

State of Maine  
Office of Securities  
121 State House Station  
Augusta, Maine 04333-0121

In Re:

Lucian D. Hodgman

CONSENT ORDER  
13-9694

This is an order of the Securities Administrator issued under 32 M.R.S. § 16412 with the consent of Lucian D. Hodgman (“Hodgman”) (CRD #1546902). Hodgman admits the Findings of Fact and Conclusions of Law set forth below, agrees to the entry of this Consent Order, agrees that it shall have the same preclusive effect as an order issued after hearing, and waives his right to a hearing and to judicial review. Hodgman further agrees that he shall be precluded from disputing the Findings of Fact and Conclusions of Law as set forth herein in any other adjudicatory proceeding in the State of Maine.

**I. FINDINGS**

1. Hodgman is a resident of Kensington, New Hampshire. Hodgman has been licensed at various times through the Maine Office of Securities (“the Office”) as an agent of a broker dealer.
2. From on or about July 14, 2004 to August 28, 2013, Hodgman was licensed in Maine as an agent of Moors & Cabot, Inc. (“Moors & Cabot”) (CRD #594). Hodgman was licensed in an Approved-Restricted capacity and was subject to heightened supervision as a condition of licensure for the above-stated timeframe due to disclosures reported on Hodgman’s CRD record. Specifically, Hodgman had been (a) permitted to resign from UBS Painewebber in January of 2001 for making an unauthorized trade in a client’s account and for failing to adhere to good business practices; (b) suspended by the NSAD in September of 2002 for 10 days and fined \$5,000 for unauthorized trading in a client’s account; and (c) the subject of two customer complaints in 1996 and 2001. The 1996 complaint alleged unauthorized trading, excessive trading, and failure to follow instructions and settled for \$50,000. The 2001 complaint alleged failure to follow instructions and settled for \$49,000 with Hodgman contributing \$7,500 towards the settlement.
3. On or about August 28, 2013, Hodgman submitted his letter of resignation to Moors & Cabot.

4. On or about September 5, 2013, Moors & Cabot filed a full Form U5 to terminate Hodgman's employment as an agent with the firm due to Hodgman's "[f]ailure to cooperate in the firms [sic] internal investigation of a mailer that went to prospective customers through a third party marketing firm without Moors & Cabots [sic] knowledge or approval." The status of Hodgman's license with Moors & Cabot remains termination requested.
5. On or about September 4, 2013, Investors Capital Corp. ("ICC") (CRD #30613) submitted an application to license Hodgman as an agent with ICC. On or about March 25, 2014, ICC filed a Form U5 to withdraw Hodgman's Maine application. Hodgman was terminated by ICC for his failure to be truthful with ICC and the Office regarding the circumstances surrounding his departure from Moors & Cabot. The status of Hodgman's pending application with ICC remains termination requested.
6. On or about October 17, 2013, the Office requested that Hodgman provide, in part, a signed narrative statement explaining the circumstances leading to his termination from Moors & Cabot.
7. On or about October 28, 2013, Hodgman provided a signed statement to the Office in which he represented that, due to a miscommunication with a third-party mailing company, a mock-up of an advertisement was mailed prior to receiving final approval from Moors & Cabot. Hodgman further represented that when he was confronted by the compliance office at Moors & Cabot about the unapproved mailing "I panicked. I didn't think clearly, under pressure, and I told a lie as to what really happened ... I stalled for a bit ... but couldn't live with the lie I had been telling. After too long, and some soul searching, I came clean ... I was wrong and only compounded it further by trying to cover it up."
8. On or about December 6, 2013, the Office received the following information from Moors & Cabot regarding the circumstances leading to Hodgman's resignation from the firm:
  - a. Sometime in late May of 2013, Hodgman submitted a mock-up of an advertisement to the compliance office for approval. On or about May 22, 2013, the compliance office e-mailed Hodgman a list of changes that needed to be made to his advertisement before it could be approved. Hodgman did not respond to the email from compliance leading Moors & Cabot to conclude that Hodgman had chosen not to pursue the advertisement.
  - b. On or about July 26, 2013, a client of another agent at Moors & Cabot received a copy of Hodgman's advertisement in the mail. When Moors & Cabot confronted Hodgman about the advertisement, Hodgman told the firm that he was aware that the advertisement had never received firm approval and that he had decided not to pursue it. Hodgman was unable to explain how another client had received a copy of the advertisement. Hodgman was advised of the firm's policy regarding such advertisements and was further informed that Moors & Cabot would need to find out exactly how this had happened and the extent of it. In response, Hodgman offered to inquire with the mailing company directly.

