STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU

In the Matter of: Complaint No. 337057

MACKROW ASSET MANAGEMENT GROUP
Unregistered

Respondent.
_____/

Issued and entered
This 23rd day of January, 2019

NOTICE AND ORDER TO CEASE AND DESIST

Julia Dale, the Director ("Administrator") of the Corporations, Securities & Commercial Licensing Bureau ("Bureau"), pursuant to her statutory authority and responsibility to administer and enforce the Michigan Uniform Securities Act (2002), 2008 PA 551, as amended, MCL 451.2101 *et seq.* ("Securities Act"), hereby orders Mackrow Asset Management Group ("Respondent") to cease and desist from offering and selling unregistered securities, from acting as an unregistered broker-dealer, and from omitting to state material facts necessary in order to make other statements made, in the light of the circumstances under which they were made, not misleading in connection with the offer and sale of securities, contrary to the Securities Act. Respondent is notified of the opportunity to request a hearing in this matter.

I. BACKGROUND

A. The Respondent

1. Mackrow Asset Management Group is a business organization with a last known address in Brooklyn, New York. Mackrow Asset Management Group is not registered in any capacity pursuant to the Securities Act in Michigan, nor has it registered any securities offerings pursuant to the Securities Act in Michigan.

B. Findings of Fact

1. The Bureau conducted an investigation of Respondent's activities.

2. The investigation developed evidence that Respondent, through its agent John Cucinella, offered and sold securities which were "investment contract" securities as that term is defined by the Securities Act to Michigan Investor CEW[1].

3. Respondent, through its agent John Cucinella, offered and sold two funds to Investor CEW, both of which became total losses :

   A. "Domestic Guard Advantage One", and
   B. "HealthStrong U.S. Ultra 5.0".

4. The investment contracts sold to Investor CEW were not registered pursuant to the Securities Act, nor has Respondent identified any applicable[2] exemption, exception, preemption, or exclusion from the applicability of Securities Act.

5. Respondent acted as a broker-dealer when it effected transactions in securities on behalf of Investor CEW in his brokerage account. Respondent is not and has never been registered as a broker-dealer in Michigan, nor has it identified any relevant exemption, exception, preemption, or exclusion from the applicability of the Securities Act.

6. Respondent's "Disclosure Statement" provided to Investor CEW at the opening of the brokerage account stated that Respondent agreed "to buy, sell, or otherwise dispose of the investment And [sic] or investment products according to your instructions…" The Disclosure Statement indicated that trade confirmations would be provided and that, unless objected to within 3 days of receipt, would be "conclusive". The Disclosure Statement notably omitted to state that unauthorized trades made without customer instructions would be considered authorized by Respondent unless objected to by the customer. A reasonable investor might consider it important to his or her investment decision that an unauthorized trade could become "authorized" after the fact simply due to the passage of time.

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[1] Investor CEW was older than 60 years of age at the time of the transactions in question.

[2] Respondent took the position that the investments sold to Investor CEW were not "securities" within the scope of the Securities Act, but rather that they were commodities or precious metals. The argument is without merit. The "funds" were baskets of investments which were sold in units to investors, and clearly are not commodities or precious metals; whether the underlying investments made by the funds may have included commodity or precious metal holdings is a separate issue from whether the investment fund units sold to Investor CEW met the definition of "investment contract" under the Securities Act. Evidence gathered during the investigation indicates that the products sold to Investor CEW were securities.

7. Respondent represented in its Disclosure Statement to Investor CEW that it would charge various fees to customer accounts and that the value of investments would need to increase sufficiently to cover the cost of the fees for the investment to break even – commonly known as a "break-even point". Analysis by Bureau staff shows that Investor CEW's investments with Respondent would have needed to increase in value by approximately thirteen-point eight percent (13.8%) annually for those investments to break even. Respondent identified that investments through it had break-even points, but omitted any statements regarding the actual break-even point for Investor CEW's investments. A reasonable investor might have considered it important to his or her investment decision to know that an investment with Respondent would need to make more than thirteen-point eight percent (13.8%) annually just to avoid losing money.

