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SECURITIES COMMISSIONER



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## Texas State Securities Board

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IN THE MATTER OF  
THE INVESTMENT ADVISER  
REPRESENTATIVE REGISTRATION OF  
TRACY MORGAN SPAETH

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§  
§

**Order No. IC13 – SUS - 04**

TO: Tracy Morgan Spaeth (CRD No. 1999478)  
Uncommon Financial Services, LC  
5012 50<sup>th</sup> Street  
Lubbock, TX 79414

### DISCIPLINARY ORDER

Be it remembered that Tracy Morgan Spaeth ("Respondent") appeared before the Securities Commissioner of the State of Texas ("Securities Commissioner") and, solely for the purposes of this proceeding, consented to the entry of this order ("Order") and Undertaking and the Findings of Fact and Conclusions of Law contained herein.

### FINDINGS OF FACT

1. Respondent has waived (a) Respondent's rights to notice and hearing in this matter; (b) Respondent's rights to appear and present evidence in this matter; (c) Respondent's rights to appeal this Order; and (d) all other procedural rights granted to the Respondent by The Securities Act, Tex. Rev. Civ. Stat. Ann. arts. 581-1 to 581-43 (West 2010 and Supp. 2012)("Texas Securities Act"), and the Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.001 to 2001.902 (West 2010 & Supp. 2012)("Administrative Procedure Act").
2. On August 10, 2010, Respondent registered with the Securities Commissioner as an investment adviser representative of Uncommon Financial Services, LC ("UFS"). This registration is currently effective.

#### **I. Unsuitable Recommendations**

3. From in or about July 2011 through in or about September 2011, Respondent recommended that at least thirty-one (31) clients invest through a private offering in Hampton Capital Markets, LLC ("HCM"). HCM purported to engage in an arbitrage

strategy to capture leveraged index ETF inefficiencies in a volatile market by connecting to an automated programming interface.

4. HCM further purported to offer investors the choice of receiving either a ten (10) percent annual return or fifty (50) percent of the trading profits on the amount invested.
5. On or about June 27, 2011, Respondent met with the principal of HCM (the "Principal") to discuss certain characteristics of HCM and observe the Principal place trades.
6. However, Respondent did not independently verify certain key representations made by the Principal.
7. Specifically, Respondent did not make a reasonable inquiry as to whether the returns advertised by HCM were attainable or whether HCM had previously achieved the advertised returns. Additionally, Respondent did not verify the existence of certain service providers to HCM.
8. Further, Respondent did not independently verify representations made in the HCM offering documents related to the Principal's trading experience.
9. Finally, Respondent failed to understand key attributes of the operational structure of HCM. Respondent asked no questions regarding whether HCM and the Principal were properly registered to collect management fees, and Respondent did not question how such fees and expenses would be allocated.
10. Respondent's clients never received any interest payments or return of principal from HCM. Further, on November 11, 2011, the Arizona Corporation Commission ordered HCM and the Principal to temporarily cease and desist from offering or selling unregistered securities and offering or selling securities while not registered as dealers or salesmen.
11. However, in October 2011 and November 2011 Respondent did return to clients all commissions that Respondent received from HCM in connection with those clients' investments in HCM.

## **II. NFA Sanction**

12. On March 27, 2012, the National Futures Association ("NFA"), a self regulatory organization, issued a decision finding that Respondent used deceptive and misleading promotional material and provided false and misleading information to the NFA. The NFA also found that Respondent failed to observe just and equitable principles of trade in that he solicited customers to open accounts at firms which maintained no books and records, were subject to emergency disciplinary actions by the NFA, and used unregulated and unauthorized counterparties.
13. In the decision, the NFA ordered Respondent to withdraw from NFA associate membership and principal status within thirty (30) days. The NFA further ordered

that Respondent shall be barred from NFA membership, associate membership, or principal status with any NFA member for three (3) years and, in the event he attains NFA membership, associate membership, or principal status with any NFA member at any time in the future, pay a fine of \$5,000.

### **III. FINRA Sanction**

14. On September 7, 2012, Respondent submitted a Letter of Acceptance, Waiver, and Consent ("AWC") to the Financial Industry Regulatory Authority ("FINRA"), a self regulatory organization, whereby Respondent consented to a two year suspension from association with all FINRA members in all capacities and a \$50,000 fine.
15. Without admitting or denying the findings, Respondent consented to the entry of findings that Respondent participated in private securities transactions without providing prior written notice to, or receiving prior written approval from, his employing FINRA member firm, and that Respondent provided a webinar to his clients that failed to disclose certain risks and was exaggerated and misleading.

