered into this Order voluntarily.

Dated this the 30 day of JAN 2014.

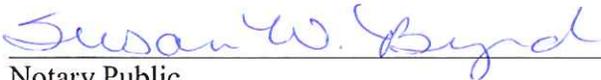
Eduardo Diaz  
Diaz Retirement Consultants

By: 

STATE OF MISSISSIPPI

COUNTY OF JACKSON

SUBSCRIBED AND SWORN TO before me this 30<sup>th</sup> day of Jan. 2014.

  
Notary Public

My commission expires: 6/20/2014