8. Respondent, through its agent John Cucinella, represented to Investor CEW that he had a "sure thing" investment for Investor CEW to invest in when a prior investment had failed to materialize as planned. Respondent, through Cucinella, failed to disclose that the investment might lose all of its value, which is what occurred. A reasonable investor might consider it important to his or her investment decision to know that a "sure thing" investment is not actually a sure thing, and that it may lose all of its value.

II. RELEVANT STATUTORY PROVISIONS

1. Section 102(d) of the Securities Act, MCL 451.2102(d), defines "broker-dealer" in part as "a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account..."

2. Section 102c(c) of the Securities Act, MCL 451.2102c(c), defines "Security" in part as:

> a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest in or based on the value of that put, call, straddle, option, or privilege on that security, certificate of deposit, or group or index of securities, put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, an investment in a viatical or life settlement agreement; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for,

guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing…

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> (v) The term includes an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor. As used in this subparagraph, a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors…

3. Section 301 of the Securities Act, MCL 451.2301, states:

   A person shall not offer or sell a security in this state unless 1 or more of the following are met:

   > (a) The security is a federal covered security.
   > (b) The security, transaction, or offer is exempted from registration under sections 201 to 203.
   > (c) The security is registered under this act.

4. Section 401(1) of the Securities Act, MCL 451.2401(1), states:

   (1) A person shall not transact business in this state as a broker-dealer unless the person is registered under this act as a broker-dealer or is exempt from registration as a broker-dealer under subsection (2) or (4).

5. Section 501 of the Securities Act, MCL 451.2501, states:

   It is unlawful for a person, in connection with the offer, sale, or purchase of a security or the organization or operation of a Michigan investment market under article 4A, to directly or indirectly do any of the following:

   > (a) Employ a device, scheme, or artifice to defraud.
   > (b) Make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.
   > (c) Engage in an act, practice, or course of business that operates or would operate as a fraud or deceit on another person.

6. Section 503(1) of the Securities Act, MCL 451.2503(1), states:

   (1) In a civil action or administrative proceeding under this act, a person claiming an exemption, exception, preemption, or exclusion has the

burden to prove the applicability of the exemption, exception, preemption, or exclusions.

III. CONCLUSIONS OF LAW

1. Respondent, Mackrow Asset Management Group, offered and sold investment contract securities in Michigan to Investor CEW, and has not identified a relevant exemption, exception, preemption, or exclusion from Securities Act registration requirements, contrary to section 301 of the Securities Act, MCL 451.2301.

2. Respondent, Mackrow Asset Management Group, acted as a broker-dealer when it effected transactions in securities for the account of Investor CEW, and has not identified a relevant exemption, exception, preemption, or exclusion from Securities Act registration requirements, contrary to section 401(1) of the Securities Act, MCL 451.2401(1).

3. Respondent, Mackrow Asset Management Group, omitted to state a material fact necessary to make other statements made not misleading in connection with the offer or sale of securities when it represented that it would only effect transactions at the instruction of Investor CEW, but omitted to state that it would make unauthorized trades and consider them to be authorized unless Investor CEW objected within three days of receipt of a trade confirmation. The statement was material and was omitted in connection with the offer or sale of a security, contrary to section 501(b) of the Securities Act, MCL 451.2501(b).

4. Respondent, Mackrow Asset Management Group, omitted to state a material fact necessary to make other statements made not misleading in connection with the offer or sale of securities when it represented that investments through it had break-even points, but omitted to state that the break-even point for Investor CEW was approximately 13.8% annually. The statement was material and was omitted in connection with the offer or sale of a security, contrary to section 501(b) of the Securities Act, MCL 451.2501(b).