### CONCLUSIONS OF LAW

1. The interests in HCM constitute "securities" as the term "securities" is defined by Section 4.A of the Texas Securities Act.
2. Respondent did not have a reasonable basis to believe that investments in HCM were suitable recommendations for any client. Respondent's recommendations without such reasonable basis constitute inequitable practices in rendering services as an investment adviser.
3. Pursuant to Section 14.A(3) of the Texas Securities Act, the aforementioned inequitable practices in rendering services as an investment adviser constitute bases for the suspension of Respondent's registration with the Securities Commissioner.
4. Pursuant to Section 14.A(9) of the Texas Securities Act, the aforementioned suspensions from membership by self regulatory organizations constitute bases for the suspension of Respondent's registration with the Securities Commissioner.

### UNDERTAKING

1. Respondent acknowledges that Respondent has represented to the staff of the Texas State Securities Board that Respondent has paid back to clients all commissions Respondent had previously received from HCM, an amount equaling \$72,223.42.
2. Respondent undertakes and agrees to pay to certain other clients that invested in HCM \$19,343.21 within ten (10) business days from the entry of this Order.
3. In connection with such payments, Respondent further undertakes and agrees to ensure that the sum of Respondent's payments in October 2011 and November

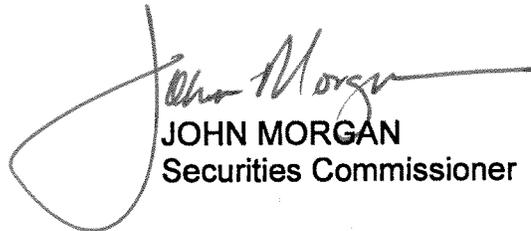
2011 and pursuant to this Undertaking equal at least five (5) percent of each client's investment in HCM.

4. Respondent further undertakes and agrees to provide to the Director of the Inspections and Compliance Division evidence of the return of the aforementioned fees to clients within twenty (20) business days from the entry of this Order.

ORDER

1. It is therefore ORDERED that the investment adviser representative registration of Tracy Morgan Spaeth is hereby SUSPENDED for a period of two (2) years from the date this Order is signed by the Securities Commissioner.
2. It is further ORDERED that Tracy Morgan Spaeth COMPLY with the terms of the Undertaking enclosed herein.

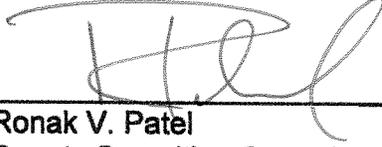
SIGNED AND ENTERED BY THE SECURITIES COMMISSIONER this 23rd  
day of May, 2013.

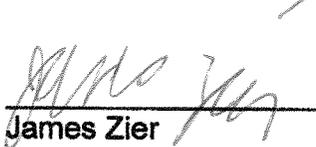
  
JOHN MORGAN  
Securities Commissioner

Respondent:

  
\_\_\_\_\_  
Tracy Morgan Spaeth

Approved as to Form:

  
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Ronak V. Patel  
Deputy Securities Commissioner

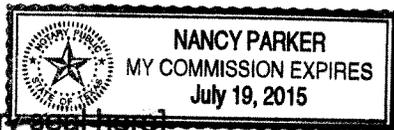
  
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James Zier  
Attorney for Respondent

  
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Clinton T. Edgar  
Attorney  
Inspections and Compliance Division

**ACKNOWLEDGEMENT**

On the 13<sup>th</sup> day of May, 2013, Tracy Morgan Spaeth ("Respondent") personally appeared before me, executed the foregoing Order and Undertaking, and acknowledged that:

1. Respondent has read the foregoing Order and Undertaking;
2. Respondent has been fully advised of his rights under the Texas Securities Act and the Administrative Procedure Act;
3. Respondent knowingly and voluntarily consents to the entry of the foregoing Order and Undertaking and the Findings of Fact and Conclusions of Law contained therein; and
4. Respondent, by consenting to the entry of the foregoing Order and Undertaking, has knowingly and voluntarily waived his rights as set forth therein.



[affix notary seal here]

Nancy Parker  
Notary Public in and for  
the State of Texas

My commission expires on: 07-19-2015