- c. On or about August 1, 2013, Hodgman informed Moors & Cabot that he had contacted the mailing company and learned that 25 postcards of the mock-up had gone out by mistake. Hodgman also informed Moors & Cabot that the mailing company did not have a record of to whom the advertisement had been mailed. Hodgman was asked to provide contact information for the mailing company and was further informed that the firm would need something in writing from the mailing company attesting to this mistake.
- d. On or about August 5, 2013, Hodgman provided Moors & Cabot with a letter from the general manager of the mailing company (hereinafter "ES") dated August 1, 2013. Hodgman also informed Moors & Cabot that it appeared 50 advertisements, and not 25, had been mailed, and reiterated that the mailing company did not maintain a mailing list. Hodgman was asked by Moors & Cabot to provide the contact information for ES so that Moors & Cabot could address the letter directly. Hodgman advised that ES was on vacation but agreed to provide Moors & Cabot with the requested contact information.
- e. Sometime within the following week, the Vice President and Compliance Officer of Moors & Cabot (hereafter "TN") received an unsolicited call from ES. During the call, ES confirmed that (a) he had written the August 1, 2013, letter; (b) the mailing of the advertisement was his company's mistake; (c) the advertisement had gone out to approximately 50 individuals; (d) he was unable to provide a mailing list to Moors & Cabot because records of the addresses were not maintained; and (f) "no money had exchanged hands."
- f. On or about August 20, 2013, the firm's chief compliance officer (hereinafter "CCO") informed TN that Hodgman had shown him a second letter dated August 2, 2013, also from ES, but that Hodgman had kept the copy of the letter. The two also discussed TN's call with ES and agreed that TN should contact ES directly to discuss any remaining questions that the firm may have.
- g. After obtaining ES's contact information from the Internet, TN called ES. Upon reaching ES, TN introduced himself and informed ES that he wanted to follow up on their earlier conversation. ES informed TN that he had no recollection of having had a conversation with TN. TN said it occurred to him during the call that ES sounded different from the person he had originally spoken with but did not think anything more of it at the time. In response to questions posed by TN, ES stated that (a) he was confident that the advertisement had gone out to more than 50 individuals, explaining that the advertisement would have been mailed to all of the addresses within each of the zip codes selected by Hodgman; and (b) he was quite sure that his company had been compensated by Hodgman. After being informed that TN had received contradictory information during his earlier call to the mailing company, ES informed TN that he was uncomfortable providing any additional information without Hodgman's authorization.

- h. Following the call with ES, TN emailed Hodgman requesting that he provide ES with authorization to speak with him. TN also called Hodgman's supervisor to expedite his request and learned that Hodgman was on vacation.
  - i. On or about August 22, 2013, TN learned that Hodgman had admitted to his supervisor that he had lied when confronted about the advertisement, one lie had led to another, and the lies culminated with Hodgman calling TN and pretending to be someone from the mailing company. Hodgman also admitted that the information that he had provided TN during the impersonated call had been false and that approximately 40,000 advertisements had been mailed and not 25-50 as he had originally stated. Hodgman also agreed to call ES to give him permission to talk with Moors & Cabot and to release any documents requested by Moors & Cabot.
  - j. Upon learning of Hodgman's admission that he had lied, TN once again called ES. During the call, ES confirmed that he had not yet received authorization from Hodgman to talk with Moors & Cabot. ES further confirmed that two mailing "campaigns" were mailed, one in May and one in July, and that approximately 40,000 postcards had been mailed. ES also informed TN that no one from his office had called TN prior to TN's initial call. ES further confirmed that he had written only one letter to Moors & Cabot and stated that he had not written a second letter dated August 2<sup>nd</sup>. Following the call with ES, TN spoke with the CCO who confirmed, again, that he was shown a letter dated August 2<sup>nd</sup> by Hodgman and that the letter was worded differently from the August 1<sup>st</sup> letter Hodgman originally provided to the firm.
  - k. On or about August 23, 2013, ES confirmed that Hodgman had still not provided him with authorization to talk with Moors & Cabot. Hodgman was informed by his supervisor that he would not be allowed into the building or into the offices of Moors & Cabot until he provided the requested authorization to ES.
  - l. On or about August 28, 2013, Hodgman submitted his letter of resignation to Moors & Cabot.
9. On or about December 17, 2013, and after learning the above details of the events leading to Hodgman's termination from Moors & Cabot, the Office requested that Hodgman provide a more detailed explanation of his actions with regard to the lies he told Moors & Cabot and the steps he took to cover his lies. Hodgman responded, in relevant part:

I was called into [TN's] office and confronted with the mailer. I, not thinking clearly, panicked. I don't know why I did it but I explained that it must have been a mix-up and 50 pieces must have slipped out. I was very wrong and perpetuated the lie. [TN] asked for evidence and proof and I asked [ES] to write a letter explaining things. This is the letter dated August 1, 2013 ... the process dragged on but I was not stalling. I confessed to the lie and subsequent mistakes I made and Moors & Cabot asked that I grant them approval to talk to [ES], which I did. The whole issue was a miscommunication that blew up because, under pressure, I panicked and wasn't completely forthright from the beginning[.]

Hodgman still made no mention of the fact that he had impersonated ES on the phone with TN.

10. On or about February 20, 2014, the Office conducted an on-the-record telephone interview of Hodgman. During the interview, Hodgman admitted to having impersonated ES on a phone call to Moors & Cabot. Hodgman also admitted that he made a conscious decision not to be fully forthcoming with the Office because “if I had been completely truthful as I should have been ... the impersonation thing would have blown me out of the water, and Maine would have never looked at me and would have denied me my registration.” During the interview, Hodgman also told the Office that he told ES that he had impersonated him and also claimed to know nothing about a second letter dated August 2<sup>nd</sup>.
11. On or about February 21, 2014, ES told the Office that Hodgman never told him that he had impersonated him on a call to Moors & Cabot and that Hodgman having done so would have been of concern to him.
12. On or about February 22, 2014, the CCO told the Office that Hodgman had come to his office and had shown him a letter dated August 2<sup>nd</sup> and that Hodgman had taken the letter with him when he left the CCO’s office. The CCO said that while in his office, Hodgman said that he felt that the firm was out to get him even though he hadn’t done anything wrong. Hodgman also expressed concern to the CCO that TN just kept digging and digging and wasn’t taking Hodgman at his word.
13. On or about March 10, 2014, in follow-up to the Office’s on-the-record interview, Hodgman provided a written statement to the Office in which he states again that he had called ES and told him that he had impersonated him on a call to Moors & Cabot.
14. Hodgman continues to deny that an August 2<sup>nd</sup> letter exists. He also has represented that he made calls to several of the individuals involved in the case to apologize and now believes he was mistaken when he told the Office he had apologized to ES and was not intentionally making false representations to the Office.

## II. CONCLUSIONS OF LAW

1. The Maine Uniform Securities Act (“the Act”) grants authority to the Securities Administrator to take disciplinary action against a licensee if she determines that it is in the public interest and the licensee has engaged in unlawful, dishonest or unethical practices in the securities business. 32 M.R.S. §§ 16412(3), (4)(M). Under that authority, the Securities Administrator may “deny an application” and “revoke, suspend, condition or limit the license of a licensee.” 32 M.R.S. § 16412(1) and (2). She may also “impose a civil fine in an amount not to exceed a maximum of \$5,000 per violation on a licensee.” 32 M.R.S. §§ 16412(3).

### Misleading Filings

2. Pursuant to 32 M.R.S. § 16505, it is unlawful for a person to make in a record that is filed under the Act a statement that, at the time and in light of the circumstances under which it is made, is false or misleading in a material respect or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in light of the circumstances under which it was made, not false or misleading.
3. Hodgman omitted material facts in a record filed under the Act in connection with his pending agent license application with ICC in violation of 32 M.R.S. § 16505, by failing to fully disclose the circumstances leading to his termination from Moors & Cabot. Specifically, Hodgman deliberately withheld the fact that he had impersonated ES on a call to Moors & Cabot because he believed that the Office would deny his application if this fact was known to the Office.
4. Hodgman made false statements in a record filed under the Act in connection with his pending agent license application with ICC in violation of 32 M.R.S. § 16505, by stating during an on-the-record interview and in a signed statement to the Office that he told ES that he had impersonated him on a call to Moors & Cabot.