5. Respondent, Mackrow Asset Management Group, omitted to state a material fact necessary to make other statements made not misleading in connection with the offer or sale of securities when it represented, through its agent John Cucinella, that an investment was a "sure thing" when, in fact, the investment was subject to risk of loss, including the entirety of the investment. The statement was material and was omitted in connection with the offer or sale of a security, contrary to section 501(b) of the Securities Act, MCL 451.2501(b).

IV. ORDER

IT IS THEREFORE ORDERED, pursuant to section 604 of the Securities Act, MCL 451.2604, that:

A. Respondent shall immediately CEASE AND DESIST from continuing to offer or sell unregistered securities, from acting as an unregistered broker-dealer, and from omitting to state material facts necessary to make other statements made not misleading in connection with the offer or sale of securities, contrary to the Securities Act.

B. Pursuant to section 604(2) of the Securities Act, this Notice and Order to Cease and Desist is IMMEDIATELY EFFECTIVE.

C. In her Final Order, the Administrator, under section 604(4) of the Securities Act, MCL 451.2604(4), intends to impose civil fines of $100,000.00 against Respondent.

D. Pursuant to section 508 of the Securities Act, MCL 451.2508, a person that willfully violates the Securities Act, or an order issued under the Securities Act, is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than $500,000.00 for each violation, or both. An individual convicted of violating a rule or order under this act may be fined, but shall not be imprisoned, if the individual did not have knowledge of the rule or order.

E. The Administrator retains the right to pursue further administrative action against Respondent under the Securities Act if the Administrator determines that such action is necessary and appropriate in the public interest, for the protection of investors and is authorized by the Securities Act.

V. NOTICE OF OPPORTUNITY FOR HEARING

Section 604 of the Securities Act, MCL 451.2604, provides that Respondent has 30 days beginning with the first day after the date of service of this Notice and Order to Cease and Desist to submit a written request to the Administrator asking that this matter be scheduled for a hearing. If the Administrator receives a written request in a timely manner, the Administrator shall schedule a hearing within 15 days after receipt of the request. The written request for a hearing must be addressed to:

Corporations, Securities & Commercial Licensing Bureau
Regulatory Compliance Division
P.O. Box 30018
Lansing, MI 48909

VI. ORDER FINAL ABSENT HEARING REQUEST

A. Under section 604 of the Securities Act, MCL 451.2604, the Respondent's failure to submit a written request for a hearing to the Administrator within 30 days after the service date of this **NOTICE AND ORDER TO CEASE AND DESIST** shall result in this order becoming a **FINAL ORDER** by operation of law. The **FINAL ORDER** includes the imposition of the fines cited described in section IV.C., and the fine amounts set forth below will become due and payable to the Administrator within sixty (60) days after the date this order becomes final:

> $100,000.00 – Mackrow Asset Management Group, under section 604 of the Securities Act, MCL 451.2604.

B. CIVIL FINE payments should be payable to the STATE OF MICHIGAN and contain identifying information (e.g., names and complaint numbers) and mailed to the following address:

> Corporations, Securities & Commercial Licensing Bureau
> Final Order Monitoring
> P.O. Box 30018
> Lansing, MI 48909

C. Failure to comply with the terms of this Order within the time frames specified may result in additional administrative penalties, including the summary suspension or continued suspension of all registrations held by Respondent under the Securities Act, the denial of any registration renewal, and/or the denial of any future applications for registration, until full compliance is made. Respondent may voluntarily surrender or withdraw a registration under the Securities Act; however, the surrender or withdrawal will not negate the summary suspension or continued suspension of the relevant registrations or any additional administrative proceedings if a violation of this Order or the Securities Act occurred.

D. Failure to pay the civil fines within six (6) months after this Order becomes final may result in the referral of the civil fines to the Michigan Department of Treasury for collection action against Respondent.

DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU

J Dale — 1/23/19

Julia Dale
Director, Corporations, Securities &
Commercial Licensing Bureau

Date