### Dishonest & Unethical Practices

5. Pursuant to Rule Chapter 504(8)(39), it is a “dishonest or unethical practice” under Section 16412(4)(M) of the Act to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative; or employ a device, scheme or artifice to defraud, make an untrue statement of material fact, omit a material fact necessary to state in order to make other statements not misleading, or engage in an act, practice or course of business that operates or would operate as a fraud or deceit upon another person.
6. Pursuant to Rule Chapter 504(8)(42), it is a “dishonest or unethical practice” under Section 16412(4)(M) of the Act to violate any of the conduct rules of the NASD<sup>1</sup>.
7. FINRA Conduct Rule 2010 provides that a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.
8. By (a) engaging in the underlying conduct detailed in paragraph 7 above; (b) deliberately withholding from the Office that he had impersonated ES on a call to Moors & Cabot; and (c) twice falsely representing to the Office that he told ES that he had impersonated ES on a call to Moors & Cabot, Hodgman violated Office of Securities Rule Chapter 504(8)(39) and (42) and FINRA Conduct Rule 2010 and engaged in “dishonest and unethical practices” under 32 M.R.S. § 16412(4)(M).
9. This Consent Order is in the public interest because it will tend to correct Hodgman’s behavior and deter similar misconduct by Hodgman and others in the future.

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<sup>1</sup> The NASD is now known as FINRA. FINRA was created in 2007 through the consolidation of the NASD and the NYSE Member Regulation.

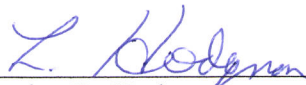
### III. ORDER

1. Hodgman's agent license with Moors & Cabot is hereby revoked.
2. Hodgman's pending agent application with ICC is hereby denied.
3. Hodgman shall pay a civil fine of \$1,750 via check made payable to "Treasurer, State of Maine" and due at the time Hodgman returns the Consent Order containing his signature to the Office of Securities. Failure to include payment in full with his signed copy of the Consent Order will suspend final execution of this Order by the Securities Administrator, at her discretion, until payment is received in full.
4. Should Hodgman ever become licensed in Maine as an investment adviser representative or an agent of a broker-dealer, he shall be subject to heightened supervision. Such heightened supervision shall include, but may not be limited to:
  - a. Hodgman shall not act in any principal, supervisory, or managerial capacity for a broker-dealer or investment adviser.
  - b. Hodgman shall work from the same office as his supervisor.
  - c. During any period in which Hodgman maintains his own branch office in Maine, Hodgman's broker-dealer and/or investment adviser must: (1) conduct a bi-annual inspection of Hodgman's branch office; and, (2) implement a system of adequate supervisory controls over such branch office operations designed to ensure a level of oversight comparable to that which would exist if Hodgman's designated supervisor were located in Hodgman's assigned office.
  - d. Within 15 days after learning of any investigation, proceeding, or written or oral customer complaint against him arising out of activities in the securities, insurance, or finance industry, Hodgman shall send written notification to the Office of Securities of the investigation, proceeding, or complaint in addition to making any required disclosures on Web CRD/IARD.
  - e. Any broker-dealer or investment adviser with which Hodgman is associated must assign as Hodgman's supervisor an appropriately Maine-licensed person approved in advance by the Securities Administrator.
  - f. Any other conditions the Securities Administrator deems appropriate at the time of licensure.
5. Failure to adhere to this Order will constitute grounds for the Securities Administrator to deny Hodgman's license application, revoke Hodgman's license or take any other available action.

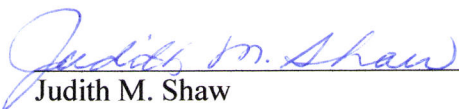
6. Except as set forth above, the Securities Administrator agrees to take no action adverse to Hodgman based solely on the same conduct addressed in this Consent Order. However, nothing in this Consent Order shall preclude the Securities Administrator from: (a) taking adverse action based at least in part on other conduct; (b) taking this Consent Order and the conduct described above into account in determining the proper resolution of any action based on other conduct; or (c) taking any and all available steps to enforce this Consent Order.

Hodgman, by signing below, admits the Findings of Fact and Conclusions of Law, agrees to the entry of this Consent Order, agrees that it shall have the same preclusive effect as an order issued after hearing, waives his right to a hearing and to judicial review and agrees that he shall be precluded from disputing the Findings of Fact and Conclusions of Law as set forth herein in any adjudicatory proceeding in the State of Maine.

Date: January 20, 2015

  
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Lucian D. Hodgman

February 2  
Date: January \_\_, 2015

  
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Judith M. Shaw  
Securities Administrator